Assembly Bill No. 114

CHAPTER 43

An act to amend Sections 1240, 1622, 2558.46, 8201, 8208, 8263.2, 8263.4, 8447, 8499, 42127, 42238.146, 44955.5, 56325, and 69432.7 of, to amend and renumber Section 60422.3 of, to amend and repeal Sections 56139 and 56331 of, to amend, repeal, and add Sections 8203.5, 41202, and 76300 of, to add Sections 41202.5, 41210, 41211, 42251, and 46201.3 to, and to repeal and add Section 42606 of, the Education Code, to amend Section 7911.1 of the Family Code, to amend Sections 7572, 7582, 7585, 12440.1, and 17581.5 of, to amend and repeal Sections 7572.5, 7572.55, 7576, 7576.2, 7576.3, 7576.5, 7586.5, 7586.6, and 7586.7 of, and to repeal Section 7588 of, the Government Code, and to amend Sections 5651 and 11323.2 of, to amend and repeal Sections 5701.3 and 5701.6 of, to add and repeal Section 18356.1 of, and to repeal Chapter 6 (commencing with Section 18350) of Part 6 of Division 9 of, the Welfare and Institutions Code, relating to education finance, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 30, 2011. Filed with Secretary of State June 30, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 114, Committee on Budget. Education finance.

(1) Existing law requires a county superintendent of schools to certify in writing whether or not the county office of education is able to meet its financial obligations for the current and 2 subsequent fiscal years. Existing law requires a county superintendent of schools to approve, conditionally approve, or disapprove the adopted budget for the school districts under his or her jurisdiction and to determine whether the adopted budget is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments.

This bill would require the budgets of a county office of education and a school district for the 2011–12 fiscal year to project the same level of revenue per unit of average daily attendance as it received in the 2010–11 fiscal year, and would delete the certification requirement regarding the 2 fiscal years subsequent to the 2011–12 fiscal year. The bill would prohibit the Superintendent of Public Instruction from requiring a county office of education to do otherwise.

(2) Existing law requires a revenue limit to be calculated for each county superintendent of schools, adjusted for various factors, and reduced, as specified. Existing law reduces the revenue limit for each county superintendent of schools for the 2011–12 fiscal year by a deficit factor of 19.892%.

This bill instead would set the deficit factor for each county superintendent of schools for the 2011–12 fiscal year at 20.041%.

(3) The Child Care and Development Services Act, administered by the State Department of Education, provides that children who are 10 years of age or younger, children with exceptional needs, children 12 years of age or younger who are recipients of child protective services or at risk of abuse, neglect, or exploitation, children 12 years of age or younger who are provided services during nontraditional hours, children 12 years of age or younger who are homeless, and children who are 11 and 12 years of age, as funding permits, as specified, are eligible, with certain requirements, for child care and development services.

This bill would instead provide that children from infancy to 13 years of age and their parents are eligible, with certain requirements, for child care and development services.

(4) Existing law requires that a child who is 11 or 12 years of age and who is otherwise eligible for subsidized child care and development services, except for his or her age, be given first priority for enrollment, and in cases of programs operating at full capacity, first priority on the waiting list for a before or after school program, as specified. Existing law also requires contractors to provide each family of an otherwise eligible 11 or 12 year old child with information about the availability of before and after school programs located in the family's community.

This bill would instead provide that the preferred placement for children who are 11 or 12 years of age and who are otherwise eligible for subsidized child care and development services is in a before or after school program. The bill would specify criteria for the provision of subsidized child care services for children who are 11 and 12 years of age.

(5) Existing law, effective July 1, 2011, requires the State Department of Education to reduce the maximum reimbursable amounts of the contracts for the Preschool Education Program, the General Child Care Program, the Migrant Day Care Program, the Alternative Payment Program, the CalWORKs Stage 3 Program, and the Allowance for Handicapped Program by 15%, as specified.

This bill would instead provide that the reduction in the maximum reimbursable amounts of the contracts for the programs listed above would be 11% or whatever proportion is necessary to ensure that expenditures for these programs do not exceed the amounts appropriated for them, including any reductions made subsequent to the adoption of the annual Budget Act.

(6) Existing law requires that the cost of state-funded child care services be governed by regional market rates, and establishes a family fee schedule reflecting specified income eligibility limits. Existing law revises the family fee schedule that was in effect for the 2007–08, 2008–09, 2009–10, and 2010–11 fiscal years to reflect an increase of 10% to existing fees, and requires the State Department of Education to submit an adjusted fee schedule to the Department of Finance for approval in order to be implemented by July 1, 2011.

This bill would delete the provision requiring the fee schedule to reflect a 10% increase in family fees.

(7) Under existing law (Proposition 98), the California Constitution requires the state to comply with a minimum funding obligation each fiscal year with respect to the support of school districts and community college districts. Existing statutory law specifies that state funding for the Child Care and Development Services Act is included within the calculation of state apportionments that apply toward this constitutional funding obligation.

This bill would, commencing July 1, 2011, specify that funds appropriated for the Child Care and Development Services Act do not apply toward the constitutional minimum funding obligation for school districts and community college districts, with the exception of state funding for the part-day California state preschool programs and the After School Education and Safety Program.

The bill would make related changes in the calculation of the minimum funding obligation required by Proposition 98.

(8) Existing law prescribes the percentage of General Fund revenues appropriated for school districts and community college districts for purposes of the provisions of the California Constitution requiring minimum funding for the public schools.

This bill would state that specified sales and use tax revenues transferred pursuant to certain provisions of the Revenue and Taxation Code are not General Fund revenues for these purposes. The bill would provide that its provisions would be operative for the 2011–12 fiscal year and subsequent years only if one or more ballot measures approved before November 17, 2012, authorize those revenues to be so treated, and provide funding for school districts and community college districts in an amount equal to that which would have been provided if the tax revenues were General Fund revenues.

The bill would require, if the aforementioned provisions of law are rendered inoperative because the ballot measure or measures are not approved, that by December 17, 2012, the Director of Finance, in consultation with the Superintendent of Public Instruction, determine the amount by which the minimum amount of moneys required to be applied by the state for the support of school districts and community college districts was reduced pursuant to the operation of the aforementioned provisions of law for the 2011–12 fiscal year. Following the determination of this amount, the bill would appropriate an amount equal to 17.8% of that amount from the General Fund to the Superintendent for each of the 2012–13 to 2016–17, inclusive, fiscal years in accordance with a specified priority order, and would appropriate 2.2% of that amount from the General Fund to the Chancellor of the California Community Colleges for each of the 2012–13 to 2016–17, inclusive, fiscal years, in accordance with a specified priority order.

(9) Existing law requires the county superintendent of schools to determine a revenue limit for each school district in the county, and requires the amount of the revenue limit to be adjusted for various factors. Existing

law reduces the revenue limit for each school district for the 2011–12 fiscal year by a deficit factor of 19.608%.

This bill instead would set the deficit factor for each school district for the 2011–12 fiscal year at 19.754%.

(10) Under existing law, county offices of education receive certain property tax revenues. Existing law requires a revenue limit to be calculated for each county superintendent of schools, and requires the amount of the revenue limit to be adjusted for various factors, including the amount of property tax revenues a county office of education receives.

This bill would require the Superintendent of Public Instruction for the 2011–12 fiscal year to determine the amount of excess property taxes available to county offices of education, and would require the auditor-controller of each county to distribute those amounts to the Supplemental Revenue Augmentation Fund within the county exclusively to reimburse the state for the costs of providing trial court services and costs until those moneys are exhausted. By imposing additional duties on local agency officials, this bill would impose a state-mandated local program.

(11) Existing law requires the Superintendent of Public Instruction to allocate, for the 2010–11 and 2011–12 fiscal years, a supplemental categorical block grant to a charter school that begins operation in the 2008–09, 2009–10, 2010–11, or 2011–12 fiscal year. Existing law requires that this supplemental categorical block grant equal $127 per unit of charter school average daily attendance as determined at the 2010–11 2nd principal apportionment for schools commencing operations in the 2008–09, 2009–10, or 2010–11 fiscal year and at the 2011–12 2nd principal apportionment for schools commencing operations in the 2011–12 fiscal year. Existing law prohibits a locally funded charter school that converted from a preexisting school between the 2008–09 and 2011–12 fiscal years, inclusive, from receiving these funds.

This bill instead would provide that, to the extent funds are provided, for the 2010–11 to the 2014–15 fiscal years, inclusive, a supplemental categorical block grant would be allocated to charter schools commencing operations during or after the 2008–09 fiscal year. The bill would provide that a locally or direct funded charter school, not just a locally funded charter school, that converted from a preexisting school between the 2008–09 and 2014–15 fiscal years, inclusive, would be prohibited from receiving these funds.

The bill would provide that for, the 2010–11 to the 2014–15 fiscal years, inclusive, the supplemental categorical block grant received by eligible charter schools would equal $127 per unit of charter school average daily attendance for charter schools commencing operations during or after the 2008–09 fiscal year, as specified.

(12) Existing law authorizes the governing board of a school district to terminate the services of any certificated employees of the district during the time period between 5 days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies if the governing board of a school district determines that its total revenue limit per unit of

average daily attendance for the fiscal year of that Budget Act has not increased by at least 2% and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district.

This bill would make this provision inoperative from July 1, 2011, to July 1, 2012, inclusive.

(13) Existing law sets forth the minimum number of instructional days and minutes school districts, county offices of education, and charter schools are required to offer.

This bill, for the 2011–12 school year, would reduce the minimum number of required instructional days and minutes by up to 7 days, and would reduce the revenue limit for each school district, county office of education, and charter school, as specified. The bill would require implementation of this reduction by a school district, county office of education, and charter school that is subject to collective bargaining to be achieved through the bargaining process, provided that the agreement has been completed and reductions implemented no later than June 30, 2012. These provisions would be operative only for the 2011–12 school year and only if the Director of Finance determines that the state revenue forecast does not meet a specified amount.

(14) Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with Disabilities Education Act (IDEA), in order that the state may qualify for federal funds available for the education of individuals with exceptional needs. Existing law requires school districts, county offices of education, and special education local plan areas to identify, locate, and assess individuals with exceptional needs and to provide those pupils with a free appropriate public education in the least restrictive environment, and with special education and related services as reflected in an individualized education program (IEP). Existing law requires the Superintendent of Public Instruction to administer the special education provisions of the Education Code and to be responsible for assuring provision of, and supervising, education and related services to individuals with exceptional needs as required pursuant to the federal IDEA.

Existing law authorizes referral, through a prescribed process, of a pupil who is suspected of needing mental health services to a community mental health service. Existing law requires the State Department of Mental Health or a designated community mental health service to be responsible for the provision of mental health services, as defined, if required in a pupil's IEP.

This bill would make these provisions concerning referral for mental health services inoperative as of July 1, 2011, would repeal them as of January 1, 2012, and would make other related conforming changes.

(15) Existing law, for the 2008–09 to the 2014–15 fiscal years, inclusive, provides that the governing board of a school district is not required to provide pupils with instructional materials by a specified period of time following adoption of those materials by the State Board of Education.

This bill would make a technical, nonsubstantive change in this provision by changing its section number.

(16) Existing law, the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program (Cal Grant Program), establishes the Cal Grant A and B Entitlement Awards, the California Community College Transfer Entitlement Awards, the Competitive Cal Grant A and B Awards, the Cal Grant C Awards, and the Cal Grant T Awards under the administration of the Student Aid Commission, and establishes eligibility requirements for awards under these programs for participating students attending qualifying institutions.

Existing law imposes requirements on qualifying institutions, requiring the commission to certify by October 1 of each year the institution's latest 3-year cohort default rate as most recently reported by the United States Department of Education. Existing law provides that an otherwise qualifying institution that did not meet a specified 3-year cohort default rate would be ineligible for new Cal Grant awards at the institution. Under the Cal Grant Program, for the 2012–13 academic year and every academic year thereafter, an otherwise qualifying institution with a 3-year cohort default rate that is equal to or greater than 30% is ineligible for initial or renewal Cal Grant awards at the institution, except as specified.

This bill instead would specify that an otherwise qualifying institution with a 3-year cohort default rate that is equal to or greater than 30% is ineligible for initial and renewal Cal Grant awards at the institution, except as specified.

(17) Existing law establishes the California State University under the administration of the Trustees of the California State University. Existing law authorizes the trustees to draw from funds appropriated to the university, for use as a revolving fund, amounts necessary to make payments of obligations of the university directly to vendors. Existing law requires the trustees to contract with one or more public accounting firms to conduct systemwide and individual campus annual financial statement and compliance audits. Existing law further requires that at least 10 individual campus audits be conducted annually on a rotating basis, and that each campus be audited at least once every 2 years.

This bill would require the annual audits to be conducted in accordance with generally accepted accounting principles. The bill would delete the requirements that at least 10 individual campus audits be conducted annually on a rotating basis, and that each campus be audited at least once every 2 years. The bill would require that the statements of net assets, revenues, expenses, changes in net assets, and cashflows be included as an addendum to the annual systemwide audit.

(18) Existing law requires the governing board of each community college district to charge each student a fee, and sets that fee at $36 per unit per semester.

This bill would raise the fee to $46 per unit per semester if the Director of Finance determines that the state revenue forecast does not meet a specified amount.

(19) Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions. Existing law provides that no local agency or school district is required to implement or give effect to any statute or executive order, or portion thereof, that imposes a mandate during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if specified conditions are met, including that the statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. Existing law provides that only certain specified mandates are subject to that provision.

This bill would specify that 2 additional mandates relating to community college districts are included among those that are subject to the provision.

(20) The Administrative Procedure Act, among other things, sets forth procedures for the development, adoption, and promulgation of regulations by administrative agencies charged with the implementation of statutes.

This bill would authorize the State Department of Social Services and the State Department of Education, notwithstanding the procedures required by the Administrative Procedure Act, to implement the provisions of the bill that relate to the Child Care and Development Services Act through all-county letters, management bulletins, or other similar instructions.

(21) This bill would provide that the implementation of the provisions of the bill related to the provision of child care services would not be subject to the appeal and resolution procedures for agencies that contract with the State Department of Education for these purposes.

(22) This bill would express the intent of the Legislature that specified funding in the Budget Act of 2011 related to educationally related mental health services would be exclusively available only for the 2011–12 and 2012–13 fiscal years.

(23) This bill would express the intent of the Legislature that the State Department of Education and appropriate departments within the California Health and Human Services Agency modify or repeal regulations pertaining to the elimination of statutes pursuant to this bill related to mental health services provided by county mental health agencies. The bill would require the State Department of Education and appropriate departments within the California Health and Human Services Agency to review regulations to ensure appropriate implementation of educationally related mental health services required by the federal Individuals with Disabilities Education Act and of certain statutes enacted pursuant to this bill. The bill would authorize the State Department of Education and appropriate departments within the California Health and Human Services Agency to utilize the statutory process for adopting emergency regulations in implementing certain statutes enacted pursuant to this bill.

(24) This bill would make conforming changes, correct some cross-references, and make other technical, nonsubstantive changes.

(25) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(26) Existing law requires the State Department of Education to award grants to school districts, county superintendents of schools, or entities approved by the department for nonrecurring expenses incurred in initiating or expanding a school breakfast program or a summer food service program.

This bill would make an appropriation of $1,000 for purposes of these grants.

(27) The funds appropriated by this bill would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(28) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1240 of the Education Code is amended to read:

1240. The county superintendent of schools shall do all of the following:

(a) Superintend the schools of his or her county.

(b) Maintain responsibility for the fiscal oversight of each school district in his or her county pursuant to the authority granted by this code.

(c) (1) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she annually may present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(2) (A) For fiscal years 2004–05 to 2006–07, inclusive, to the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, annually shall submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index (API), as defined in subdivision (b) of Section 17592.70, and shall include, among other things, his or her observations while visiting the schools and his or her determinations for each school regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies. As a condition for receipt of funds, the county superintendent, or his or her designee, shall use a standardized

template to report the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details for each school.

(B) Commencing with the 2007–08 fiscal year, to the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, annually shall submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2006 base API, pursuant to Section 52056. As a condition for the receipt of funds, the annual report shall include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision. For purposes of this section, schools ranked in deciles 1 to 3, inclusive, on the 2006 base API shall include schools determined by the department to meet either of the following:

(i) The school meets all of the following criteria:

(I) Does not have a valid base API score for 2006.

(II) Is operating in fiscal year 2007–08 and was operating in fiscal year 2006–07 during the Standardized Testing and Reporting (STAR) Program testing period.

(III) Has a valid base API score for 2005 that was ranked in deciles 1 to 3, inclusive, in that year.

(ii) The school has an estimated base API score for 2006 that would be in deciles 1 to 3, inclusive.

(C) The department shall estimate an API score for any school meeting the criteria of subclauses (I) and (II) of clause (i) of subparagraph (B) and not meeting the criteria of subclause (III) of clause (i) of subparagraph (B), using available test scores and weighting or corrective factors it deems appropriate. The department shall post the API scores on its Internet Web site on or before May 1.

(D) For purposes of this section, references to schools ranked in deciles 1 to 3, inclusive, on the 2006 base API shall exclude schools operated by county offices of education pursuant to Section 56140, as determined by the department.

(E) In addition to the requirements above, the county superintendent, or his or her designee, annually shall verify both of the following:

(i) That pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive

instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

(ii) That pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

(F) (i) Commencing with the 2010–11 fiscal year and every third year thereafter, the Superintendent shall identify a list of schools ranked in deciles 1 to 3, inclusive, of the API for which the county superintendent, or his or her designee, annually shall submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county that describes the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the base API as defined in clause (ii).

(ii) For the 2010–11 fiscal year, the list of schools ranked in deciles 1 to 3, inclusive, of the base API shall be updated using the criteria set forth in clauses (i) and (ii) of subparagraph (B), subparagraph (C), and subparagraph (D), as applied to the 2009 base API and thereafter shall be updated every third year using the criteria set forth in clauses (i) and (ii) of subparagraph (B), subparagraph (C), and subparagraph (D), as applied to the base API of the year preceding the third year consistent with clause (i).

(iii) As a condition for the receipt of funds, the annual report shall include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision.

(G) The county superintendent of the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco shall contract with another county office of education or an independent auditor to conduct the required visits and make all reports required by this paragraph.

(H) On a quarterly basis, the county superintendent, or his or her designee, shall report the results of the visits and reviews conducted that quarter to the governing board of the school district at a regularly scheduled meeting held in accordance with public notification requirements. The results of the visits and reviews shall include the determinations of the county superintendent, or his or her designee, for each school regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies. If the county superintendent, or his

or her designee, conducts no visits or reviews in a quarter, the quarterly report shall report that fact.

(I) The visits made pursuant to this paragraph shall be conducted at least annually and shall meet the following criteria:

(i) Minimize disruption to the operation of the school.

(ii) Be performed by individuals who meet the requirements of Section 45125.1.

(iii) Consist of not less than 25 percent unannounced visits in each county. During unannounced visits in each county, the county superintendent shall not demand access to documents or specific school personnel. Unannounced visits shall only be used to observe the condition of school repair and maintenance, and the sufficiency of instructional materials, as defined by Section 60119.

(J) The priority objective of the visits made pursuant to this paragraph shall be to determine the status of all of the following circumstances:

(i) Sufficient textbooks as defined in Section 60119 and as specified in subdivision (i).

(ii) The condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy or paragraph (1) of subdivision (c) of Section 17592.72.

(iii) The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials, as defined by Section 60119, and the safety, cleanliness, and adequacy of school facilities, including good repair as required by Sections 17014, 17032.5, 17070.75, and 17089.

(iv) The extent to which pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

(v) The extent to which pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

(K) The county superintendent may make the status determinations described in subparagraph (J) during a single visit or multiple visits. In determining whether to make a single visit or multiple visits for this purpose, the county superintendent shall take into consideration factors such as cost-effectiveness, disruption to the schoolsite, deadlines, and the availability of qualified reviewers.

(L) If the county superintendent determines that the condition of a facility poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy or paragraph (1) of subdivision (c) of Section 17592.72, or is not in good repair, as specified in subdivision (d) of Section 17002 and required by Sections 17014, 17032.5, 17070.75, and 17089, the county superintendent, among other things, may do any of the following:

(i) Return to the school to verify repairs.

(ii) Prepare a report that specifically identifies and documents the areas or instances of noncompliance if the district has not provided evidence of successful repairs within 30 days of the visit of the county superintendent or, for major projects, has not provided evidence that the repairs will be conducted in a timely manner. The report may be provided to the governing board of the school district. If the report is provided to the school district, it shall be presented at a regularly scheduled meeting held in accordance with public notification requirements. The county superintendent shall post the report on his or her Internet Web site. The report shall be removed from the Internet Web site when the county superintendent verifies the repairs have been completed.

(d) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(e) Annually, on or before August 15, present a report to the governing board of the school district and the Superintendent regarding the fiscal solvency of a school district with a disapproved budget, qualified interim certification, or a negative interim certification, or that is determined to be in a position of fiscal uncertainty pursuant to Section 42127.6.

(f) Keep in his or her office the reports of the Superintendent.

(g) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of an applicant or his or her authorized agent.

(h) Enforce the course of study.

(i) (1) Enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority in accordance with Section 51050.

(2) For purposes of this subdivision, sufficient textbooks or instructional materials has the same meaning as in subdivision (c) of Section 60119.

(3) (A) Commencing with the 2005–06 school year, if a school is ranked in any of deciles 1 to 3, inclusive, of the base API, as specified in paragraph (2) of subdivision (c), and not currently under review pursuant to a state or federal intervention program, the county superintendent specifically shall review that school at least annually as a priority school. A review conducted for purposes of this paragraph shall be completed by the fourth week of the school year. For the 2004–05 fiscal year only, the county superintendent shall make a diligent effort to conduct a visit to each school pursuant to this paragraph within 120 days of receipt of funds for this purpose.

(B) In order to facilitate the review of instructional materials before the fourth week of the school year, the county superintendent in a county with 200 or more schools that are ranked in any of deciles 1 to 3, inclusive, of the base API, as specified in paragraph (2) of subdivision (c), may utilize a combination of visits and written surveys of teachers for the purpose of determining sufficiency of textbooks and instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined in subdivision (c) of Section 60119. If a county superintendent elects to conduct written surveys of teachers, the county

superintendent shall visit the schools surveyed within the same academic year to verify the accuracy of the information reported on the surveys. If a county superintendent surveys teachers at a school in which the county superintendent has found sufficient textbooks and instructional materials for the previous two consecutive years and determines that the school does not have sufficient textbooks or instructional materials, the county superintendent shall within 10 business days provide a copy of the insufficiency report to the school district as set forth in paragraph (4).

(C) For purposes of this paragraph, "written surveys" may include paper and electronic or online surveys.

(4) If the county superintendent determines that a school does not have sufficient textbooks or instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined by subdivision (c) of Section 60119, the county superintendent shall do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance.

(B) Provide within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), or, if applicable, provide a copy of the report to the school district within 10 business days pursuant to subparagraph (B) of paragraph (3).

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the department to purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement of this subdivision. If the department purchases textbooks or instructional materials for the school district, the department shall issue a public statement at the first regularly scheduled meeting of the state board occurring immediately after the department receives the request of the county superintendent and that meets the applicable public notice requirements, indicating that the district superintendent and the governing board of the school district failed to provide pupils with sufficient textbooks or instructional materials as required by this subdivision. Before purchasing the textbooks or instructional materials, the department shall consult with the district to determine which textbooks or instructional materials to purchase. All purchases of textbooks or instructional materials shall comply with Chapter 3.25 (commencing with Section 60420) of Part 33. The amount of funds necessary for the purchase of the textbooks and materials is a loan to the school district receiving the textbooks or instructional materials. Unless the school district repays the amount owed based upon an agreed-upon repayment schedule with the Superintendent, the Superintendent shall notify the Controller and the Controller shall deduct an amount equal to the total amount used to purchase the textbooks and materials from the next principal apportionment of the district or from another apportionment of state funds.

(j) Preserve carefully all reports of school officers and teachers.

(k) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the department.

(*l*) (1) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(A) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent no later than 45 days after the close of the period being reported.

(B) As part of each report, the county superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for two subsequent fiscal years. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to a county office of education that, based upon current projections, will not meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification shall be assigned to a county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to a county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance with those standards, the Superintendent may reclassify a certification. If a county office of education receives a negative certification, the Superintendent, or his or her designee, may exercise the authority set forth in subdivision (c) of Section 1630. Copies of each certification, and of the report containing that certification, shall be sent to the Superintendent at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification and the report containing that certification shall be sent to the Controller at the time the certification is submitted to the county board of education.

(i) For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, each county office of education budget shall project the same level of revenue per unit of average daily attendance as it received in the 2010–11 fiscal year and shall maintain staffing and program levels commensurate with that level.

(ii) For the 2011–12 fiscal year, the county superintendent shall not be required to certify in writing whether or not the county office of education is able to meet its financial obligations for the two subsequent fiscal years.

(iii) For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, the Superintendent, as a condition on approval of a county office of education

budget, shall not require a county office of education to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the county superintendent to certify in writing whether or not the county office of education is able to meet its financial obligations for the two subsequent fiscal years.

(2) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent, and shall be based on standards and criteria for fiscal stability adopted by the state board pursuant to Section 33127. The reports and supporting data shall be made available by the county superintendent to an interested party upon request.

(3) This subdivision does not preclude the submission of additional budgetary or financial reports by the county superintendent to the county board of education or to the Superintendent.

(4) The county superintendent is not responsible for the fiscal oversight of the community colleges in the county, however, he or she may perform financial services on behalf of those community colleges.

(m) If requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(n) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of a certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of an educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of an educational program has been reported.

SEC. 2. Section 1622 of the Education Code is amended to read:

1622. (a) On or before July 1 of each fiscal year, the county board of education shall adopt an annual budget for the budget year and shall file that budget with the Superintendent of Public Instruction, the county board of supervisors, and the county auditor. The budget, and supporting data, shall be maintained and made available for public review. The budget shall indicate the date, time, and location at which the county board of education held the public hearing required under Section 1620.

(b) The Superintendent of Public Instruction shall examine the budget to determine whether it (1) complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets, (2) allows the county office of education to meet its financial obligations during the fiscal year, and (3) is consistent with a financial plan that will enable the county office of education to satisfy its multiyear financial commitments. In addition, the Superintendent shall identify any technical corrections to the budget that must be made. On or before August 15, the Superintendent of Public Instruction shall approve or disapprove the budget and, in the event of a disapproval, transmit to the county office of education in writing his or her recommendations regarding revision of the budget and the reasons for those recommendations. For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127,

the Superintendent, as a condition on approval of a county office of education budget, shall not require a county office of education to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the county superintendent to certify in writing whether or not the county office of education is able to meet its financial obligations for the two subsequent fiscal years.

(c) On or before September 8, the county board of education shall revise the county office of education budget to reflect changes in projected income or expenditures subsequent to July 1, and to include any response to the recommendations of the Superintendent of Public Instruction, shall adopt the revised budget, and shall file the revised budget with the Superintendent of Public Instruction, the county board of supervisors, and the county auditor. Prior to revising the budget, the county board of education shall hold a public hearing regarding the proposed revisions, which shall be made available for public inspection not less than three working days prior to the hearing. The agenda for that hearing shall be posted at least 72 hours prior to the public hearing and shall include the location where the budget will be available for public inspection. The revised budget, and supporting data, shall be maintained and made available for public review.

(d) The Superintendent of Public Instruction shall examine the revised budget to determine whether it complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets and, no later than October 8, shall approve or disapprove the revised budget. If the Superintendent of Public Instruction disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 1623. For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, the Superintendent, as a condition on approval of a county office of education budget, shall not require a county office of education to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the county superintendent to certify in writing whether or not the county office of education is able to meet its financial obligations for the two subsequent fiscal years.

(e) Notwithstanding any other provision of this section, the budget review for a county office of education shall be governed by paragraphs (1), (2), and (3) of this subdivision, rather than by subdivisions (c) and (d), if the county board of education so elects, and notifies the Superintendent of Public Instruction in writing of that decision, no later than October 31 of the immediately preceding calendar year.

(1) In the event of the disapproval of the budget of a county office of education pursuant to subdivision (b), on or before September 8, the county superintendent of schools and the county board of education shall review the recommendations of the Superintendent of Public Instruction at a regularly scheduled meeting of the county board of education and respond to those recommendations. That response shall include the proposed actions to be taken, if any, as a result of those recommendations.

(2) No later than October 8, after receiving the response required under paragraph (1), the Superintendent of Public Instruction shall review that response and either approve or disapprove the budget of the county office of education. If the Superintendent of Public Instruction disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 1623.

(3) Not later than 45 days after the Governor signs the annual Budget Act, the county office of education shall make available for public review any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

SEC. 3. Section 2558.46 of the Education Code is amended to read:

2558.46. (a) (1) For the 2003–04 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 1.195 percent deficit factor.

(2) For the 2004–05 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 0.323 percent deficit factor.

(3) For the 2003–04 and 2004–05 fiscal years, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced further by a 1.826 percent deficit factor.

(4) For the 2005–06 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced further by a 0.898 percent deficit factor.

(5) For the 2008–09 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 7.839 percent deficit factor.

(6) For the 2009–10 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by an 18.621 percent deficit factor.

(7) For the 2010–11 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by an 18.250 percent deficit factor.

(8) For the 2011–12 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 20.041 percent deficit factor.

(b) In computing the revenue limit for each county superintendent of schools for the 2006–07 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2003–04, 2004–05, and 2005–06 fiscal years without being reduced by the deficit factors specified in subdivision (a).

(c) In computing the revenue limit for each county superintendent of schools for the 2010–11 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2009–10 fiscal year without being reduced by the deficit factors specified in subdivision (a).

(d) In computing the revenue limit for each county superintendent of schools for the 2011–12 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2010–11 fiscal year without being reduced by the deficit factors specified in subdivision (a).

(e) In computing the revenue limit for each county superintendent of schools for the 2012–13 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2011–12 fiscal year without being reduced by the deficit factor specified in subdivision (a).

SEC. 4. Section 8201 of the Education Code is amended to read:

8201. The purpose of this chapter is as follows:

(a) To provide a comprehensive, coordinated, and cost-effective system of child care and development services for children from infancy to 13 years of age and their parents, including a full range of supervision, health, and support services through full- and part-time programs.

(b) To encourage community-level coordination in support of child care and development services.

(c) To provide an environment that is healthy and nurturing for all children in child care and development programs.

(d) To provide the opportunity for positive parenting to take place through understanding of human growth and development.

(e) To reduce strain between parent and child in order to prevent abuse, neglect, or exploitation.

(f) To enhance the cognitive development of children, with particular emphasis upon those children who require special assistance, including bilingual capabilities to attain their full potential.

(g) To establish a framework for the expansion of child care and development services.

(h) To empower and encourage parents and families of children who require child care services to take responsibility to review the safety of the child care program or facility and to evaluate the ability of the program or facility to meet the needs of the child.

SEC. 5. Section 8203.5 of the Education Code is amended to read:

8203.5. (a) The Superintendent shall ensure that each contract entered into under this chapter to provide child care and development services, or to facilitate the provision of those services, provides support to the public school system of this state through the delivery of appropriate educational services to the children served pursuant to the contract.

(b) The Superintendent shall ensure that all contracts for child care and development programs include a requirement that each public or private provider maintain a developmental profile to appropriately identify the emotional, social, physical, and cognitive growth of each child served in order to promote the child's success in the public schools. To the extent possible, the department shall provide a developmental profile to all public and private providers using existing profile instruments that are most cost efficient. The provider of any program operated pursuant to a contract under

Section 8262 shall be responsible for maintaining developmental profiles upon entry through exit from a child development program.

(c) Notwithstanding any other provision of law, "moneys to be applied by the state," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution, includes funds appropriated for the Child Care and Development Service Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6, whether or not those funds are allocated to school districts, as defined in Section 41302.5, or community college districts.

(d) This section is not subject to Part 34 (commencing with Section 62000).

(e) This section shall remain in effect only until July 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2011, deletes or extends that date.

SEC. 6. Section 8203.5 is added to the Education Code, to read:

8203.5. (a) The Superintendent shall ensure that each contract entered into under this chapter to provide child care and development services, or to facilitate the provision of those services, provides support to the public school system of this state through the delivery of appropriate educational services to the children served pursuant to the contract.

(b) The Superintendent shall ensure that all contracts for child care and development programs include a requirement that each public or private provider maintain a developmental profile to appropriately identify the emotional, social, physical, and cognitive growth of each child served in order to promote the child's success in the public schools. To the extent possible, the department shall provide a developmental profile to all public and private providers using existing profile instruments that are most cost efficient. The provider of any program operated pursuant to a contract under Section 8262 shall be responsible for maintaining developmental profiles upon entry through exit from a child development program.

(c) This section is not subject to Part 34 (commencing with Section 62000) of Division 4 of Title 2.

(d) This section shall become operative on July 1, 2011.

SEC. 7. Section 8208 of the Education Code is amended to read:

8208. As used in this chapter:

(a) "Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services.

(b) "Alternative payment program" means a local government agency or nonprofit organization that has contracted with the department pursuant to Section 8220.1 to provide alternative payments and to provide support services to parents and providers.

(c) "Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private nontax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain,

or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(d) "Assigned reimbursement rate" is that rate established by the contract with the agency and is derived by dividing the total dollar amount of the contract by the minimum child day of average daily enrollment level of service required.

(e) "Attendance" means the number of children present at a child care and development facility. "Attendance," for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(f) "Capital outlay" means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(g) "Caregiver" means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(h) "Child care and development facility" means any residence or building or part thereof in which child care and development services are provided.

(i) "Child care and development programs" means those programs that offer a full range of services for children from infancy to 13 years of age, for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

(1) General child care and development.

(2) Migrant child care and development.

(3) Child care provided by the California School Age Families Education Program (Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29 of Division 4 of Title 2).

(4) California state preschool program.

(5) Resource and referral.

(6) Child care and development services for children with exceptional needs.

(7) Family child care home education network.

(8) Alternative payment.

(9) Schoolage community child care.

(j) "Child care and development services" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements.

(k) "Children at risk of abuse, neglect, or exploitation" means children who are so identified in a written referral from a legal, medical, or social service agency, or emergency shelter.

(*l*) "Children with exceptional needs" means either of the following:

(1) Infants and toddlers under three years of age who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) and its implementing regulations. These children include an infant or toddler with a developmental delay or established risk condition, or who is at high risk of having a substantial developmental disability, as defined in subdivision (a) of Section 95014 of the Government Code. These children shall have active individualized family service plans, shall be receiving early intervention services, and shall be children who require the special attention of adults in a child care setting.

(2) Children ages 3 to 21 years, inclusive, who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000) of Division 4 of Title 2, and who meet eligibility criteria described in Section 56026 and, Article 2.5 (commencing with Section 56333) of Chapter 4 of Part 30 of Division 4 of Title 2, and Sections 3030 and 3031 of Title 5 of the California Code of Regulations. These children shall have an active individualized education program, shall be receiving early intervention services or appropriate special education and related services, and shall be children who require the special attention of adults in a child care setting. These children include children with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (also referred to as emotional disturbance), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, who need special education and related services consistent with Section 1401(3)(A) of Title 20 of the United States Code.

(m) "Closedown costs" means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(n) "Cost" includes, but is not limited to, expenditures that are related to the operation of child care and development programs. "Cost" may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs. "Cost" may also include amounts for licensable facilities in the community served by the program, including lease payments or depreciation, downpayments, and payments of principal and interest on loans incurred to acquire, rehabilitate, or construct licensable facilities, but these costs shall not exceed fair market rents existing in the community in which the facility is located. "Reasonable and necessary costs" are costs that, in nature and amount, do not exceed what an ordinary prudent person would incur in the conduct of a competitive business.

(o) "Elementary school," as contained in former Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the cancellation provisions of loans to students in institutions of higher learning.

(p) "Family child care home education network" means an entity organized under law that contracts with the department pursuant to Section 8245 to make payments to licensed family child care home providers and to provide educational and support services to those providers and to children and families eligible for state-subsidized child care and development services. A family child care home education network may also be referred to as a family child care home system.

(q) "Health services" include, but are not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(r) "Higher educational institutions" means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(s) "Intergenerational staff" means persons of various generations.

(t) "Limited-English-speaking-proficient and non-English-speaking-proficient children" means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(u) "Parent" means a biological parent, stepparent, adoptive parent, foster parent, caretaker relative, or any other adult living with a child who has responsibility for the care and welfare of the child.

(v) "Program director" means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.

(w) "Proprietary child care agency" means an organization or facility providing child care, which is operated for profit.

(x) "Resource and referral programs" means programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(y) "Severely disabled children" are children with exceptional needs from birth to 21 years of age, inclusive, who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbances, or severe mental retardation. "Severely disabled children" also include those individuals who would have been eligible for enrollment in a developmental center for handicapped pupils under Chapter 6 (commencing with Section 56800) of Part 30 of Division 4 of Title 2 as it read on January 1, 1980.

(z) "Short-term respite child care" means child care service to assist families whose children have been identified through written referral from a legal, medical, or social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child's own home.

(aa) (1) "Site supervisor" means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of a child care and development program operating in a single site. The Superintendent may waive the requirements of this subdivision if the Superintendent determines that the existence of compelling need is appropriately documented.

(2) For California state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a program director under both Sections 8244 and 8360.1 is also qualified under this subdivision.

(ab) "Standard reimbursement rate" means that rate established by the Superintendent pursuant to Section 8265.

(ac) "Startup costs" means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(ad) "California state preschool program" means part-day and full-day educational programs for low-income or otherwise disadvantaged three- and four-year-old children.

(ae) "Support services" means those services that, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent training, provider and staff

training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(af) "Teacher" means a person with the appropriate permit issued by the Commission on Teacher Credentialing who provides program supervision and instruction that includes supervision of a number of aides, volunteers, and groups of children.

(ag) "Underserved area" means a county or subcounty area, including, but not limited to, school districts, census tracts, or ZIP Code areas, where the ratio of publicly subsidized child care and development program services to the need for these services is low, as determined by the Superintendent.

(ah) "Workday" means the time that the parent requires temporary care for a child for any of the following reasons:

(1) To undertake training in preparation for a job.

(2) To undertake or retain a job.

(3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

(ai) "Three-year-old children" means children who will have their third birthday on or before December 2 of the fiscal year in which they are enrolled in a California state preschool program.

(aj) "Four-year-old children" means children who will have their fourth birthday on or before December 2 of the fiscal year in which they are enrolled in a California state preschool program.

(ak) "Local educational agency" means a school district, a county office of education, a community college district, or a school district on behalf of one or more schools within the school district.

SEC. 8. Section 8263.2 of the Education Code is amended to read:

8263.2. (a) Notwithstanding any other law, effective July 1, 2011, the department shall reduce the maximum reimbursable amounts of the contracts for the Preschool Education Program, the General Child Care Program, the Migrant Day Care Program, the Alternative Payment Program, the CalWORKs Stage 3 Program, and the Allowance for Handicapped Program by 11 percent or by whatever proportion is necessary to ensure that expenditures for these programs do not exceed the amounts appropriated for them, including any reductions made subsequent to the adoption of the annual Budget Act. The department may consider the contractor's performance or whether the contractor serves children in underserved areas as defined in subdivision (ag) of Section 8208 when determining contract reductions, provided that the aggregate reduction to each program specified in this subdivision is 11 percent or by whatever proportion is necessary to ensure that expenditures for these programs do not exceed the amounts appropriated for them, including any reductions made subsequent to the adoption of the annual Budget Act.

(b) Notwithstanding any other law, effective July 1, 2011, families shall be disenrolled from subsidized child care services, consistent with the priorities for services specified in subdivision (b) of Section 8263. Families shall be disenrolled in the following order:

(1) Families whose income exceeds 70 percent of the state median income (SMI) adjusted for family size, except for families whose children are receiving child protective services or are at risk of being neglected or abused.

(2) Families with the highest income below 70 percent of the SMI, in relation to family size.

(3) Families that have the same income and have been enrolled in child care services the longest.

(4) Families that have the same income and have a child with exceptional needs.

(5) Families whose children are receiving child protective services or are at risk of being neglected or abused, regardless of family income.

SEC. 9. Section 8263.4 of the Education Code is amended to read:

8263.4. (a) The preferred placement for children who are 11 or 12 years of age and who are otherwise eligible for subsidized child care and development services shall be in a before or after school program.

(b) Children who are 11 or 12 years of age shall be eligible for subsidized child care services only for the portion of care needed that is not available in a before or after school program provided pursuant to Article 22.5 (commencing with Section 8482) or Article 22.6 (commencing with Section 8484.7). Contractors shall provide each family of an eligible 11 or 12 year old with the option of combining care provided in a before or after school program with subsidized child care in another setting, for those hours within a day when the before or after school program does not operate, in order to meet the child care needs of the family.

(c) Children who are 11 or 12 years of age, who are eligible for and who are receiving subsidized child care services, and for whom a before or after school program is not available, shall continue to receive subsidized child care services.

(d) A before or after school program shall be considered not available when a parent certifies in writing, on a form provided by the department that is translated into the parent's primary language pursuant to Sections 7295.4 and 7296.2 of the Government Code, the reason or reasons why the program would not meet the child care needs of the family. The reasons why a before or after school program shall be considered not available shall include, but not be limited to, any of the following:

(1) The program does not provide services when needed during the year, such as during the summer, school breaks, or intersession.

(2) The program does not provide services when needed during the day, such as in the early morning, evening, or weekend hours.

(3) The program is too geographically distant from the child's school of attendance.

(4) The program is too geographically distant from the parents' residence.

(5) Use of the program would create substantial transportation obstacles for the family.

(6) Any other reason that makes the use of before or after school care inappropriate for the child or burdensome on the family.

(e) If an 11 or 12 year old child who is enrolled in a subsidized child development program becomes ineligible for subsidized child care under subdivision (b) and is disenrolled from the before or after school program, or if the before or after school program no longer meets the child care needs of the family, the child shall be given priority to return to the subsidized child care services upon the parent's notification of the contractor of the need for child care.

(f) This section does not apply to an 11 or 12 year old child with a disability, including a child with exceptional needs who has an individualized education program as required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), or Part 30 (commencing with Section 56000) of Division 4 of Title 2.

(g) The savings generated each contract year by the implementation of the changes made to this section by the act amending this section during the 2005–06 Regular Session shall remain with each alternative payment program, child development center, or other contractor for the provision of child care services, except for care provided by programs pursuant to Article 15.5 (commencing with Section 8350). Each contractor shall report annually to the department the amount of savings resulting from this implementation, and the department shall report annually to the Legislature the amount of savings statewide resulting from that implementation.

SEC. 10. Section 8447 of the Education Code is amended to read:

8447. (a) The Legislature hereby finds and declares that greater efficiencies may be achieved in the execution of state subsidized child care and development program contracts with public and private agencies by the timely approval of contract provisions by the Department of Finance, the Department of General Services, and the State Department of Education and by authorizing the State Department of Education to establish a multiyear application, contract expenditure, and service review as may be necessary to provide timely service while preserving audit and oversight functions to protect the public welfare.

(b) (1) The Department of Finance and the Department of General Services shall approve or disapprove annual contract funding terms and conditions, including both family fee schedules and regional market rate schedules that are required to be adhered to by contract, and contract face sheets submitted by the State Department of Education not more than 30 working days from the date of submission, unless unresolved conflicts remain between the Department of Finance, the State Department of Education, and the Department of General Services. The State Department of Education shall resolve conflicts within an additional 30 working day time period. Contracts and funding terms and conditions shall be issued to child care contractors no later than June 1. Applications for new child care funding shall be issued not more than 45 working days after the effective date of authorized new allocations of child care moneys.

(2) Notwithstanding paragraph (1), the State Department of Education shall implement the regional market rate schedules based upon the county

aggregates, as determined by the Regional Market survey conducted in 2005.

(3) Notwithstanding paragraph (1), for the 2006–07 fiscal year, the State Department of Education shall update the family fee schedules by family size, based on the 2005 state median income survey data for a family of four. The family fee schedule used during the 2005–06 fiscal year shall remain in effect. However, the department shall adjust the family fee schedule for families that are newly eligible to receive or will continue to receive services under the new income eligibility limits. The family fees shall not exceed 10 percent of the family's monthly income.

(4) Notwithstanding any other law, the family fee schedule that was in effect for the 2007–08, 2008–09, 2009–10, and 2010–11 fiscal years shall be adjusted to reflect the income eligibility limits specified in subdivision (b) of Section 8263.1 for the 2011–12 fiscal year, and shall retain a flat fee per family. The revised family fee schedule shall begin at income levels at which families currently begin paying fees. The revised family fees shall not exceed 10 percent of the family's monthly income. The State Department of Education shall first submit the adjusted fee schedule to the Department of Finance for approval in order to be implemented by July 1, 2011.

(5) It is the intent of the Legislature to fully fund the third stage of child care for former CalWORKs recipients.

(c) With respect to subdivision (b), it is the intent of the Legislature that the Department of Finance annually review contract funding terms and conditions for the primary purpose of ensuring consistency between child care contracts and the child care budget. This review shall include evaluating any proposed changes to contract language or other fiscal documents to which the contractor is required to adhere, including those changes to terms or conditions that authorize higher reimbursement rates, that modify related adjustment factors, that modify administrative or other service allowances, or that diminish fee revenues otherwise available for services, to determine if the change is necessary or has the potential effect of reducing the number of full-time equivalent children that may be served.

(d) Alternative payment child care systems, as set forth in Article 3 (commencing with Section 8220), shall be subject to the rates established in the Regional Market Rate Survey of California Child Care Providers for provider payments. The State Department of Education shall contract to conduct and complete a Regional Market Rate Survey no more frequently than once every two years, consistent with federal regulations, with a goal of completion by March 1.

(e) By March 1 of each year, the Department of Finance shall provide to the State Department of Education the State Median Income amount for a four-person household in California based on the best available data. The State Department of Education shall adjust its fee schedule for child care providers to reflect this updated state median income; however, no changes based on revisions to the state median income amount shall be implemented midyear.

(f) Notwithstanding the June 1 date specified in subdivision (b), changes to the regional market rate schedules and fee schedules may be made at any other time to reflect the availability of accurate data necessary for their completion, provided these documents receive the approval of the Department of Finance. The Department of Finance shall review the changes within 30 working days of submission and the State Department of Education shall resolve conflicts within an additional 30 working day period. Contractors shall be given adequate notice prior to the effective date of the approved schedules. It is the intent of the Legislature that contracts for services not be delayed by the timing of the availability of accurate data needed to update these schedules.

(g) Notwithstanding any other provision of law, no family receiving CalWORKs cash aid may be charged a family fee.

SEC. 11. Section 8499 of the Education Code is amended to read:

8499. For purposes of this chapter, the following definitions shall apply:

(a) "Block grant" means the block grant contained in Title VI of the Child Care and Development Fund, as established by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193).

(b) "Child care" means all licensed child care and development services and license-exempt child care, including, but not limited to, private for-profit programs, nonprofit programs, and publicly funded programs, for all children up to and including 12 years of age, including children with exceptional needs and children from all linguistic and cultural backgrounds.

(c) "Child care provider" means a person who provides child care services or represents persons who provide child care services.

(d) "Community representative" means a person who represents an agency or business that provides private funding for child care services, or who advocates for child care services through participation in civic or community-based organizations but is not a child care provider and does not represent an agency that contracts with the State Department of Education to provide child care and development services.

(e) "Consumer" means a parent or person who receives, or who has received within the past 36 months, child care services.

(f) "Department" means the State Department of Education.

(g) "Local planning council" means a local child care and development planning council as described in Section 8499.3.

(h) "Public agency representative" means a person who represents a city, county, city and county, or local educational agency.

SEC. 12. Section 41202 of the Education Code is amended to read:

41202. The words and phrases set forth in subdivision (b) of Section 8 of Article XVI of the Constitution of the State of California shall have the following meanings:

(a) "Moneys to be applied by the State," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution, means appropriations from the General Fund that are made for allocation to school districts, as defined, or community college districts. An appropriation that is withheld,

impounded, or made without provisions for its allocation to school districts or community college districts, shall not be considered to be "moneys to be applied by the State."

(b) "General Fund revenues which may be appropriated pursuant to Article XIII B," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI, means General Fund revenues that are the proceeds of taxes as defined by subdivision (c) of Section 8 of Article XIII B of the California Constitution, including, for the 1986–87 fiscal year only, any revenues that are determined to be in excess of the appropriations limit established pursuant to Article XIII B for the fiscal year in which they are received. General Fund revenues for a fiscal year to which paragraph (1) of subdivision (b) is being applied shall include, in that computation, only General Fund revenues for that fiscal year that are the proceeds of taxes, as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, and shall not include prior fiscal year revenues. Commencing with the 1995–96 fiscal year, and each fiscal year thereafter, "General Fund revenues that are the proceeds of taxes," as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, includes any portion of the proceeds of taxes received from the state sales tax that are transferred to the counties pursuant to, and only if, legislation is enacted during the 1995–96 fiscal year the purpose of which is to realign children's programs. The amount of the proceeds of taxes shall be computed for any fiscal year in a manner consistent with the manner in which the amount of the proceeds of taxes was computed by the Department of Finance for purposes of the Governor's Budget for the Budget Act of 1986.

(c) "General Fund revenues appropriated for school districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, as defined in Section 41302.5, regardless of whether those appropriations were made from the General Fund to the Superintendent of Public Instruction, to the Controller, or to any other fund or state agency for the purpose of allocation to school districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(d) "General Fund revenues appropriated for community college districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to community college districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of Article XVI, without regard to any unexpended balance of any appropriation. Any

reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(e) "Total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, as defined in Section 41302.5, and community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Superintendent of Public Instruction, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to school districts and community college districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(f) "General Fund revenues appropriated for school districts and community college districts, respectively" and "moneys to be applied by the state for the support of school districts and community college districts," as used in Section 8 of Article XVI of the California Constitution, shall include funds appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6 and shall not include any of the following:

(1) Any appropriation that is not made for allocation to a school district, as defined in Section 41302.5, or to a community college district regardless of whether the appropriation is made for any purpose that may be considered to be for the benefit to a school district, as defined in Section 41302.5, or a community college district. This paragraph shall not be construed to exclude any funding appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6.

(2) Any appropriation made to the Teachers' Retirement Fund or to the Public Employees' Retirement Fund except those appropriations for reimbursable state mandates imposed on or before January 1, 1988.

(3) Any appropriation made to service any public debt approved by the voters of this state.

(g) "Allocated local proceeds of taxes," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for school districts as defined, those local revenues, except revenues identified pursuant to paragraph (5) of subdivision (h) of Section 42238, that are used to offset state aid for school districts in calculations performed pursuant to Sections 2558, 42238, and Chapter 7.2 (commencing with Section 56836) of Part 30.

(h) "Allocated local proceeds of taxes," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for community college districts, those local revenues that are used to offset state aid for community college districts in calculations performed

pursuant to Section 84700. In no event shall the revenues or receipts derived from student fees be considered "allocated local proceeds of taxes."

(i) For the purposes of calculating the 4 percent entitlement pursuant to subdivision (a) of Section 8.5 of Article XVI of the California Constitution, "the total amount required pursuant to Section 8(b)" shall mean the General Fund aid required for schools pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution, and shall not include allocated local proceeds of taxes.

(j) This section shall remain in effect only until July 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2011, deletes or extends that date.

SEC. 13. Section 41202 is added to the Education Code, to read:

41202. The words and phrases set forth in subdivision (b) of Section 8 of Article XVI of the Constitution of the State of California shall have the following meanings:

(a) "Moneys to be applied by the State," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution, means appropriations from the General Fund that are made for allocation to school districts, as defined, or community college districts. An appropriation that is withheld, impounded, or made without provisions for its allocation to school districts or community college districts, shall not be considered to be "moneys to be applied by the State."

(b) "General Fund revenues which may be appropriated pursuant to Article XIII B," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI, means General Fund revenues that are the proceeds of taxes as defined by subdivision (c) of Section 8 of Article XIII B of the California Constitution, including, for the 1986–87 fiscal year only, any revenues that are determined to be in excess of the appropriations limit established pursuant to Article XIII B for the fiscal year in which they are received. General Fund revenues for a fiscal year to which paragraph (1) of subdivision (b) is being applied shall include, in that computation, only General Fund revenues for that fiscal year that are the proceeds of taxes, as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, and shall not include prior fiscal year revenues. Commencing with the 1995–96 fiscal year, and each fiscal year thereafter, "General Fund revenues that are the proceeds of taxes," as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, includes any portion of the proceeds of taxes received from the state sales tax that are transferred to the counties pursuant to, and only if, legislation is enacted during the 1995–96 fiscal year the purpose of which is to realign children's programs. The amount of the proceeds of taxes shall be computed for any fiscal year in a manner consistent with the manner in which the amount of the proceeds of taxes was computed by the Department of Finance for purposes of the Governor's Budget for the Budget Act of 1986.

(c) "General Fund revenues appropriated for school districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for

allocation to school districts, as defined in Section 41302.5, regardless of whether those appropriations were made from the General Fund to the Superintendent, to the Controller, or to any other fund or state agency for the purpose of allocation to school districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(d) "General Fund revenues appropriated for community college districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to community college districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(e) "Total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, as defined in Section 41302.5, and community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Superintendent, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to school districts and community college districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(f) "General Fund revenues appropriated for school districts and community college districts, respectively" and "moneys to be applied by the state for the support of school districts and community college districts," as used in Section 8 of Article XVI of the California Constitution, shall include funds appropriated for part-day California state preschool programs under Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of Division 1 of Title 1, and the After School Education and Safety Program established pursuant to Article 22.5 (commencing with Section 8482) of Chapter 2 of Part 6 of Division 1 of Title 1, and shall not include any of the following:

(1) Any appropriation that is not made for allocation to a school district, as defined in Section 41302.5, or to a community college district, regardless of whether the appropriation is made for any purpose that may be considered to be for the benefit to a school district, as defined in Section 41302.5, or a community college district. This paragraph shall not be construed to exclude any funding appropriated for part-day California state preschool programs under Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of Division 1 of Title 1 or the After School Education and Safety Program established pursuant to Article 22.5 (commencing with Section 8482) of Chapter 2 of Part 6 of Division 1 of Title 1.

(2) Any appropriation made to the Teachers' Retirement Fund or to the Public Employees' Retirement Fund except those appropriations for reimbursable state mandates imposed on or before January 1, 1988.

(3) Any appropriation made to service any public debt approved by the voters of this state.

(4) With the exception of the programs identified in paragraph (1), commencing with the 2011–12 fiscal year, any funds appropriated for the Child Care and Development Services Act, pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1.

(g) "Allocated local proceeds of taxes," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for school districts as defined, those local revenues, except revenues identified pursuant to paragraph (5) of subdivision (h) of Section 42238, that are used to offset state aid for school districts in calculations performed pursuant to Sections 2558, 42238, and Chapter 7.2 (commencing with Section 56836) of Part 30.

(h) "Allocated local proceeds of taxes," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for community college districts, those local revenues that are used to offset state aid for community college districts in calculations performed pursuant to Section 84700. In no event shall the revenues or receipts derived from student fees be considered "allocated local proceeds of taxes."

(i) For purposes of calculating the 4-percent entitlement pursuant to subdivision (a) of Section 8.5 of Article XVI of the California Constitution, "the total amount required pursuant to Section 8(b)" shall mean the General Fund aid required for schools pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution, and shall not include allocated local proceeds of taxes.

(j) This section shall become operative on July 1, 2011.

SEC. 14. Section 41202.5 is added to the Education Code, to read:

41202.5. (a) The finds and declares as follows:

(1) The Legislature acted to implement Proposition 98 soon after its passage by defining "total allocations to school districts and community college districts from General Fund proceeds of taxes" to include the entirety of programs funded under the Child Care and Development Services Act (Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1).

(2) In California Teachers Assn. v. Hayes (1992) 5 Cal.App.4th 1513, the Court of Appeal permitted the inclusion of child care within the Proposition 98 minimum funding guarantee but left open the possibility of excluding particular child care programs that did not directly advance and support the educational mission of school districts.

(b) It is the intent of the Legislature to clarify that the part-time state preschool programs and the After School Education and Safety Program fall within the Proposition 98 guarantee and to fund other child care programs less directly associated with school districts from appropriations that do not count toward the Proposition 98 minimum guarantee.

(c) Notwithstanding any other provision of law, for purposes of making the computations required by subdivision (b) of Section 8 of Article XVI of the California Constitution in the 2011–12 fiscal year and each subsequent fiscal year, both of the following apply:

(1) For purposes of paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, the term "General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986–87" does not include General Fund revenues appropriated for any program within Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1, with the exception of the part-day California state preschool programs set forth in Article 7 (commencing with Section 8235) and the After School Education and Safety Program in Article 22.5 (commencing with Section 8482). The Director of Finance shall adjust accordingly "the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986–87," for purposes of applying that percentage in the 2011–12 fiscal year and each subsequent fiscal year in making the calculations required under paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

(2) General Fund revenues appropriated in the 2010–11 fiscal year or any subsequent fiscal year for any program within Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1, with the exception of the part-day California state preschool programs set forth in Article 7 (commencing with Section 8235) and the After School Education and Safety Program in Article 22.5 (commencing with Section 8482), are not included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" for purposes of paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

SEC. 15. Section 41210 is added to the Education Code, to read:

41210. (a) The revenues transferred pursuant to Section 6015.15 and 6201.15 of the Revenue and Taxation Code are not "General Fund revenues" as that term is used in Section 8 of Article XVI of the California Constitution.

(b) This section shall be operative for the 2011–12 fiscal year and subsequent years so long as one or more ballot measures approved before November 17, 2012, authorize the determination in subdivision (a) and provide funding for school districts and community college districts in an

amount equal to that which would have been provided if the revenues referenced in subdivision (a) were General Fund revenues for purposes of Section 8 of Article XVI of the California Constitution.

SEC. 16. Section 41211 is added to the Education Code, to read:

41211. The following shall apply if Section 41210 is rendered inoperative because the ballot measure or measures described in subdivision (b) of that section are not approved:

(a) Before December 17, 2012, the Director of Finance, in consultation with the Superintendent, shall determine the amount of funding that would have been provided in the 2011–12 fiscal year to school districts and community college districts if the revenues described in subdivision (a) of Section 41210 were General Fund revenues for purposes of Section 8 of Article XVI of the California Constitution.

(b) For each of the 2012–13 to 2016–17, inclusive, fiscal years, 17.8 percent of the amount determined in subdivision (a) is appropriated from the General Fund to the Superintendent and shall be distributed in the following priority:

(1) To reduce amounts deferred under Section 14041.6.

(2) To repay obligations to school districts and county offices of education under Section 6 of Article XIII B of the California Constitution.

(3) To use for other one-time purposes as provided by statute enacted after the effective date of this section.

(c) For each of the 2012–13 to 2016–17, inclusive, fiscal years, 2.2 percent of the amount determined in subdivision (a) is appropriated from the General Fund to the Chancellor of the California Community Colleges and shall be distributed in the following priority:

(1) To reduce amounts deferred under Section 84321.6.

(2) To repay obligations to community college districts under Section 6 of Article XIII B of the California Constitution.

(3) To use for other one-time purposes as provided by statute enacted after the effective date of this section.

(d) For the 2011–12 fiscal year and subsequent fiscal years, the computations required by Section 8 of Article XVI of the California Constitution shall include the amount determined in subdivision (a).

SEC. 17. Section 42127 of the Education Code is amended to read:

42127. (a) On or before July 1 of each year, the governing board of each school district shall accomplish the following:

(1) Hold a public hearing on the budget to be adopted for the subsequent fiscal year. The budget to be adopted shall be prepared in accordance with Section 42126. The agenda for that hearing shall be posted at least 72 hours prior to the public hearing and shall include the location where the budget will be available for public inspection.

(A) For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, each school district budget shall project the same level of revenue per unit of average daily attendance as it received in the 2010–11 fiscal year and shall maintain staffing and program levels commensurate with that level.

(B) For the 2011–12 fiscal year, the school district shall not be required to demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.

(2) Adopt a budget. Not later than five days after that adoption or by July 1, whichever occurs first, the governing board shall file that budget with the county superintendent of schools. That budget and supporting data shall be maintained and made available for public review. If the governing board of the district does not want all or a portion of the property tax requirement levied for the purpose of making payments for the interest and redemption charges on indebtedness as described in paragraph (1) or (2) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, the budget shall include a statement of the amount or portion for which a levy shall not be made.

(b) The county superintendent of schools may accept changes in any statement included in the budget, pursuant to subdivision (a), of the amount or portion for which a property tax levy shall not be made. The county superintendent or the county auditor shall compute the actual amounts to be levied on the property tax rolls of the district for purposes that exceed apportionments to the district pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code. Each school district shall provide all data needed by the county superintendent or the county auditor to compute the amounts. On or before August 15, the county superintendent shall transmit the amounts computed to the county auditor who shall compute the tax rates necessary to produce the amounts. On or before September 1, the county auditor shall submit the rate computed to the board of supervisors for adoption.

(c) The county superintendent of schools shall do all of the following:

(1) Examine the adopted budget to determine whether it complies with the standards and criteria adopted by the state board pursuant to Section 33127 for application to final local educational agency budgets. The county superintendent shall identify, if necessary, any technical corrections that are required to be made to bring the budget into compliance with those standards and criteria.

(2) Determine whether the adopted budget will allow the district to meet its financial obligations during the fiscal year and is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments. In addition to his or her own analysis of the budget of each school district, the county superintendent of schools shall review and consider studies, reports, evaluations, or audits of the school district that were commissioned by the district, the county superintendent, the Superintendent, and state control agencies and that contain evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present. The county superintendent of schools shall either conditionally approve or disapprove a budget that does

not provide adequate assurance that the district will meet its current and future obligations and resolve any problems identified in studies, reports, evaluations, or audits described in this paragraph.

(d) On or before August 15, the county superintendent of schools shall approve, conditionally approve, or disapprove the adopted budget for each school district. If a school district does not submit a budget to the county superintendent of schools, the county superintendent of schools shall, at district expense, develop a budget for that school district by September 15 and transmit that budget to the governing board of the school district. The budget prepared by the county superintendent of schools shall be deemed adopted, unless the county superintendent of schools approves any modifications made by the governing board of the school district. The approved budget shall be used as a guide for the district's priorities. The Superintendent shall review and certify the budget approved by the county. If, pursuant to the review conducted pursuant to subdivision (c), the county superintendent of schools determines that the adopted budget for a school district does not satisfy paragraph (1) or (2) of that subdivision, he or she shall conditionally approve or disapprove the budget and, not later than August 15, transmit to the governing board of the school district, in writing, his or her recommendations regarding revision of the budget and the reasons for those recommendations, including, but not limited to, the amounts of any budget adjustments needed before he or she can conditionally approve that budget. The county superintendent of schools may assign a fiscal adviser to assist the district to develop a budget in compliance with those revisions. In addition, the county superintendent of schools may appoint a committee to examine and comment on the superintendent's review and recommendations, subject to the requirement that the committee report its findings to the superintendent no later than August 20. For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, the county superintendent, as a condition on approval of a school district budget, shall not require a school district to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the school district to demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.

(e) On or before September 8, the governing board of the school district shall revise the adopted budget to reflect changes in projected income or expenditures subsequent to July 1, and to include any response to the recommendations of the county superintendent of schools, shall adopt the revised budget, and shall file the revised budget with the county superintendent of schools. Prior to revising the budget, the governing board shall hold a public hearing regarding the proposed revisions, to be conducted in accordance with Section 42103. In addition, if the adopted budget is disapproved pursuant to subdivision (d), the governing board and the county superintendent of schools shall review the disapproval and the recommendations of the county superintendent of schools regarding revision

of the budget at the public hearing. The revised budget and supporting data shall be maintained and made available for public review.

(1) For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, each school district budget shall project the same level of revenue per unit of average daily attendance as it received in the 2010–11 fiscal year and shall maintain staffing and program levels commensurate with that level.

(2) For the 2011–12 fiscal year, the school district shall not be required to demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.

(f) On or before September 22, the county superintendent of schools shall provide a list to the Superintendent identifying all school districts for which budgets may be disapproved.

(g) The county superintendent of schools shall examine the revised budget to determine whether it (1) complies with the standards and criteria adopted by the state board pursuant to Section 33127 for application to final local educational agency budgets, (2) allows the district to meet its financial obligations during the fiscal year, (3) satisfies all conditions established by the county superintendent of schools in the case of a conditionally approved budget, and (4) is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments, and, not later than October 8, shall approve or disapprove the revised budget. If the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1, unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed and the department approves the waiver after determining that a budget review committee is not necessary. Upon the grant of a waiver, the county superintendent immediately has the authority and responsibility provided in Section 42127.3. Upon approving a waiver of the budget review committee, the department shall ensure that a balanced budget is adopted for the school district by November 30. If no budget is adopted by November 30, the Superintendent may adopt a budget for the school district. The Superintendent shall report to the Legislature and the Director of Finance by December 10 if any district, including a district that has received a waiver of the budget review committee process, does not have an adopted budget by November 30. This report shall include the reasons why a budget has not been adopted by the deadline, the steps being taken to finalize budget adoption, the date the adopted budget is anticipated, and whether the Superintendent has or will exercise his or her authority to adopt a budget for the school district. For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, the county superintendent, as a condition on approval of a school district budget, shall not require a school district to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the school district to

demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.

(h) Not later than October 8, the county superintendent of schools shall submit a report to the Superintendent identifying all school districts for which budgets have been disapproved or budget review committees waived. The report shall include a copy of the written response transmitted to each of those districts pursuant to subdivision (d).

(i) Notwithstanding any other provision of this section, the budget review for a school district shall be governed by paragraphs (1), (2), and (3) of this subdivision, rather than by subdivisions (e) and (g), if the governing board of the school district so elects and notifies the county superintendent in writing of that decision, not later than October 31 of the immediately preceding calendar year. On or before July 1, the governing board of a school district for which the budget review is governed by this subdivision, rather than by subdivisions (e) and (g), shall conduct a public hearing regarding its proposed budget in accordance with Section 42103.

(1) If the adopted budget of a school district is disapproved pursuant to subdivision (d), on or before September 8, the governing board of the school district, in conjunction with the county superintendent of schools, shall review the superintendent's recommendations at a regular meeting of the governing board and respond to those recommendations. The response shall include any revisions to the adopted budget and other proposed actions to be taken, if any, as a result of those recommendations.

(2) On or before September 22, the county superintendent of schools will provide a list to the Superintendent identifying all school districts for which a budget may be tentatively disapproved.

(3) Not later than October 8, after receiving the response required under paragraph (1), the county superintendent of schools shall review that response and either approve or disapprove the budget. If the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1, unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed and the department approves the waiver after determining that a budget review committee is not necessary. Upon the grant of a waiver, the county superintendent has the authority and responsibility provided to a budget review committee in Section 42127.3. Upon approving a waiver of the budget review committee, the department shall ensure that a balanced budget is adopted for the school district by November 30. The Superintendent shall report to the Legislature and the Director of Finance by December 10 if any district, including a district that has received a waiver of the budget review committee process, does not have an adopted budget by November 30. This report shall include the reasons why a budget has not been adopted by the deadline, the steps being taken to finalize budget adoption, and the date the adopted budget is anticipated. For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, the county superintendent, as a condition on approval of a

school district budget, shall not require a school district to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the school district to demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.

(4) Not later than 45 days after the Governor signs the annual Budget Act, the school district shall make available for public review any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

(j) Any school district for which the county board of education serves as the governing board is not subject to subdivisions (c) to (h), inclusive, but is governed instead by the budget procedures set forth in Section 1622.

SEC. 18. Section 42238.146 of the Education Code is amended to read:

42238.146. (a) (1) For the 2003–04 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 1.198 percent deficit factor.

(2) For the 2004–05 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 0.323 percent deficit factor.

(3) For the 2003–04 and 2004–05 fiscal years, the revenue limit for each school district determined pursuant to this article shall be further reduced by a 1.826 percent deficit factor.

(4) For the 2005–06 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 0.892 percent deficit factor.

(5) For the 2008–09 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 7.844 percent deficit factor.

(6) For the 2009–10 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 18.355 percent deficit factor.

(7) For the 2010–11 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 17.963 percent deficit factor.

(8) For the 2011–12 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 19.754 percent deficit factor.

(b) In computing the revenue limit for each school district for the 2006–07 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2003–04, 2004–05, and 2005–06 fiscal years without being reduced by the deficit factors specified in subdivision (a).

(c) In computing the revenue limit for each school district for the 2010–11 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2009–10 fiscal year without being reduced by the deficit factors specified in subdivision (a).

(d) In computing the revenue limit for each school district for the 2011–12 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2010–11 fiscal year without being reduced by the deficit factors specified in subdivision (a).

(e) In computing the revenue limit for each school district for the 2012–13 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2011–12 fiscal year without being reduced by the deficit factors specified in subdivision (a).

SEC. 19. Section 42251 is added to the Education Code, to read:

42251. (a) The Superintendent shall make the following calculations for the 2011–12 fiscal year:

(1) Determine the amount of funds that will be restricted after the Superintendent makes the deduction pursuant to Section 52335.3 for each county office of education pursuant to subdivision (e) of Section 2558 as of June 30, 2012.

(2) Divide fifty million dollars ($50,000,000) by the statewide sum of the amounts determined pursuant to paragraph (1). If the fraction is greater than one it shall be deemed to be one.

(3) Multiply the fraction determined pursuant to paragraph (2) by the amount determined pursuant to paragraph (1) for each county office of education.

(b) The auditor-controller of each county shall distribute the amounts determined in paragraph (3) of subdivision (a)

to the Supplemental Revenue Augmentation Fund created within the county pursuant to Section 100.06 of the Revenue and Taxation Code. The aggregate amount of transfers required by this subdivision shall be made in two equal shares, with the first share being transferred no later than January 15, 2012, and the second share being transferred after that date but no later than May 1, 2012.

(c) The moneys transferred to the Supplemental Revenue Augmentation Fund in the 2011–12 fiscal year shall be transferred by the county office of education to the Controller, in amounts and for those purposes as directed by the Director of Finance, exclusively to reimburse the state for the costs of providing trial court services and costs until those moneys are exhausted.

SEC. 20. Section 42606 of the Education Code is repealed.

SEC. 21. Section 42606 is added to the Education Code, to read:

42606. (a) To the extent funds are provided, for the 2010–11 to the 2014–15 fiscal years, inclusive, the Superintendent shall allocate a supplemental categorical block grant to a charter school that began operation during or after the 2008–09 fiscal year. These supplemental categorical block grant funds may be used for any educational purpose. Commencing in the 2011–12 fiscal year, a locally or direct funded charter school that converted from a preexisting school between the 2008–09 and 2014–15 fiscal years, inclusive, is not eligible for funding specified in this section. A charter school that receives funding pursuant to this subdivision shall not

receive additional funding for programs specified in paragraph (2) of subdivision (a) of Section 42605, with the exception of the program funded pursuant to Item 6110-211-0001 of Section 2.00 of the annual Budget Act.

(b) (1) For the 2010–11 fiscal year, the supplemental categorical block grant shall equal one hundred twenty-seven dollars ($127) per unit of charter school average daily attendance as determined at the 2010–11 second principal apportionment for charter schools commencing operations during or after the 2008–09 fiscal year. A locally funded charter school that converted from a preexisting school during or after the 2008-09 fiscal year is not eligible for funding specified in this section.

(2) For the 2011–12 to the 2014–15 fiscal years, inclusive, the supplemental categorical block grant shall equal one hundred twenty-seven dollars ($127) per unit of charter school average daily attendance as determined at the current year second principal apportionment for charter schools commencing operations during or after the 2008–09 fiscal year. In lieu of this supplemental grant, a school district shall provide new conversion charter schools that commenced operations within the district during or after the 2008–09 fiscal year, one hundred twenty-seven dollars ($127) per unit of charter school average daily attendance as determined at the current year second principal apportionment. This paragraph does not preclude a school district and a new conversion charter school from negotiating an alternative funding rate. Absent agreement from both parties on an alternative rate, the school district shall be obligated to provide funding at the one hundred twenty-seven dollars ($127) per average daily attendance rate.

SEC. 22. Section 44955.5 of the Education Code is amended to read:

44955.5. (a) During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board.

(b) This section is inoperative from July 1, 2002, to July 1, 2003, inclusive, and from July 1, 2011, to July 1, 2012, inclusive.

SEC. 23. Section 46201.3 is added to the Education Code, to read:

46201.3. (a) For the 2011–12 school year, the minimum number of instructional days and minutes school districts, county offices of education, and charter schools are required to offer as set forth in Sections 41420, 46200, 46200.5, 46201, 46201.5, 46202, and 47612.5 shall be reduced by up to seven days.

(b) Implementation of the reduction in the number of instructional days offered by a school district, county office of education, and charter school that is subject to collective bargaining pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code shall be achieved through the bargaining process, provided that the agreement has been completed and reductions implemented no later than June 30, 2012.

(c) The revenue limit for each school district, county office of education, and charter school determined pursuant to Article 3 (commencing with Section 2550) of Chapter 12 of Part 2 of Division 1 of Title 1, Article 2 (commencing with Section 42238) of Chapter 7 of Part 24 of Division 3, and Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8 of Division 4 shall be reduced by the product of 4 percent and the fraction determined pursuant to paragraph (2).

(1) Subtract the revenue forecast determined pursuant to subdivision (a) of Section 3.94 of the Budget Act of 2011 from eighty-six billion four hundred fifty-two million five hundred thousand dollars ($86,452,500,000).

(2) Divide the lesser of two billion dollars ($2,000,000,000) or the amount calculated in paragraph (1) by two billion dollars ($2,000,000,000).

(d) This section does not affect the number of instructional days or instructional minutes that may be reduced pursuant to Section 46201.2.

(e) The revenue limit reductions authorized by this section, when combined with the reductions applied under subdivision (c) of Section 3.94 of the Budget Act of 2011, may not be applied so as to reduce school funding below the requirements of Section 8 of Article XVI of the California Constitution based on the applicable revenues estimated by the Department of Finance pursuant to Section 3.94 of the Budget Act of 2011.

(f) This section shall be operative on February 1, 2012, only for the 2011–12 school year and only if subdivision (c) of Section 3.94 of the Budget Act of 2011 is operative.

SEC. 24. Section 56139 of the Education Code is amended to read:

56139. (a) The Superintendent is responsible for monitoring local educational agencies to ensure compliance with the requirement to provide mental health services to individuals with exceptional needs pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and to ensure that funds provided for this purpose are appropriately utilized.

(b) The Superintendent shall submit a report to the Legislature by April 1, 2005, that includes all of the following:

(1) A description of the data that is currently collected by the department related to pupils served and services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(2) A description of the existing monitoring processes used by the department to ensure that local educational agencies are complying with Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, including the monitoring performed to ensure the appropriate use of funds for programs identified in Section 64000.

(3) Recommendations on the manner in which to strengthen and improve monitoring by the department of the compliance by a local educational agency with the requirements of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, on the manner in which to strengthen and improve collaboration and coordination with the State Department of Mental Health in monitoring and data collection activities, and on the additional data needed related to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(c) The Superintendent shall collaborate with the Director of Mental Health in preparing the report required pursuant to subdivision (b) and shall convene at least one meeting of appropriate stakeholders and organizations, including a representative from the State Department of Mental Health and mental health directors, to obtain input on existing data collection and monitoring processes, and on ways to strengthen and improve the data collected and monitoring performed.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 25. Section 56325 of the Education Code is amended to read:

56325. (a) (1) As required by subclause (I) of clause (i) of subparagraph (C) of paragraph (2) of subsection (d) of Section 1414 of Title 20 of the United States Code, the following shall apply to special education programs for individuals with exceptional needs who transfer from district to district within the state. In the case of an individual with exceptional needs who has an individualized education program and transfers into a district from a district not operating programs under the same local plan in which he or she was last enrolled in a special education program within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved individualized education program or shall develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

(2) In the case of an individual with exceptional needs who has an individualized education program and transfers into a district from a district operating programs under the same special education local plan area of the district in which he or she was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those described in the existing approved individualized education program, unless the parent and the local educational agency agree to develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

(3) As required by subclause (II) of clause (i) of subparagraph (C) of paragraph (2) of subsection (d) of Section 1414 of Title 20 of the United States Code, the following shall apply to special education programs for individuals with exceptional needs who transfer from an educational agency located outside the State of California to a district within California. In the case of an individual with exceptional needs who transfers from district to district within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, until the local educational agency conducts an assessment pursuant to paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code, if determined to be necessary by the local educational agency, and develops a new individualized education program, if appropriate, that is consistent with federal and state law.

(b) (1) To facilitate the transition for an individual with exceptional needs described in subdivision (a), the new school in which the individual with exceptional needs enrolls shall take reasonable steps to promptly obtain the pupil's records, including the individualized education program and supporting documents and any other records relating to the provision of special education and related services to the pupil, from the previous school in which the pupil was enrolled, pursuant to paragraph (2) of subsection (a) of Section 99.31 of Title 34 of the Code of Federal Regulations.

(2) The previous school in which the individual with exceptional needs was enrolled shall take reasonable steps to promptly respond to the request from the new school.

(c) If whenever a pupil described in subdivision (a) was placed and residing in a residential nonpublic, nonsectarian school, prior to transferring to a district in another special education local plan area, and this placement is not eligible for funding pursuant to Section 56836.16, the special education local plan area that contains the district that made the residential nonpublic, nonsectarian school placement is responsible for the funding of the placement, including related services, for the remainder of the school year. An extended year session is included in the school year in which the session ends.

SEC. 26. Section 56331 of the Education Code is amended to read:

56331. (a) A pupil who is suspected of needing mental health services may be referred to a community mental health service in accordance with Section 7576 of the Government Code.

(b) Prior to referring a pupil to a county mental health agency for services, the local educational agency shall follow the procedures set forth in Section 56320 and conduct an assessment in accordance with Sections 300.301 to 300.306, inclusive, of Title 34 of the Code of Federal Regulations. If an individual with exceptional needs is identified as potentially requiring mental health services, the local educational agency shall request the participation of the county mental health agency in the individualized education program. A local educational agency shall provide any specially designed instruction

required by an individualized education program, including related services such as counseling services, parent counseling and training, psychological services, or social work services in schools as defined in Section 300.34 of Title 34 of the Code of Federal Regulations. If the individualized education program of an individual with exceptional needs includes a functional behavioral assessment and behavior intervention plan, in accordance with Section 300.530 of Title 34 of the Code of Federal Regulations, the local educational agency shall provide documentation upon referral to a county mental health agency. Local educational agencies shall provide related services, by qualified personnel, unless the individualized education program team designates a more appropriate agency for the provision of services. Local educational agencies and community mental health services shall work collaboratively to ensure that assessments performed prior to referral are as useful as possible to the community mental health service agency in determining the need for mental health services and the level of services needed.

(c) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 27. Section 60422.3 of the Education Code is amended and renumbered to read:

60049. (a) Notwithstanding subdivision (i) of Section 60200, Section 60422, or any other provision of law, for the 2008–09 to the 2014–15 fiscal years, inclusive, the governing board of a school district is not required to provide pupils with instructional materials by a specified period of time following adoption of those materials by the state board.

(b) Notwithstanding subdivision (a), this section does not relieve school districts of their obligations to provide every pupil with textbooks or instructional materials, as provided in Section 1240.3.

(c) This section does not relieve school districts of the obligation to hold a public hearing or hearings pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (a) of Section 60119.

(d) This section shall become inoperative on July 1, 2015, and, as of January 1, 2016, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2016, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 28. Section 69432.7 of the Education Code is amended to read:

69432.7. As used in this chapter, the following terms have the following meanings:

(a) An "academic year" is July 1 to June 30, inclusive. The starting date of a session shall determine the academic year in which it is included.

(b) "Access costs" means living expenses and expenses for transportation, supplies, and books.

(c) "Award year" means one academic year, or the equivalent, of attendance at a qualifying institution.

(d) "College grade point average" and "community college grade point average" mean a grade point average calculated on the basis of all college work completed, except for nontransferable units and courses not counted in the computation for admission to a California public institution of higher education that grants a baccalaureate degree.

(e) "Commission" means the Student Aid Commission.

(f) "Enrollment status" means part- or full-time status.

(1) "Part time," for purposes of Cal Grant eligibility, means 6 to 11 semester units, inclusive, or the equivalent.

(2) "Full time," for purposes of Cal Grant eligibility, means 12 or more semester units or the equivalent.

(g) "Expected family contribution," with respect to an applicant, shall be determined using the federal methodology pursuant to subdivision (a) of Section 69506 (as established by Title IV of the federal Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1070 et seq.)) and applicable rules and regulations adopted by the commission.

(h) "High school grade point average" means a grade point average calculated on a 4.0 scale, using all academic coursework, for the sophomore year, the summer following the sophomore year, the junior year, and the summer following the junior year, excluding physical education, reserve officer training corps (ROTC), and remedial courses, and computed pursuant to regulations of the commission. However, for high school graduates who apply after their senior year, "high school grade point average" includes senior year coursework.

(i) "Instructional program of not less than one academic year" means a program of study that results in the award of an associate or baccalaureate degree or certificate requiring at least 24 semester units or the equivalent, or that results in eligibility for transfer from a community college to a baccalaureate degree program.

(j) "Instructional program of not less than two academic years" means a program of study that results in the award of an associate or baccalaureate degree requiring at least 48 semester units or the equivalent, or that results in eligibility for transfer from a community college to a baccalaureate degree program.

(k) "Maximum household income and asset levels" means the applicable household income and household asset levels for participants, including new applicants and renewing recipients, in the Cal Grant Program, as defined and adopted in regulations by the commission for the 2001–02 academic year, which shall be set pursuant to the following income and asset ceiling amounts:

CAL GRANT PROGRAM INCOME CEILINGS

	Cal Grant A, C, and T	Cal Grant B
Dependent and Independent students with dependents*		
Family Size		

Six or more	$74,100	$40,700
Five	$68,700	$37,700
Four	$64,100	$33,700
Three	$59,000	$30,300
Two	$57,600	$26,900
Independent		
Single, no dependents	$23,500	$23,500
Married	$26,900	$26,900

*Applies to independent students with dependents other than a spouse.

CAL GRANT PROGRAM ASSET CEILINGS

	Cal Grant A, C, and T	Cal Grant B
Dependent**	$49,600	$49,600
Independent	$23,600	$23,600

**Applies to independent students with dependents other than a spouse.

The commission shall annually adjust the maximum household income and asset levels based on the percentage change in the cost of living within the meaning of paragraph (1) of subdivision (e) of Section 8 of Article XIII B of the California Constitution. The maximum household income and asset levels applicable to a renewing recipient shall be the greater of the adjusted maximum household income and asset levels or the maximum household income and asset levels at the time of the renewing recipient's initial Cal Grant award. For a recipient who was initially awarded a Cal Grant for an academic year before the 2011–12 academic year, the maximum household income and asset levels shall be the greater of the adjusted maximum household income and asset levels or the 2010–11 academic year maximum household income and asset levels. An applicant or renewal recipient who qualifies to be considered under the simplified needs test established by federal law for student assistance shall be presumed to meet the asset level test under this section. Prior to disbursing any Cal Grant funds, a qualifying institution shall be obligated, under the terms of its institutional participation agreement with the commission, to resolve any conflicts that may exist in the data the institution possesses relating to that individual.

(*l*) (1) "Qualifying institution" means an institution that complies with paragraphs (2) and (3) and is any of the following:

(A) A California private or independent postsecondary educational institution that participates in the Pell Grant Program and in at least two of the following federal campus-based student aid programs:

(i) Federal Work-Study.

(ii) Perkins Loan Program.

(iii) Supplemental Educational Opportunity Grant Program.

(B) A nonprofit institution headquartered and operating in California that certifies to the commission that 10 percent of the institution's operating budget, as demonstrated in an audited financial statement, is expended for purposes of institutionally funded student financial aid in the form of grants, that demonstrates to the commission that it has the administrative capacity to administer the funds, that is accredited by the Western Association of Schools and Colleges, and that meets any other state-required criteria adopted by regulation by the commission in consultation with the Department of Finance. A regionally accredited institution that was deemed qualified by the commission to participate in the Cal Grant Program for the 2000–01 academic year shall retain its eligibility as long as it maintains its existing accreditation status.

(C) A California public postsecondary educational institution.

(2) (A) The institution shall provide information on where to access California license examination passage rates for the most recent available year from graduates of its undergraduate programs leading to employment for which passage of a California licensing examination is required, if that data is electronically available through the Internet Web site of a California licensing or regulatory agency. For purposes of this paragraph, "provide" may exclusively include placement of an Internet Web site address labeled as an access point for the data on the passage rates of recent program graduates on the Internet Web site where enrollment information is also located, on an Internet Web site that provides centralized admissions information for postsecondary educational systems with multiple campuses, or on applications for enrollment or other program information distributed to prospective students.

(B) The institution shall be responsible for certifying to the commission compliance with the requirements of subparagraph (A).

(3) (A) The commission shall certify by October 1 of each year the institution's latest three-year cohort default rate as most recently reported by the United States Department of Education.

(B) For purposes of the 2011–12 academic year, an otherwise qualifying institution with a 2008 trial three-year cohort default rate reported by the United States Department of Education as of February 28, 2011, that is equal to or greater than 24.6 percent shall be ineligible for initial and renewal Cal Grant awards at the institution, except as provided in subparagraph (F).

(C) For purposes of the 2012–13 academic year, and every academic year thereafter, an otherwise qualifying institution with a three-year cohort default rate that is equal to or greater than 30 percent, as certified by the commission on October 1, 2011, and every year thereafter, shall be ineligible

for initial and renewal Cal Grant awards at the institution, except as provided in subparagraph (F).

(D) (i) An otherwise qualifying institution that becomes ineligible under this paragraph for initial and renewal Cal Grant awards may regain its eligibility for the academic year following an academic year in which it satisfies the requirements established in subparagraph (B) or (C), as applicable.

(ii) If the United States Department of Education corrects or revises an institution's three-year cohort default rate that originally failed to satisfy the requirements established in subparagraph (B) or (C), as applicable, and the correction or revision results in the institution's three-year cohort default rate satisfying those requirements, that institution shall immediately regain its eligibility for the academic year to which the corrected or revised three-year cohort default rate would have been applied.

(E) An otherwise qualifying institution for which no three-year cohort default rate has been reported by the United States Department of Education shall be provisionally eligible to participate in the Cal Grant Program until a three-year cohort default rate has been reported for the institution by the United States Department of Education.

(F) An institution that is ineligible for initial and renewal Cal Grant awards at the institution under subparagraph (B) or (C) shall be eligible for renewal Cal Grant awards for recipients who were enrolled in the ineligible institution during the academic year before the academic year for which the institution is ineligible and who choose to renew their Cal Grant awards to attend the ineligible institution. Cal Grant awards subject to this subparagraph shall be reduced as follows:

(i) The maximum Cal Grant A and B awards specified in the annual Budget Act shall be reduced by 20 percent.

(ii) The reductions specified in this subparagraph shall not impact access costs as specified in subdivision (b) of Section 69435.

(G) Notwithstanding any other law, the requirements of this paragraph shall not apply to institutions with 40 percent or less of undergraduate students borrowing federal student loans, using information reported to the United States Department of Education for the academic year two years prior to the year in which the commission is certifying the three-year cohort default rate pursuant to subparagraph (A).

(H) By January 1, 2013, the Legislative Analyst shall submit to the Legislature a report on the implementation of this paragraph. The report shall be prepared in consultation with the commission, and shall include policy recommendations for appropriate measures of default risk and other direct or indirect measures of quality or effectiveness in educational institutions participating in the Cal Grant Program, and appropriate scores for those measures. It is the intent of the Legislature that appropriate policy and fiscal committees review the requirements of this paragraph and consider changes thereto.

(m) "Satisfactory academic progress" means those criteria required by applicable federal standards published in Title 34 of the Code of Federal

Regulations. The commission may adopt regulations defining "satisfactory academic progress" in a manner that is consistent with those federal standards.

SEC. 29. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) (1) The fee prescribed by this section shall be thirty-six dollars ($36) per unit per semester, effective with the fall term of the 2011–12 academic year.

(2) The board of governors shall proportionately adjust the amount of the fee for term lengths based upon a quarter system, and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the board of governors may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750.5, the board of governors shall subtract, from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The board of governors shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the full-time equivalent students (FTES) of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) (1) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Temporary Assistance to Needy Families program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.

(2) The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates

eligibility according to income standards established by regulations of the board of governors.

(3) Paragraphs (1) and (2) may be applied to a student enrolled in the 2005–06 academic year if the student is exempted from nonresident tuition under paragraph (3) of subdivision (a) of Section 76140.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) The fee requirements of this section shall be waived for any student who is the surviving spouse or the child, natural or adopted, of a deceased person who met all of the requirements of Section 68120.

(j) The fee requirements of this section shall be waived for any student in an undergraduate program, including a student who has previously graduated from another undergraduate or graduate program, who is the dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if that dependent meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following applies:

(1) The dependent was a resident of California on September 11, 2001.

(2) The individual killed in the attacks was a resident of California on September 11, 2001.

(k) A determination of whether a person is a resident of California on September 11, 2001, for purposes of subdivision (j) shall be based on the criteria set forth in Chapter 1 (commencing with Section 68000) of Part 41 of Division 5 for determining nonresident and resident tuition.

(*l*) (1) "Dependent," for purposes of subdivision (j), is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42).

(2) A dependent who is the surviving spouse of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers provided in this section until January 1, 2013.

(3) A dependent who is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers under subdivision (j) until that person attains the age of 30 years.

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California

Victim Compensation and Government Claims Board, is also entitled to the waivers provided in this section until January 1, 2013.

(m) (1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) to (j), inclusive.

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) to (j), inclusive. From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) to (j), inclusive. It is the intent of the Legislature that funds provided pursuant to this subdivision be used to support the determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. It also is the intent of the Legislature that the funds provided pursuant to this subdivision directly offset mandated costs claimed by community college districts pursuant to Commission on State Mandates consolidated Test Claims 99-TC-13 (Enrollment Fee Collection) and 00-TC-15 (Enrollment Fee Waivers). Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(n) The board of governors shall adopt regulations implementing this section.

(o) This section shall be inoperative and is repealed on January 1, 2012, only if Section 3.94 of the Budget Act of 2011 is operative.

SEC. 30. Section 76300 is added to the Education Code, to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) (1) The fee prescribed by this section shall be forty-six dollars ($46) per unit per semester, effective with the fall term of the 2011–12 academic year.

(2) The board of governors shall proportionately adjust the amount of the fee for term lengths based upon a quarter system, and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the board of governors may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750.5, the board of governors shall subtract, from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The board of governors shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the full-time equivalent students (FTES) of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) (1) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Temporary Assistance to Needy Families program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.

(2) The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by regulations of the board of governors.

(3) Paragraphs (1) and (2) may be applied to a student enrolled in the 2005–06 academic year if the student is exempted from nonresident tuition under paragraph (3) of subdivision (a) of Section 76140.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a dependent or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. “Active service of the state,” for the purposes of this subdivision, refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) The fee requirements of this section shall be waived for any student who is the surviving spouse or the child, natural or adopted, of a deceased person who met all of the requirements of Section 68120.

(j) The fee requirements of this section shall be waived for any student in an undergraduate program, including a student who has previously graduated from another undergraduate or graduate program, who is the dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon or the crash of United

Airlines Flight 93 in southwestern Pennsylvania, if that dependent meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following applies:

(1) The dependent was a resident of California on September 11, 2001.

(2) The individual killed in the attacks was a resident of California on September 11, 2001.

(k) A determination of whether a person is a resident of California on September 11, 2001, for purposes of subdivision (j) shall be based on the criteria set forth in Chapter 1 (commencing with Section 68000) of Part 41 of Division 5 for determining nonresident and resident tuition.

(*l*) (1) "Dependent," for purposes of subdivision (j), is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42).

(2) A dependent who is the surviving spouse of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers provided in this section until January 1, 2013.

(3) A dependent who is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers under subdivision (j) until that person attains 30 years of age.

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California Victim Compensation and Government Claims Board, is also entitled to the waivers provided in this section until January 1, 2013.

(m) (1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) to (j), inclusive.

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) to (j), inclusive. From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) to (j), inclusive. It is the intent of the Legislature that funds provided pursuant to this subdivision be used to support the determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. It also is the intent of the Legislature that the funds provided pursuant to this subdivision directly offset mandated costs claimed by community college districts pursuant to Commission on State Mandates consolidated Test Claims 99-TC-13 (Enrollment Fee Collection) and 00-TC-15 (Enrollment Fee Waivers). Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(n) The board of governors shall adopt regulations implementing this section.

(o) This section shall become operative on January 1, 2012, only if Section 3.94 of the Budget Act of 2011 is operative.

SEC. 31. Section 7911.1 of the Family Code is amended to read:

7911.1. (a) Notwithstanding any other law, the State Department of Social Services or its designee shall investigate any threat to the health and safety of children placed by a California county social services agency or probation department in an out-of-state group home pursuant to the provisions of the Interstate Compact on the Placement of Children. This authority shall include the authority to interview children or staff in private or review their file at the out-of-state facility or wherever the child or files may be at the time of the investigation. Notwithstanding any other law, the State Department of Social Services or its designee shall require certified out-of-state group homes to comply with the reporting requirements applicable to group homes licensed in California pursuant to Title 22 of the California Code of Regulations for each child in care regardless of whether he or she is a California placement, by submitting a copy of the required reports to the Compact Administrator within regulatory timeframes. The Compact Administrator within one business day of receiving a serious events report shall verbally notify the appropriate placement agencies and within five working days of receiving a written report from the out-of-state group home, forward a copy of the written report to the appropriate placement agencies.

(b) Any contract, memorandum of understanding, or agreement entered into pursuant to paragraph (b) of Article 5 of the Interstate Compact on the Placement of Children regarding the placement of a child out of state by a California county social services agency or probation department shall include the language set forth in subdivision (a).

(c) The State Department of Social Services or its designee shall perform initial and continuing inspection of out-of-state group homes in order to either certify that the out-of-state group home meets all licensure standards required of group homes operated in California or that the department has granted a waiver to a specific licensing standard upon a finding that there exists no adverse impact to health and safety. Any failure by an out-of-state group home facility to make children or staff available as required by subdivision (a) for a private interview or make files available for review shall be grounds to deny or discontinue the certification. The State Department of Social Services shall grant or deny an initial certification or a waiver under this subdivision to an out-of-state group home facility that has more than six California children placed by a county social services agency or probation department by August 19, 1999. The department shall grant or deny an initial certification or a waiver under this subdivision to an out-of-state group home facility that has six or fewer California children placed by a county social services agency or probation department by February 19, 2000. Certifications made pursuant to this subdivision shall be reviewed annually.

(d) Within six months of the effective date of this section, a county shall be required to obtain an assessment and placement recommendation by a county multidisciplinary team for each child in an out-of-state group home facility. On or after March 1, 1999, a county shall be required to obtain an assessment and placement recommendation by a county multidisciplinary team prior to placement of a child in an out-of-state group home facility.

(e) Any failure by an out-of-state group home to obtain or maintain its certification as required by subdivision (c) shall preclude the use of any public funds, whether county, state, or federal, in the payment for the placement of any child in that out-of-state group home, pursuant to the Interstate Compact on the Placement of Children.

(f) (1) A multidisciplinary team shall consist of participating members from county social services, county mental health, county probation, county superintendents of schools, and other members as determined by the county.

(2) Participants shall have knowledge or experience in the prevention, identification, and treatment of child abuse and neglect cases, and shall be qualified to recommend a broad range of services related to child abuse or neglect.

(g) (1) The department may deny, suspend, or discontinue the certification of the out-of-state group home if the department makes a finding that the group home is not operating in compliance with the requirements of subdivision (c).

(2) Any judicial proceeding to contest the department's determination as to the status of the out-of-state group home certificate shall be held in California pursuant to Section 1085 of the Code of Civil Procedure.

(h) The certification requirements of this section shall not impact placements of emotionally disturbed children made pursuant to an individualized education program developed pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) if the placement is not funded with federal or state foster care funds.

(i) Only an out-of-state group home authorized by the Compact Administrator to receive state funds for the placement by a county social services agency or probation department of any child in that out-of-state group home from the effective date of this section shall be eligible for public funds pending the department's certification under this section.

SEC. 32. Section 7572 of the Government Code is amended to read:

7572. (a) A child shall be assessed in all areas related to the suspected disability by those qualified to make a determination of the child's need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, including, but not limited to, services in the areas of occupational therapy and physical therapy. All assessments required or conducted pursuant to this section shall be governed by the assessment procedures contained in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code.

(b) Occupational therapy and physical therapy assessments shall be conducted by qualified medical personnel as specified in regulations

developed by the State Department of Health Services in consultation with the State Department of Education.

(c) A related service or designated instruction and service shall only be added to the child's individualized education program by the individualized education program team, as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code, if a formal assessment has been conducted pursuant to this section, and a qualified person conducting the assessment recommended the service in order for the child to benefit from special education. In no case shall the inclusion of necessary related services in a pupil's individualized education plan be contingent upon identifying the funding source. Nothing in this section shall prevent a parent from obtaining an independent assessment in accordance with subdivision (b) of Section 56329 of the Education Code, which shall be considered by the individualized education program team.

(1) If an assessment has been conducted pursuant to subdivision (b), the recommendation of the person who conducted the assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. When the proposed recommendation of the person has been discussed with the parent and there is disagreement on the recommendation pertaining to the related service, the parent shall be notified in writing and may require the person who conducted the assessment to attend the individualized education program team meeting to discuss the recommendation. The person who conducted the assessment shall attend the individualized education program team meeting if requested. Following this discussion and review, the recommendation of the person who conducted the assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local educational agency.

(2) If an independent assessment for the provision of related services or designated instruction and services is submitted to the individualized education program team, review of that assessment shall be conducted by the person specified in subdivision (b). The recommendation of the person who reviewed the independent assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. The parent shall be notified in writing and may request the person who reviewed the independent assessment to attend the individualized education program team meeting to discuss the recommendation. The person who reviewed the independent assessment shall attend the individualized education program team meeting if requested. Following this review and discussion, the recommendation of the person who reviewed the independent assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local agency.

(3) Any disputes between the parent and team members representing the public agencies regarding a recommendation made in accordance with paragraphs (1) and (2) shall be resolved pursuant to Chapter 5 (commencing

with Section 56500) of Part 30 of Division 4 of Title 2 of the Education Code.

(d) Whenever a related service or designated instruction and service specified in subdivision (b) is to be considered for inclusion in the child's individualized educational program, the local education agency shall invite the responsible public agency representative to meet with the individualized education program team to determine the need for the service and participate in developing the individualized education program. If the responsible public agency representative cannot meet with the individualized education program team, then the representative shall provide written information concerning the need for the service pursuant to subdivision (c). Conference calls, together with written recommendations, are acceptable forms of participation. If the responsible public agency representative will not be available to participate in the individualized education program meeting, the local educational agency shall ensure that a qualified substitute is available to explain and interpret the evaluation pursuant to subdivision (d) of Section 56341 of the Education Code. A copy of the information shall be provided by the responsible public agency to the parents or any adult pupil for whom no guardian or conservator has been appointed.

SEC. 33. Section 7572.5 of the Government Code is amended to read:

7572.5. (a) If an assessment is conducted pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code, which determines that a child is seriously emotionally disturbed, as defined in Section 300.8 of Title 34 of the Code of Federal Regulations, and any member of the individualized education program team recommends residential placement based on relevant assessment information, the individualized education program team shall be expanded to include a representative of the county mental health department.

(b) The expanded individualized education program team shall review the assessment and determine whether:

(1) The child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care.

(2) Residential care is necessary for the child to benefit from educational services.

(3) Residential services are available that address the needs identified in the assessment and that will ameliorate the conditions leading to the seriously emotionally disturbed designation.

(c) If the review required in subdivision (b) results in an individualized education program that calls for residential placement, the individualized education program shall include all of the items outlined in Section 56345 of the Education Code, and shall also include:

(1) Designation of the county mental health department as lead case manager. Lead case management responsibility may be delegated to the county welfare department by agreement between the county welfare department and the designated county mental health department. The county

mental health department shall retain financial responsibility for the provision of case management services.

(2) Provision for a review of the case progress, the continuing need for out-of-home placement, the extent of compliance with the individualized education program, and progress toward alleviating the need for out-of-home care, by the full individualized education program team at least every six months.

(3) Identification of an appropriate residential facility for placement with the assistance of the county welfare department as necessary.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 34. Section 7572.55 of the Government Code is amended to read:

7572.55. (a) Residential placements for a child with a disability who is seriously emotionally disturbed may be made out-of-state only after in-state alternatives have been considered and are found not to meet the child's needs and only when the requirements of Section 7572.5, and subdivision (e) of Section 56365 of the Education Code have been met. The local education agency shall document the alternatives to out-of-state residential placement that were considered and the reasons why they were rejected.

(b) Out-of-state placements shall be made only in a privately operated school certified by the California Department of Education.

(c) A plan shall be developed for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school. If the child is a ward or dependent of the court, this plan shall be documented in the record.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 35. Section 7576 of the Government Code is amended to read:

7576. (a) The State Department of Mental Health, or a community mental health service, as described in Section 5602 of the Welfare and Institutions Code, designated by the State Department of Mental Health, is responsible for the provision of mental health services, as defined in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education, if required in the individualized education program of a pupil. A local educational agency is not required to place a pupil in a more restrictive educational environment in order for the pupil to receive the mental health services specified in his or her individualized education program if the mental health services can be appropriately provided in a less restrictive setting. It is the intent of the Legislature that the local educational agency and the community mental health service vigorously attempt to develop a mutually satisfactory placement that is acceptable to the parent and addresses the educational and

mental health treatment needs of the pupil in a manner that is cost effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. For purposes of this section, "parent" is as defined in Section 56028 of the Education Code.

(b) A local educational agency, individualized education program team, or parent may initiate a referral for assessment of the social and emotional status of a pupil, pursuant to Section 56320 of the Education Code. Based on the results of assessments completed pursuant to Section 56320 of the Education Code, an individualized education program team may refer a pupil who has been determined to be an individual with exceptional needs, as defined in Section 56026 of the Education Code, and who is suspected of needing mental health services to a community mental health service if the pupil meets all of the criteria in paragraphs (1) to (5), inclusive. Referral packages shall include all documentation required in subdivision (c), and shall be provided immediately to the community mental health service.

(1) The pupil has been assessed by school personnel in accordance with Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code. Local educational agencies and community mental health services shall work collaboratively to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed.

(2) The local educational agency has obtained written parental consent for the referral of the pupil to the community mental health service, for the release and exchange of all relevant information between the local educational agency and the community mental health service, and for the observation of the pupil by mental health professionals in an educational setting.

(3) The pupil has emotional or behavioral characteristics that satisfy all of the following:

(A) Are observed by qualified educational staff in educational and other settings, as appropriate.

(B) Impede the pupil from benefiting from educational services.

(C) Are significant as indicated by their rate of occurrence and intensity.

(D) Are associated with a condition that cannot be described solely as a social maladjustment or a temporary adjustment problem, and cannot be resolved with short-term counseling.

(4) As determined using educational assessments, the pupil's functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services.

(5) The local educational agency, pursuant to Section 56331 of the Education Code, has provided appropriate counseling and guidance services, psychological services, parent counseling and training, or social work services to the pupil pursuant to Section 56363 of the Education Code, or behavioral intervention as specified in Section 56520 of the Education Code, as specified in the individualized education program and the individualized

education program team has determined that the services do not meet the educational needs of the pupil, or, in cases where these services are clearly inadequate or inappropriate to meet the educational needs of the pupil, the individualized education program team has documented which of these services were considered and why they were determined to be inadequate or inappropriate.

(c) If referring a pupil to a community mental health service in accordance with subdivision (b), the local educational agency or the individualized education program team shall provide the following documentation:

(1) Copies of the current individualized education program, all current assessment reports completed by school personnel in all areas of suspected disabilities pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code, and other relevant information, including reports completed by other agencies.

(2) A copy of the parent's consent obtained as provided in paragraph (2) of subdivision (b).

(3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria set forth in paragraphs (3) and (4) of subdivision (b).

(4) A description of the counseling, psychological, and guidance services, and other interventions that have been provided to the pupil, as provided in the individualized education program of the pupil, including the initiation, duration, and frequency of these services, or an explanation of the reasons a service was considered for the pupil and determined to be inadequate or inappropriate to meet his or her educational needs.

(d) Based on preliminary results of assessments performed pursuant to Section 56320 of the Education Code, a local educational agency may refer a pupil who has been determined to be, or is suspected of being, an individual with exceptional needs, and is suspected of needing mental health services, to a community mental health service if a pupil meets the criteria in paragraphs (1) and (2). Referral packages shall include all documentation required in subdivision (e) and shall be provided immediately to the community mental health service.

(1) The pupil meets the criteria in paragraphs (2) to (4), inclusive, of subdivision (b).

(2) Counseling and guidance services, psychological services, parent counseling and training, social work services, and behavioral or other interventions as provided in the individualized education program of the pupil are clearly inadequate or inappropriate in meeting his or her educational needs.

(e) If referring a pupil to a community mental health service in accordance with subdivision (d), the local educational agency shall provide the following documentation:

(1) Results of preliminary assessments to the extent they are available and other relevant information including reports completed by other agencies.

(2) A copy of the parent's consent obtained as provided in paragraph (2) of subdivision (b).

(3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria in paragraphs (3) and (4) of subdivision (b).

(4) Documentation that appropriate related educational and designated instruction and services have been provided in accordance with Sections 300.34 and 300.39 of Title 34 of the Code of Federal Regulations.

(5) An explanation of the reasons that counseling and guidance services, psychological services, parent counseling and training, social work services, and behavioral or other interventions as provided in the individualized education program of the pupil are clearly inadequate or inappropriate in meeting his or her educational needs.

(f) The procedures set forth in this chapter are not designed for use in responding to psychiatric emergencies or other situations requiring immediate response. In these situations, a parent may seek services from other public programs or private providers, as appropriate. This subdivision does not change the identification and referral responsibilities imposed on local educational agencies under Article 1 (commencing with Section 56300) of Chapter 4 of Part 30 of Division 4 of Title 2 of the Education Code.

(g) Referrals shall be made to the community mental health service in the county in which the pupil lives. If the pupil has been placed into residential care from another county, the community mental health service receiving the referral shall forward the referral immediately to the community mental health service of the county of origin, which shall have fiscal and programmatic responsibility for providing or arranging for the provision of necessary services. The procedures described in this subdivision shall not delay or impede the referral and assessment process.

(h) A county mental health agency does not have fiscal or legal responsibility for costs it incurs prior to the approval of an individualized education program, except for costs associated with conducting a mental health assessment.

(i) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 36. Section 7576.2 of the Government Code is amended to read:

7576.2. (a) The Director of the State Department of Mental Health is responsible for monitoring county mental health agencies to ensure compliance with the requirement to provide mental health services to disabled pupils pursuant to this chapter and to ensure that funds provided for this purpose are appropriately utilized.

(b) The Director of the State Department of Mental Health shall submit a report to the Legislature by April 1, 2005, that includes the following:

(1) A description of the data that is currently collected by the State Department of Mental Health related to pupils served and services provided pursuant to this chapter.

(2) A description of the existing monitoring process used by the State Department of Mental Health to ensure that county mental health agencies are complying with this chapter.

(3) Recommendations on the manner in which to strengthen and improve monitoring by the State Department of Mental Health of the compliance by a county mental health agency with the requirements of this chapter, on the manner in which to strengthen and improve collaboration and coordination with the State Department of Education in monitoring and data collection activities, and on the additional data needed related to this chapter.

(c) The Director of the State Department of Mental Health shall collaborate with the Superintendent of Public Instruction in preparing the report required pursuant to subdivision (b) and shall convene at least one meeting of appropriate stakeholders and organizations, including a representative from the State Department of Education, to obtain input on existing data collection and monitoring processes, and on ways to strengthen and improve the data collected and monitoring performed.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 37. Section 7576.3 of the Government Code is amended to read:

7576.3. (a) It is the intent of the Legislature that the Director of the State Department of Mental Health collaborate with an entity with expertise in children's mental health to collect, analyze, and disseminate best practices for delivering mental health services to disabled pupils. The best practices may include, but are not limited to:

(1) Interagency agreements in urban, suburban, and rural areas that result in clear identification of responsibilities between local educational agencies and county mental health agencies and result in efficient and effective delivery of services to pupils.

(2) Procedures for developing and amending individualized education programs that include mental health services that provide flexibility to educational and mental health agencies and protect the interests of children in obtaining needed mental health needs.

(3) Procedures for creating ongoing communication between the classroom teacher of the pupil and the mental health professional who is directing the mental health program for the pupil.

(b) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 38. Section 7576.5 of the Government Code is amended to read:

7576.5. (a) If funds are appropriated to local educational agencies to support the costs of providing services pursuant to this chapter, the local educational agencies shall transfer those funds to the community mental health services that provide services pursuant to this chapter in order to reduce the local costs of providing these services. These funds shall be used

exclusively for programs operated under this chapter and are offsetting revenues in any reimbursable mandate claim relating to special education programs and services.

(b) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 39. Section 7582 of the Government Code is amended to read:

7582. Assessments and therapy treatment services provided under programs of the State Department of Health Care Services, or its designated local agencies, rendered to a child referred by a local education agency for an assessment or a disabled child or youth with an individualized education program, shall be exempt from financial eligibility standards and family repayment requirements for these services when rendered pursuant to this chapter.

SEC. 40. Section 7585 of the Government Code is amended to read:

7585. (a) Whenever a department or local agency designated by that department fails to provide a related service or designated instruction and service required pursuant to Section 7575, and specified in the pupil's individualized education program, the parent, adult pupil, if applicable, or a local educational agency referred to in this chapter, shall submit a written notification of the failure to provide the service to the Superintendent of Public Instruction or the Secretary of California Health and Human Services.

(b) When either the Superintendent or the secretary receives a written notification of the failure to provide a service as specified in subdivision (a), a copy shall immediately be transmitted to the other party. The Superintendent, or his or her designee, and the secretary, or his or her designee, shall meet to resolve the issue within 15 calendar days of receipt of the notification. A written copy of the meeting resolution shall be mailed to the parent, the local educational agency, and affected departments, within 10 days of the meeting.

(c) If the issue cannot be resolved within 15 calendar days to the satisfaction of the Superintendent and the secretary, they shall jointly submit the issue in writing to the Director of the Office of Administrative Hearings, or his or her designee, in the Department of General Services.

(d) The Director of the Office of Administrative Hearings, or his or her designee, shall review the issue and submit his or her findings in the case to the Superintendent and the secretary within 30 calendar days of receipt of the case. The decision of the director, or his or her designee, shall be binding on the departments and their designated agencies who are parties to the dispute.

(e) If the meeting, conducted pursuant to subdivision (b), fails to resolve the issue to the satisfaction of the parent or local educational agency, either party may appeal to the director, whose decision shall be the final administrative determination and binding on all parties.

(f) Whenever notification is filed pursuant to subdivision (a), the pupil affected by the dispute shall be provided with the appropriate related service

or designated instruction and service pending resolution of the dispute, if the pupil had been receiving the service. The Superintendent and the secretary shall ensure that funds are available for the provision of the service pending resolution of the issue pursuant to subdivision (e).

(g) This section does not prevent a parent or adult pupil from filing for a due process hearing under Section 7586.

(h) The contract between the State Department of Education and the Office of Administrative Hearings for conducting due process hearings shall include payment for services rendered by the Office of Administrative Hearings which are required by this section.

SEC. 41. Section 7586.5 of the Government Code is amended to read:

7586.5. (a) Not later than January 1, 1988, the Superintendent of Public Instruction and the Secretary of the Health and Human Services Agency jointly shall submit to the Legislature and the Governor a report on the implementation of this chapter. The report shall include, but not be limited to, information regarding the number of complaints and due process hearings resulting from this chapter.

(b) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 42. Section 7586.6 of the Government Code is amended to read:

7586.6. (a) The Superintendent of Public Instruction and the Secretary of the Health and Human Services Agency shall ensure that the State Department of Education and the State Department of Mental Health enter into an interagency agreement by January 1, 1998. It is the intent of the Legislature that the agreement include, but not be limited to, procedures for ongoing joint training, technical assistance for state and local personnel responsible for implementing this chapter, protocols for monitoring service delivery, and a system for compiling data on program operations.

(b) It is the intent of the Legislature that the designated local agencies of the State Department of Education and the State Department of Mental Health update their interagency agreements for services specified in this chapter at the earliest possible time. It is the intent of the Legislature that the state and local interagency agreements be updated at least every three years or earlier as necessary.

(c) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 43. Section 7586.7 of the Government Code is amended to read:

7586.7. (a) The Superintendent of Public Instruction and the Secretary of the Health and Human Services Agency jointly shall prepare and implement within existing resources a plan for in-service training of state and local personnel responsible for implementing the provisions of this chapter.

(b) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 44. Section 7588 of the Government Code is repealed.

SEC. 45. Section 12440.1 of the Government Code is amended to read:

12440.1. (a) The trustees, in conjunction with the Controller, shall implement a process that allows any campus or other unit of the university to make payments of obligations of the university from its revolving fund directly to all of its vendors. Notwithstanding Article 5 (commencing with Section 16400) of Chapter 2 of Part 2 of Division 4 of Title 2, or any other law, the trustees may draw from funds appropriated to the university, for use as a revolving fund, amounts necessary to make payments of obligations of the university directly to vendors. In any fiscal year, the trustees shall obtain the approval of the Director of Finance to draw amounts in excess of 10 percent of the total appropriation to the university for that fiscal year for use as a revolving fund.

(b) Notwithstanding Sections 925.6, 12410, and 16403, or any other law, the trustees shall maintain payment records for three years and make those records available to the Controller for postaudit review, as needed.

(c) (1) Notwithstanding Section 8546.4 or any other law, the trustees shall contract with one or more public accounting firms to conduct a systemwide annual financial statement audit in accordance with generally accepted accounting principles (GAAP), as well as other required compliance audits without obtaining the approval of any other state officer or entity.

(2) The statement of net assets, statement of revenues, expenses, changes in net assets, and statement of cashflows of each campus shall be included as an addendum to the annual systemwide audit. Summary information on transactions with auxiliary organizations for each campus shall also be included in the addendum. Any additional information necessary shall be provided upon request.

(d) The internal and independent financial statement audits of the trustees shall test compliance with procurement procedures and the integrity of the payments made. The results of these audits shall be included in the biennial report required by Section 13405.

(e) As used in this section:

(1) "Trustees" means the Trustees of the California State University.

(2) "University" means the California State University.

SEC. 46. Section 17581.5 of the Government Code is amended to read:

17581.5. (a) A school district or community college district shall not be required to implement or give effect to the statutes, or a portion of the statutes, identified in subdivision (c) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or a portion of the statute, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of school districts or

community college districts pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute, or a portion of the statute, or the test claim number utilized by the commission, specifically has been identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered specifically to have been identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it specifically is identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) Within 30 days after enactment of the Budget Act, the Department of Finance shall notify school districts of any statute or executive order, or portion thereof, for which reimbursement is not provided for the fiscal year pursuant to this section.

(c) This section applies only to the following mandates:

(1) School Bus Safety I (CSM-4433) and II (97-TC-22) (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

(2) County Treasury Withdrawals (96-365-03; and Chapter 784 of the Statutes of 1995 and Chapter 156 of the Statutes of 1996).

(3) Grand Jury Proceedings (98-TC-27; and Chapter 1170 of the Statutes of 1996, Chapter 443 of the Statutes of 1997, and Chapter 230 of the Statutes of 1998).

(4) Law Enforcement Sexual Harassment Training (97-TC-07; and Chapter 126 of the Statutes of 1993).

(5) Health Benefits for Survivors of Peace Officers and Firefighters (Chapter 1120 of the Statutes of 1996 and 97-TC-25).

(d) This section applies to the following mandates for the 2010–11, 2011–12, and 2012–13 fiscal years only:

(1) Removal of Chemicals (Chapter 1107 of the Statutes of 1984 and CSM 4211 and 4298).

(2) Scoliosis Screening (Chapter 1347 of the Statutes of 1980 and CSM 4195).

(3) Pupil Residency Verification and Appeals (Chapter 309 of the Statutes of 1995 and 96-384-01).

(4) Integrated Waste Management (Chapter 1116 of the Statutes of 1992 and 00-TC-07).

(5) Law Enforcement Jurisdiction Agreements (Chapter 284 of the Statutes of 1998 and 98-TC-20).

(6) Physical Education Reports (Chapter 640 of the Statutes of 1997 and 98-TC-08).

(7) 98.01.042.390-Sexual Assault Response Procedures (Chapter 423 of the Statutes of 1990 and 99-TC-12).

(8) 98.01.059.389-Student Records (Chapter 593 of the Statutes of 1989 and 02-TC-34).

SEC. 47. Section 5651 of the Welfare and Institutions Code is amended to read:

5651. The proposed annual county mental health services performance contract shall include all of the following:

(a) The following assurances:

(1) That the county is in compliance with the expenditure requirements of Section 17608.05.

(2) That the county shall provide services to persons receiving involuntary treatment as required by Part 1 (commencing with Section 5000) and Part 1.5 (commencing with Section 5585).

(3) That the county shall comply with all requirements necessary for Medi-Cal reimbursement for mental health treatment services and case management programs provided to Medi-Cal eligible individuals, including, but not limited to, the provisions set forth in Chapter 3 (commencing with Section 5700), and that the county shall submit cost reports and other data to the department in the form and manner determined by the department.

(4) That the local mental health advisory board has reviewed and approved procedures ensuring citizen and professional involvement at all stages of the planning process pursuant to Section 5604.2.

(5) That the county shall comply with all provisions and requirements in law pertaining to patient rights.

(6) That the county shall comply with all requirements in federal law and regulation pertaining to federally funded mental health programs.

(7) That the county shall provide all data and information set forth in Sections 5610 and 5664.

(8) That the county, if it elects to provide the services described in Chapter 2.5 (commencing with Section 5670), shall comply with guidelines established for program initiatives outlined in that chapter.

(9) Assurances that the county shall comply with all applicable laws and regulations for all services delivered.

(b) The county's proposed agreement with the department for state hospital usage as required by Chapter 4 (commencing with Section 4330) of Part 2 of Division 4.

(c) Any contractual requirements needed for any program initiatives utilized by the county contained within this part. In addition, any county may choose to include contract provisions for other state directed mental health managed programs within this performance contract.

(d) Other information determined to be necessary by the director, to the extent this requirement does not substantially increase county costs.

SEC. 48. Section 5701.3 of the Welfare and Institutions Code is amended to read:

5701.3. (a) Consistent with the annual Budget Act, this chapter shall not affect the responsibility of the state to fund psychotherapy and other mental health services required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and the state shall reimburse counties for all allowable costs incurred by counties in providing services pursuant to that chapter. The reimbursement provided pursuant to

this section for purposes of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code shall be provided by the state through an appropriation included in either the annual Budget Act or other statute. Counties shall continue to receive reimbursement from specifically appropriated funds for costs necessarily incurred in providing psychotherapy and other mental health services in accordance with this chapter. For reimbursement claims for services delivered in the 2001–02 fiscal year and thereafter, counties are not required to provide any share of those costs or to fund the cost of any part of these services with money received from the Local Revenue Fund established by Chapter 6 (commencing with Section 17600) of Part 5 of Division 9.

(b) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 49. Section 5701.6 of the Welfare and Institutions Code is amended to read:

5701.6. (a) Counties may utilize money received from the Local Revenue Fund established by Chapter 6 (commencing with Section 17600) of Part 5 of Division 9 to fund the costs of any part of those services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. If money from the Local Revenue Fund is used by counties for those services, counties are eligible for reimbursement from the state for all allowable costs to fund assessments, psychotherapy, and other mental health services allowable pursuant to Section 300.24 of Title 34 of the Code of Federal Regulations and required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(b) This section is declaratory of existing law.

(c) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 50. Section 11323.2 of the Welfare and Institutions Code is amended to read:

11323.2. (a) Necessary supportive services shall be available to every participant in order to participate in the program activity to which he or she is assigned or to accept employment or the participant shall have good cause for not participating under subdivision (f) of Section 11320.3. As provided in the welfare-to-work plan entered into between the county and participant pursuant to this article, supportive services shall include all of the following:

(1) Child care.

(A) Paid child care shall be available to every participant with a dependent child in the assistance unit who needs paid child care if the child is 10 years of age or under, or requires child care or supervision due to a physical, mental, or developmental disability or other similar condition as verified by the county welfare department, or who is under court supervision.

(B) To the extent funds are available paid child care shall be available to a participant with a dependent child in the assistance unit who needs paid child care if the child is 11 or 12 years of age.

(C) Necessary child care services shall be available to every former recipient for up to two years, pursuant to Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code.

(D) A child in foster care receiving benefits under Title IV-E of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.) or a child who would become a dependent child except for the receipt of federal Supplemental Security Income benefits pursuant to Title XVI of the federal Social Security Act (42 U.S.C. Sec. 1381 et seq.) shall be deemed to be a dependent child for the purposes of this paragraph.

(E) The provision of care and payment rates under this paragraph shall be governed by Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code. Parent fees shall be governed by subdivisions (g) and (h) of Section 8263 of the Education Code.

(2) Transportation costs, which shall be governed by regional market rates as determined in accordance with regulations established by the department.

(3) Ancillary expenses, which shall include the cost of books, tools, clothing specifically required for the job, fees, and other necessary costs.

(4) Personal counseling. A participant who has personal or family problems that would affect the outcome of the welfare-to-work plan entered into pursuant to this article shall, to the extent available, receive necessary counseling or therapy to help him or her and his or her family adjust to his or her job or training assignment.

(b) If provided in a county plan, the county may continue to provide case management and supportive services under this section to former participants who become employed. The county may provide these services for up to the first 12 months of employment to the extent they are not available from other sources and are needed for the individual to retain the employment.

SEC. 51. Section 18356.1 is added to the Welfare and Institutions Code, to read:

18356.1. This chapter shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 52. Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services or the State Department of Education may implement Section 4, Sections 7 to 11, inclusive, and Section 50 of this act, through all-county letters, management bulletins, or other similar instructions.

SEC. 53. Notwithstanding any other law, the implementation of Section 4, Sections 7 to 11, inclusive, and Section 50 of this act is not subject to the appeal and resolution procedures for agencies that contract with the State Department of Education for the provision of child care services or the due process requirements afforded to families that are denied services specified in Chapter 19 (commencing with Section 18000) of Division 1 of Title 5 of the California Code of Regulations.

SEC. 54. It is the intent of the Legislature that funding provided in provisions 18 and 26 of Item 6110-161-0001 and provision 9 of Item 6110-161-0890 of Section 2.00 of the Budget Act of 2011 for educationally related mental health services, including out-of-home residential services for emotionally disturbed pupils, required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) shall be exclusively available for these services only for the 2011–12 and 2012–13 fiscal years.

SEC. 55. (a) It is the intent of the Legislature that the State Department of Education and the appropriate departments within the California Health and Human Services Agency modify or repeal regulations that are no longer supported by statute due to the amendments in Sections 24 to 26, inclusive, Section 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act.

(b) The State Department of Education and the appropriate departments within the California Health and Human Services Agency shall review regulations to ensure the appropriate implementation of educationally related mental health services required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and Sections 24 to 26, inclusive, Section 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act.

(c) The State Department of Education and the appropriate departments within the California Health and Human Services Agency may adopt regulations to implement Sections 24 to 26, inclusive, Section 32 to 44, inclusive, Sections 47 to 49, inclusive, and Section 51 of this act. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the State Department of Education and the appropriate departments within the California Health and Human Services Agency are hereby exempted, for this purpose, from the requirements of subdivision (b) of Section 11346.1 of the Government Code. For purposes of subdivision (e) of Section 11346.1 of the Government Code, the 180-day period, as applicable to the effective period of an emergency regulatory action and submission of specified materials to the Office of Administrative Law, is hereby extended to one year.

SEC. 56. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 57. There is hereby appropriated one thousand dollars ($1,000) from the General Fund to the State Department of Education for purposes

of funding the award grants pursuant to Section 49550.3 of the Education Code to school districts, county superintendents of schools, or entities approved by the department for nonrecurring expenses incurred in initiating or expanding a school breakfast program or a summer food service program.

SEC. 58. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

O

Assembly Bill No. 602

CHAPTER 854

An act to amend Sections 44903.7, 48915.5, 56100, 56140, 56156.5, 56167, 56190, 56200, 56325, 56342, 56360, 56361, 56362, 56366.2, 56441.14, and 56500 of, to amend and repeal Sections 56210, 56213, 56214, 56214.5, 56217, 56218, 56364, and 56370 of, to amend, repeal, and add Sections 56211, 56212, 56425, 56425.5, 56426, 56426.1, 56426.2, 56426.25, 56426.4, 56427, 56429, and 56430 of, to add Sections 56364.5, 56366.9, and 56432 to, to add Chapter 2.5 (commencing with Section 56195) and Chapter 7.2 (commencing with Section 56836) to, and to add Article 1.1 (commencing with Section 56205) to Chapter 3 of, Part 30 of, to add and repeal Sections 56202 and 56832 of, to add and repeal Chapter 7.1 (commencing with Section 56835) of Part 30 of, to repeal Sections 56448 and 56449 of, to repeal Article 6 (commencing with Section 56170) of Chapter 2 of, to repeal Article 1 (commencing with Section 56200) and Article 2 (commencing with Section 56220) of Chapter 3 of, Part 30 of, and to repeal Chapter 4.3 (commencing with Section 56400) and Chapter 7 (commencing with Section 56700) of Part 30 of, the Education Code, relating to special education, and making an appropriation therefor.

[Approved by Governor October 10, 1997. Filed with Secretary of State October 10, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 602, Davis. Poochigian and Davis Special Education Reform Act.

Existing law sets forth a method for determining apportionments for the purposes of special education programs operated by school districts, county superintendents of schools, and special education local plan areas (SELPAs). That method is based in part on amounts based on personnel costs that are computed pursuant to statutory formulas, amounts based on support services costs that are computed pursuant to statutory formulas, and amounts specifically computed for early education for individuals with exceptional needs younger than 3 years of age, nonpublic, nonsectarian schools and agencies, individuals having low-incidence disabilities, and licensed children's institutions. The number of instructional personnel services units that may be claimed are computed for teachers for special day classes and centers, instructional aides, and resource specialists, on the basis of the ratio of those positions to a specified number of pupils.

This bill would enact the Poochigian and Davis Special Education Reform Act and would make legislative findings and declarations with respect to the problems arising from the existing method of

financing special education and related services. The bill would declare the intent of the Legislature to establish a new method for financing special education that is based on the pupil population in each SELPA. The bill would further declare the intent of the Legislature that the new funding method, among other things, ensures greater equity in funding among SELPAs, avoids unnecessary complexity, requires fiscal and program accountability, and avoids financial incentives to inappropriately place pupils in special education. The bill would also contain a legislative finding and declaration that an areawide approach to special education services delivery through administration by SELPAs best serves differing population densities and provides local flexibility, as specified. The bill would also declare the intent of the Legislature to equalize funding among SELPAs.

This bill, to accomplish the intent of the Legislature, would do the following:

(1) This bill would repeal the existing method of computing special education apportionments and make numerous conforming changes to other provisions of law, including the repeal and amendment of supporting statutes relating to the funding of special education programs. The bill would set forth a new method for making apportionments, as follows:

(a) A method for computing one-time equalization adjustments to special education apportionments to school districts and county offices of education that is based upon computed amounts per each type of special education services unit would be established. The bill would require the Superintendent of Public Instruction (superintendent) to compute special education services unit rates (unit rates) for that purpose for teachers of special day classes and centers for pupils who are severely disabled, unit rates for instructional aides for pupils who are severely disabled, unit rates for teachers of special day classes and centers for pupils with exceptional needs who are not severely disabled, unit rates for instructional aides for pupils with exceptional needs who are not severely disabled, unit rates for resource specialists, and unit rates for designated instruction and services. Those unit rates would be based on amounts computed by the superintendent for the 1995–96 fiscal year. Those unit rates would be averaged for services to pupils who are not severely disabled, except with respect to the unit rates for instructional aides. The superintendent would be required to compute statewide average unit rates for the purposes of equalization adjustments. Based upon those computations, the superintendent would be required, for the 1997–98 fiscal year only, to make computations to determine the amount of equalization adjustments, if any, to be made to the special education funding. These equalization adjustments computed for the 1997–98 fiscal year would only be funded to the

extent funds are appropriated for that purpose and would not create any future entitlements for equalization.

(b) Commencing in the 1998–99 fiscal year and each fiscal year thereafter, allocations of funds would be made to SELPAs and the administrator of each SELPA would be responsible for the fiscal administration of the annual budget allocation plan for special education programs and the allocation of state and federal funds to the school districts and county offices of education composing the SELPA in accordance with the local plan.

(c) For the 1998–99 fiscal year, each SELPA would be entitled to, at a minimum, an amount equal to the amount received per unit of average daily attendance in the 1997–98 fiscal year from specified state, local, and federal revenues for the purpose of special education for preschool pupils (ages 3 to 5 years), special education for pupils enrolled in kindergarten and grades 1 to 12, inclusive, and the amounts received for equalization, as described in subdivision (a), as adjusted for inflation, and equalization to the statewide target amount, changes in enrollment, and for the incidence of special disabilities, if applicable.

(d) Commencing with the 1999–2000 fiscal year and each fiscal year thereafter, the amount of funding computed for each SELPA would be subject to adjustment for changes in enrollment, equalization to the statewide target amount, inflation, and for the incidence of special disabilities, as specified. For purposes of equalization, each SELPA that would receive an amount per unit of average daily attendance for a fiscal year, as defined, that is below the statewide target amount per unit of average daily attendance for SELPAs, as computed, would be entitled to an equalization adjustment for that fiscal year. Adjustments for equalization would continue through and including the fiscal year in which all SELPAs are funded, at a minimum, at the statewide target amount, as adjusted for inflation. The superintendent would be required to make various computations to determine the amounts available for the purposes of equalization and the amount of the equalization adjustment for each SELPA.

(e) Funding for licensed children's institutions would continue to be computed as required by existing law.

(f) The method of funding for nonpublic, nonsectarian school contracts would be revised. The State Department of Education would be required to administer an extraordinary cost pool to protect SELPAs from the extraordinary costs associated with single placements in nonpublic, nonsectarian schools. The Office of the Legislative Analyst, the Department of Finance, and the State Department of Education would be required to conduct a study, as specified, of nonpublic school and nonpublic agency costs with a final report to the appropriate policy and fiscal committees of the Legislature on or before May 1, 1998.

(g) Low-incidence funding would continue to be computed as required by existing law.

(h) The method of allocating funds for regionalized operations and services and the direct instructional support of program specialists would be revised.

(2) This bill would require each SELPA to submit a revised local plan on or before the time it is required to submit a local plan as specified. Until the superintendent approves the revised local plan, the SELPA would be required to continue to operate under the reporting and accounting requirements prescribed by the State Department of Education for the special education finance provisions repealed by this bill. The department would be required to issue transition guidelines on the accounting requirements that SELPAs would be required to follow, including, but not necessarily limited to, guidelines pertaining to accounting for instructional personnel service units and caseloads. The bill would prohibit the State Board of Education from approving any proposal to divide a SELPA into 2 or more units unless either equalization among SELPAs has been achieved or the division has no net impact on state costs for special education, provided, however, that a proposal may be approved if it was initially submitted prior to January 1, 1997.

(3) This bill would require each SELPA to administer the revised local plans described in (2) and the allocation of funds. The bill would require SELPAs that do not have approved revised local plans to continue to distribute funds under the methods set forth in existing law, as specified.

(4) This bill would revise the requirements for a SELPA that requests a designation as a necessary small SELPA.

(5) This bill would repeal provisions requiring the termination of the state's participation in special education programs for individuals with exceptional needs between the ages of 3 and 5 years if certain conditions occur.

(6) This bill would make some of the numerous necessary conforming substantive and technical changes to provisions of law relating to special education.

(7) To the extent that this bill would place new requirements on SELPAs, school districts, and county offices of education with respect to governance of SELPAs and the distribution of funds to SELPAs, this bill would impose a state-mandated local program.

(8) The bill would make legislative findings and declarations that the federal Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Act Amendments of 1997, contains specified provisions and that state and local education agencies are required to abide by federal laws.

(9) This bill would require the Office of the Legislative Analyst, in conjunction with the Department of Finance and the State Department of Education, to conduct a study of the distribution of

severe and costly disabilities and the Office of the Legislative Analyst, the Department of Finance, and the State Department of Education to submit a report of their findings to the appropriate policy and fiscal committees of the Legislature on or before June 1, 1998.

(10) This bill would require the State Department of Education to convene a working group to develop recommendations for improving the compliance of state and local education agencies with state and federal special education laws and regulations and to submit a report of the recommendations to the appropriate policy and fiscal committees of the Legislature on or before September 1, 1998.

(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(12) This bill would provide that funding for this bill is contingent upon the enactment of an appropriation in the annual Budget Act, but would appropriate $100,000 from specified federal funds for the purpose of the Office of the Legislative Analyst, the Department of Finance, and the State Department of Education conducting the study of nonpublic school and nonpublic agency costs and $200,000 from specified federal funds for the purpose of the Office of the Legislative Analyst contracting for the request for proposal and study of the distribution of severe and costly disabilities.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) This act shall be known and may be cited as the Poochigian and Davis Special Education Reform Act.

(b) The Legislature hereby finds and declares the following:

(1) On December 1, 1995, approximately 9.4 percent of the 5,467,224 pupils enrolled in kindergarten and grades 1 to 12, inclusive, in California required some form of special education programming or service.

(2) Significant inequities in funding for special education exist in California. Special education funding derives from the value of a local education agency's various instructional personnel services unit rates plus the funds it generates from multiplying the total unit values by the agency's support services ratio. Since these values and ratios vary greatly among the local education agencies, widely disparate funding amounts are generated for the same type of program among local education agencies.

(3) In the 1994–95 fiscal year, the following range in funding amounts existed for each of the four types of instructional personnel services units providing services to the nonseverely disabled:

Unit Type	Lowest	Highest
Special classes and centers	$31,137	$80,044
Resource specialists	$26,064	$84,579
Designated instruction and services	$30,080	$91,760
Instructional aides	$ 9,601	$49,883

(4) The range in funding amounts in the 1994–95 fiscal year was even greater for instructional personnel services units for special education services for severely disabled pupils in special education classes, as follows:

Unit Type	Lowest	Highest
Special classes and centers	$31,137	$89,181
Instructional aides	$ 9,601	$55,577

(5) Equalization aid has not been provided to correct the disparities in special education funding since the Master Plan for Special Education was enacted for statewide implementation in 1980. Consequently, funding figures, based primarily on expenditures made in the base year 1979–80, are still being used.

(6) In recent years, some additional money has been provided to school districts to equalize revenue limit funding for regular education programs, and school districts with lower base revenue limits have had those revenue limits increased, resulting in those school districts attaining a base revenue limit that is closer to the statewide average.

(7) In February 1994, the Legislative Analyst, in the ''Analysis of the 1994–95 Budget Bill,'' cited a number of major problems with the state's current special education funding formula. Among the shortfalls cited included:

(A) Unjustified funding variation among local education agencies.

(B) Unnecessary complexity.

(C) Constraint on local innovation and on responses to changing requirements.

(D) Inappropriate fiscal incentives related to special education placements.

(8) The current method of funding special education programs unduly influences the manner and methods through which special education services are provided and inhibits the ability of local education agencies to appropriately individualize the provision of special education services to individuals with exceptional needs.

(9) Existing law provides for the annual calculation of additional instructional personnel services necessary to address the enrollment

growth in special education programs. Over the last four years, the number of additional instructional personnel service units actually funded to address the enrollment growth has been well under one-half the number for which the calculation provides:

Fiscal Year	Calculated Need	Amount Funded	Percent Funded
1993-94	$ 87,259,893	$ 30,376,332	34.8
1994-95	106,704,203	51,947,000	48.7
1995-96	99,634,692	31,589,000	31.7
1996-97	134,444,158	56,887,715	42.3

(10) Individuals with exceptional needs and their families are protected by provisions of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and federal regulations relating thereto. These protections include, but are not limited to, the following:

(A) Individuals with exceptional needs shall be identified, located, and appropriately evaluated in a nondiscriminatory manner.

(B) Individuals with exceptional needs have the right to a free appropriate public education pursuant to an individualized education program developed by local education agency representatives in partnership with the individual's parents.

(C) Individuals with exceptional needs and their families shall receive prior notification whenever a local educational agency intends or refuses to initiate the evaluation of the individual with exceptional needs.

(D) Whenever a local educational agency intends to change the educational placement of an individual with exceptional needs, the individual with exceptional needs and his or her family may review the contents of any records or other materials used to make educational decisions regarding the individual with exceptional needs.

(E) Due process protections, including the protection of seeking redress in the courts.

(11) The protections set forth in paragraph (10) and other requirements of federal law and regulations shall not be adversely affected or negated by any changes to state law which may occur from this act.

SEC. 2. It is the intent of the Legislature, in enacting this act, to accomplish the following:

(a) To establish a funding mechanism that:

(1) Ensures greater equity in funding among special education local plan areas so that pupils with exceptional needs receive the necessary level of services regardless of their geographical location.

(2) Eliminates financial incentives to inappropriately place pupils in special education programs.

(3) Recognizes the interaction among funding for special education programs and services, revenue limits for school districts, and funding for categorical programs.

(4) Phases in the newly developed funding formula on a gradual basis so as not to disrupt educational services to pupils enrolled in general or special education programs.

(5) Requires fiscal and program accountability in a manner that ensures effective services are provided to pupils who require special education services in compliance with federal laws and regulations and ensures that federal and state funds are used for the intended special education purposes.

(6) Establishes a funding formula that is understandable and avoids unnecessary complexity.

(b) To recognize and establish the following principles to guide the new funding mechanism:

(1) Allocations to special education local plan areas encourage and support an areawide approach to service delivery that incorporates collaborative administration and coordination of special education services within an area, allows for the tailoring of the organizational structures to differing population densities and demographic attributes, and provides local flexibility for the planning and provision of special education services in an efficient and cost-effective manner.

(2) Allocations to special education local plan areas are best based on a neutral factor such as total pupil population in the special education local plan area.

(3) Local education agencies need the flexibility to adopt innovative approaches to the delivery of special education services.

(c) It is also the intent of the Legislature that alternative delivery systems that include effective schoolwide and districtwide screening practices, the development of effective teaching and intervention strategies, and regular and special education program collaboration, including team teaching, consultation, and home-school partnerships, be fully utilized in the identification process so as to prevent pupils from needing special education services.

(d) It is further the intent of the Legislature that the new funding mechanism based on total pupil population, does not create, in any way, a disincentive to identify and serve pupils with exceptional needs or eliminate or reduce the continuum of placement options.

SEC. 3. The Legislature further finds and declares as follows:

(a) It is the intent of the Legislature to equalize special education program funding imbalances among local education agencies in the

1997–98 fiscal year, pursuant to Chapter 7.1 (commencing with Section 56835) of Part 30 of the Education Code, only to the extent that funds are provided for that purpose in the Budget Act of 1997 or in this act. It is further the intent of the Legislature to implement a population-based funding formula in the 1998–99 fiscal year, pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30 of the Education Code, to allocate special education program funds instead of instructional personnel service units to the special education local plan areas, and to equalize per-pupil funding among the special education local plan areas over a multiyear period, only to the extent that funds are appropriated for those purposes in the annual Budget Act.

(b) As part of the new special education funding system, this act proposes to achieve local administrative savings by simplifying the administrative processes of the current funding system that govern the activities of special education local plan areas, school districts, and county offices of education. Specifically, this act eliminates the process-intensive J-50 claim system that drains local resources away from providing services to completing numerous, lengthy reports in order to secure state funding for special education. To ensure program accountability when the resource-based funding system is replaced by the population-based funding system, this act also provides for additional information to be included in each local plan that will provide the public and other units of government specific information on how services shall be provided and funded. The Legislature finds and declares that the administrative savings resulting from this act will more than offset any increased costs from any new administrative workload resulting from this act.

(c) It is further the intent of the Legislature that the funds provided for equalization entitlements pursuant to this act shall fully compensate any mandated costs associated with maintaining pupil caseload for the purpose of any cost claim filed with the Commission on State Mandates.

SEC. 4. Section 44903.7 of the Education Code is amended to read:

44903.7. When a local plan for the education of individuals with exceptional needs is developed or revised pursuant to Chapter 2.5 (commencing with Section 56195) of Part 30, the following provisions shall apply:

(a) Whenever any certificated employee, who is performing service for one employer, is terminated, reassigned, or transferred, or becomes an employee of another employer because of the reorganization of special education programs pursuant to Chapter 797 of the Statutes of 1980, the employee shall be entitled to the following:

(1) The employee shall retain the seniority date of his or her employment with the district or county office from which he or she

was terminated, reassigned, or transferred, in accordance with Section 44847. In the case of termination, permanent employees shall retain the rights specified in Section 44956 or, in the case of probationary employees, Sections 44957 and 44958, with the district or county office initiating the termination pursuant to Section 44955.

(2) The reassignment, transfer, or new employment caused by the reorganization of special education programs pursuant to Chapter 797 of the Statutes of 1980, shall not affect the seniority or classification of certificated employees already attained in any school district that undergoes the reorganization. These employees shall have the same status with respect to their seniority or classification, with the new employer, including time served as probationary employees. The total number of years served as a certificated employee with the former district or county office shall be credited, year for year, for placement on the salary schedule of the new district or county office.

(b) All certificated employees providing service to individuals with exceptional needs shall be employed by a county office of education or an individual school district. Special education local plan areas or responsible local agencies resulting from local plans for the education of individuals with exceptional needs formulated in accordance with Part 30 (commencing with Section 56000) shall not be considered employers of certificated personnel for purposes of this section.

(c) Subsequent to the reassignment or transfer of any certificated employee as a result of the reorganization of special education programs, pursuant to Chapter 797 of the Statutes of 1980, that employee shall have priority, except as provided in subdivision (d), in being informed of and in filling certificated positions in special education in the areas in which the employee is certificated within the district or county office by which the certificated employee is then currently employed. This priority shall expire 24 months after the date of reassignment or transfer, and may be waived by the employee during that time period.

(d) A certificated employee who has served as a special education teacher in a district or county office and has been terminated from his or her employment by that district or county office pursuant to Section 44955, shall have first priority in being informed of and in filling vacant certificated positions in special education, for which the employee is certificated and was employed, in any other county office or school district that provides the same type of special education programs and services for the pupils previously served by the terminated employee. For a period of 39 months for permanent employees and 24 months for probationary employees from the date of termination, the employee shall have the first priority right to reappointment as provided in this section, if the employee has not attained the age of 65 years before reappointment.

SEC. 5. Section 48915.5 of the Education Code is amended to read:

48915.5. (a) In a matter involving a pupil with previously identified exceptional needs who is currently enrolled in a special education program, the governing board may order the pupil expelled pursuant to subdivision (b) or (d) of Section 48915 only if all of the following conditions are met:

(1) An individualized education program team meeting is held and conducted pursuant to Article 3 (commencing with Section 56340) of Chapter 2 of Part 30.

(2) The team determines that the misconduct was not caused by, or was not a direct manifestation of, the pupil's identified disability.

(3) The team determines that the pupil had been appropriately placed at the time the misconduct occurred.

The term ''pupil with previously identified exceptional needs,'' as used in this section, means a pupil who meets the requirements of Section 56026 and who, at the time the alleged misconduct occurred, was enrolled in a special education program, including enrollment in nonpublic schools pursuant to Section 56365 and state special schools.

(b) For purposes of this section, all applicable procedural safeguards prescribed by federal and state law and regulations apply to proceedings to expel pupils with previously identified exceptional needs, except that, notwithstanding Section 56321, subdivision (e) of Section 56506, or any other provision of law, parental consent is not required prior to conducting a preexpulsion educational assessment pursuant to subdivision (e), or as a condition of the final decision of the local board to expel.

(c) Each local educational agency, pursuant to the requirements of Section 56195.8, shall develop procedures and timelines governing expulsion procedures for individuals with exceptional needs.

(d) The parent of each pupil with previously identified exceptional needs has the right to participate in the individualized education program team meeting conducted pursuant to subdivision (a) preceding the commencement of expulsion proceedings, following the completion of a preexpulsion assessment pursuant to subdivision (e), through actual participation, representation, or a telephone conference call. The meeting shall be held at a time and place mutually convenient to the parent and local educational agency within the period, if any, of the pupil's preexpulsion suspension. A telephone conference call may be substituted for the meeting. Each parent shall be notified of his or her right to participate in the meeting at least 48 hours prior to the meeting. Unless a parent has requested a postponement, the meeting may be conducted without the parent's participation, if the notice required by this subdivision has been provided. The notice shall specify that the meeting may be held without the parent's participation, unless the parent requests a postponement for up to three additional

schooldays pursuant to this subdivision. Each parent may request that the meeting be postponed for up to three additional schooldays. If a postponement has been granted, the local educational agency may extend any suspension of a pupil for the period of postponement if the pupil continues to pose an immediate threat to the safety of himself, herself, or others and the local educational agency notifies the parent that the suspension will be continued during the postponement. However, the suspension shall not be extended beyond 10 consecutive schooldays unless agreed to by the parent, or by a court order. If a parent who has received proper notice of the meeting refuses to consent to an extension beyond 10 consecutive schooldays and chooses not to participate, the meeting may be conducted without the parent's participation.

(e) In determining whether a pupil should be expelled, the individualized education program team shall base its decision on the results of a preexpulsion educational assessment conducted in accordance with the guidelines of Section 104.35 of Title 34 of the Code of Federal Regulations, which shall include a review of the appropriateness of the pupil's placement at the time of the alleged misconduct, and a determination of the relationship, if any, between the pupil's behavior and his or her disability.

In addition to the preexpulsion educational assessment results, the individualized education program team shall also review and consider the pupil's health records and school discipline records. The parent, pursuant to Section 300.504 of Title 34 of the Code of Federal Regulations, is entitled to written notice of the local educational agency's intent to conduct a preexpulsion assessment. The parent shall make the pupil available for the assessment at a site designated by the local educational agency without delay. The parent's right to an independent assessment under Section 56329 applies despite the fact that the pupil has been referred for expulsion.

(f) If the individualized education program team determines that the alleged misconduct was not caused by, or a direct manifestation of, the pupil's disability, and if it is determined that the pupil was appropriately placed, the pupil shall be subject to the applicable disciplinary actions and procedures prescribed under this article.

(g) The parent of each pupil with previously identified exceptional needs has the right to a due process hearing conducted pursuant to Section 1415 of Title 20 of the United States Code if the parent disagrees with the decision of the individualized education program team made pursuant to subdivision (f), or if the parent disagrees with the decision to rely upon information obtained, or proposed to be obtained, pursuant to subdivision (e).

(h) No expulsion hearing shall be conducted for an individual with exceptional needs until all of the following have occurred:

(1) A preexpulsion assessment is conducted.

(2) The individualized education program team meets pursuant to subdivision (a).

(3) Due process hearings and appeals, if initiated pursuant to Section 1415 of Title 20 of the United States Code, are completed.

(i) Pursuant to subdivision (a) of Section 48918, the statutory times prescribed for expulsion proceedings for individuals with exceptional needs shall commence after the completion of paragraphs (1), (2), and (3) in subdivision (h).

(j) If an individual with exceptional needs is excluded from schoolbus transportation, the pupil is entitled to be provided with an alternative form of transportation at no cost to the pupil or parent.

SEC. 6. Section 56100 of the Education Code is amended to read:

56100. The State Board of Education shall do all of the following:

(a) Adopt rules and regulations necessary for the efficient administration of this part.

(b) Adopt criteria and procedures for the review and approval by the board of local plans. Local plans may be approved for up to four years.

(c) Adopt size and scope standards for determining the efficacy of local plans submitted by special education local plan areas, pursuant to subdivision (a) of Section 56195.1.

(d) Provide review, upon petition, to any district, special education local plan area, or county office that appeals a decision made by the department that affects its providing services under this part except a decision made pursuant to Chapter 5 (commencing with Section 56500).

(e) Review and approve a program evaluation plan for special education programs provided by this part in accordance with Chapter 6 (commencing with Section 56600). This plan may be approved for up to three years.

(f) Recommend to the Commission on Teacher Credentialing the adoption of standards for the certification of professional personnel for special education programs conducted pursuant to this part.

(g) Adopt regulations to provide specific procedural criteria and guidelines for the identification of pupils as individuals with exceptional needs.

(h) Adopt guidelines of reasonable pupil progress and achievement for individuals with exceptional needs. The guidelines shall be developed to aid teachers and parents in assessing an individual pupil's education program and the appropriateness of the special education services.

(i) In accordance with the requirements of federal law, adopt regulations for all educational programs for individuals with exceptional needs, including programs administered by other state or local agencies.

(j) Adopt uniform rules and regulations relating to parental due process rights in the area of special education.

(k) Adopt rules and regulations regarding the ownership and transfer of materials and equipment, including facilities, related to transfer of programs, reorganization, or restructuring of special education local plan areas.

SEC. 7. Section 56140 of the Education Code is amended to read:

56140. County offices shall do all of the following:

(a) Initiate and submit to the superintendent a countywide plan for special education which demonstrates the coordination of all local plans submitted pursuant to Section 56200 and which ensures that all individuals with exceptional needs residing within the county, including those enrolled in alternative education programs, including, but not limited to, alternative schools, charter schools, opportunity schools and classes, community day schools operated by school districts, community schools operated by county offices of education, and juvenile court schools, will have access to appropriate special education programs and related services. However, a county office shall not be required to submit a countywide plan when all the districts within the county elect to submit a single local plan.

(b) Within 45 days, approve or disapprove any proposed local plan submitted by a district or group of districts within the county or counties. Approval shall be based on the capacity of the district or districts to ensure that special education programs and services are provided to all individuals with exceptional needs.

(1) If approved, the county office shall submit the plan with comments and recommendations to the superintendent.

(2) If disapproved, the county office shall return the plan with comments and recommendations to the district. This district may immediately appeal to the superintendent to overrule the county office's disapproval. The superintendent shall make a decision on an appeal within 30 days of receipt of the appeal.

(3) A local plan may not be implemented without approval of the plan by the county office or a decision by the superintendent to overrule the disapproval of the county office.

(c) Participate in the state onsite review of the district's implementation of an approved local plan.

(d) Join with districts in the county which elect to submit a plan or plans pursuant to subdivision (c) of Section 56195.1. Any plan may include more than one county, and districts located in more than one county. Nothing in this subdivision shall be construed to limit the authority of a county office to enter into other agreements with these districts and other districts to provide services relating to the education of individuals with exceptional needs.

SEC. 8. Section 56156.5 of the Education Code is amended to read:

56156.5. (a) Each district, special education local plan area, or county office shall be responsible for providing appropriate education to individuals with exceptional needs residing in licensed

children's institutions and foster family homes located in the geographical area covered by the local plan.

(b) In multidistrict and district and county office local plan areas, local written agreements shall be developed, pursuant to subdivision (f) of Section 56195.7, to identify the public education entities that will provide the special education services.

(c) If there is no local agreement, special education services for individuals with exceptional needs residing in licensed children's institutions shall be the responsibility of the county office in the county in which the institution is located, if the county office is part of the special education local plan area, and special education services for individuals with exceptional needs residing in foster family homes shall be the responsibility of the district in which the foster family home is located. If a county office is not a part of the special education local plan area, special education services for individuals with exceptional needs residing in licensed children's institutions, pursuant to this subdivision, shall be the responsibility of the responsible local agency or other administrative entity of the special education local plan area. This program responsibility shall continue until the time local written agreements are developed pursuant to subdivision (f) of Section 56195.7.

SEC. 9. Section 56167 of the Education Code is amended to read:

56167. (a) Individuals with exceptional needs who are placed in a public hospital, state licensed children's hospital, psychiatric hospital, proprietary hospital, or a health facility for medical purposes are the educational responsibility of the district, special education local plan area, or county office in which the hospital or facility is located, as determined in local written agreements pursuant to subdivision (e) of Section 56195.7.

(b) For the purposes of this part, ''health facility'' shall have the definition set forth in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

SEC. 10. Article 6 (commencing with Section 56170) of Chapter 2 of Part 30 of the Education Code is repealed.

SEC. 11. Section 56190 of the Education Code is amended to read:

56190. Each plan submitted under Section 56195.1 shall establish a community advisory committee. The committee shall serve only in an advisory capacity.

SEC. 12. Chapter 2.5 (commencing with Section 56195) is added to Part 30 of the Education Code, to read:

CHAPTER 2.5. GOVERNANCE

Article 1. Local Plans

56195. Each special education local plan area, as defined in subdivision (d) of Section 56195.1, shall administer local plans

submitted pursuant to Chapter 3 (commencing with Section 56200) and shall administer the allocation of funds pursuant to Chapter 7.2 (commencing with Section 56836).

56195.1. The governing board of a district shall elect to do one of the following:

(a) If of sufficient size and scope, under standards adopted by the board, submit to the superintendent a local plan for the education of all individuals with exceptional needs residing in the district in accordance with Chapter 3 (commencing with Section 56200).

(b) In conjunction with one or more districts, submit to the superintendent a local plan for the education of individuals with exceptional needs residing in those districts in accordance with Chapter 3 (commencing with Section 56200). The plan shall include, through joint powers agreements or other contractual agreements, all the following:

(1) Provision of a governance structure and any necessary administrative support to implement the plan.

(2) Establishment of a system for determining the responsibility of participating agencies for the education of each individual with exceptional needs residing in the special education local plan area.

(3) Designation of a responsible local agency or alternative administrative entity to perform functions such as the receipt and distribution of funds, provision of administrative support, and coordination of the implementation of the plan. Any participating agency may perform any of these services required by the plan.

(c) Join with the county office, to submit to the superintendent a local plan in accordance with Chapter 3 (commencing with Section 56200) to assure access to special education and services for all individuals with exceptional needs residing in the geographic area served by the plan. The county office shall coordinate the implementation of the plan, unless otherwise specified in the plan. The plan shall include, through contractual agreements, all of the following:

(1) Establishment of a system for determining the responsibility of participating agencies for the education of each individual with exceptional needs residing in the geographical area served by the plan.

(2) Designation of the county office, of a responsible local agency, or of any other administrative entity to perform functions such as the receipt and distribution of funds, provision of administrative support, and coordination of the implementation of the plan. Any participating agency may perform any of these services required by the plan.

(d) The service area covered by the local plan developed under subdivision (a), (b), or (c) shall be known as the special education local plan area.

(e) Nothing in this section shall be construed to limit the authority of a county office and a school district or group of school districts to enter into contractual agreements for services relating to the education of individuals with exceptional needs; provided that, except for instructional personnel service units serving infants, until a special education local plan area adopts a revised local plan approved pursuant to Section 56836.03, the county office of education or school district that reports a unit for funding shall be the agency that employs the personnel who staff the unit, unless the combined unit rate and support service ratio of the nonemploying agency is equal to or lower than that of the employing agency and both agencies agree that the nonemploying agency will report the unit for funding.

56195.3. In developing a local plan under Section 56195.1, each district shall do the following:

(a) Involve special and general teachers selected by their peers and parents selected by their peers in an active role.

(b) Cooperate with the county office and other school districts in the geographic areas in planning its option under Section 56195.1 and each fiscal year, notify the department, impacted special education local plan areas, and participating county offices of its intent to elect an alternative option from those specified in Section 56195.1, at least one year prior to the proposed effective date of the implementation of the alternative plan.

(c) Cooperate with the county office to assure that the plan is compatible with other local plans in the county and any county plan of a contiguous county.

(d) Submit to the county office for review any plan developed under subdivision (a) or (b) of Section 56195.1.

56195.5. (a) Each county office and district governing board shall have authority over the programs it directly maintains, consistent with the local plan submitted pursuant to Section 56195.1. In counties with more than one special education local plan area for which the county office provides services, relevant provisions of contracts between the county office and its employees governing wages, hours, and working conditions shall supersede like provisions contained in a plan submitted under Section 56195.1.

(b) Any county office or district governing board may provide for the education of individual pupils in special education programs maintained by other districts or counties, and may include within the special education programs pupils who reside in other districts or counties. Section 46600 shall apply to interdistrict attendance agreements for programs conducted pursuant to this part.

Article 2. Local Requirements

56195.7. In addition to the provisions required to be included in the local plan pursuant to Chapter 3 (commencing with Section 56200), each special education local plan area that submits a local plan pursuant to subdivision (b) of Section 56195.1 and each county office that submits a local plan pursuant to subdivision (c) of Section 56195.1 shall develop written agreements to be entered into by entities participating in the plan. The agreements need not be submitted to the superintendent. These agreements shall include, but not be limited to, the following:

(a) A coordinated identification, referral, and placement system pursuant to Chapter 4 (commencing with Section 56300).

(b) Procedural safeguards pursuant to Chapter 5 (commencing with Section 56500).

(c) Regionalized services to local programs, including, but not limited to, all of the following:

(1) Program specialist service pursuant to Section 56368.

(2) Personnel development, including training for staff, parents, and members of the community advisory committee pursuant to Article 3 (commencing with Section 56240).

(3) Evaluation pursuant to Chapter 6 (commencing with Section 56600).

(4) Data collection and development of management information systems.

(5) Curriculum development.

(6) Provision for ongoing review of programs conducted, and procedures utilized, under the local plan, and a mechanism for correcting any identified problem.

(d) A description of the process for coordinating services with other local public agencies that are funded to serve individuals with exceptional needs.

(e) A description of the process for coordinating and providing services to individuals with exceptional needs placed in public hospitals, proprietary hospitals, and other residential medical facilities pursuant to Article 5.5 (commencing with Section 56167) of Chapter 2.

(f) A description of the process for coordinating and providing services to individuals with exceptional needs placed in licensed children's institutions and foster family homes pursuant to Article 5 (commencing with Section 56155) of Chapter 2.

(g) A description of the process for coordinating and providing services to individuals with exceptional needs placed in juvenile court schools or county community schools pursuant to Section 56150.

(h) A budget for special education and related services that shall be maintained by the special education local plan area and be open to the public covering the entities providing programs or services

within the special education local plan area. The budget language shall be presented in a form that is understandable by the general public. For each local educational agency or other entity providing a program or service, the budget, at minimum, shall display the following:

(1) Expenditures by object code and classification for the previous fiscal year and the budget by the same object code classification for the current fiscal year.

(2) The number and type of certificated instructional and support personnel, including the type of class setting to which they are assigned, if appropriate.

(3) The number of instructional aides and other qualified classified personnel.

(4) The number of enrolled individuals with exceptional needs receiving each type of service provided.

56195.8. (a) Each entity providing special education under this part shall adopt policies for the programs and services it operates, consistent with agreements adopted pursuant to subdivision (b) or (c) of Section 56195.1 or Section 56195.7. The policies need not be submitted to the superintendent.

(b) The policies shall include, but not be limited to, all of the following:

(1) Nonpublic, nonsectarian services, including those provided pursuant to Sections 56365 and 56366.

(2) Review, at a general education or special education teacher's request, of the assignment of an individual with exceptional needs to his or her class and a mandatory meeting of the individualized education program team if the review indicates a change in the pupil's placement, instruction, related services, or any combination thereof. The procedures shall indicate which personnel are responsible for the reviews and a timetable for completion of the review.

(3) Procedural safeguards pursuant to Chapter 5 (commencing with Section 56500).

(4) Resource specialists pursuant to Section 56362.

(5) Transportation, where appropriate, which describes how special education transportation is coordinated with regular home-to-school transportation. The policy shall set forth criteria for meeting the transportation needs of special education pupils. The policy shall include procedures to ensure compatibility between mobile seating devices, when used, and the securement systems required by Federal Motor Vehicle Safety Standard No. 222 (49 C.F.R. 571.222) and to ensure that schoolbus drivers are trained in the proper installation of mobile seating devices in the securement systems.

(6) Information on the number of individuals with exceptional needs who are being provided special education and related services.

(7) Caseloads pursuant to Chapter 4.45 (commencing with Section 56440) of Part 30. The policies, with respect to caseloads, shall not be developed until guidelines or proposed regulations are issued pursuant to Section 56441.7. The guidelines or proposed regulations shall be considered when developing the caseload policy. A statement of justification shall be attached if the local caseload policy exceeds state guidelines or proposed regulations.

(c) The policies may include, but are not limited to, provisions for involvement of district and county governing board members in any due process hearing procedure activities conducted pursuant to, and consistent with, state and federal law.

56195.9. The plan for special education shall be developed and updated cooperatively by a committee of representatives of special and regular teachers and administrators selected by the groups they represent and with participation by parent members of the community advisory committee, or parents selected by the community advisory committee, to ensure adequate and effective participation and communication.

SEC. 13. Section 56200 of the Education Code is amended to read:

56200. Each local plan submitted to the superintendent under this part shall contain all the following:

(a) Compliance assurances, including general compliance with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), and this part.

(b) A description of services to be provided by each district and county office. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

(c) (1) A description of the governance and administration of the plan, including the role of county office and district governing board members.

(2) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56170, shall specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of the superintendents of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the local plan.

(d) Copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56170.

(e) An annual budget plan to allocate instructional personnel service units, support services, and transportation services directly to entities operating those services and to allocate regionalized services funds to the county office, responsible local agency, or other

alternative administrative structure. The annual budget plan shall be adopted at a public hearing held by the district, special education local plan area, or county office, as appropriate. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during the fiscal year, and these revisions may be submitted to the superintendent as amendments to the allocations set forth in the plan. However, the revisions shall, prior to submission to the superintendent, be approved according to the policymaking process, established pursuant to paragraph (2) of subdivision (c).

(f) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct this review prior to submission of the plan to the superintendent.

(g) A description of the identification, referral, assessment, instructional planning, implementation, and review in compliance with Chapter 4 (commencing with Section 56300).

(h) A description of the process being utilized to meet the requirements of Section 56303.

(i) A description of the process being utilized to meet the requirements of the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

SEC. 14. Section 56202 is added to the Education Code, to read:

56202. This article shall only apply to districts, county offices, and special education local plan areas that have not had a revised local plan approved pursuant to Section 56836.03.

This article shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 15. Article 1.1 (commencing with Section 56205) is added to Chapter 3 of Part 30 of the Education Code, to read:

Article 1.1. State Requirements

56205. Each special education local plan area shall submit a local plan to the superintendent under this part. The local plan shall contain all the following:

(a) Compliance assurances, including general compliance with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), federal regulations relating thereto, and this part.

(b) (1) A description of the governance and administration of the plan, including identification of the governing body of a multidistrict plan or the individual responsible for administration in a single

district plan, and a description of the elected officials to whom the governing body or individual is responsible.

(2) A description of the regionalized operations and services listed in Section 56836.23 and the direct instructional support provided by program specialists in accordance with Section 56368 to be provided through the plan.

(3) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of the superintendents of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the local plan.

(4) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall identify the respective roles of the administrative unit and the administrator of the special education local plan area and the individual local education agencies within the special education local plan area in relation to the following:

(A) The hiring, supervision, evaluation, and discipline of the administrator of the special education local plan area and staff employed by the administrative unit in support of the local plan.

(B) The allocation from the state of federal and state funds to the special education local plan area or to local education agencies within the special education local plan area.

(C) The operation of special education programs.

(D) Monitoring the appropriate use of federal, state, and local funds allocated for special education programs.

(E) The preparation of program and fiscal reports required of the special education local plan area by the state.

(5) The description of the governance and administration of the plan, and the policymaking process, shall be consistent with subdivision (f) of Section 56001, subdivision (a) of Section 56195.3, and Section 56195.9 and shall reflect a schedule of regular consultations regarding policy and budget development with representatives of special and regular teachers and administrators selected by the groups they represent and parent members of the community advisory committee established pursuant to Article 7 (commencing with Section 56190) of Chapter 2.

(c) A description of the method by which members of the public, including parents or guardians of individuals with exceptional needs who are receiving services under the plan, may address questions or concerns to the governing body or individual identified in paragraph (1) of subdivision (b).

(d) A description of an alternative resolution process, including mediation and final and binding arbitration to resolve disputes over the distribution of funding, the responsibility for service provision,

and other activities specified within the plan. Any arbitration shall be conducted by the department.

(e) Copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56195.1.

(f) An annual budget allocation plan that shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget allocation plan may be revised during any fiscal year, and these revisions may be submitted to the superintendent as amendments to the allocations set forth in the local plan. However, the revisions shall, prior to submission to the superintendent, be approved according to the policymaking process established pursuant to paragraph (3) of subdivision (b) and consistent with subdivision (f) of Section 56001 and Section 56222. The annual budget plan shall separately identify the allocations for all of the following:

(1) Funds received in accordance with Chapter 7.2 (commencing with Section 56836).

(2) Administrative costs of the plan.

(3) Special education services to pupils with severe disabilities and low incidence disabilities.

(4) Special education services to pupils with nonsevere disabilities.

(5) Supplemental aids and services to meet the individual needs of pupils placed in regular education classrooms and environments.

(6) Regionalized operations and services, and direct instructional support by program specialists in accordance with Article 6 (commencing with Section 56836.23) of Chapter 7.2.

(7) The use of property taxes allocated to the special education local plan area pursuant to Section 2572.

(g) An annual service plan shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the special education local plan area at least 15 days prior to the hearing. The annual service plan may be revised during any fiscal year, and these revisions may be submitted to the superintendent as amendments to the plan. However, the revisions shall, prior to submission to the superintendent, be approved according to the policymaking process established pursuant to paragraph (3) of subdivision (b) and consistent with subdivision (f) of Section 56001 and Section 56222. The annual service plan shall include a description of services to be provided by each district and county office, including the nature of the services and the location at which the services will be provided, including alternative schools, charter schools, opportunity schools and classes, community day schools operated by school districts, community schools operated by county offices of education, and juvenile court schools regardless

of whether the district or county office of education is participating in the local plan. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

(h) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct this review prior to submission of the plan to the superintendent.

(i) A description of the identification, referral, assessment, instructional planning, implementation, and review in compliance with Chapter 4 (commencing with Section 56300).

(j) A description of the process being utilized to meet the requirements of Section 56303.

(k) A description of the process being utilized to meet the requirements of the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

(*l*) The local plan, budget allocation plan, and annual service plan shall be written in language that is understandable to the general public.

56206. As a part of the local plan submitted pursuant to Section 56205, each special education local plan area shall describe how specialized equipment and services will be distributed within the local plan area in a manner that minimizes the necessity to serve pupils in isolated sites and maximizes the opportunities to serve pupils in the least restrictive environments.

56207. (a) No educational programs and services already in operation in school districts or a county office of education pursuant to Part 30 (commencing with Section 56000) shall be transferred to another school district or a county office of education or from a county office of education to a school district unless the special education local plan area has developed a plan for the transfer which addresses, at a minimum, all of the following:

(1) Pupil needs.

(2) The availability of the full continuum of services to affected pupils.

(3) The functional continuation of the current individualized education programs of all affected pupils.

(4) The provision of services in the least restrictive environment from which affected pupils can benefit.

(5) The maintenance of all appropriate support services.

(6) The assurance that there will be compliance with all federal and state laws and regulations and special education local plan area policies.

(7) The means through which parents and staff were represented in the planning process.

(b) The date on which the transfer will take effect may be no earlier than the first day of the second fiscal year beginning after the date on which the sending or receiving agency has informed the other agency and the governing body or individual identified in paragraph (1) of subdivision (b) of Section 56205, unless the governing body or individual identified in paragraph (1) of subdivision (b) of Section 56205 unanimously approves the transfer taking effect on the first day of the first fiscal year following that date.

(c) If either the sending or receiving agency disagree with the proposed transfer, the matter shall be resolved by the alternative resolution process established pursuant to subdivision (d) of Section 56205.

56208. This article shall apply to special education local plan areas that are submitting a revised local plan for approval pursuant to Section 56836.03 or that have an approved revised local plan pursuant to Section 56836.03.

SEC. 16. Section 56210 of the Education Code is amended to read:

56210. (a) It is the intent of the Legislature in enacting this article to ensure that individuals with exceptional needs residing in special education local plan areas with small or sparse populations have equitable access to the programs and services they may require. It is further the intent of the Legislature to provide a guaranteed minimum level of authorized instructional personnel service units to special education local plan areas with small or sparse populations and the means through which these special education local plan areas may achieve planned orderly growth and maintenance of services through the local planning process. It is also the intent of the Legislature to relieve special education local plan areas with small or sparse populations from the burdensome dependency upon the annual waiver authority of Sections 56728.6, 56728.8, and 56761 so that individuals with exceptional needs residing in those areas may have equitable access to required programs and services.

(b) It is the further intent of the Legislature in enacting this article that special education local plan areas with small or sparse populations be provided with supplemental funding to facilitate their ability to perform the regionalized service functions listed in Section 56780 and provide the direct instructional support of program specialists in accordance with Section 56368.

(c) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 56211 of the Education Code is amended to read:

56211. (a) A special education local plan area submitting a local plan, pursuant to subdivision (c) of Section 56195.1, which includes all of the school districts located in the county submitting the plan, except those participating in a countywide special education local

plan area located in an adjacent county, and which meets the criteria for special education local plan areas with small or sparse populations set forth in Section 56212, is eligible to request that designation in its local plan application and may request exemption for the three-year period covered by its approved plan from compliance with one or more of the standards, ratios, and criteria specified in subdivision (b). In requesting the designation in its local plan application, the special education local plan area shall include a maintenance of service section, pursuant to Section 56213, in which it may request authorization to operate pursuant to the provisions of this article for the three-year period covered by its approved local plan. Each request shall specify which of the standards, ratios, proportions, and criteria for which any exemption is requested, and why compliance with the standards, ratios, proportions, and criteria would prevent the provision of a free appropriate public education or would create undue hardship.

(b) An eligible special education local plan area submitting a local plan application pursuant to this section may request exemption from the standards, ratios, and criteria set forth in Sections 56728.6, 56728.8 and 56760 pertaining to the authorization, recapture, retention, and operation of instructional personnel service units.

(c) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 18. Section 56211 is added to the Education Code, to read:

56211. A special education local plan area submitting a local plan, pursuant to subdivision (c) of Section 56195.1, which includes all of the school districts located in the county submitting the plan, except those participating in a countywide special education local plan area located in an adjacent county, and which meets the criteria for special education local plan areas with small populations set forth in Section 56212, is eligible to request that designation in its local plan application.

This section shall become operative on July 1, 1998.

SEC. 19. Section 56212 of the Education Code is amended to read:

56212. An eligible special education local plan area, which submits a local plan under the provisions of Section 56211, may request designation as a small or sparsely populated special education local plan area in one of the following categories:

(a) A necessary small special education local plan area in which the total enrollment in kindergarten and grades 1 to 12, inclusive, is less than 15,000, and which includes all of the school districts located in the county or counties participating in the local plan.

(b) A sparsely populated special education local plan area in which the total enrollment in kindergarten and grades 1 to 12, inclusive, is less than 25,000, in which the combined pupil density

ratio is not more than 20 pupils in those grades per square mile, and which includes all of the school districts located in the county submitting the plan except those that are participants in a countywide special education local plan area located in an adjacent county.

(c) A special education local plan area with a sparsely populated county in which a special education local plan area includes all of the districts in two or more adjacent counties and in which at least one of the counties would have met the criteria set forth in subdivision (a) or (b) of this section if the districts and the county office of education had elected to submit a single county plan.

(d) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 20. Section 56212 is added to the Education Code, to read:

56212. An eligible special education local plan area, which submits a local plan under the provisions of Section 56211, may request designation as a necessary small special education local plan area if its total reported units of average daily attendance in kindergarten and grades 1 to 12, inclusive, is less than 15,000, and if it includes all of the school districts located in the county or counties participating in the local plan.

This section shall become operative on July 1, 1998.

SEC. 21. Section 56213 of the Education Code is amended to read:

56213. (a) Each eligible special education local plan area that submits a local plan pursuant to Section 56211 and that elects exemptions from the standards, ratios, proportions, and criteria set forth in Sections 56728.6, 56728.8, and 56760 pertaining to the authorization, recapture, retention, and operation of instructional personnel service units shall, for the duration of its local plan, retain, as minimum annual authorization, the number of authorized instructional personnel service units, and portions thereof, that it reported as operated at the second principal apportionment of the fiscal year immediately preceding the initial year of implementation of the local plan submitted pursuant to this article.

(b) In addition to the contents required to be included in the local plan pursuant to Section 56200, a local plan application submitted pursuant to this article shall include a maintenance of service section in which the eligible special education local plan area shall project the type and total number of additional instructional personnel service units, and portions thereof, it will require for each year of the duration of the local plan, the locations in which instructional personnel service units will be utilized, their estimated caseloads, and a description of the services to be provided.

(c) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that

becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 22. Section 56214 of the Education Code is amended to read:

56214. Each small or sparsely populated special education local plan area which anticipates that its service needs will require instructional personnel service units, or portions thereof, in excess of those authorized in its approved local plan may submit, prior to March 1 of any year, an amendment to the maintenance of service section of its local plan in which it may request an increase in its total number of authorized instructional personnel service units beginning in the following year. The amendment shall project the type and total number of additional instructional personnel service units, and portions thereof, the small or sparsely populated special education local plan area will require for each remaining year of the duration of the local plan, the locations in which additional instructional personnel service units will be utilized, their estimated caseloads, and a description of the services to be provided.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 23. Section 56214.5 of the Education Code is amended to read:

56214.5. A special education local plan area which ceases meeting the criteria set forth in Sections 56211 and 56212 during any year in which the local plan area is implementing an approved local plan pursuant to this article shall retain the exemptions authorized pursuant to Section 56213 and the then current level of authorized instructional personnel service units for the following year.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 24. Section 56217 of the Education Code is amended to read:

56217. Plans and amendments submitted pursuant to this article shall be approved by the State Board of Education prior to the implementation of those plans and amendments.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 25. Section 56218 of the Education Code is amended to read:

56218. Instructional personnel service units authorized pursuant to this article shall not increase the statewide total number of instructional personnel service units for the purposes of state apportionments unless an appropriation specifically for an increase in the number of instructional personnel service units is made in the

annual Budget Act or other legislation. If an appropriation is made, instructional personnel service units authorized pursuant to this article shall be included in the increased number of units and shall be funded only by the appropriation and no other funds may be apportioned for them.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 26. Article 2 (commencing with Section 56220) of Chapter 3 of Part 30 of the Education Code is repealed.

SEC. 27. Section 56325 of the Education Code is amended to read:

56325. (a) Whenever a pupil transfers into a school district from a school district not operating programs under the same local plan in which he or she was last enrolled in a special education program, the administrator of a local program under this part shall ensure that the pupil is immediately provided an interim placement for a period not to exceed 30 days. The interim placement must be in conformity with an individualized education program, unless the parent or guardian agrees otherwise. The individualized education program implemented during the interim placement may be either the pupil's existing individualized education program, implemented to the extent possible within existing resources, which may be implemented without complying with subdivision (a) of Section 56321, or a new individualized education program developed pursuant to Section 56321.

(b) Before the expiration of the 30-day period, the interim placement shall be reviewed by the individualized education program team and a final recommendation shall be made by the team in accordance with the requirements of this chapter. The team may utilize information, records, and reports from the school district or county program from which the pupil transferred.

(c) Whenever a pupil described in subdivision (a) is placed and residing in a residential nonpublic, nonsectarian school, the special education local plan area making that placement shall continue to be responsible for the funding of the placement for the remainder of the school year.

SEC. 28. Section 56342 of the Education Code is amended to read:

56342. The individualized education program team shall review the assessment results, determine eligibility, determine the content of the individualized education program, consider local transportation policies and criteria developed pursuant to paragraph (5) of subdivision (b) of Section 56195.8, and make program placement recommendations.

Prior to recommending a new placement in a nonpublic, nonsectarian school, the individualized education program team shall submit the proposed recommendation to the local governing

board of the district and special education local plan area for review and recommendation regarding the cost of the placement.

The local governing board shall complete its review and make its recommendations, if any, at the next regular meeting of the board. A parent or representative shall have the right to appear before the board and submit written and oral evidence regarding the need for nonpublic school placement for his or her child. Any recommendations of the board shall be considered at an individualized education program team meeting, to be held within five days of the board's review.

Notwithstanding Section 56344, the time limit for the development of an individualized education program shall be waived for a period not to exceed 15 additional days to permit the local governing board to meet its review and recommendation requirements.

SEC. 29. Section 56360 of the Education Code is amended to read:

56360. Each special education local plan area shall ensure that a continuum of program options is available to meet the needs of individuals with exceptional needs for special education and related services, as required by the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and federal regulations relating thereto.

SEC. 30. Section 56361 of the Education Code is amended to read:

56361. The continuum of program options shall include, but not necessarily be limited to, all of the following or any combination of the following:

(a) Regular education programs consistent with subparagraph (B) of paragraph (5) of Section 1412 and clause (iv) of subparagraph (C) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code and implementing regulations.

(b) A resource specialist program pursuant to Section 56362.

(c) Designated instruction and services pursuant to Section 56363.

(d) Special classes and centers pursuant to Section 56364.

(e) Nonpublic, nonsectarian school services pursuant to Section 56365.

(f) State special schools pursuant to Section 56367.

(g) Instruction in settings other than classrooms where specially designed instruction may occur.

(h) Itinerant instruction in classrooms, resource rooms, and settings other than classrooms where specially designed instruction may occur to the extent required by federal law or regulation.

(i) Instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions to the extent required by federal law or regulation.

SEC. 31. Section 56362 of the Education Code is amended to read:

56362. (a) The resource specialist program shall provide, but not be limited to, all of the following:

(1) Provision for a resource specialist or specialists who shall provide instruction and services for those pupils whose needs have been identified in an individualized education program developed by the individualized education program team and who are assigned to regular classroom teachers for a majority of a schoolday.

(2) Provision of information and assistance to individuals with exceptional needs and their parents.

(3) Provision of consultation, resource information, and material regarding individuals with exceptional needs to their parents and to regular staff members.

(4) Coordination of special education services with the regular school programs for each individual with exceptional needs enrolled in the resource specialist program.

(5) Monitoring of pupil progress on a regular basis, participation in the review and revision of individualized education programs, as appropriate, and referral of pupils who do not demonstrate appropriate progress to the individualized education program team.

(6) Emphasis at the secondary school level on academic achievement, career and vocational development, and preparation for adult life.

(b) The resource specialist program shall be under the direction of a resource specialist who is a credentialed special education teacher, or who has a clinical services credential with a special class authorization, who has had three or more years of teaching experience, including both regular and special education teaching experience, as defined by rules and regulations of the Commission on Teacher Credentialing and who has demonstrated the competencies for a resource specialist, as established by the Commission on Teacher Credentialing.

(c) Caseloads for resource specialists shall be stated in the local policies developed pursuant to Section 56195.8 and in accordance with regulations established by the board. No resource specialist shall have a caseload which exceeds 28 pupils.

(d) Resource specialists shall not simultaneously be assigned to serve as resource specialists and to teach regular classes.

(e) Resource specialists shall not enroll a pupil for a majority of a schoolday without prior approval by the superintendent.

(f) At least 80 percent of the resource specialists within a local plan shall be provided with an instructional aide.

SEC. 32. Section 56364 of the Education Code is amended to read:

56364. (a) Special classes and centers that enroll pupils with similar and more intensive educational needs shall be available. The classes and centers shall enroll the pupils when the nature or severity of the disability precludes their participation in the regular school program for a majority of a schoolday. Special classes and centers and other removal of individuals with exceptional needs from the regular education environment shall occur only when education in regular

classes with the use of supplementary aids and services cannot be achieved satisfactorily due to the nature or severity of the exceptional need.

In providing or arranging for the provision of activities, each public agency shall ensure that each individual with exceptional needs participates in those activities with nondisabled pupils to the maximum extent appropriate to the needs of the individual with exceptional needs, including nonacademic and extracurricular services and activities. Special classes and centers shall meet standards adopted by the board.

(b) This section shall not apply to any special education local plan area that has a revised local plan approved pursuant to Section 56836.03. This section shall apply to special education local plan areas that have not had a revised local plan approved pursuant to that section.

(c) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 33. Section 56364.5 is added to the Education Code, to read:

56364.5. (a) Special classes and centers that enroll pupils with similar and more intensive educational needs shall be available. The classes and centers shall enroll pupils when the nature or severity of the disability precludes their participation in the regular school program for all or significant portions of a schoolday. Special classes and centers and other removal of individuals with exceptional needs from the regular education environment shall occur only when education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily due to the nature or severity of the exceptional needs.

(b) In providing or arranging for the provision of activities, each public agency shall ensure that each individual with exceptional needs participates in those activities with nondisabled pupils to the maximum extent appropriate to the needs of the individual with exceptional needs, including nonacademic and extracurricular services and activities. Special classes and centers shall meet standards adopted by the board.

(c) This section shall only apply to special education local plan areas that have had a revised local plan approved pursuant to Section 56836.03.

SEC. 34. Section 56366.2 of the Education Code is amended to read:

56366.2. (a) A district, special education local plan area, county office, nonpublic, nonsectarian school, or nonpublic, nonsectarian agency may petition the superintendent to waive one or more of the requirements under Sections 56365, 56366, 56366.3, 56366.6, and

56366.7. The petition shall state the reasons for the waiver request, and shall include the following:

(1) Sufficient documentation to demonstrate that the waiver is necessary to the content and implementation of a specific pupil's individualized education program and the pupil's current placement.

(2) The period of time that the waiver will be effective during any one school year.

(3) Documentation and assurance that the waiver does not abrogate any right provided individuals with exceptional needs and their parents or guardians under state or federal law, and does not hinder the compliance of a district, special education local plan area, or county office with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and federal regulations relating thereto.

(b) No waiver shall be granted for reimbursement of those costs prohibited under Article 4 (commencing with Section 56836.20) of Chapter 7.2 of Part 30 or for the certification requirements pursuant to Section 56366.1 unless approved by the board pursuant to Section 56101.

(c) In submitting the annual report on waivers granted under Section 56101 and this section to the State Board of Education, the superintendent shall specify information related to the provision of special education and related services to individuals with exceptional needs through contracts with nonpublic, nonsectarian schools and agencies located in the state, nonpublic, nonsectarian school and agency placements in facilities located out of state, and the specific section waived pursuant to this section.

SEC. 35. Section 56366.9 is added to the Education Code, to read:

56366.9. A licensed children's institution at which individuals with exceptional needs reside shall not require as a condition of residential placement that it provide the appropriate educational programs to those individuals through a nonpublic, nonsectarian school or agency owned or operated by a licensed children's institution. Those services may only be provided if the special education local plan area determines that alternative educational programs are not available.

SEC. 36. Section 56370 of the Education Code is amended to read:

56370. A transfer of special education programs from a school district to the county superintendent of schools or to other school districts, or from the county superintendent of schools to school districts, shall not be approved by the Superintendent of Public Instruction if the transfer would result in diminishing the level of services or the opportunity of the affected pupils to interact with the

general school population, as required in the individualized education programs of the affected pupils.

This section shall not apply to any special education local plan area that has a revised local plan approved pursuant to Section 56836.03. This section shall apply to special education local plan areas that have not had a revised local plan approved pursuant to this section.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 37. Chapter 4.3 (commencing with Section 56400) of Part 30, of the Education Code is repealed.

SEC. 38. Section 56425 of the Education Code is amended to read:

56425. As a condition of receiving state aid pursuant to this part, each district, special education local plan area, or county office that operated early education programs for individuals with exceptional needs younger than three years of age, as defined in Section 56026, and that received state or federal aid for special education for those programs in the 1980–81 fiscal year, shall continue to operate early education programs in the 1981–82 fiscal year and each fiscal year thereafter.

If a district or county office offered those programs in the 1980-81 fiscal year but in a subsequent year transfers the programs to another district or county office in the special education local plan area, the district or county office shall be exempt from the provisions of this section in any year when the programs are offered by the district or county office to which they were transferred.

A district, special education local plan area, or county office that is required to offer a program pursuant to this section shall be eligible for funding pursuant to Chapter 7 (commencing with Section 56700) of Part 30.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 39. Section 56425 is added to the Education Code, to read:

56425. As a condition of receiving state aid pursuant to this part, each district, special education local plan area, or county office that operated early education programs for individuals with exceptional needs younger than three years of age, as defined in Section 56026, and that received state or federal aid for special education for those programs in the 1980–81 fiscal year, shall continue to operate early education programs in the 1981–82 fiscal year and each fiscal year thereafter.

If a district or county office offered those programs in the 1980-81 fiscal year but in a subsequent year transfers the programs to another district or county office in the special education local plan area, the

district or county office shall be exempt from the provisions of this section in any year when the programs are offered by the district or county office to which they were transferred.

A district, special education local plan area, or county office that is required to offer a program pursuant to this section shall be eligible for funding pursuant to Section 56432.

This section shall become operative on July 1, 1998.

SEC. 40. Section 56425.5 of the Education Code is amended to read:

56425.5. The Legislature hereby finds and declares that early education programs for infants identified as individuals with exceptional needs that provide educational services with active parent involvement can significantly reduce the potential impact of many disabling conditions, and positively influence later development when the child reaches schoolage.

Early education programs funded pursuant to Sections 56427, 56428, and 56728.8 shall provide a continuum of program options provided by a transdisciplinary team to meet the multiple and varied needs of infants and their families. Recognizing the parent as the infant's primary teacher, it is the Legislature's intent that early education programs shall include opportunities for the family to receive home visits and to participate in family involvement activities pursuant to Sections 56426.1 and 56426.4. It is the intent of the Legislature that, as an infant grows older, program emphasis would shift from home-based services to a combination of home-based and group services.

It is further the intent of the Legislature that services rendered by state and local agencies serving infants with exceptional needs and their families be coordinated and maximized.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 41. Section 56425.5 is added to the Education Code, to read:

56425.5. The Legislature hereby finds and declares that early education programs for infants identified as individuals with exceptional needs that provide educational services with active parent involvement, can significantly reduce the potential impact of many disabling conditions, and positively influence later development when the child reaches schoolage.

Early education programs funded pursuant to Sections 56427, 56428, and 56432 shall provide a continuum of program options provided by a transdisciplinary team to meet the multiple and varied needs of infants and their families. Recognizing the parent as the infant's primary teacher, it is the Legislature's intent that early education programs shall include opportunities for the family to receive home visits and to participate in family involvement

activities pursuant to Sections 56426.1 and 56426.4. It is the intent of the Legislature that, as an infant grows older, program emphasis would shift from home-based services to a combination of home-based and group services.

It is further the intent of the Legislature that services rendered by state and local agencies serving infants with exceptional needs and their families be coordinated and maximized.

This section shall become operative on July 1, 1998.

SEC. 42. Section 56426 of the Education Code is amended to read:

56426. An early education program shall include services specially designed to meet the unique needs of infants, from birth to three years of age, and their families. The primary purpose of an early education program is to enhance development of the infant. To meet this purpose, the program shall focus upon the infant and his or her family, and shall include home visits, group services, and family involvement activities. Early education programs funded pursuant to Sections 56427, 56428, and 56728.8 shall include, as program options, home-based services pursuant to Section 56426.1, and home-based and group services pursuant to Section 56426.2 and shall be provided in accordance with the Individuals with Disabilities Education Act (20 U.S.C. Secs. 1471 to 1485, incl.), and the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 43. Section 56426 is added to the Education Code, to read:

56426. An early education program shall include services specially designed to meet the unique needs of infants, from birth to three years of age, and their families. The primary purpose of an early education program is to enhance development of the infant. To meet this purpose, the program shall focus upon the infant and his or her family, and shall include home visits, group services, and family involvement activities. Early education programs funded pursuant to Sections 56427, 56428, and 56432 shall include, as program options, home-based services pursuant to Section 56426.1, and home-based and group services pursuant to Section 56426.2 and shall be provided in accordance with the Individuals with Disabilities Education Act (20 U.S.C. Secs. 1471 to 1485, incl.), and the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

This section shall become operative on July 1, 1998.

SEC. 44. Section 56426.1 of the Education Code is amended to read:

56426.1. (a) Home-based early education services funded pursuant to Sections 56427, 56428, and 56728.8 shall include, but not be limited to, all of the following:

(1) Observing the infant's behavior and development in his or her natural environment.

(2) Presenting activities that are developmentally appropriate for the infant and are specially designed, based on the infant's exceptional needs, to enhance the infant's development. Those activities shall be developed to conform with the infant's individualized family service plan and to ensure that they do not conflict with his or her medical needs.

(3) Modeling and demonstrating developmentally appropriate activities for the infant to the parents, siblings, and other caregivers, as designated by the parent.

(4) Interacting with the family members and other caregivers, as designated by the parent, to enhance and reinforce their development of skills necessary to promote the infant's development.

(5) Discussing parental concerns related to the infant and the family, and supporting parents in coping with their infant's needs.

(6) Assisting parents to solve problems, to seek other services in their community, and to coordinate the services provided by various agencies.

(b) The frequency of home-based services shall be once or twice a week, depending on the needs of the infant and the family.

(c) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 45. Section 56426.1 is added to the Education Code, to read:

56426.1. (a) Home-based early education services funded pursuant to Sections 56427, 56428, and 56432 shall include, but not be limited to, all of the following:

(1) Observing the infant's behavior and development in his or her natural environment.

(2) Presenting activities that are developmentally appropriate for the infant and are specially designed, based on the infant's exceptional needs, to enhance the infant's development. Those activities shall be developed to conform with the infant's individualized family service plan and to ensure that they do not conflict with his or her medical needs.

(3) Modeling and demonstrating developmentally appropriate activities for the infant to the parents, siblings, and other caregivers, as designated by the parent.

(4) Interacting with the family members and other caregivers, as designated by the parent, to enhance and reinforce their development of skills necessary to promote the infant's development.

(5) Discussing parental concerns related to the infant and the family, and supporting parents in coping with their infant's needs.

(6) Assisting parents to solve problems, to seek other services in their community, and to coordinate the services provided by various agencies.

(b) The frequency of home-based services shall be once or twice a week, depending on the needs of the infant and the family.

(c) This section shall become operative on July 1, 1998.

SEC. 46. Section 56426.2 of the Education Code is amended to read:

56426.2. (a) Early education services funded pursuant to Sections 56427, 56428, and 56728.8 shall be provided through both home visits and group settings with other infants, with or without the parent. Home-based and group services shall include, but not be limited to, all of the following:

(1) All services identified in subdivision (a) of Section 56426.1.

(2) Group and individual activities that are developmentally appropriate and specially designed, based on the infant's exceptional needs, to enhance the infant's development. Those activities shall be developed to conform with the infant's individualized family service plan and to ensure that they do not conflict with his or her medical needs.

(3) Opportunities for infants to socialize and participate in play and exploration activities.

(4) Transdisciplinary services by therapists, psychologists, and other specialists as appropriate.

(5) Access to various developmentally appropriate equipment and specialized materials.

(6) Opportunities for family involvement activities, including parent education and parent support groups.

(b) Services provided in a center under this chapter shall not include child care or respite care.

(c) The frequency of group services shall not exceed three hours a day for up to, and including, three days a week, and shall be determined on the basis of the needs of the infant and the family.

(d) The frequency of home visits provided in conjunction with group services shall range from one to eight visits per month, depending on the needs of the infant and the family.

(e) Group services shall be provided on a ratio of no more than four infants to one adult.

(f) Parent participation in group services shall be encouraged.

(g) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 47. Section 56426.2 is added to the Education Code, to read:

56426.2. (a) Early education services funded pursuant to Sections 56427, 56428, and 56432 shall be provided through both home visits and group settings with other infants, with or without the parent. Home-based and group services shall include, but not be limited to, all of the following:

(1) All services identified in subdivision (a) of Section 56426.1.

(2) Group and individual activities that are developmentally appropriate and specially designed, based on the infant's exceptional needs, to enhance the infant's development. Those activities shall be developed to conform with the infant's individualized family service plan and to ensure that they do not conflict with his or her medical needs.

(3) Opportunities for infants to socialize and participate in play and exploration activities.

(4) Transdisciplinary services by therapists, psychologists, and other specialists as appropriate.

(5) Access to various developmentally appropriate equipment and specialized materials.

(6) Opportunities for family involvement activities, including parent education and parent support groups.

(b) Services provided in a center under this chapter shall not include child care or respite care.

(c) The frequency of group services shall not exceed three hours a day for up to, and including, three days a week, and shall be determined on the basis of the needs of the infant and the family.

(d) The frequency of home visits provided in conjunction with group services shall range from one to eight visits per month, depending on the needs of the infant and the family.

(e) Group services shall be provided on a ratio of no more than four infants to one adult.

(f) Parent participation in group services shall be encouraged.

(g) This section shall become operative on July 1, 1998.

SEC. 48. Section 56426.25 of the Education Code is amended to read:

56426.25. The maximum service levels set forth in Sections 56426.1 and 56426.2 apply only for purposes of the allocation of funds for early education programs pursuant to Sections 56427, 56428, and 56728.8, and may be exceeded by a district, special education local plan area, or county office, in accordance with the infants' individualized family service plan, provided that no change in the level of entitlement to state funding under this part thereby results.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 49. Section 56426.25 is added to the Education Code, to read:

56426.25. The maximum service levels set forth in Sections 56426.1 and 56426.2 apply only for purposes of the allocation of funds for early education programs pursuant to Sections 56427, 56428, and 56432, and may be exceeded by a district, special education local plan area, or county office, in accordance with the infants' individualized family service plan, provided that no change in the level of entitlement to state funding under this part thereby results.

This section shall become operative on July 1, 1998.

SEC. 50. Section 56426.4 of the Education Code is amended to read:

56426.4. (a) Family involvement activities funded pursuant to Sections 56427, 56428, and 56728.8 shall support family members in meeting the practical and emotional issues and needs of raising their infant. These activities may include, but are not limited to, the following:

(1) Educational programs that present information or demonstrate techniques to assist the family to promote their infant's development.

(2) Parent education and training to assist families in understanding, planning for, and meeting the unique needs of their infant.

(3) Parent support groups to share similar experiences and possible solutions.

(4) Instruction in making toys and other materials appropriate to their infant's exceptional needs and development.

(b) The frequency of family involvement activities shall be at least once a month.

(c) Participation by families in family involvement activities shall be voluntary.

(d) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 51. Section 56426.4 is added to the Education Code, to read:

56426.4. (a) Family involvement activities funded pursuant to Sections 56427, 56428, and 56432 shall support family members in meeting the practical and emotional issues and needs of raising their infant. These activities may include, but are not limited to, the following:

(1) Educational programs that present information or demonstrate techniques to assist the family to promote their infant's development.

(2) Parent education and training to assist families in understanding, planning for, and meeting the unique needs of their infant.

(3) Parent support groups to share similar experiences and possible solutions.

(4) Instruction in making toys and other materials appropriate to their infant's exceptional needs and development.

(b) The frequency of family involvement activities shall be at least once a month.

(c) Participation by families in family involvement activities shall be voluntary.

(d) This section shall become operative on July 1, 1998.

SEC. 52. Section 56427 of the Education Code is amended to read:

56427. (a) Not less than two million three hundred twenty-four thousand dollars ($2,324,000) of the federal discretionary funds appropriated to the State Department of Education under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) in any fiscal year shall be expended for early education programs for infants with exceptional needs and their families, until the department determines, and the Legislature concurs, that the funds are no longer needed for that purpose.

(b) Programs ineligible to receive funding pursuant to Section 56425 or 56728.8 may receive funding pursuant to subdivision (a).

(c) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 53. Section 56427 is added to the Education Code, to read:

56427. (a) Not less than two million three hundred twenty-four thousand dollars ($2,324,000) of the federal discretionary funds appropriated to the State Department of Education under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) in any fiscal year shall be expended for early education programs for infants with exceptional needs and their families, until the department determines, and the Legislature concurs, that the funds are no longer needed for that purpose.

(b) Programs ineligible to receive funding pursuant to Section 56425 or 56432 may receive funding pursuant to subdivision (a).

(c) This section shall become operative on July 1, 1998.

SEC. 54. Section 56429 of the Education Code is amended to read:

56429. In order to assure the maximum utilization and coordination of local early education services, eligibility for the receipt of funds pursuant to Section 56425, 56427, 56428, or 56728.8 is conditioned upon the approval by the superintendent of a local plan for early education services, which approval shall apply for not less than one, nor more than four years. The local plan shall identify existing public and private early education services, and shall include an interagency plan for the delivery of early education services in accordance with the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that

becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 55. Section 56429 is added to the Education Code, to read:

56429. In order to assure the maximum utilization and coordination of local early education services, eligibility for the receipt of funds pursuant to Section 56425, 56427, 56428, or 56432 is conditioned upon the approval by the superintendent of a local plan for early education services, which approval shall apply for not less than one, nor more than four, years. The local plan shall identify existing public and private early education services, and shall include an interagency plan for the delivery of early education services in accordance with the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

This section shall become operative on July 1, 1998.

SEC. 56. Section 56430 of the Education Code is amended to read:

56430. (a) Early education services may be provided by any of the following methods:

(1) Directly by a local educational agency.

(2) Through an interagency agreement between a local educational agency and another public agency.

(3) Through a contract with another public agency pursuant to Section 56369.

(4) Through a contract with a certified nonpublic, nonsectarian school, or nonpublic, nonsectarian agency pursuant to Section 56366.

(5) Through a contract with a nonsectarian hospital in accordance with Section 56361.5.

(b) Contracts or agreements with agencies identified in subdivision (a) for early education services are strongly encouraged when early education services are currently provided by another agency, and when found to be a cost-effective means of providing the services. The placement of individual infants under the contract shall not require specific approval by the governing board of the district or the county office.

(c) Early education services provided under this chapter shall be funded pursuant to Sections 56427, 56428, and 56728.8. Early education programs shall not be funded pursuant to any of Sections 56740 to 56743, inclusive.

(d) This section shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 57. Section 56430 is added to the Education Code, to read:

56430. (a) Early education services may be provided by any of the following methods:

(1) Directly by a local educational agency.

(2) Through an interagency agreement between a local educational agency and another public agency.

(3) Through a contract with another public agency pursuant to Section 56369.

(4) Through a contract with a certified nonpublic, nonsectarian school, or nonpublic, nonsectarian agency pursuant to Section 56366.

(5) Through a contract with a nonsectarian hospital in accordance with Section 56361.5.

(b) Contracts or agreements with agencies identified in subdivision (a) for early education services are strongly encouraged when early education services are currently provided by another agency, and when found to be a cost-effective means of providing the services. The placement of individual infants under the contract shall not require specific approval by the governing board of the district or the county office.

(c) Early education services provided under this chapter shall be funded pursuant to Sections 56427, 56428, and 56432.

(d) This section shall become operative on July 1, 1998.

SEC. 58. Section 56432 is added to the Education Code, to read:

56432. (a) For the 1998–99 fiscal year and each fiscal year thereafter, a special education local plan area shall be eligible for state funding of those instructional personnel service units operated and fundable for services to individuals with exceptional needs younger than three years of age at the second principal apportionment of the prior fiscal year, as long as the pupil count of these pupils divided by the number of instructional personnel service units is not less than the following:

(1) For special classes and centers—12, based on the unduplicated pupil count.

(2) For resource specialist programs—24, based on the unduplicated pupil count.

(3) For designated instruction and services—12, based on the unduplicated pupil count, or 39, based on the duplicated pupil count.

(b) A special education local plan area shall be eligible for state funding of instructional personnel service units for services to individuals with exceptional needs younger than three years of age in excess of the number of instructional personnel service units operated and fundable at the second principal apportionment of the prior fiscal year only with the authorization of the superintendent.

(c) The superintendent shall base the authorization of funding for special education local plan areas pursuant to this section, including the reallocation of instructional personnel service units, upon criteria that shall include, but not be limited to, the following:

(1) Changes in the total number of pupils younger than three years of age enrolled in special education programs.

(2) High- and low-average caseloads per instructional personnel service unit for each instructional setting.

(d) Infant programs in special classes and centers funded pursuant to this item shall be supported by two aides, unless otherwise required by the superintendent.

(e) Infant services in resource specialist programs funded pursuant to this item shall be supported by one aide.

(f) When units are allocated pursuant to this subdivision, the superintendent shall allocate only the least expensive unit appropriate.

(g) Notwithstanding Sections 56211 and 56212, a special education local plan area may apply for, and the superintendent may grant, a waiver of any of the standards and criteria specified in this section if compliance would prevent the provision of a free, appropriate public education or would create undue hardship. In granting the waivers, the superintendent shall give priority to the following factors:

(1) Applications from special education local plan areas for waivers for a period not to exceed three years to specifically maintain or increase the level of special education services necessary to address the special education service requirements of individuals with exceptional needs residing in sparsely populated districts or attending isolated schools designated in the application.

(A) Sparsely populated districts are school districts that meet one of the following conditions:

(i) A school district or combination of contiguous school districts in which the total enrollment is less than 600 pupils, kindergarten and grades 1 to 12, inclusive, and in which one or more of the school facilities is an isolated school.

(ii) A school district or combination of contiguous school districts in which the total pupil density ratio is less than 15 pupils, kindergarten and grades 1 to 12, inclusive, per square mile and in which one or more of the school facilities is an isolated school.

(B) Isolated schools are schools with enrollments of less than 600 pupils, kindergarten and grades 1 to 12, inclusive, that meet one or more of the following conditions:

(i) The school is located more than 45 minutes average driving time over commonly used and well-traveled roads from the nearest school, including schools in adjacent special education local plan areas, with an enrollment greater than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(ii) The school is separated, by roads that are impassable for extended periods of time due to inclement weather, from the nearest school, including schools in adjacent special education local plan areas, with an enrollment greater than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(iii) The school is of a size and location that, when its enrollment is combined with the enrollments of the two largest schools within an average driving time of not more than 30 minutes over commonly used and well-traveled roads, including schools in adjacent special

education local plan areas, the combined enrollment is less than 600 pupils, kindergarten and grades 1 to 12, inclusive.

(iv) The school is the one of normal attendance for a severely disabled individual, as defined in Section 56030.5, or an individual with a low-incidence disability, as defined in Section 56026.5, who otherwise would be required to be transported more than 75 minutes, average one-way driving time over commonly used and well-traveled roads, to the nearest appropriate program.

(2) The location of licensed children's institutions, foster family homes, residential medical facilities, or similar facilities that serve children younger than three years of age and are within the boundaries of a local plan if 3 percent or more of the local plan's unduplicated pupil count resides in those facilities.

(h) By authorizing units pursuant to this section, the superintendent shall not increase the statewide total number of instructional personnel service units for purposes of state apportionments unless an appropriation specifically for growth in the number of instructional personnel service units is made in the annual Budget Act or other legislation. If that growth appropriation is made, units authorized by the superintendent pursuant to this section are subject to the restrictions that the units shall be funded only by that growth appropriation and no other funds may be apportioned for the units.

(i) The superintendent shall monitor the use of instructional personnel service units retained or authorized by the granting of waivers pursuant to subdivision (h) to ensure that the instructional personnel service units are used in a manner wholly consistent with the basis for the waiver request.

(j) This section shall become operative on July 1, 1998.

SEC. 59. Section 56441.14 of the Education Code is amended to read:

56441.14. Criteria and options for meeting the special education transportation needs of individuals with exceptional needs between the ages of three and five, inclusive, shall be included in the local transportation policy required pursuant to paragraph (5) of subdivision (b) of Section 56195.8.

SEC. 60. Section 56448 of the Education Code is repealed.

SEC. 61. Section 56449 of the Education Code is repealed.

SEC. 62. Section 56500 of the Education Code is amended to read:

56500. As used in this chapter, ''public education agency'' means a district, special education local plan area, or county office, depending on the category of local plan elected by the governing board of a school district pursuant to Section 56195.1, or any other public agency providing special education or related services.

SEC. 63. Section 56832 is added to the Education Code, to read:

56832. (a) This chapter shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute,

that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

(b) Notwithstanding subdivision (a), this chapter, as it existed on December 31, 1998, shall apply until June 30, 2001, for the purpose of recertifications of amounts funded under this chapter.

SEC. 64. Chapter 7.1 (commencing with Section 56835) is added to Part 30 of the Education Code, to read:

CHAPTER 7.1. EQUALIZATION FOR 1997–98 FISCAL YEAR

56835. It is the intent of the Legislature in enacting this chapter to provide a mechanism for computing a one-time equalization adjustment for local educational agencies providing special education and related services. It is further the intent of the Legislature to make equalization adjustments pursuant to this chapter for the 1997–98 fiscal year only to the extent funds are appropriated for that purpose. This chapter shall not be construed to establish any equalization entitlement in any fiscal year subsequent to the 1997–98 fiscal year.

56835.01. For the purposes of computing equalization adjustments for the 1997–98 fiscal year, the superintendent shall make the following computations to determine the special education services unit rates for services provided to pupils who are severely disabled and pupils who are not severely disabled for each district and each county office as follows:

(a) To determine the special education services unit rate for teachers of special day classes and centers for pupils who are severely disabled for the school district or county office of education, make the following computations:

(1) Add one to the support services quotient for severely disabled pupils for the annual apportionment for the 1995–96 fiscal year computed pursuant to subdivision (c) of Section 56737 and subdivision (c) of Section 56828, if applicable.

(2) Multiply the sum computed in paragraph (1) by the instructional personnel services unit rate for special day classes computed for the annual apportionment for the 1995–96 fiscal year pursuant to the applicable provisions of subdivision (a) of Section 56721, subdivision (a) of Section 56722, Sections 56723 and 56724, and subdivision (c) of Section 56828.

(3) Subtract the amount computed in subdivision (c) from the rate computed in paragraph (2). This is the special education services unit rate for teachers of special day classes and centers for pupils who are severely disabled to be used for the purpose of computing equalization adjustments for the district or county office pursuant to this chapter.

(b) For the purpose of computing, pursuant to subdivision (d), the average special education services unit rate for services to pupils

who are not severely disabled, make the following computations for each district and county office:

(1) Determine the special education services unit rate for teachers of special day classes and centers for pupils with exceptional needs who are not severely disabled by making the following computations:

(A) Add one to the support services quotient for pupils with exceptional needs who are not severely disabled for the annual apportionment for the 1995–96 fiscal year computed pursuant to subdivision (b) of Section 56737 and subdivision (c) of Section 56828, if applicable.

(B) Multiply the sum computed in subparagraph (A) by the instructional personnel services unit rate for special day classes computed for the annual apportionment for the 1995–96 fiscal year pursuant to the applicable provisions of subdivision (a) of Section 56721, subdivision (a) of 56722, Sections 56723 and 56724, and subdivision (c) of Section 56828.

(C) Multiply the number of instructional personnel services units for teachers of special day classes and centers for pupils who are not severely disabled reported for the district or county office for the annual apportionment for the 1995–96 fiscal year by the rate computed in subparagraph (B).

(2) Determine the special education services unit rate for resource specialists for the district or county office by making the following computations:

(A) Add one to the support services quotient for pupils with exceptional needs who are not severely disabled for the annual apportionment for the 1995–96 fiscal year computed pursuant to subdivision (b) of Section 56737 and subdivision (c) of Section 56828, if applicable.

(B) Multiply the sum computed in subparagraph (A) by the instructional personnel services unit rate for resource specialists computed for the annual apportionment for the 1995–96 fiscal year pursuant to the applicable provisions of subdivision (b) of Section 56721, subdivisions (d) and (e) of Section 56722, Sections 56723 and 56724, and subdivision (c) of Section 56828.

(C) Multiply the number of instructional personnel services units for resource specialists reported for the district or county office for the annual apportionment for the 1995–96 fiscal year by the rate computed in subparagraph (B).

(3) Determine the special education services unit rate for designated instruction and services by making the following computations:

(A) Add one to the support services quotient for pupils with exceptional needs who are not severely disabled computed for the annual apportionment for the 1995–96 fiscal year pursuant to

subdivision (b) of Section 56737 and subdivision (c) of Section 56828, if applicable.

(B) Multiply the sum computed in subparagraph (A) by the instructional personnel services unit rate for designated instruction and services computed for the annual apportionment for the 1995–96 fiscal year pursuant to the applicable provisions of subdivision (c) of Section 56721, subdivision (f) of Section 56722, Sections 56723 and 56724, and subdivision (c) of Section 56828.

(C) Multiply the number of instructional personnel services units for designated instruction and services reported for the district or county office for the annual apportionment for the 1995–96 fiscal year by the rate computed in subparagraph (B).

(c) For each district and county office, divide the amount computed pursuant to Article 6 (commencing with Section 56750) of Chapter 6 for the district or county office by the total number of instructional personnel services units reported for the types of special education services units specified in subdivision (a) and paragraphs (1), (2), and (3) of subdivision (b) for the annual apportionment for the 1995–96 fiscal year.

(d) For each district and county office, to determine the average special education services unit rate for services to pupils who are not severely disabled, make the following computations:

(1) Add the amounts computed for services to pupils who are not severely disabled pursuant to subparagraph (C) of paragraph (1), subparagraph (C) of paragraph (2), and subparagraph (C) of paragraph (3) of subdivision (b).

(2) Add the total number of instructional personnel services units for teachers of special day classes and centers for pupils who are not severely disabled, resource specialists, and designated instruction and services reported for the district or county office for the annual apportionment for the 1995–96 fiscal year.

(3) Divide the amount computed in paragraph (1) by the number computed in paragraph (2).

(4) Subtract the amount computed in subdivision (c) from the rate computed in paragraph (3). This is the average special education services unit rate for services to pupils who are not severely disabled for the district or county office.

56835.02. For the purposes of computing equalization adjustments for the 1997–98 fiscal year, the superintendent shall make the following computations to determine the special education services unit rates for instructional aides for pupils with exceptional needs for each district and each county office:

(a) To determine the special education services unit rate for instructional aides for pupils who are severely disabled for the district or county office, make the following computations:

(1) Add one to the support services quotient for severely disabled pupils for the annual apportionment for the 1995–96 fiscal year

computed pursuant to subdivision (c) of Section 56737 and subdivision (c) of Section 56828, if applicable.

(2) Multiply the sum computed in paragraph (1) by the instructional personnel services unit rate for instructional aides computed for the annual apportionment for the 1995–96 fiscal year pursuant to the applicable provisions of subdivision (d) of Section 56721, Sections 56722, 56723, and 56724, and subdivision (c) of Section 56828.

(b) To determine the unit rate for instructional aides for pupils with exceptional needs who are not severely disabled for the district or county office, make the following computations:

(1) Add one to the support services quotient for pupils with exceptional needs who are not severely disabled for the annual apportionment for the 1995–96 fiscal year computed pursuant to subdivision (b) of Section 56737 and subdivision (c) of Section 56828, if applicable.

(2) Multiply the sum computed in paragraph (1) by the instructional personnel services unit rate for instructional aides computed for the annual apportionment for the 1995–96 fiscal year pursuant to the applicable provisions of subdivision (d) of Section 56721, Sections 56722, 56723, and 56724, and subdivision (c) of Section 56828.

56835.03. For the 1997–98 fiscal year only, the superintendent shall make the following computations to determine the amounts of the equalization adjustment, if any, for the types of special education services units described in Sections 56835.01 and 56835.02 for each district and county office:

(a) To arrive at the statewide average unit rate for each type of special education services unit for the 1995–96 fiscal year, as computed for districts and county offices pursuant to Sections 56835.01 and 56835.02, perform the following computations:

(1) Make the following computations to determine the statewide average unit rates for districts for the following types of special education services units:

(A) To determine the statewide average unit rate for teachers of special day classes and centers for pupils who are severely disabled:

(i) Multiply the special education services unit rate for teachers of special day classes and centers for pupils who are severely disabled computed for each district pursuant to subdivision (a) of Section 56835.01 by the total number of instructional personnel services units reported for teachers of special day classes and centers for pupils who are severely disabled for the district for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each district computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for teachers of special day classes and centers for pupils who are severely

disabled reported for each district for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(B) To determine the statewide average unit rate for special education services to pupils who are not severely disabled:

(i) Multiply the average special education services unit rate for services to pupils who are not severely disabled computed for each district pursuant to subdivision (d) of Section 56835.01 by the total number of instructional personnel services units for pupils who are not severely disabled reported for the district for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each district computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for special education services to pupils who are not severely disabled reported for each district for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(C) To determine the statewide average unit rate for instructional aides for pupils who are severely disabled:

(i) Multiply the special education services unit rate for instructional aides for pupils who are severely disabled computed for each district pursuant to subdivision (a) of Section 56835.02 by the total number of instructional personnel services units for instructional aides for pupils who are severely disabled reported for the district for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each district computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for instructional aides for pupils who are severely disabled reported for each district for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(D) To determine the statewide average unit rate for instructional aides for pupils who are not severely disabled:

(i) Multiply the special education services unit rate for instructional aides for pupils who are not severely disabled computed for each district pursuant to subdivision (b) of Section 56835.02 by the total number of instructional personnel services units for instructional aides for pupils who not are severely disabled reported for the district for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each district computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for instructional aides for pupils who are not severely disabled reported for each district for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(2) Make the following computations to determine the statewide average special education services unit rates for county offices for the following types of special education services units:

(A) To determine the statewide average unit rate for teachers of special day classes and centers for pupils who are severely disabled:

(i) Multiply the special education services unit rate for teachers of special day classes and centers for pupils who are severely disabled computed for each county office pursuant to subdivision (a) of Section 56835.01 by the total number of instructional personnel services units reported for teachers of special day classes and centers for pupils who are severely disabled for the county office for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each county office computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for teachers of special day classes and centers for pupils who are severely disabled reported for each county office for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(B) To determine the statewide average unit rate for special education services to pupils who are not severely disabled:

(i) Multiply the average special education services unit rate for services to pupils who are not severely disabled computed for each county office pursuant to subdivision (d) of Section 56835.01 by the total number of instructional personnel services units reported for pupils who are not severely disabled reported for the county office for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each county office computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for special education services to pupils who are not severely disabled reported for each county office for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(C) To determine the statewide average unit rate for instructional aides for pupils who are severely disabled:

(i) Multiply the special education services unit rate for instructional aides for pupils who are severely disabled computed for each county office pursuant to subdivision (a) of Section 56835.02 by

the total number of instructional personnel services units for instructional aides for pupils who are severely disabled reported for the county office for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each county office computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for instructional aides for pupils who are severely disabled reported for each county office for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(D) To determine the statewide average unit rate for instructional aides for pupils who are not severely disabled:

(i) Multiply the special education services unit rate for instructional aides for pupils who are not severely disabled computed for each county office pursuant to subdivision (b) of Section 56835.02 by the total number of instructional personnel services units for instructional aides for pupils who are not severely disabled reported for the county office for the annual apportionment for the 1995–96 fiscal year.

(ii) Total the products for each county office computed pursuant to clause (i).

(iii) Total the number of instructional personnel services units for instructional aides for pupils who are not severely disabled reported for each county office for the annual apportionment for the 1995–96 fiscal year.

(iv) Divide the sum computed pursuant to clause (ii) by the sum computed pursuant to clause (iii).

(b) Make the following computations to determine the difference between the unit rate computed for each type of special education services unit for each district and county office and the statewide average unit rate computed in subdivision (a) for each type of special education services unit for districts and county offices:

(1) For each district, make the following computations:

(A) Subtract the special education services unit rate for teachers of special day classes and centers for pupils who are severely disabled computed for the district pursuant to subdivision (a) of Section 56835.01 from the statewide average unit rate for teachers of special day classes and centers for pupils who are severely disabled computed pursuant to subparagraph (A) of paragraph (1) of subdivision (a).

(B) Subtract the average special education services unit rate for services to pupils who are not severely disabled computed for the district pursuant to subdivision (d) of Section 56835.01 from the statewide average unit rate for services to pupils who are not severely

disabled computed pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(C) Subtract the special education services unit rate for instructional aides for pupils who are severely disabled computed for the district pursuant to subdivision (a) of Section 56835.02 from the statewide average unit rate for instructional aides for pupils who are severely disabled computed pursuant to subparagraph (C) of paragraph (1) of subdivision (a).

(D) Subtract the special education services unit rate for instructional aides for pupils who are not severely disabled computed for the district pursuant to subdivision (b) of Section 56835.02 from the statewide average unit rate for instructional aides for pupils who are not severely disabled computed pursuant to subparagraph (D) of paragraph (1) of subdivision (a).

(2) For each county office, make the following computations:

(A) Subtract the special education services unit rate for teachers of special day classes and centers for pupils who are severely disabled computed for the county office pursuant to subdivision (a) of Section 56835.01 from the statewide average unit rate for teachers of special day classes and centers for pupils who are severely disabled computed pursuant to subparagraph (A) of paragraph (2) of subdivision (a).

(B) Subtract the average special education services unit rate for services to pupils who are not severely disabled computed for the county office pursuant to subdivision (d) of Section 56835.01 from the statewide average unit rate for services to pupils who are not severely disabled computed pursuant to subparagraph (B) of paragraph (2) of subdivision (a).

(C) Subtract the special education services unit rate for instructional aides for pupils who are severely disabled computed for the county office pursuant to subdivision (a) of Section 56835.02 from the statewide average unit rate for instructional aides for pupils who are severely disabled computed pursuant to subparagraph (C) of paragraph (2) of subdivision (a).

(D) Subtract the special education services unit rate for instructional aides for pupils who are not severely disabled computed for the county office pursuant to subdivision (b) of Section 56835.02 from the statewide average unit rate for instructional aides for pupils who are not severely disabled computed pursuant to subparagraph (D) of paragraph (2) of subdivision (a).

(c) For each district and county office, multiply the difference in the unit rate determined for each type of special education services unit pursuant to subdivision (b) by the total number of units of that type of special education services unit that were reported for the district or county office at the annual apportionment for the 1995–96 fiscal year.

(d) For each district and county office, add the amounts computed pursuant to subdivision (c) for the district or county office that are zero or greater. Each district and county office having an amount that is zero or greater shall receive an equalization adjustment in the amount computed pursuant to subdivision (g).

(e) Total the amounts computed pursuant to subdivision (d) for each district and county office to determine the total statewide amount necessary to fully fund this section in the 1997–98 fiscal year.

(f) Divide the amount that is actually appropriated for the 1997–98 fiscal year for the purpose of equalization pursuant to this chapter by the amount computed pursuant to subdivision (e) to determine the percentage of the amount computed for each district and county office pursuant to subdivision (d) that will be funded pursuant to this section.

(g) For the 1997–98 fiscal year to determine the amount of the equalization adjustment to apportion to each eligible district and county office pursuant to this section, multiply the amount computed pursuant to subdivision (d) by the percentage computed pursuant to subdivision (f). The superintendent shall apportion an equalization adjustment for the 1997–98 fiscal year in the amount equal to that product to the district or county office.

56835.04. (a) The data certified by the State Department of Education to the Controller for the 1995–96 fiscal year with respect to apportionments computed under Chapter 7 (commencing with Section 56700) shall be used for the purposes of making computations based upon the 1995–96 fiscal year pursuant to this chapter.

(b) For purposes of this chapter, information reported ''for the 1995–96 annual apportionment'' means the data meeting the requirements of subdivision (a), as certified in March 1997.

56835.05. (a) The department shall continuously monitor and review all special education programs approved under this chapter to assure that all funds appropriated to districts and county offices under this chapter are expended for the purposes intended.

(b) Funds apportioned to districts and county offices pursuant to this chapter shall be expended exclusively for programs operated under this part.

56835.06. Regardless of when this act becomes effective, it is the intent of the Legislature to make the apportionments for the equalization adjustments computed pursuant to this chapter for the entire 1997–98 fiscal year.

56835.07. This chapter shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 65. Chapter 7.2 (commencing with Section 56836) is added to Part 30 of the Education Code, to read:

CHAPTER 7.2. SPECIAL EDUCATION FUNDING

Article 1. Administration

56836. Commencing with the 1998–99 fiscal year and for each fiscal year thereafter, apportionments to special education local plan areas for special education programs operated by, and services provided by, districts, county offices, and special education local plan areas shall be computed pursuant to this chapter.

56836.01. Commencing with the 1998–99 fiscal year and each fiscal year thereafter, the administrator of each special education local plan area, in accordance with the local plan approved by the superintendent, shall be responsible for the following:

(a) The fiscal administration of the annual budget allocation plan for special education programs of school districts and county superintendents of schools composing the special education local plan area.

(b) The allocation of state and federal funds allocated to the special education local plan area for the provision of special education and related services by those entities.

(c) The reporting and accounting requirements prescribed by this part.

56836.02. (a) The superintendent shall apportion funds from Section A of the State School Fund to districts and county offices of education in accordance with the allocation plan adopted pursuant to subdivision (f) of Section 56205, unless the local plan approved by the superintendent specified that they be apportioned to the administrative unit of the special education local plan area. If the local plan specifies that the funds be apportioned to the administrative unit of the special education local plan area, the administrator of the special education local plan area shall, upon receipt, distribute the funds in accordance with the allocation plan adopted pursuant to subdivision (f) of Section 56205. Unless the local plan approved by the superintendent specifies an alternative method of distributing state and local funds among the participating local educational agencies, the funds shall be distributed by the special education local plan area as allocated instructional personnel service units and operated as computed in Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998, or Chapter 7.1 (commencing with Section 56835).

(b) The superintendent shall apportion funds for regionalized services and program specialists from Section A of the State School Fund to the administrative unit of each special education local plan area. Upon receipt, the administrator of a special education local plan area shall direct the administrative unit of the special education local plan area to distribute the funds in accordance with the allocation plan adopted pursuant to subdivision (f) of Section 56205.

56836.03. (a) On or after January 1, 1998, each special education local plan area shall submit a revised local plan. Each special education local plan area shall submit its revised local plan not later than the time it is required to submit its local plan pursuant to subdivision (b) of Section 56100 and the revised local plan shall meet the requirements of Chapter 3 (commencing with Section 56200).

(b) Until the superintendent has approved the revised local plan and the special education local plan area begins to operate under the revised local plan, each special education local plan area shall continue to operate under the programmatic, reporting, and accounting requirements prescribed by the State Department of Education for the purposes of Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998. The department shall develop transition guidelines, and, as necessary, transition forms, to facilitate a transition from the reporting and accounting methods required for Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998, and related provisions of this part, to the reporting and accounting methods required for this chapter. Under no circumstances shall the transition guidelines exceed the requirements of the provisions described in paragraphs (1) and (2). The transition guidelines shall, at a minimum, do the following:

(1) Describe the method for accounting for the instructional service personnel units and caseloads, as required by Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998.

(2) Describe the accounting that is required to be made, if any, for the purposes of Sections 56030, 56140, 56156.5, 56361.5, 56362, 56363.3, 56365.5, 56366.2, 56366.3, 56370, 56441.5, 56441.7, and 56447.

(c) Commencing with the 1997–98 fiscal year, through and including the fiscal year in which equalization among special education local plan areas has been achieved, the board shall not approve any proposal to divide a special education local plan area into two or more units, unless the division has no net impact on state costs for special education; provided, however, that the board may approve a proposal that was initially submitted to the department prior to January 1, 1997.

56836.04. (a) The superintendent shall continuously monitor and review all special education programs approved under this part to assure that all funds appropriated to special education local plan areas under this part are expended for the purposes intended.

(b) Funds apportioned to special education local plan areas pursuant to this chapter shall be expended exclusively for programs operated under this part.

56836.05. Apportionments made under this part shall be made by the superintendent as early as practicable in the fiscal year. Upon order of the superintendent, the Controller shall draw warrants upon

the money appropriated, in favor of the eligible special education local plan areas.

Article 2. Computation of Apportionments

56836.06. For the purposes of this article, the following terms or phrases shall have the following meanings, unless the context clearly requires otherwise:

(a) ''Average daily attendance reported for the special education local plan area'' means the total of the following:

(1) The total number of units of average daily attendance reported for the second principal apportionment pursuant to Section 41601 for all pupils enrolled in the district or districts that are a part of the special education local plan area.

(2) The total number of units of average daily attendance reported pursuant to Section 41601 for all pupils enrolled in schools operated by the county office or offices that compose the special education local plan area, or for those county offices that are a part of more than one special education local plan area, that portion of the average daily attendance of pupils enrolled in the schools operated by the county office that are under the jurisdiction of the special education local plan area.

(b) ''Special education local plan area'' includes the school district or districts and county office or offices of education composing the special education local plan area.

(c) ''The fiscal year in which equalization among special education local plan areas has been achieved'' means the first fiscal year in which each special education local plan area is funded at or above the statewide target amount per unit of average daily attendance, as computed pursuant to Section 56836.11.

56836.08. (a) For the 1998–99 fiscal year, the superintendent shall make the following computations to determine the amount of funding for each special education local plan area:

(1) Add the amount of funding per unit of average daily attendance computed for the special education local plan area pursuant to paragraph (1) of subdivision (a) of Section 56836.10 to the inflation adjustment computed pursuant to subdivision (d) for the 1998–99 fiscal year.

(2) Multiply the amount computed in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the 1997–98 fiscal year.

(3) Add the actual amount of the equalization adjustment, if any, computed for the 1998–99 fiscal year pursuant to Section 56836.14 to the amount computed in paragraph (2).

(4) Add or subtract, as appropriate, the adjustment for growth computed pursuant to Section 56836.15 from the amount computed in paragraph (3).

(5) Add the special disabilities adjustment computed pursuant to Article 2.5 (commencing with Section 56836.155).

(b) For the 1999–2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of funding for each special education local plan area for the fiscal year in which the computation is made:

(1) Add the amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year pursuant to Section 56836.10 to the inflation adjustment computed pursuant to subdivision (d) for the fiscal year in which the computation is made.

(2) Multiply the amount computed in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the prior fiscal year.

(3) Add the actual amount of the equalization adjustment, if any, computed for the special education local plan area for the fiscal year in which the computation is made pursuant to Section 56836.14 to the amount computed in paragraph (2).

(4) Add or subtract, as appropriate, the adjustment for growth or decline in enrollment, if any, computed for the special education local plan area for the fiscal year in which the computation is made pursuant to Section 56836.15 from the amount computed in paragraph (3).

(5) Add the special disabilities adjustment computed pursuant to Article 2.5 (commencing with Section 56836.155) and increased pursuant to subparagraph (D) if the adjusted funding per unit of average daily attendance of the special education local plan area is below the statewide target amount per unit of average daily attendance as determined pursuant to subparagraphs (A) to (C), inclusive, as follows:

(A) Calculate the adjusted amount of funding per unit of average daily attendance for each special education local plan area, measured in dollars and cents, using the methodology contained in subdivision (a) of Section 56836.10, except that the amount used from the computation in Section 56836.09 shall be reduced by the amount computed pursuant to Article 2.5 (commencing with Section 56836.155).

(B) Determine the statewide target amount per unit of average daily attendance, measured in dollars and cents and rounded up to the nearest 50 cents ($0.50), as computed pursuant to subdivision (a) of Section 56836.11.

(C) The adjusted funding per unit of average daily attendance is below the statewide target amount if the amount calculated pursuant to subparagraph (A), subtracted from the amount calculated pursuant to subparagraph (B), yields a positive value.

(D) If the computation made pursuant to subparagraph (C) yields a positive value, increase the special disabilities adjustment in

the 1999–2000 fiscal year and each year thereafter by the percent increase in growth in average daily attendance reported by the special education local plan area and the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the applicable fiscal year.

(E) Inclusion of the special disabilities adjustment in the total funding of a special education local plan area shall neither change nor be included in the computation of equalization funding pursuant to Section 56836.12 or the computations made after this computation that precede the computation in Section 56836.12.

(c) For the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of General Fund moneys that the special education local plan area may claim:

(1) Add the total of the amount of property taxes allocated to the special education local plan area pursuant to Section 2572 for the fiscal year in which the computation is made to the amount of federal funds allocated to the special education local plan area pursuant to Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) for the fiscal year in which the computation is made.

(2) Add the amount of funding computed for the special education local plan area pursuant to subdivision (a) for the 1998–99 fiscal year, and commencing with the 1999–2000 fiscal year and each fiscal year thereafter, the amount computed for the fiscal year in which the computations were made pursuant to subdivision (b) to the amount of funding computed for the special education local plan area pursuant to Article 3 (commencing with Section 56836.16).

(3) Subtract the sum computed in paragraph (1) from the sum computed in paragraph (2).

(d) For the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the inflation adjustment for the fiscal year in which the computation is made:

(1) For the 1998–99 fiscal year, multiply the statewide target amount per unit of average daily attendance for special education local plan areas for the 1997–98 fiscal year computed pursuant to paragraph (3) of Section 56836.11 by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the 1998–99 fiscal year.

(2) For the 1999–2000 fiscal year and each fiscal year thereafter, multiply the statewide target amount per unit of average daily attendance for special education local plan areas for the prior fiscal year computed pursuant to Section 56836.11 by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

56836.09. For the purpose of computing the amount to apportion to each special education local plan area for the 1998–99 fiscal year,

the superintendent shall compute the total amount of funding received by the special education local plan area for the 1997–98 fiscal year as follows:

(a) Add the following amounts that were received for the 1997–98 fiscal year:

(1) The total amount of federal funds available to the state pursuant to Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) allocated to the special education local plan area for the purposes of special education for individuals with exceptional needs enrolled in kindergarten and grades 1 to 12, inclusive.

(2) The total amount of federal funds available to the state pursuant to Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) allocated to the special education local plan area for the purposes of providing preschool and related services to individuals with exceptional needs who are ages 3 to 5 years, inclusive, pursuant to Chapter 4.45 (commencing with Section 56440).

(3) The total amount of property taxes allocated to the special education local plan area pursuant to Section 2572.

(4) The total amount of General Fund moneys allocated to the special education local plan area pursuant to Chapter 7 (commencing with Section 56700) plus the total amount received for equalization pursuant to Chapter 7.1 (commencing with Section 56835), as those chapters existed on December 31, 1998.

(5) The total amount of General Fund moneys and federal funds available to the state pursuant to Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) allocated to another special education local plan area for any pupils with exceptional needs who are served by the other special education local plan area but who are residents of the special education local plan area for which this computation is being made.

(b) Add the following amounts received in the 1997–98 fiscal year:

(1) The total amount determined for the special education local plan area for the purpose of providing nonpublic, nonsectarian school services to licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities for the 1997–98 fiscal year pursuant to Article 3 (commencing with Section 56836.16).

(2) The total amount of General Fund moneys and federal funds available to the state pursuant to Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) allocated for any pupils with exceptional needs who are served by the special education local plan area but who do not reside within the boundaries of the special education local plan area.

(3) The total amount of General Fund moneys allocated to the special education local plan area to perform the regionalized

operations and services functions listed in Article 6 (commencing with Section 56836.23) and to provide the direct instructional support of program specialists in accordance with Section 56368.

(4) The total amount of General Fund moneys allocated to the special education local plan area for individuals with exceptional needs younger than three years of age pursuant to Chapter 7 (commencing with Section 56700), as that chapter existed on December 31, 1998.

(5) The total amount of General Fund moneys allocated to local education agencies within the special education local plan area pursuant to Section 56771, as that section existed on December 31, 1998, for specialized books, materials, and equipment for pupils with low-incidence disabilities.

(c) Subtract the sum computed in subdivision (b) from the sum computed in subdivision (a).

56836.10. (a) The superintendent shall make the following computations to determine the amount of funding per unit of average daily attendance for each special education local plan area for the 1998–99 fiscal year:

(1) Divide the amount of funding for the special education local plan area computed for the 1997–98 fiscal year pursuant to Section 56836.09 by the number of units of average daily attendance reported for the special education local plan area for the 1997–98 fiscal year.

(2) Add the amount computed in paragraph (1) to the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the 1998–99 fiscal year.

(b) Commencing with the 1999–2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of funding per unit of average daily attendance for each special education local plan area for the fiscal year in which the computation is made:

(1) For the 1999–2000 fiscal year, divide the amount of funding for the special education local plan area computed for the 1998–99 fiscal year pursuant to subdivision (a) of Section 56836.08 by the number of units of average daily attendance reported for the special education local plan area for the 1998–99 fiscal year.

(2) For the 2000–01 fiscal year, and each fiscal year thereafter, divide the amount of funding for the special education local plan area computed for the prior fiscal year pursuant to subdivision (b) of Section 56836.08 by the number of units of average daily attendance reported for the special education local plan area for the prior fiscal year.

56836.11. (a) For the purpose of computing the equalization adjustment for special education local plan areas for the 1998–99 fiscal year, the superintendent shall make the following computations to determine the statewide target amount per unit of average daily attendance for special education local plan areas:

(1) Total the amount of funding computed for each special education local plan area pursuant to Section 56836.09 for the 1997–98 fiscal year.

(2) Total the number of units of average daily attendance reported for each special education local plan area for the 1997–98 fiscal year.

(3) Divide the sum computed in paragraph (1) by the sum computed in paragraph (2) to determine the statewide target amount for the 1997–98 fiscal year.

(4) Add the amount computed in paragraph (3) to the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the 1998–99 fiscal year to determine the statewide target amount for the 1998–99 fiscal year.

(b) Commencing with the 1999–2000 fiscal year and each fiscal year thereafter, to determine the statewide target amount per unit of average daily attendance for special education local plan areas, the superintendent shall multiply the statewide target amount per unit of average daily attendance computed for the prior fiscal year pursuant to this section by one plus the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

56836.12. (a) For the purpose of computing the equalization adjustment for special education local plan areas for the 1998–99 fiscal year, the superintendent shall make the following computations to determine the amount that each special education local plan area that has an amount per unit of average daily attendance that is below the statewide target amount per unit of average daily attendance may request as an equalization adjustment:

(1) Subtract the amount per unit of average daily attendance computed for the special education local plan area pursuant to subdivision (a) of Section 56836.10 from the statewide target amount per unit of average daily attendance determined pursuant to subdivision (a) of Section 56836.11.

(2) If the remainder computed in paragraph (1) is greater than zero, multiply that remainder by the number of units of average daily attendance reported for the special education local plan area for the 1997–98 fiscal year.

(b) Commencing with the 1999–2000 fiscal year, through and including the fiscal year in which equalization among the special education local plan areas has been achieved, the superintendent shall make the following computations to determine the amount that each special education local plan area that has an amount per unit of average daily attendance that is below the statewide target amount per unit of average daily attendance may request as an equalization adjustment:

(1) Add to the amount per unit of average daily attendance computed for the special education local plan area pursuant to

subdivision (b) of Section 56836.10 for the fiscal year in which the computation is made the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the fiscal year in which the computation is made.

(2) Subtract the amount computed pursuant to paragraph (1) from the statewide target amount per unit of average daily attendance computed pursuant to subdivision (b) of Section 56936.11 for the fiscal year in which the computation is made.

(3) If the remainder computed in paragraph (2) is greater than zero, multiply that remainder by the number of units of average daily attendance reported for the special education local plan area for the prior fiscal year.

56836.13. Commencing with the 1998–99 fiscal year, through and including the fiscal year in which equalization among the special education local plan areas has been achieved, the superintendent shall make the following computations to determine the amount available for making equalization adjustments for the fiscal year in which the computation is made:

(a) Determine the amounts of funds equal to the increase in federal funds, if any, appropriated in the annual Budget Act for the purposes of equalizing funding for special education local plan areas pursuant to this chapter. The increase shall be computed by subtracting the amount of federal funds available to the state pursuant to Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) for the fiscal year in which the computation is made from the amount available to the state from those funds for the prior fiscal year.

(b) Subtract the amount computed in subdivision (a) from the amount of funds provided for increased costs to the state in administering the special education program.

(c) Add to the amount in subdivision (b), the amount of additional funds, if any, appropriated in the fiscal year for which the computation is made in the annual Budget Act for the purposes of equalizing funding for special education local plan areas pursuant to this chapter.

56836.14. Commencing with the 1998–99 fiscal year, through and including the fiscal year in which equalization among the special education local plan areas has been achieved, the superintendent shall make the following computations to determine the actual amount of the equalization adjustment for each special education local plan area that has an amount per unit of average daily attendance that is below the statewide target amount per unit of average daily attendance:

(a) Add the amount determined for each special education local plan area pursuant to Section 56836.12 for the fiscal year in which the computation is made to determine the total statewide aggregate amount necessary to fund each special education local plan area at

the statewide target amount per unit of average daily attendance for special education local plan areas.

(b) Divide the amount computed in subdivision (a) by the amount computed pursuant to Section 56836.13 to determine the percentage of the total amount of funds necessary to fund each special education local plan area at the statewide target amount per unit of average daily attendance for special education local plan areas that are actually available for that purpose.

(c) To determine the amount to allocate to the special education local plan area for a special education local plan area equalization adjustment, multiply the amount computed for the special education local plan area pursuant to Section 56836.12, if any, by the percentage determined in subdivision (b).

56836.15. (a) In order to mitigate the effects of any declining enrollment, commencing in the 1998–99 fiscal year, and each fiscal year thereafter, the superintendent shall calculate allocations to special education local plan areas based on the average daily attendance reported for the special education local plan area for the fiscal year in which the computation is made or the prior fiscal year, whichever is greater. However, the prior fiscal year average daily attendance reported for the special education local plan area shall be adjusted for any loss or gain of average daily attendance reported for the special education local plan area due to a reorganization or transfer of territory in the special education local plan area.

(b) If in the fiscal year for which the computation is made, the number of units of average daily attendance upon which allocations to the special education local plan area are based is greater than the number of units of average daily attendance upon which allocations to the special education local plan area were based in the prior fiscal year, the special education local plan area shall be allocated a growth adjustment equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2).

(1) The statewide target amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

(c) If in the fiscal year for which the computation is made, the number of units of average daily attendance upon which allocations to the special education local plan area are based is less than the number of units of average daily attendance upon which allocations to the special education local plan area were based in the prior fiscal year, the special education local plan area shall receive a funding

reduction equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2):

(1) The amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

Article 2.5. Computation of Adjustment

56836.155. (a) For the 1998–99 fiscal year, prior to calculating the apportionment in Article 2 (commencing with Section 56836.06), the superintendent shall perform the following calculation:

(1) Determine for each special education local plan area the number of pupils with exceptional needs with the special disabilities specified in subdivision (b) for pupils residing in the special education local plan area based on the April 1996 pupil count.

(2) Determine for each special education local plan area the total reported incidence of all disabilities for pupils of age 3 to 22 years, inclusive, excluding pupils in placements as described in paragraph (1) of subdivision (b).

(3) Determine the statewide total of reported incidence of special disabilities determined pursuant to paragraph (1).

(4) Determine the statewide total reported incidence of all disabilities determined pursuant to paragraph (2).

(b) For the purposes of paragraph (1) of subdivision (a), the superintendent shall use the count of all pupils with exceptional needs of age 3 to 22 years, inclusive, exclusive of placements in paragraph (1) and inclusive of the disabilities in paragraph (2).

(1) Pupils in state operated programs, nonpublic schools, and out-of-home placements.

(2) Pupils with low-incidence disabilities of autistic, hard of hearing, deaf, visually impaired, deaf, blind, and severe orthopedic impairment, except that, for the purposes of subdivision (a), pupils in the disability category of orthopedic impairment shall be used in the absence of special education local plan area counts of only severe orthopedic impairment. To the count of low-incidence disabilities, also add pupils in the disability category of traumatic brain injury.

(c) Calculate, for each special education local plan area, the reported incidence of special disabilities as a percentage of its total reported incidence of all disabilities by dividing the amount in paragraph (1) of subdivision (a) by the amount in paragraph (2) of

subdivision (a). The percentage amount is to be expressed to the accuracy of one hundredth of a percentage point.

(d) Calculate the statewide total of reported incidence of special disabilities as a percent of the statewide total incidence of all disabilities by dividing the amount in paragraph (3) of subdivision (a) by the amount in paragraph (4) of subdivision (a). The percent amount is to be expressed to the accuracy of one hundredth of a percentage point.

(e) For each special education local plan area whose percentage of special disabilities calculated pursuant to subdivision (c) is greater than the statewide percent of special disabilities pursuant to subdivision (d), determine the number of excess pupils in the special education local plan area as follows:

(1) Multiply the statewide percent of special disabilities calculated in subdivision (d) by the count by the special education local plan area of all disabilities determined pursuant to paragraph (2) of subdivision (a).

(2) Subtract the amount calculated in paragraph (1) from the count by the special education local plan area of special disabilities determined pursuant to paragraph (1) of subdivision (a). Round this number to the nearest whole number.

(f) Multiply the number of excess pupils calculated in subdivision (e) by one thousand dollars ($1,000). This is the amount that each special education local plan area having excess pupils is to receive as a special disabilities adjustment in the 1998–99 fiscal year and that is to be included in the total amount of funding received by the special education local plan area pursuant to Section 56836.08.

Article 3. Licensed Children's Institutions

56836.16. (a) For the 1980–81 fiscal year and each fiscal year thereafter, the superintendent shall apportion to each district and county superintendent providing programs pursuant to Article 5 (commencing with Section 56155) of Chapter 2 an amount equal to the difference, if any, between (1) the costs of master contracts with nonpublic, nonsectarian schools and agencies to provide special education instruction, designated instruction and services, or both, to pupils in licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities funded under this chapter, and (2) the state and federal income received by the district or county superintendent for providing these programs. The sum of the excess cost, plus any state or federal income for these programs, shall not exceed the cost of master contracts with nonpublic, nonsectarian schools and agencies to provide special education and designated instruction and services for these pupils, as determined by the superintendent.

(b) The cost of master contracts with nonpublic, nonsectarian schools and agencies that a district or county office of education reports under this section shall not include any of the following costs that a district, county office, or special education local plan area may incur:

(1) Administrative or indirect costs for the local education agency.

(2) Direct support costs for the local education agency.

(3) Transportation costs provided either directly, or through a nonpublic, nonsectarian school or agency master contract or individual services agreement for use of services or equipment owned, leased, or contracted, by a district, special education local plan area, or county office for any pupils enrolled in nonpublic, nonsectarian schools or agencies, unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency pursuant to subdivisions (a) and (b) of Section 56366.

(4) Costs for services routinely provided by the district or county office including the following, unless the board grants a waiver under 56101:

(A) School psychologist services other than those described in Sections 56324 and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(B) School nurse services other than those described in Sections 49423.5, 56324, and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(C) Language, speech, and hearing services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(D) Modified, specialized, or adapted physical education services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(E) Other services not specified by a pupil's individualized education program or funded by the state on a caseload basis.

(5) Costs for nonspecial education programs or settings, including those provided for individuals with exceptional needs between the ages of birth and five years, inclusive, pursuant to Sections 56431 and 56441.8.

(6) Costs for nonpublic, nonsectarian school or agency placements outside of the state unless the board has granted a waiver pursuant to subdivisions (e) and (f) of Section 56365.

(7) Costs for related nonpublic, nonsectarian school pupil assessments by a school psychologist or school nurse pursuant to Sections 56320 and 56324.

(8) Costs for services that the nonpublic, nonsectarian school or agency is not certified to provide.

(9) Costs for services provided by personnel who do not meet the requirements specified in subdivision (*l*) of Section 56366.1.

(10) Costs for services provided by public school employees.

(d) A nonpublic, nonsectarian school or agency shall not claim and is not entitled to receive reimbursement for attendance unless the site where the pupil is receiving special education or designated instruction and services is certified.

56836.17. (a) The superintendent may reimburse each district and county office of education providing programs pursuant to Article 5 (commencing with Section 56155) of Chapter 2 for assessment and identification costs for pupils in licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities who are placed in state-certified nonpublic, nonsectarian schools.

(b) Actual costs under this section shall not include either administrative or indirect costs, or any proration of support costs.

(c) The total amount reimbursed statewide under this section shall not exceed the amount appropriated for these purposes in any fiscal year. If the superintendent determines that this amount is insufficient to reimburse all claims, the superintendent shall prorate the deficiency among all districts or county offices submitting claims.

56836.18. (a) The superintendent shall establish and maintain an emergency fund for the purpose of providing relief to special education local plan areas when a licensed children's institution, foster family home, residential medical facility, or other similar facility serving individuals with exceptional needs opens or expands in a special education local plan area during the course of the school year which impacts the special education local plan area, or when a pupil is placed in a facility for which no public or state-certified nonpublic program exists within the special education local plan area in which the pupil's individualized education program can be implemented during the course of the school year and impacts the educational program.

(b) The special education local plan area in which the impaction occurs shall be responsible for submitting a written request to the superintendent for emergency funding. The written request shall contain, at a minimum, all of the following:

(1) Specific information on the new or expanded licensed children's institution, foster family home, residential medical facility, or other similar facility described in subdivision (a), including information on the new unserved or underserved pupils residing in the facility, or specific information relating to the new unserved or underserved pupils residing in those facilities.

(2) The identification of the steps undertaken demonstrating that no public special education program exists within the special education local plan area capable of programmatically meeting the needs of the identified pupils.

(3) A plan from the special education local plan area describing the services to be provided.

(c) The superintendent shall approve, modify, or disapprove the written request for emergency funding within 30 days of the receipt of the written request and shall notify the special education local plan area administrator, in writing, of the final decision.

(d) It is the intent of the Legislature that appropriations necessary to fund these emergency situations shall be included in the Budget Act for each fiscal year.

Article 4. Nonpublic, Nonsectarian School Contracts

56836.20. (a) The cost of master contracts with nonpublic, nonsectarian schools and agencies that a special education local plan area enters into shall not include any of the following costs that a special education local plan area may incur:

(1) Administrative or indirect costs of the special education local plan area.

(2) Direct support costs for the special education local plan area.

(3) Transportation costs provided either directly, or through a nonpublic, nonsectarian school or agency contract for use of services or equipment owned, leased, or contracted, by a special education local plan area for any pupils enrolled in nonpublic, nonsectarian schools or agencies, unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency pursuant to subdivisions (a) and (b) of Section 56366.

(4) Costs for services routinely provided by the special education local plan area including the following, unless the board grants a waiver under Section 56101:

(A) School psychologist services other than those described in Sections 56324 and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(B) School nurse services other than those described in Sections 49423.5, 56324, and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(C) Language, speech, and hearing services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(D) Modified, specialized, or adapted physical education services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(E) Other services not specified by a pupil's individualized education program or funded by the state on a caseload basis.

(5) Costs for nonspecial education programs or settings, including those provided for individuals with exceptional needs between the ages of birth and five years, inclusive, pursuant to Sections 56431 and 56441.8.

(6) Costs for nonpublic, nonsectarian school or agency placements outside of the state unless the board has granted a waiver pursuant to subdivisions (e) and (f) of Section 56365.

(7) Costs for related nonpublic, nonsectarian school pupil assessments by a school psychologist or school nurse pursuant to Sections 56320 and 56324.

(8) Costs for services that the nonpublic, nonsectarian school or agency is not certified to provide.

(9) Costs for services provided by personnel who do not meet the requirements specified in subdivision (*l*) of Section 56366.1.

(10) Costs for services provided by public school employees.

(b) A nonpublic, nonsectarian school or agency shall not claim and is not entitled to receive reimbursement for attendance unless the site where the pupil is receiving special education or designated instruction and services is certified.

56836.21. (a) The State Department of Education shall administer an extraordinary cost pool to protect special education local plan areas from the extraordinary costs associated with single placements in nonpublic, nonsectarian schools. Funds shall be appropriated for this purpose in the annual Budget Act. Special education local plan areas shall be eligible for reimbursement from this pool in accordance with this section.

(b) The threshold amount for claims under this section shall be the lesser of the following:

(1) One percent of the allocation calculated pursuant to Section 56836.08 for the special education local plan area for the current fiscal year for any special education local plan area that meets the criteria in subdivision (a) of Section 56212.

(2) The State Department of Education shall calculate the average cost of a nonpublic, nonsectarian school placement in the 1997–98 fiscal year. This amount shall be multiplied by 2.5, then by one plus the inflation factor computed pursuant to Section 42238.1, to obtain the alternative threshold amount for claims in the 1998–99 fiscal year. In subsequent fiscal years, the alternative threshold amount shall be the alternative threshold amount for the prior fiscal year multiplied by one plus the inflation factor computed pursuant to Section 42238.1.

(c) Special education local plan areas shall be eligible to submit claims for costs of any nonpublic, nonsectarian school placements exceeding the threshold amount on forms developed by the State Department of Education. All claims for a fiscal year shall be submitted by November 30 following the close of the fiscal year. If the total amount claimed by special education local plan areas exceeds the amount appropriated, the claims shall be prorated.

Article 5. Low Incidence Funding

56836.22. (a) Commencing with the 1985–86 fiscal year, and for each fiscal year thereafter, funds to support specialized books, materials, and equipment as required under the individualized education program for each pupil with low incidence disabilities, as defined in Section 56026.5, shall be determined by dividing the total number of pupils with low incidence disabilities in the state, as reported on December 1 of the prior fiscal year, into the annual appropriation provided for this purpose in the Budget Act.

(b) The per-pupil entitlement determined pursuant to subdivision (a) shall be multiplied by the number of pupils with low incidence disabilities in each special education local plan area to determine the total funds available for each local plan.

(c) The superintendent shall apportion the amount determined pursuant to subdivision (b) to the special education local plan area for purposes of purchasing and coordinating the use of specialized books, materials, and equipment.

(d) As a condition of receiving these funds, the special education local plan area shall ensure that the appropriate books, materials, and equipment are purchased, that the use of the equipment is coordinated as necessary, and that the books, materials, and equipment are reassigned to local educational agencies within the special education local plan area once the agency that originally received the books, materials, and equipment no longer needs them.

(e) It is the intent of the Legislature that special education local plan areas share unused specialized books, materials, and equipment with neighboring special education local plan areas.

Article 6. Program Specialists and Administration of Regionalized Operations and Services

56836.23. Funds for regionalized operations and services and the direct instructional support of program specialists shall be apportioned to the special education local plan areas. As a condition to receiving those funds, the special education local plan area shall assure that all functions listed below are performed in accordance with the description set forth in its local plan adopted pursuant to subdivision (c) of Section 56205:

(a) Coordination of the special education local plan area and the implementation of the local plan.

(b) Coordinated system of identification and assessment.

(c) Coordinated system of procedural safeguards.

(d) Coordinated system of staff development and parent education.

(e) Coordinated system of curriculum development and alignment with the core curriculum.

(f) Coordinated system of internal program review, evaluation of the effectiveness of the local plan, and implementation of a local plan accountability mechanism.

(g) Coordinated system of data collection and management.

(h) Coordination of interagency agreements.

(i) Coordination of services to medical facilities.

(j) Coordination of services to licensed children's institutions and foster family homes.

(k) Preparation and transmission of required special education local plan area reports.

(*l*) Fiscal and logistical support of the community advisory committee.

(m) Coordination of transportation services for individuals with exceptional needs.

(n) Coordination of career and vocational education and transition services.

(o) Assurance of full educational opportunity.

(p) Fiscal administration and the allocation of state and federal funds pursuant to Section 56836.01.

(q) Direct instructional program support that may be provided by program specialists in accordance with Section 56368.

56836.24. Commencing with the 1998–99 fiscal year and each year thereafter, the superintendent shall make the following computations to determine the amount of funding for the purposes specified in Section 56836.23 to apportion to each special education local plan area for the fiscal year in which the computation is made:

(a) For the 1998–99 fiscal year the superintendent shall make the following computations:

(1) Multiply the total amount of state General Fund money allocated to the special education local plan areas in the 1997–98 fiscal year, for the purposes of Article 9 (commencing with Section 56780) of Chapter 7, as that chapter existed on December 31, 1998, by one plus the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the 1998–99 fiscal year.

(2) Divide the amount calculated in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the 1997–98 fiscal year.

(3) To determine the amount to be allocated to each special education local plan area in the 1998–99 fiscal year, the superintendent shall multiply the amount computed in paragraph (2) by the number of units of average daily attendance reported for the special education local plan area for the 1998–99 fiscal year, except that a special education local plan area designated as a necessary small special education local plan area in accordance with Section 56212 and reporting fewer than 15,000 units of average daily attendance for the 1998–99 fiscal year shall be deemed to have 15,000

units of average daily attendance, and no special education local plan area shall receive less than it received in the 1997–98 fiscal year.

(b) For the 1999–2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following calculations:

(1) Multiply the amount determined in paragraph (2) of subdivision (a) by one plus the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the current fiscal year.

(2) Multiply the amount determined in paragraph (1) by the number of units of average daily attendance reported for the special education local plan area for the current fiscal year, except that a special education local plan area designated as a necessary small special education local plan area in accordance with Section 56212 and reporting fewer than 15,000 units of average daily attendance for the current fiscal year shall be deemed to have 15,000 units of average daily attendance.

56836.25. Funds received pursuant to this article shall be expended for the purposes specified in Section 56836.23.

SEC. 66. (a) The Legislature finds and declares as follows:

(1) The individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), as amended by the Individuals with Disabilities Education Act Amendments of 1997 (105 P.L. 17), effective in part upon enactment and in part as further specified in the act, provides as follows:

''Sec. 612. STATE ELIGIBILITY.

(a) In general.--A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions:

[Language Omitted]

(5) LEAST RESTRICTIVE ENVIRONMENT-

(A) IN GENERAL-To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(B) ADDITIONAL REQUIREMENT-

(i) IN GENERAL-If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of subparagraph (A).

(ii) ASSURANCE-If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that it will revise the funding

mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

[Language Omitted]''

(16) PERFORMANCE GOALS AND INDICATORS—The State—

(A) has established goals for the performance of children with disabilities in the State that—

(i) will promote the purposes of this Act, as stated in section 601(d); and

(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;

(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and

(D) based on its assessment of that progress, will revise its State improvement plan under subpart 1 of part D as may be needed to improve its performance, if the State receives assistance under that subpart.

(17) PARTICIPATION IN ASSESSMENTS—

(A) IN GENERAL-Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local education agency—

(i) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and

(ii) develops and, beginning not later than July 1, 2000, conducts those alternate assessments.

(B) REPORTS-The State educational agency makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(i) The number of children with disabilities participating in regular assessments.

(ii) The number of those children participating in alternate assessments.

(iii) (I) The performance of those children on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

(II) Data relating to the performance of children described under subclause (I) shall be disaggregated—

(aa) for assessments conducted after July 1, 1998; and

(bb) for assessments conducted before July 1, 1998, if the State is required to disaggregate such data prior to July 1, 1998.

[Language Omitted]''

''Sec. 616. WITHHOLDING AND JUDICIAL REVIEW

(a) WITHHOLDING OF PAYMENTS-

(1) IN GENERAL-Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or State agency affected by any failure described in subparagraph (B)), finds—

(A) that there has been a failure by the State to comply substantially with any provision of this part; or

(B) that there is a failure to comply with any condition of a local educational agency's or State agency's eligibility under this part, including the terms of any agreement to achieve compliance with this part within the timelines specified in the agreement; the Secretary shall, after notifying the State educational agency, withhold, in whole or in part, any further payments to the State under this part, or refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(2) NATURE OF WITHHOLDING-If the Secretary withholds further payments under paragraph (1), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there if no longer any failure to comply with the provisions of this part, as specified in subparagraph (A) or (B) of paragraph (1), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (1) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.''

[Language Omitted]''

(2) State and local education agencies are required to abide by federal laws that are in effect.

(b) This section shall remain in effect only if the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), as amended by the Individuals with Disabilities Education Act Amendments of 1997 (105 P.L. 17), is not further amended or repealed, and this section is repealed upon any further amendment or repeal of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et

seq.), as amended by the Individuals with Disabilities Education Act Amendments of 1997 (105 P.L. 17).

(c) It is the intent of the Legislature that this section be reenacted to incorporate any changes to the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), as amended by the Individuals with Disabilities Education Act Amendments of 1997 (105 P.L. 17), as soon as possible after the amendment of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), as amended by the Individuals with Disabilities Education Act Amendments of 1997 (105 P.L. 17).

SEC. 67. (a) The Office of the Legislative Analyst, in conjunction with the Department of Finance and the State Department of Education, shall conduct a study to gather, analyze, and report on data that would indicate the extent to which the incidence of disabilities, that are medically defined or severe and significantly above-average in cost, or both, are evenly or unevenly distributed among the population of special education local plan areas. The Office of the Legislative Analyst shall contract for both the development of the request for proposal for the study and for the study itself. The Office of the Legislative Analyst, the Department of Finance, and the State Department of Education, shall submit a report of the contractor's findings and recommendations no later than June 1, 1998, to the Governor and the appropriate policy and fiscal committees of the California State Senate and the California State Assembly. The report shall include, if feasible and appropriate, a method to adjust the funding formula contained in Chapter 7.2 (commencing with Section 56836) of Part 30 of the Education Code in order to recognize the distribution of disabilities that are medically defined or severe and significantly above-average in cost, or both, among the special education local plan areas. The report shall use the definition of severe orthopedic impairment developed by the State Department of Education pursuant to Section 70.

(b) There is hereby appropriated to the State Department of Education for transfer to the Office of the Legislative Analyst for the 1997–98 fiscal year the sum of two hundred thousand dollars ($200,000) from supplemental federal special education grant funds for Part B of the Individuals with Disabilities Education Act. The funds are only to be used for the purpose of contracting for the request for proposal and study in subdivisions (a) and (b) and for the purpose of paying any necessary overhead associated with the supervision of the independent contracts. Provision 1 of Item 6110-161-0890 of the 1997–98 Budget Act on funds received over the amount of federal funds budgeted shall only apply to the balance of supplemental federal special education grant funds for Part B of the Individuals with Disabilities Education Act remaining after the appropriation made by this subdivision is deducted from that supplemental funding.

(c) Of the amount needed to fully fund the equalization formula in Article 2 (commencing with Section 56836.06) of Chapter 7.2 of Part 30 of the Education Code as it read on January 1, 1998, fifteen million dollars ($15,000,000) shall be available for an adjustment to that formula pursuant to the results of the study required pursuant to Section 67. The amount actually required to fully fund the adjustment enacted by an act of the Legislature subsequent to the results of the study shall be funded in whole in the 1998–99 fiscal year if eighty million dollars ($80,000,000), or more, in federal funds becomes available, or proportionately less if less federal funds are available, during years of equalization carried out pursuant to Article 2 (commencing with Section 56836.06) of Chapter 7.2 of Part 30 of the Education Code. At the time an adjustment is enacted, the formula in Article 2 (commencing with Section 56836.06) of Chapter 7.2 of Part 30 of the Education Code shall also be amended in an act other than the Budget Act to reduce the full funding level by the total cost of the adjustment which may be more or less than fifteen million dollars ($15,000,000) such that the total cost of the formula in Article 2 (commencing with Section 56836.06) of Chapter 7.2 of Part 30 of the Education Code plus the adjustment shall equal the cost of the equalization formula as it existed before enacting the adjustment. The adjustment shall be enacted to amend or replace the formula established in Article 2.5 (commencing with Section 56836.155) of Chapter 7.2 of Part 30 of the Education Code and shall not be enacted in addition to the formula established in that article.

SEC. 68. (a) The Office of the Legislative Analyst, the Department of Finance, and the State Department of Education shall conduct a study, in consultation with the other interested parties, of nonpublic school and nonpublic agency costs as compared to the cost of public school placements, the cause of continuing increases in nonpublic school and agency costs, and recommendations for cost containment. In carrying out this study the Office of the Legislative Analyst shall examine the impact on nonpublic school and nonpublic agency costs of children residing in out-of-home placements, and of mediation and due process hearings. The Office of the Legislative Analyst may contract with an independent party to conduct this study on behalf of the Office of the Legislative Analyst. The Office of the Legislative Analyst shall submit a final report of its findings and recommendations on or before May 1, 1998, to the appropriate policy and fiscal committees of the Senate and the Assembly of the California Legislature.

(b) There is hereby appropriated to the State Department of Education for transfer to the Office of the Legislative Analyst for the 1997–98 fiscal year the sum of one hundred thousand dollars ($100,000) from supplemental federal special education grant funds for Part B of the Individuals with Disabilities Education Act. The funds are only to be used for the purpose of conducting the study in

subdivision (a). Provision 1 of Item 6110-161-0890 of the 1997–98 Budget Act on funds received over the amount of federal funds budgeted shall only apply to the balance of supplemental federal special education grant funds for Part B of the Individuals with Disabilities Education Act remaining after the appropriation made by this subdivision is deducted from that supplemental funding.

SEC. 69. (a) The State Department of Education shall convene a working group to develop recommendations for improving the compliance of state and local education agencies with state and federal special education laws and regulations. These recommendations shall define how the State Department of Education and local education agencies will assure and maintain compliance of special education laws and regulations in providing services to individuals with exceptional needs. Final recommendations shall include, but not be limited to, state compliance training and technical assistance, state review and monitoring of local compliance, the state complaint process and timetable, state corrective action and follow up, and local and state agency sanctions for noncompliance.

(b) The working group shall include members representing the State Board of Education, the State Department of Education, county offices of education, school districts, special education local plan areas, the Special Education Advisory Commission, the State Department of Education administrative hearing office, the federal Office of Civil Rights or Office for Special Education Programs, organizations advocating for, or consisting of, individuals with exceptional needs and their families, parents of individuals with exceptional needs, and organizations representing school teachers and other support services staff serving individuals with exceptional needs. It is the intent of the Legislature that the working group convened by the State Department of Education shall include a balance of members representing state and local education agencies and employees, and members representing individuals with exceptional needs and their families.

(c) The State Department of Education shall submit a report of the working group's recommendations no later than September 1, 1998, to the Governor and the appropriate policy and fiscal committees of the Senate and the Assembly of the California Legislature.

SEC. 70. On or before January 1, 1998, the State Department of Education shall develop a definition of severe orthopedic impairment for use in the application and distribution of low-incidence funding in the 1998–99 fiscal year.

SEC. 71. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts

that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 72. Funding for this bill, except as provided in Sections 67 and 68 of this bill, shall be contingent upon the enactment of an appropriation in the annual Budget Act.

O

ASSEMBLY BILL No. 661

Introduced by Assembly Member Torlakson

February 25, 2009

An act to add Sections 56836.16 and 56836.161 to the Education Code, relating to special education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 661, as introduced, Torlakson. Special education: behavioral intervention plans: mandate claim: funding.

(1) Existing law requires the Superintendent of Public Instruction, on or before September 1, 1992, to develop, and the State Board of Education to adopt, regulations, as specified, governing the use of behavioral interventions for individuals with exceptional needs receiving special education and related services. Existing law prescribes the calculations to be made to determine the amount of General Fund moneys to allocate to each special education local plan area.

This bill would require the Superintendent to perform various calculations to increase the amount of funding per unit of average daily attendance for each special education local plan area, as specified. The bill would appropriate $65,000,000 from the General Fund to the Superintendent in augmentation of a specified item of the Budget Act of 2009 for purposes of providing that increased funding. The bill also would appropriate $10,000,000 from the General Fund to the Superintendent for allocation on a one-time basis to county offices of education and special education local plan areas, as specified. The bill would direct that $85,000,000 be appropriated from the General Fund on a one-time basis in each of the 2011–12 to 2016–17 fiscal years,

inclusive, except as provided, to the Superintendent for allocation to school districts on a per-pupil basis. The Superintendent would be required to use specified calculations to compute the allocation for each school district. The bill would deem the funding described in this paragraph as payments in full satisfaction of, and in lieu of, any reimbursable mandate claims resulting from the statement of decision of the Commission on State Mandates regarding the Behavioral Intervention Plans Mandated Cost Test Claim.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that it is in the state's interest that this act be enacted immediately to provide funding for positive behavioral intervention plans for special education pupils pursuant to Chapter 959 of the Statutes of 1990 in order to resolve a contested state mandate issue of 14-year standing. The Legislature anticipates that the Governor will request the enactment of this act prior to the enactment of the Budget Act of 2009.

SEC. 2. Section 56836.16 is added to the Education Code, to read:

56836.16. (a) The Superintendent shall determine the statewide total average daily attendance used for the purposes of Section 56836.08 for the 2008–09 fiscal year. For the purposes of this calculation, the 2008–09 second principal average daily attendance for the court, community school, and special education programs served by the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area shall be used in lieu of the average daily attendance used for that agency for the purposes of Section 56836.08.

(b) The Superintendent shall divide sixty-five million dollars ($65,000,000), by the amount determined pursuant to subdivision (a).

(c) For each special education local plan area, the Superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of Section

56836.08 for the 2009–10 fiscal year by the quotient determined pursuant to subdivision (b). This increase shall be effective beginning in the 2009–10 fiscal year.

(d) Notwithstanding subdivision (c), for the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area, the Superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of Section 56836.08 by the ratio of the amount determined pursuant to subdivision (b) to the statewide target per unit of average daily attendance determined pursuant to Section 56836.11 for the 2008–09 fiscal year. This increase shall be effective beginning in the 2009–10 fiscal year.

(e) The Superintendent shall increase the statewide target per unit of average daily attendance determined pursuant to Section 56836.11 for the 2009–10 fiscal year by the amount determined pursuant to subdivision (b).

(f) The funding provided pursuant to subdivisions (a) to (e), inclusive, and the funding provided pursuant to subdivisions (a) and (b) of Section 56836.161 shall be deemed as payments in full satisfaction of, and in lieu of, any reimbursable mandate claims resulting from the statement of decision of the Commission on State Mandates regarding the Behavioral Intervention Plans Mandated Cost Test Claim (CSM 4464). By providing this funding, the state does not concede the existence of any unfunded reimbursable mandate with regard to Section 56523 and its implementing regulations, including subdivisions (c), (d), (e), (f), and (aa) of Section 3001 and Section 3052 of Title 5 of the California Code of Regulations, as those provisions read on July 1, 2008. These funds shall be used exclusively for programs operated pursuant to this part and, as a first priority, for the programs and services required pursuant to Section 56523 and its implementing regulations. By virtue of these funds, Section 56523 and its implementing regulations shall be deemed to be fully funded within the meaning of subdivision (e) of Section 17556 of the Government Code.

(g) Within the meaning of subdivision (e) of Section 17556 of the Government Code, the funds appropriated for purposes of this section are not specifically intended to fund any state-mandated special education programs and services resulting from

amendments enacted after July 1, 2008, to any of the following statutes and regulations:

(1) The federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), if the amendments result in circumstances where state law exceeds federal law.

(2) Federal regulations implementing the federal Individuals with Disabilities Education Act (34 C.F.R. Parts 300 and 303), if the amendments result in circumstances where state law exceeds federal law.

(3) This part.

(4) Sections 3000 to 4671, inclusive, of Title 5 of the California Code of Regulations.

(h) State funds appropriated by the annual Budget Act and otherwise allocated to each special education local plan area pursuant to Chapter 7.2 (commencing with Section 56836) shall supplement and not supplant the funds provided pursuant to subdivisions (a) to (e), inclusive. The funds provided pursuant to subdivisions (a) to (e), inclusive, shall be in addition to the level of any cost-of-living adjustment provided for purposes of this chapter in the annual Budget Act.

SEC. 3. Section 56836.161 is added to the Education Code, to read:

56836.161. (a) (1) The amount of eighty-five million dollars ($85,000,000) shall be appropriated from the General Fund on a one-time basis in each of the 2011–12 to 2016–17 fiscal years, inclusive, to the Superintendent for allocation to school districts on a per-pupil basis. The Superintendent shall compute the amount per pupil by dividing eighty-five million dollars ($85,000,000) by the total average daily attendance, excluding attendance for regional occupational centers and programs, adult education, and programs operated by county superintendents of schools, for all pupils in kindergarten and grades 1 to 12, inclusive, in all school districts as used by the Superintendent for the second principal apportionment for the 2007–08 fiscal year. The allocation for each school district shall equal the per-pupil amount times the district's average daily attendance as reported to the Superintendent for the second principal apportionment for the 2007–08 fiscal year. The amount allocated to each school district shall be the same in all subsequent fiscal years as it is in the first fiscal year.

(2) Notwithstanding paragraph (1), the state, in its discretion, may appropriate and allocate amounts in excess of eighty-five million dollars ($85,000,000) annually in any of the 2011–12 to 2016–17 fiscal years, inclusive, for the purpose of discharging the obligation in advance of the period, so long as the total amount appropriated and allocated pursuant to this section during that time period is five hundred ten million dollars ($510,000,000).

(3) In any fiscal year, commencing with the 2012–13 fiscal year, in which the amount of the minimum funding guarantee for the support of school districts and community college districts is determined by paragraph (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, the annual appropriation described in paragraph (1) shall not be made.

(4) The Director of Finance shall notify, in writing, the fiscal committees of both houses of the Legislature, the Controller, and the Superintendent no later than May 14 of a fiscal year if the appropriation for the following fiscal year is not required pursuant to paragraph (3). If an appropriation is not made pursuant to paragraph (1) for a specific fiscal year or years, it shall instead be made in the fiscal year or years immediately following the final payment pursuant to paragraph (1).

(5) The funds described in this section shall be in addition to the level of any cost-of-living adjustment provided to school districts in the annual Budget Act.

(b) From the funds appropriated for purposes of this section by subdivision (b) of Section 4 of the act that added this section, the Superintendent shall allocate all of the following:

(1) The amount of one million five hundred thousand dollars ($1,500,000) to county offices of education in equal per-pupil amounts. The Superintendent shall determine the per-pupil amount by dividing one million five hundred thousand dollars ($1,500,000) by the total statewide county special education pupil count, as reported by county offices of education as of December 2007. The allocation for each county office of education shall be the per-pupil amount times the county's special education pupil count reported as of December 2007. The Superintendent shall adjust the computations in such a manner as to ensure that the minimum allocation to each county office of education is at least five thousand dollars ($5,000).

(2) The amount of six million dollars ($6,000,000) to special education local plan areas that existed for the 2007–08 fiscal year. The Superintendent shall determine the amount of the allocation for each special education local plan area by dividing six million dollars ($6,000,000) by the statewide special education pupil count reported as of December 2007. The allocation for each special education local plan area shall be the statewide per-pupil amount multiplied by the special education pupil count for the area reported as of December 2007. The Superintendent shall adjust the computations in a manner that ensures that the minimum allocation to each special education local plan area is at least ten thousand dollars ($10,000).

(3) The amount of two million five hundred thousand dollars ($2,500,000) to the San Joaquin County Office of Education.

(c) The funding provided pursuant to subdivisions (a) and (b) and subdivisions (a) to (e), inclusive, of Section 56836.16 shall be deemed as payments in full satisfaction of, and in lieu of, any reimbursable mandate claims resulting from the statement of decision of the Commission on State Mandates regarding the Behavioral Intervention Plans Mandated Cost Test Claim (CSM 4464).

SEC. 4. (a) The amount of sixty-five million dollars ($65,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction in augmentation of Item 6110–161–0001 of the Budget Act of 2009 for purposes of Section 56836.16 of the Education Code. It is the intent of the Legislature that the funding appropriated by this subdivision be included in the annual Budget Act in subsequent fiscal years.

(b) (1) The amount of ten million dollars ($10,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation on a one-time basis to county offices of education and special education local plan areas pursuant to subdivision (b) of Section 56836.161 of the Education Code. These funds shall be in addition to the level of any cost-of-living adjustment provided for county offices of education and special education local plan areas in the annual Budget Act.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this subdivision shall be deemed to be General Fund revenues appropriated for school districts, as defined

in subdivision (a) of Section 41202 of the Education Code, for the 2007–08 fiscal year, and included within the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B, as defined in subdivision (e) of Section 41202 of the Education Code, for the 2007–08 fiscal year.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to alleviate, at the earliest possible time, the fiscal hardship to local educational agencies caused by the persistent shortfalls in federal funding for special education, to increase state funding for the special education program thereby reducing encroachment, to facilitate the settlement of current litigation regarding those programs and the funding thereof, to obviate new litigation, and to resolve related school finance issues, it is necessary that this act take effect immediately.

O

Assembly Bill No. 1222

CHAPTER 329

An act to amend Sections 17518.5, 17521, 17551, 17553, 17558, 17561, 17564, 17581, 17581.5, and 17612 of, to add Sections 17521.5, 17557.1, and 17557.2 to, to add Article 1.5 (commencing with Section 17572) to Chapter 4 of Part 7 of Division 4 of Title 2 of, and to repeal Section 17572 of, the Government Code, relating to state mandates.

[Approved by Governor October 8, 2007. Filed with Secretary of State October 8, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1222, Laird. State mandates: legislatively determined mandate.

(1) Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, including school districts, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions. Existing law establishes a procedure for local governmental agencies to file claims for reimbursement of these costs with the Commission on State Mandates. These procedures require that a claim for reimbursement include, among other things, a written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate.

This bill would require that a test claim also identify the effective date and register number of regulations alleged to contain a mandate, as well as a legislatively determined mandate on the same statute or executive order. It would also require that the written narrative contain specified declarations with respect to legislatively determined mandates, if applicable.

(2) The procedures established by existing law also require the commission to hear and decide upon each claim for reimbursement and then determine the amount to be subvened for reimbursement and adopt parameters and guidelines for payment of claims. Existing law requires the commission to consult with the Department of Finance, among other state officials, when adopting parameters and guidelines for reimbursement.

This bill would provide that, notwithstanding these provisions, the department and a local agency, school district, or statewide association may jointly request that the Legislature determine if a particular statute or executive order imposes a mandate for which reimbursement is required by the California Constitution. It would require that a joint request submitted to the Legislature identify the statute or executive order, a reasonable reimbursement methodology, a list of eligible claimants, an estimate of statewide costs for the initial claiming period, an annual dollar amount necessary for reimbursement, and documentation of significant support among local agencies or school districts for the methodology. It would

provide that, if the Legislature accepts the joint request and determines that the statute or executive order, or portion thereof, imposes a mandate for which reimbursement is required, it shall declare by statute that the requirements of the statute or executive order, or portion thereof, are a legislatively determined mandate, and specify the term and period of reimbursement and methodology for reimbursing eligible local agencies or school districts subject to specified criteria, or, with respect to local government agencies subject to specified provisions of the California Constitution applicable to the reimbursement of mandates, appropriate funds sufficient for reimbursement in the Budget Act or suspend the mandate.

The bill also would provide that, when it accepts reimbursement for a legislatively determined mandate, a local agency or school district agrees that payment as agreed to pursuant to the statute adopted by the Legislature constitutes full reimbursement of its costs for that mandate for the applicable period of reimbursement, that the reasonable reimbursement methodology is appropriate for reimbursement payments on that mandate for 5 fiscal years or as otherwise specified in the statute, and that the local government shall withdraw any test claim pending before the commission regarding this mandate, any unpaid reimbursement claims previously filed by the local agency or school district with the Controller on the same mandate for the same period shall be deemed withdrawn, and a test claim on the same statute or executive order as a legislatively determined mandate will not be filed with the commission except as specified.

The bill also would specify procedures for the commission in connection with a test claim based on the same statute or executive order as a legislatively determined mandate and make other conforming changes.

(3) The procedures established by existing law require the commission to submit adopted parameters and guidelines to the Controller for payment of reimbursement claims.

This bill would authorize the commission to instead adopt and submit to the Controller a reasonable reimbursement methodology proposed by a test claimant and the department and would require the Controller to issue claiming instructions pursuant to that methodology, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 17518.5 of the Government Code is amended to read:

17518.5. (a) "Reasonable reimbursement methodology" means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.

(b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.

(c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.

(d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

(e) A reasonable reimbursement methodology may be developed by any of the following:

(1) The Department of Finance.

(2) The Controller.

(3) An affected state agency.

(4) A claimant.

(5) An interested party.

SEC. 1.5. Section 17521 of the Government Code is amended to read:

17521. "Test claim" means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state, and includes a claim filed pursuant to Section 17574.

SEC. 2. Section 17521.5 is added to the Government Code, to read:

17521.5. "Legislatively determined mandate" means the provisions of a statute or executive order that the Legislature, pursuant to Article 1.5, has declared by statute to be a mandate for which reimbursement is required by Section 6 of Article XIII B of the California Constitution.

SEC. 3. Section 17551 of the Government Code is amended to read:

17551. (a) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.

(b) Except as provided in Sections 17573 and 17574, commission review of claims may be had pursuant to subdivision (a) only if the test claim is filed within the time limits specified in this section.

(c) Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

(d) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561.

SEC. 4. Section 17553 of the Government Code is amended to read:

17553. (a) The commission shall adopt procedures for receiving claims filed pursuant to this article and Section 17574 and for providing a hearing on those claims. The procedures shall do all of the following:

(1) Provide for presentation of evidence by the claimant, the Department of Finance, and any other affected department or agency, and any other interested person.

(2) Ensure that a statewide cost estimate is adopted within 12 months after receipt of a test claim, when a determination is made by the commission that a mandate exists. This deadline may be extended for up to six months upon the request of either the claimant or the commission.

(3) Permit the hearing of a claim to be postponed at the request of the claimant, without prejudice, until the next scheduled hearing.

(b) All test claims shall be filed on a form prescribed by the commission and shall contain at least the following elements and documents:

(1) A written narrative that identifies the specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate and shall include all of the following:

(A) A detailed description of the new activities and costs that arise from the mandate.

(B) A detailed description of existing activities and costs that are modified by the mandate.

(C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.

(D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(F) Identification of all of the following:

(i) Dedicated state funds appropriated for this program.

(ii) Dedicated federal funds appropriated for this program.

(iii) Other nonlocal agency funds dedicated for this program.

(iv) The local agency's general purpose funds for this program.

(v) Fee authority to offset the costs of this program.

(G) Identification of prior mandate determinations made by the Commission on State Mandates or a predecessor agency that may be related to the alleged mandate.

(H) Identification of a legislatively determined mandate pursuant to Section 17573 that is on the same statute or executive order.

(2) The written narrative shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so, as follows:

(A) Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

(B) Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

(C) Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program.

(D) If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Section 17574.

(3) (A) The written narrative shall be supported with copies of all of the following:

(i) The test claim statute that includes the bill number or executive order, alleged to impose or impact a mandate.

(ii) Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate.

(iii) Administrative decisions and court decisions cited in the narrative.

(B) State mandate determinations made by the Commission on State Mandates or a predecessor agency and published court decisions on state mandate determinations made by the Commission on State Mandates are exempt from this requirement.

(4) A test claim shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief. The date of signing, the declarant's title, address, telephone number, facsimile machine telephone number, and electronic mail address shall be included.

(c) If a completed test claim is not received by the commission within 30 calendar days from the date that an incomplete test claim was returned by the commission, the original test claim filing date may be disallowed, and a new test claim may be accepted on the same statute or executive order.

(d) In addition, the commission shall determine whether an incorrect reduction claim is complete within 10 days after the date that the incorrect reduction claim is filed. If the commission determines that an incorrect reduction claim is not complete, the commission shall notify the local agency and school district that filed the claim stating the reasons that the claim is not complete. The local agency or school district shall have 30 days to complete the claim. The commission shall serve a copy of the complete incorrect reduction claim on the Controller. The Controller shall have no more than 90 days after the date the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the commission.

SEC. 5. Section 17557.1 is added to the Government Code, to read:

17557.1. (a) Notwithstanding any other provision of this part, within 30 days of the commission's adoption of a statement of decision on a test claim, the test claimant and the Department of Finance may notify the executive director of the commission in writing of their intent to follow the process described in this section to develop a reasonable reimbursement methodology and statewide estimate of costs for the initial claiming period and budget year for reimbursement of costs mandated by the state in accordance with the statement of decision. The letter of intent shall include the date on which the test claimant and the Department of Finance will submit a plan to ensure that costs from a representative sample of eligible local agency or school district claimants are considered in the development of a reasonable reimbursement methodology.

(b) This plan shall also include all of the following information:

(1) The date on which the test claimant and Department of Finance will provide to the executive director an informational update regarding their progress in developing the reasonable reimbursement methodology.

(2) The date on which the test claimant and Department of Finance will submit to the executive director the draft reasonable reimbursement methodology and proposed statewide estimate of costs for the initial claiming period and budget year. This date shall be no later than 180 days after the date the letter of intent is sent by the test claimant and Department of Finance to the executive director.

(c) At the request of the test claimant and Department of Finance, the executive director may provide for up to four extensions of this 180-day period.

(d) The test claimant or Department of Finance may notify the executive director at any time that the claimant or Department of Finance no longer intends to develop a reasonable reimbursement methodology pursuant to this section. In this case, paragraph (2) of subdivision (a) of Section 17553 and Section 17557 shall apply to the test claim. Upon receipt of this notification, the executive director shall notify the test claimant of the duty to submit proposed parameters and guidelines within 30 days under subdivision (a) of Section 17557.

SEC. 6. Section 17557.2 is added to the Government Code, to read:

17557.2. (a) A reasonable reimbursement methodology developed pursuant to Section 17557.1 or a joint request for early termination of a reasonable reimbursement methodology shall have broad support from a wide range of local agencies or school districts. The test claimant and Department of Finance may demonstrate broad support from a wide range of local agencies or school districts in different ways, including, but not limited to, obtaining endorsement by one or more statewide associations of local agencies or school districts and securing letters of approval from local agencies or school districts.

(b) No later than 60 days before a commission hearing, the test claimant and Department of Finance shall submit to the commission a joint proposal that shall include all of the following:

(1) The draft reasonable reimbursement methodology.

(2) The proposed statewide estimate of costs for the initial claiming period and budget year.

(3) A description of the steps the test claimant and the Department of Finance undertook to determine the level of support by local agencies or school districts for the draft reasonable reimbursement methodology.

(4) An agreement that the reasonable reimbursement methodology developed and approved under this section shall be in effect for a period of five years unless a different term is approved by the commission, or upon submission to the commission of a letter indicating the Department of Finance and test claimant's joint interest in early termination of the reasonable reimbursement methodology.

(5) An agreement that, at the conclusion of the period established in paragraph (4), the Department of Finance and the test claimant will consider jointly whether amendments to the methodology are necessary.

(c) The commission shall approve the draft reasonable reimbursement methodology if review of the information submitted pursuant to Section 17557.1 and subdivision (b) of this section demonstrates that the draft reasonable reimbursement methodology and statewide estimate of costs for the initial claiming period and budget year have been developed in accordance with Section 17557.1 and meet the requirements of subdivision (a). The commission thereafter shall adopt the proposed statewide estimate of costs for the initial claiming period and budget year. Statewide cost estimates adopted under this section shall be included in the report to the Legislature required under Section 17600 and shall be reported by the commission to the appropriate Senate and Assembly policy and fiscal committees, the Legislative Analyst, and the Department of Finance not later than 30 days after adoption.

(d) Unless amendments are proposed pursuant to this subdivision, the reasonable reimbursement methodology approved by the commission pursuant to this section shall expire after either five years, any other term approved by the commission, or upon submission to the commission of a letter indicating the Department of Finance's and test claimant's joint interest in early termination of the reasonable reimbursement methodology.

(e) The commission shall approve a joint request for early termination of a reasonable reimbursement methodology if the request meets the requirements of subdivision (a). If the commission approves a joint request for early termination, the commission shall notify the test claimant of the duty to submit proposed parameters and guidelines to the commission pursuant to subdivision (a) of Section 17557.

(f) At least one year before the expiration of a reasonable reimbursement methodology, the commission shall notify the Department of Finance and the test claimant that they may do one of the following:

(1) Jointly propose amendments to the reasonable reimbursement methodology by submitting the information described in paragraphs (1), (3), and (4) of subdivision (b), and providing an estimate of the mandate's annual cost for the subsequent budget year.

(2) Jointly propose that the reasonable reimbursement methodology remain in effect.

(3) Allow the reasonable reimbursement methodology to expire and notify the commission that the test claimant will submit proposed parameters and guidelines to the commission pursuant to subdivision (a) of Section 17557 to replace the reasonable reimbursement methodology.

(g) The commission shall either approve the continuation of the reasonable reimbursement methodology or approve the jointly proposed amendments to the reasonable reimbursement methodology if the information submitted in accordance with paragraph (1) of subdivision (d) demonstrates that the proposed amendments were developed in accordance with Section 17557.1 and meet the requirements of subdivision (a) of this section.

SEC. 7. Section 17558 of the Government Code is amended to read:

17558. (a) The commission shall submit the adopted parameters and guidelines or a reasonable reimbursement methodology approved pursuant to Section 17557.2 to the Controller. As used in this chapter, a "reasonable reimbursement methodology" approved pursuant to Section 17557.2 includes all amendments to the reasonable reimbursement methodology. When the Legislature declares a legislatively determined mandate in accordance with Section 17573 in which claiming instructions are necessary, the Department of Finance shall notify the Controller.

(b) Not later than 60 days after receiving the adopted parameters and guidelines, a reasonable reimbursement methodology from the commission, or notification from the Department of Finance, the Controller shall issue claiming instructions for each mandate that requires state reimbursement, to assist local agencies and school districts in claiming costs to be reimbursed. In preparing claiming instructions, the Controller shall request assistance from the Department of Finance and may request the assistance of other state agencies. The claiming instructions shall be derived from the test claim decision and the adopted parameters and guidelines, reasonable reimbursement methodology, or statute declaring a legislatively determined mandate.

(c) The Controller shall, within 60 days after receiving amended parameters and guidelines, an amended reasonable reimbursement methodology from the commission or other information necessitating a revision of the claiming instructions, prepare and issue revised claiming instructions for mandates that require state reimbursement that have been established by commission action pursuant to Section 17557, Section 17557.2, or after any decision or order of the commission pursuant to Section 17559, or after any action by the Legislature pursuant to Section 17573. In preparing revised claiming instructions, the Controller may request the assistance of other state agencies.

SEC. 8. Section 17561 of the Government Code, as amended by Chapter 179 of the Statutes of 2007, is amended to read:

17561. (a) The state shall reimburse each local agency and school district for all "costs mandated by the state," as defined in Section 17514 and for legislatively determined mandates in accordance with Section 17573.

(b) (1) For the initial fiscal year during which these costs are incurred, reimbursement funds shall be provided as follows:

(A) Any statute mandating these costs shall provide an appropriation therefor.

(B) Any executive order mandating these costs shall be accompanied by a bill appropriating the funds therefor, or alternatively, an appropriation for these costs shall be included in the Budget Bill for the next succeeding fiscal year. The executive order shall cite that item of appropriation in the Budget Bill or that appropriation in any other bill that is intended to serve as the source from which the Controller may pay the claims of local agencies and school districts.

(2) In subsequent fiscal years appropriations for these costs shall be included in the annual Governor's Budget and in the accompanying Budget Bill. In addition, appropriations to reimburse local agencies and school districts for continuing costs resulting from chaptered bills or executive orders for which claims have been awarded pursuant to subdivision (a) of Section 17551 shall be included in the annual Governor's Budget and in the accompanying Budget Bill.

(c) The amount appropriated to reimburse local agencies and school districts for costs mandated by the state shall be appropriated to the Controller for disbursement.

(d) The Controller shall pay any eligible claim pursuant to this section by August 15 or 45 days after the date the appropriation for the claim is effective, whichever is later. The Controller shall disburse reimbursement funds to local agencies or school districts if the costs of these mandates are not payable to state agencies, or to state agencies that would otherwise collect the costs of these mandates from local agencies or school districts in the form of fees, premiums, or payments. When disbursing reimbursement funds to local agencies or school districts, the Controller shall disburse them as follows:

(1) For initial reimbursement claims, the Controller shall issue claiming instructions to the relevant local agencies and school districts pursuant to Section 17558. 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, the reasonable reimbursement methodology approved by the commission pursuant to Section 17557.2, or statutory declaration of a legislatively determined mandate and reimbursement methodology pursuant to Section 17573.

(A) When claiming instructions are issued by the Controller pursuant to Section 17558 for each mandate determined pursuant to Section 17551 or 17573 that requires state reimbursement, each local agency or school district to which the mandate is applicable shall submit claims for initial fiscal year costs to the Controller within 120 days of the issuance date for the claiming instructions.

(B) When the commission is requested to review the claiming instructions pursuant to Section 17571, each local agency or school district to which the

mandate is applicable shall submit a claim for reimbursement within 120 days after the commission reviews the claiming instructions for reimbursement issued by the Controller.

(C) If the local agency or school district does not submit a claim for reimbursement within the 120-day period, or submits a claim pursuant to revised claiming instructions, it may submit its claim for reimbursement as specified in Section 17560. The Controller shall pay these claims from the funds appropriated therefor, provided that the Controller (i) may audit the records of any local agency or school district to verify the actual amount of the mandated costs, the application of a reasonable reimbursement methodology, or application of a legislatively enacted reimbursement methodology under Section 17573, and (ii) may reduce any claim that the Controller determines is excessive or unreasonable.

(2) In subsequent fiscal years each local agency or school district shall submit its claims as specified in Section 17560. The Controller shall pay these claims from funds appropriated therefor, provided that the Controller (A) may audit (i) the records of any local agency or school district to verify the actual amount of the mandated costs, (ii) the application of a reasonable reimbursement methodology, or (iii) application of a legislatively enacted reimbursement methodology under Section 17573, (B) may reduce any claim that the Controller determines is excessive or unreasonable, and (C) shall adjust the payment to correct for any underpayments or overpayments that occurred in previous fiscal years.

(3) When paying a timely filed claim for initial reimbursement, the Controller shall withhold 20 percent of the amount of the claim until the claim is audited to verify the actual amount of the mandated costs. All initial reimbursement claims for all fiscal years required to be filed on their initial filing date for a state-mandated local program shall be considered as one claim for the purpose of computing any late claim penalty. Any claim for initial reimbursement filed after the filing deadline shall be reduced by 10 percent of the amount that would have been allowed had the claim been timely filed. The Controller may withhold payment of any late claim for initial reimbursement until the next deadline for funded claims unless sufficient funds are available to pay the claim after all timely filed claims have been paid. In no case may a reimbursement claim be paid if submitted more than one year after the filing deadline specified in the Controller's claiming instructions on funded mandates.

(e) (1) Except as specified in paragraph (2), for the purposes of determining the state's payment obligation under paragraph (1) of subdivision (b) of Section 6 of Article XIII B of the Constitution, a mandate that is "determined in a preceding fiscal year to be payable by the state" means any mandate for which the commission adopted a statewide cost estimate pursuant to this part during a previous fiscal year or that were identified as mandates by a predecessor agency to the commission, or that the Legislature declared by statute to be a legislatively determined mandate, unless the mandate has been repealed or otherwise eliminated.

(2) If the commission adopts a statewide cost estimate for a mandate during the months of April, May, or June, the state's payment obligation under subdivision (b) of Section 6 of Article XIII B shall commence one year after the time specified in paragraph (1).

SEC. 9. Section 17564 of the Government Code is amended to read:

17564. (a) No claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551 or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars ($1,000). However, a county superintendent of schools or county may submit a combined claim on behalf of school districts, direct service districts, or special districts within their county if the combined claim exceeds one thousand dollars ($1,000) even if the individual school district's, direct service district's, or special district's claims do not each exceed one thousand dollars ($1,000). The county superintendent of schools or the county shall determine if the submission of the combined claim is economically feasible and shall be responsible for disbursing the funds to each school, direct service, or special district. These combined claims may be filed only when the county superintendent of schools or the county is the fiscal agent for the districts. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a school district, direct service district, or special district provides to the county superintendent of schools or county and to the Controller, at least 180 days prior to the deadline for filing the claim, a written notice of its intent to file a separate claim.

(b) Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines or reasonable reimbursement methodology and claiming instructions.

(c) Claims for direct and indirect costs filed pursuant to a legislatively determined mandate pursuant to Section 17573 shall be filed and paid in the manner prescribed in the Budget Act or other bill, or claiming instructions, if applicable.

SEC. 10. Section 17572 of the Government Code is repealed.

SEC. 11. Article 1.5 (commencing with Section 17572) is added to Chapter 4 of Part 7 of Division 4 of Title 2 of the Government Code, to read:

Article 1.5. Legislatively Determined Mandate Procedure

17572. The Legislature finds and declares all of the following:

(a) Early settlement of mandate claims will allow the commission to focus its efforts on rendering sound quasi-judicial decisions regarding complicated disputes over the existence of state-mandated local programs.

(b) Early settlement of mandate claims will provide timely information to the Legislature regarding local costs of state requirements and timely reimbursement to local agencies or school districts.

(c) It is the intent of the Legislature to provide for an orderly process for settling mandate claims in which the parties are in substantial agreement. Nothing in this article diminishes the right of a local agency or school district that chooses not to accept reimbursement pursuant to this article from filing a test claim with the commission or taking other steps to obtain reimbursement pursuant to Section 6 of Article XIII B of the California Constitution.

17573. (a) Notwithstanding Section 17551, the Department of Finance and a local agency, school district, or statewide association may jointly request of the chairpersons of the committees in each house of the Legislature that consider appropriations, and the chairpersons of the committees and appropriate subcommittees in each house of the Legislature that consider the State Budget, that the Legislature (1) determine that a statute or executive order, or portion thereof, mandates a new program or higher level of service requiring reimbursement of local governments pursuant to Section 6 of Article XIII B of the California Constitution, (2) establish a reimbursement methodology, and (3) appropriate funds for reimbursement of costs. For purposes of this section, "statewide association" includes a statewide association representing local agencies or school districts, as defined in Sections 17518 and 17519.

(b) The statute of limitations specified in Section 17551 shall be tolled from the date a local agency, school district, or statewide association contacts the Department of Finance or responds to a Department of Finance request to initiate a joint request for a legislatively determined mandate pursuant to subdivision (a), to (1) the date that the Budget Act for the subsequent fiscal year is adopted if a joint request is submitted pursuant to subdivision (a), or (2) the date on which the Department of Finance, or a local agency, school district, or statewide association notifies the other party of its decision not to submit a joint request. A local agency, school district, or statewide association, or the Department of Finance shall provide written notification to the commission of each of these dates.

(c) A joint request made under subdivision (a) shall be in writing and include all of the following:

(1) Identification of those provisions of the statute or executive order, or portion thereof, that mandate a new program or higher level of service requiring reimbursement of local agencies or school districts pursuant to Section 6 of Article XIII B of the California Constitution, a proposed reimbursement methodology, and the period of reimbursement.

(2) A list of eligible claimants and a statewide estimate for the initial claiming period and annual dollar amount necessary to reimburse local agencies or school districts to comply with that statute or executive order that mandates a new program or higher level of service.

(3) Documentation of significant support among local agencies or school districts for the proposed reimbursement methodology, including, but not limited to, endorsements by statewide associations and letters of approval from local agencies or school districts.

(d) A joint request authorized by this section may be submitted to the Legislature pursuant to subdivision (a) at any time after enactment of a statute or issuance of an executive order, regardless of whether a test claim on the same statute or executive order is pending with the commission. If a test claim is pending before the commission, the period of reimbursement established by that filing shall apply to a joint request filed pursuant to this section.

(e) (1) If the Legislature accepts the joint request and determines that those provisions of the statute or executive order, or portion thereof, mandate a new program or higher level of service requiring reimbursement of local agencies or school districts pursuant to Section 6 of Article XIII B of the California Constitution, it shall adopt a statute declaring that the statute or executive order, or portion thereof, is a legislatively determined mandate and specify the term and period of reimbursement and methodology for reimbursing eligible local agencies or school districts. If no term is specified in the statute, then the term shall be five years, beginning July 1 of the year in which the statute is enacted.

(2) For the purpose of this subdivision, "term" means the number of years specified in the statute adopted pursuant to this subdivision for reimbursing eligible local agencies or school districts for a legislatively determined mandate.

(f) When the Legislature adopts a statute pursuant to paragraph (1) of subdivision (e) on a mandate subject to subdivision (b) of Section 6 of Article XIII B of the California Constitution, the Legislature shall do either of the following:

(1) Appropriate in the Budget Act the full payable amount for reimbursement to local agencies that has not been previously paid.

(2) Suspend the operation of the mandate pursuant to Section 17581 or repeal the mandate.

(g) The Department of Finance, or a local agency, school district, or statewide association shall notify the commission of actions taken pursuant to this section, as specified below:

(1) Provide the commission with a copy of any communications regarding development of a joint request under this section and a copy of a joint request when it is submitted to the Legislature.

(2) Notify the commission of the date of (A) the Legislature's action on a joint request in the Budget Act, or (B) the Department of Finance's decision not to submit a joint request on a specific statute or executive order.

(h) Upon receipt of notice that a joint request has been submitted to the Legislature on the same statute or executive order as a pending test claim, the commission may stay its proceedings on the pending test claim upon the request of any party.

(i) Upon enactment of a statute declaring a legislatively determined mandate, enactment of a reimbursement methodology, and appropriation for reimbursement of the full payable amount that has not been previously paid in the Budget Act, all of the following shall apply:

(1) The Controller shall prepare claiming instructions pursuant to Section 17558, if applicable.

(2) The commission shall not adopt a statement of decision, parameters and guidelines, or statewide cost estimate on the same statute or executive order unless a local agency or school district that has rejected the amount of reimbursement files a test claim or takes over a withdrawn test claim on the same statute or executive order.

(3) A local agency or school district accepting payment for the statute or executive order, or portion thereof, that mandates a new program or higher level of service pursuant to Section 6 of Article XIII B of the California Constitution shall not be required to submit parameters and guidelines if it is the successful test claimant pursuant to Section 17557.

17574. (a) A local agency or school district agrees to the following terms and conditions when it accepts reimbursement for a legislatively determined mandate pursuant to Section17573:

(1) Any unpaid reimbursement claims the local agency or school district has previously filed with the Controller pursuant to Section 17561 and derived from parameters and guidelines or reasonable reimbursement methodology shall be deemed withdrawn if they are on the same statute or executive order of a legislatively determined mandate and for the same period of reimbursement.

(2) The payment of the amount agreed upon pursuant to Section 17573 constitutes full reimbursement of its costs for that mandate for the applicable period of reimbursement.

(3) The methodology upon which the payment is calculated is an appropriate reimbursement methodology for the term specified in subdivision (e) of Section 17573.

(4) A test claim filed with the commission by a local agency or school district on the same statute or executive order as a legislatively determined mandate shall be withdrawn.

(5) A test claim on the same statute or executive order as a legislatively determined mandate will not be filed with the commission except as provided in subdivision (c).

(b) If a local agency or school district rejects reimbursement for a legislatively determined mandate pursuant to Section 17573, a local agency or school district may take over a withdrawn test claim within six months after the date the test claim is withdrawn, by substitution of parties and compliance with the filing requirements in subdivision (b) of Section 17553, as specified in the commission's notice of withdrawal.

(c) (1) Notwithstanding Section 17551 and subdivision (b) of Section 17573, a local agency or school district may file a test claim on the same statute or executive order as a legislatively determined mandate if one of the following applies:

(A) The Legislature amends the reimbursement methodology and the local agency or school district rejects reimbursement.

(B) The term of the legislatively determined mandate, as defined in subdivision (e) of Section 17573, has expired.

(C) The term of the legislatively determined mandate, as defined in subdivision (e) of Section 17573, is amended and the local agency or school district rejects reimbursement under the new term.

(D) The mandate is subject to subdivision (b) of Section 6 of Article XIII B and the Legislature does both of the following:

(i) Fails to appropriate in the Budget Act funds to reimburse local agencies for the full payable amount that has not been previously paid based on the reimbursement methodology enacted by the Legislature.

(ii) Does not repeal or suspend the mandate pursuant to Section 17581.

(2) A test claim filed pursuant to the authority granted by this subdivision shall be filed within six months of the date an action described in subparagraph (A), (B), (C), or (D) of paragraph (1) occurs.

(d) Notwithstanding any other provision of this section, a local agency or school district shall not file a test claim pursuant to this section if the statute of limitations specified in subdivision (c) of Section 17551 expired before the date a legislatively determined mandate was adopted by the Legislature pursuant to Section 17573.

(e) Notwithstanding the period of reimbursement specified in subdivision (e) of Section 17557, a test claim filed pursuant to this section shall establish eligibility for reimbursement beginning with the fiscal year of an action described in subparagraph (A), (B), (C), or (D) of paragraph (1) of subdivision (c).

17574.5. The determination of a legislatively determined mandate pursuant to Section 17573 shall not be binding on the commission when making its determination pursuant to subdivision (a) of Section 17551.

SEC. 12. Section 17581 of the Government Code is amended to read:

17581. (a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute or executive order, or portion thereof, or the commission's test claim number, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) Within 30 days after enactment of the Budget Act, the Department of Finance shall notify local agencies of any statute or executive order, or portion thereof, for which operation of the mandate is suspended because

reimbursement is not provided for that fiscal year pursuant to this section and Section 6 of Article XIII B of the California Constitution.

(c) Notwithstanding any other provision of law, if a local agency elects to implement or give effect to a statute or executive order described in subdivision (a), the local agency may assess fees to persons or entities which benefit from the statute or executive order. Any fee assessed pursuant to this subdivision shall not exceed the costs reasonably borne by the local agency.

(d) This section shall not apply to any state-mandated local program for the trial courts, as specified in Section 77203.

(e) This section shall not apply to any state-mandated local program for which the reimbursement funding counts toward the minimum General Fund requirements of Section 8 of Article XVI of the Constitution.

SEC. 13. Section 17581.5 of the Government Code, as amended by Chapter 174 of the Statutes of 2007, is amended to read:

17581.5. (a) A school district shall not be required to implement or give effect to the statutes, or a portion of the statutes, identified in subdivision (c) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or a portion of the statute, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of school districts pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute, or a portion of the statute, or the test claim number utilized by the commission, specifically has been identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered specifically to have been identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it specifically is identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) Within 30 days after enactment of the Budget Act, the Department of Finance shall notify school districts of any statute or executive order, or portion thereof, for which reimbursement is not provided for the fiscal year pursuant to this section.

(c) This section applies only to the following mandates:

(1) The School Bus Safety I (CSM-4433) and II (97-TC-22) mandates (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

(2) The School Crimes Reporting II mandate (97-TC-03; and Chapter 759 of the Statutes of 1992 and Chapter 410 of the Statutes of 1995).

(3) Investment reports (96-358-02; and Chapter 783 of the Statutes of 1995 and Chapters 156 and 749 of the Statutes of 1996).

(4) County treasury oversight committees (96-365-03; and Chapter 784 of the Statutes of 1995 and Chapter 156 of the Statutes of 1996).

(5) Grand jury proceedings mandate (98-TC-27; and Chapter 1170 of the Statutes of 1996, Chapter 443 of the Statutes of 1997, and Chapter 230 of the Statutes of 1998).

(6) Sexual Harassment Training in the Law Enforcement Workplace (97-TC-07; and Chapter 126 of the Statutes of 1993).

SEC. 14. Section 17612 of the Government Code, as amended by Chapter 179 of the Statutes of 2007, is amended to read:

17612. (a) Upon receipt of the report submitted by the commission pursuant to Section 17600, funding shall be provided in the subsequent Budget Act for costs incurred in prior years. No funding shall be provided for years in which a mandate is suspended.

(b) The Legislature may amend, modify, or supplement the parameters and guidelines, reasonable reimbursement methodology, and adopted statewide estimate of costs for the initial claiming period and budget year for mandates contained in the annual Budget Act. If the Legislature amends, modifies, or supplements the parameters and guidelines, reasonable reimbursement methodology, and adopted statewide estimate of costs for the initial claiming period and budget year, it shall make a declaration in separate legislation specifying the basis for the amendment, modification, or supplement.

(c) If the Legislature deletes from the annual Budget Act funding for a mandate, the local agency or school district may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement for that fiscal year.

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AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN SENATE AUGUST 22, 2012

AMENDED IN SENATE JUNE 25, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1476

Introduced by Committee on Budget (Blumenfield (Chair), Alejo, Bonilla, Brownley, Buchanan, Butler, Cedillo, Chesbro, Dickinson, Feuer, Gordon, Huffman, Mitchell, Monning, and Swanson)

January 10, 2012

An act to amend Sections 17193.5, 17199.4, 52055.780, 56520, 56523, 56525, ~~and~~ 69432.7*, and 69999.6* of, and to add Sections 56521.1, 56521.2, and 56522 to, the Education Code, to amend Section 17581.6 of the Government Code, to amend Items 6110-485 and 6110-488 of Section 2.00 of the Budget Act of 2011 (Chapter 33 of the Statutes of 2011), and to add Item 6440–301–6048 to Section 2.00 of the Budget Act of 2012 (Chapter 21 of the Statutes of 2012), relating to education finance, and making an appropriation therefor, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

AB 1476, as amended, Committee on Budget. Education finance.

(1) Existing law authorizes a public credit provider, as defined, to require a participating party, with regard to providing credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness of a participating party, to agree to specified conditions, including allowing the Controller to allocate specified school district, county office of education, or charter school apportionments

to public credit providers if the public credit provider is required to make principal or interest payments, or both, pursuant to the credit enhancement agreement. Existing law imposes those same conditions on securing financing or refinancing for projects or working capital from the California School Finance Authority, in which case the Controller allocates apportionments to an identified trustee when a participating party will not make a payment to the authority at the time the payment is required.

This bill would authorize these payments to a public credit provider or a trustee, as applicable, to be made from specified funds if the Schools and Local Public Safety Protection Act of 2012 (Attorney General reference number 12-0009) is approved by the voters at the November 6, 2012, statewide general election.

(2) The Quality Education Investment Act of 2006 effectuates the intent of the Legislature to implement the terms of the proposed settlement agreement of a specified legal action, to provide for the discharge of the minimum state educational funding requirement, and to improve the quality of academic instruction and the level of pupil achievement in schools whose pupils have high levels of poverty and complex educational needs, among other things. A provision of the act appropriates $218,322,000 from the General Fund for the 2013–14 fiscal year, of which $170,322,000 is for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent of Public Instruction pursuant to the act.

This bill would instead require, for the 2013–14 fiscal year, that $361,000,000 be appropriated from the General Fund, of which $313,000,000 would be for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent of Public Instruction pursuant to the act.

(3) Existing regulations of the State Department of Education, among other things, prohibit the authorization, order, consent to, or payment for specified interventions, or interventions similar to the prohibited interventions and require nonpublic schools and agencies to develop policies consistent with regulations related to emergency interventions. Existing department regulations also provide that emergency interventions, among other things, may be used only to control unpredictable, spontaneous behavior which poses a clear and present danger of serious physical harm to the individual or others, require that emergency interventions be employed for no longer than necessary to contain the behavior, and prohibit emergency interventions from

including specified interventions. Existing regulations of the United States Department of Education require the individualized education program (IEP) team to consider the use of positive behavioral interventions and supports to address the behavior of a child whose behavior impedes his or her learning and the learning of others. Existing regulations of the United States Department of Education provide the procedures for evaluations related to behavioral needs.

This bill would codify a portion of those federal regulations related to emergency interventions and prohibited interventions consistent with certain requirements. The bill generally would codify the portion of the federal regulations that require the IEP team to consider the use of positive behavioral interventions and supports to address the behavior of an individual whose behavior impedes his or her learning and the learning of others, thereby imposing a state-mandated local program, and require the Superintendent of Public Instruction to issue nonmandatory program guidelines regarding the systematic use of behavioral interventions, and provide related training, as specified.

(4) Existing law requires the Superintendent of Public Instruction to develop and the State Board of Education to adopt regulations governing the use of behavioral interventions with individuals with exceptional needs receiving special education and related services.

This bill would require the state board to repeal those regulations.

(5) Existing law provides a person recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst qualifies as a behavioral intervention case manager of a school district, special education local plan area, or county office of education and may conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs. Existing law provides that a school district, special education local plan area, or county office of education is not required to use a Board Certified Behavior Analyst as a behavioral intervention case manager.

This bill would instead provide that a person recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst may conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs. The bill would provide that a school district, special education local plan area, or county office of education is not required to use a Board Certified Behavior Analyst to conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs.

(6) Existing law, the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program (Cal Grant Program), establishes the Cal Grant A and B Entitlement awards, the California Community College Transfer Entitlement awards, the Competitive Cal Grant A and B awards, the Cal Grant C awards, and the Cal Grant T awards under the administration of the Student Aid Commission (commission), and establishes eligibility requirements for awards under these programs for participating students attending qualifying institutions, as defined.

Existing law requires the commission to certify by October 1 of each year a qualifying institution's latest 3-year cohort default rate as most recently reported by the United States Department of Education. Existing law provides that, for purposes of the 2012–13 academic year, and every academic year thereafter, an otherwise qualifying institution with a 3-year cohort default rate that is equal to or greater than 15.5% is ineligible for initial and renewal Cal Grant awards at the institution. Existing law also requires that an otherwise qualifying institution is ineligible for an initial or renewal Cal Grant award at the institution if the institution has a graduation rate of 30% or less for students taking 150% or less of the expected time to complete degree requirements, as specified, with certain exceptions. Existing law also requires that an otherwise qualifying institution that becomes ineligible under these provisions for initial and renewal Cal Grant awards may regain its eligibility for the academic year following an academic year in which it satisfies the requirements relating to the cohort default rate and the graduation rate.

This bill would instead require that an otherwise qualifying institution that becomes ineligible under these provisions for initial and renewal Cal Grant awards shall regain its eligibility ~~in~~ *for* the academic year ~~in~~ *for* which it satisfies these requirements.

(7) Provisions of law that became inoperative on July 1, 2003, and that were repealed on January 1, 2004, established the Governor's Scholarship Programs under the administration of the Scholarshare Investment Board. Existing law expresses the intent of the Legislature to provide explicit authority to the board to continue to administer accounts for, and to make awards to, persons who qualified for awards under the provisions of the Governor's Scholarship Programs as those provisions existed on January 1, 2003, and to provide for the management and disbursement of funds previously set aside for the Governor's Scholarship Programs. Existing law provides that the

amount remaining in the Golden State Scholarshare Trust following a specified transfer is available as a reserve for funding claims for awards.

Existing law additionally states the intent of the Legislature to provide a guarantee should additional funds be needed to cover awards authorized and made pursuant to the program. Existing law also requires the board to negotiate with the current manager of the program to execute an amended or new management and funding agreement, which would be required to include specified terms, including, but not limited to, terms that provide for the return to the General Fund of specified moneys appropriated to the Governor's Scholarship Programs.

Of those funds transferred to the General Fund, this bill would appropriate $5,000,000 to the Chancellor of the California State University, without regard to fiscal years, to fund specified purposes relating to open education resources pursuant to legislation enacted in the 2011—12 Regular Session of the Legislature. The bill would prohibit all, or a portion, of that $5,000,000 from being encumbered unless at least 100% of that amount encumbered is matched by private funds, and would require the amount of the $5,000,000 that is not matched by private funds to revert to the Golden State Scholarshare Trust for purposes of the Governor's Scholarship Programs.

~~(7)~~

(8) Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, including a school district and a community college district, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions. Existing law, commencing with the 2012–13 fiscal year, requires that certain funds appropriated in the annual Budget Act for reimbursement of the cost of a new program or increased level of service of an existing program mandated by statute or executive order be available as a block grant to school districts, charter schools, and county offices of education to support specified state-mandated local programs and permits those entities to elect to receive that block grant funding in lieu of claiming mandated costs pursuant to the state claims procedure.

This bill would add specified state-mandated local programs to the set of programs for which a school district, charter school, or county office of education may elect to receive a block grant, including, among others, the inter district attendance permits program.

~~(8)~~

(9) The Budget Act of 2011 made numerous appropriations for the support of public education in this state.

Existing law establishes the Proposition 98 Reversion Account in the General Fund, and requires that the Legislature, from time to time, transfer into this account moneys previously appropriated in satisfaction of the constitutional minimum funding requirements that have not been disbursed or otherwise encumbered for the purposes for which they were appropriated. The Budget Act of 2011 reappropriated $6,824,000 from the Proposition 98 Reversion Account, of which $6,594,000 was for allocation by the Superintendent of Public Instruction for apportionment for special education programs, as specified.

This bill would reappropriate an additional $10,335,000 from the Proposition 98 Reversion Account for allocation by the Superintendent to support special education, as specified.

~~(9)~~

(10) The Budget Act of 2011, as amended, reappropriated $220,137,000 from the General Fund to the State Department of Education for apportionment for special education programs.

This bill would reduce this reappropriation to the department for those purposes by $10,335,000 to $209,802,000.

~~(10)~~

(11) Existing law establishes the 2006 University Capital Outlay Bond Fund in the State Treasury for deposit of funds from the proceeds of bonds issued and sold for the purpose of providing funds to aid the University of California, the Hastings College of the Law, and the California State University.

This bill would amend the Budget Act of 2012 by appropriating $4,750,000 from the 2006 University Capital Outlay Bond Fund to the University of California for the purpose of funding preliminary plans and working drawings for the Classroom and Academic Office Building at the Merced campus. The bill would require that contractors and subcontractors of the University of California be required to pay prevailing wages, as specified, as a condition of the availability of these funds. The bill would also authorize the use of the 2006 bond funds remaining at the end of capital outlay projects for specified purposes.

~~(11)~~

(12) The Budget Act of 2012 appropriated $2,053,750,000 for the support of the University of California.

This bill would require the University of California, as a condition of receipt of those funds, to report to the Legislature by May 1, 2013,

on whether it has met an enrollment goal for the 2012–13 academic year.

~~(12)~~

(13) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(13)~~

(14) This bill would appropriate $230,000 from federal Individuals with Disabilities Education Act carryover funds to the State Department of Education to, among other things, provide oversight of, and technical assistance and monitoring to, local educational agencies regarding changes to the requirements related to the identification and provision of behavior intervention services made pursuant to this act.

(15) This bill would require the State Board of Education and the Health and Human Services Agency to repeal regulations related to mental health services provided by county mental health agencies that are no longer supported by statute, including specified regulations.

~~(14)~~

(16) Funds appropriated by this bill would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

~~(15)~~

(17) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 17193.5 of the Education Code is amended to read:

17193.5. (a) For purposes of this section, "public credit provider" means any financial institution or combination of financial institutions, that consists either solely, or has as a member or participant, a public retirement system. Notwithstanding any other law, a public credit provider, in connection with providing credit enhancement for bonds, notes, certificates of participation,

or other evidences of indebtedness of a participating party, may require the participating party to agree to the following conditions:

(1) If a participating party adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a schedule for the repayment of principal and interest on the bonds, notes, certificates of participation, or other evidence of indebtedness and identify the public credit provider that provided credit enhancement. The notice shall be provided not later than the date of issuance of the bonds.

(2) If, for any reason a public credit provider is required to make principal or interest payments or both pursuant to a credit enhancement agreement, the public credit provider shall immediately notify the Controller of that fact and of the amount paid out by the public credit provider.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the public credit provider in the amount of the payments made by the public credit provider for the purpose of reimbursing the public credit provider for its expenditures made pursuant to the credit enhancement agreement. The Controller shall make that apportionment only from *moneys designated for apportionments to a participating party, provided that these moneys are within* one or ~~both~~ *more* of the following:

~~(A) Moneys designated for apportionments to a school district pursuant to Section 42238 or to a county office of education pursuant to Section 2558 or to the community college district pursuant to Section 84750, or in the case of a charter school, pursuant to Sections 47633, 47634.1, and 47634.2.~~

~~(B) Moneys, if any, designated for apportionment to a school district, county office of education, or charter school pursuant to subparagraph (B) of paragraph (3) of subdivision (c) of Section 36 of Article XIII of the California Constitution.~~

(A) Any revenue limit apportionments, without regard to the specific funding source of the apportionment, to a school district or county office of education.

(B) Any general apportionments, without regard to the specific funding source of the apportionment, to a community college district.

(C) Any charter school block grant apportionments, without regard to the specific funding source of the apportionment, to a charter school.

(D) Any charter school categorical block grant apportionments, without regard to the specific funding source of the apportionment, to a charter school.

(b) The amount apportioned for a participating party pursuant to this section shall be deemed to be an allocation to the participating party ~~for purposes of subdivision (b) or Section 8 of Article XVI of the California Constitution~~*, and shall be included in the computation of the allocation, limit, entitlement, or apportionment for the participating party*. ~~For purposes of computing revenue limits or revenue levels pursuant to Section 42338 for any school district or pursuant to Section 2558 for any county office of education or pursuant to Section 84750 for any community college district, the revenue limit or revenue level for any fiscal year in which funds are apportioned for the district or for the county office of education pursuant to this section shall include any amounts apportioned by the Controller pursuant to paragraph (3) of subdivision (a). For purposes of computing the general-purpose entitlement of a charter school pursuant to Section 47633, that entitlement shall include any amounts apportioned by the Controller pursuant to paragraph (3) of subdivision (a). For purposes of computing the categorical block grant of a charter school pursuant to Section 47634.1 or 47634.2, that grant shall include any amounts apportioned by the Controller pursuant to paragraph (3) of subdivision (a).~~ The participating party and its creditors do not have a claim to funds apportioned or anticipated to be apportioned to the trustee by the Controller pursuant to paragraph (3) of subdivision (a).

SEC. 2. Section 17199.4 of the Education Code is amended to read:

17199.4. (a) Notwithstanding any other law, any participating party, in connection with securing financing or refinancing of projects, or working capital pursuant to this chapter, may elect to guarantee or provide for payment of the bonds and related obligations in accordance with the following conditions:

(1) If a participating party adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a

schedule for the repayment of principal and interest on the bonds, and any other costs necessary or incidental to financing pursuant to this chapter, and identify a trustee appointed by the participating party or the authority for purposes of this section. If payment of all or a portion of the principal and interest on the bond is secured by a letter of credit or other instrument of direct payment, the notice may provide for reimbursements to the provider of the instrument in lieu of payment of that portion of the principal and interest of the bonds. The notice shall be provided not later than the date of issuance of the bonds or 60 days before the next payment, whichever date is later. The participating party shall update the notice at least annually if there is a change in the required payment for any reason, including, but not limited to, providing for new or increased costs necessary or incidental to the financing.

(2) If, for any reason, the participating party will not make a payment at the time the payment is required, the participating party shall notify the trustee of that fact and of the amount of the deficiency. If the trustee receives this notice from the participating party, or does not receive any payment by the date that payment becomes due, the trustee shall immediately communicate that information to the Controller.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the trustee on the date shown in the schedule in the amount of the deficiency for the purpose of making the required payment. The Controller shall make that apportionment only from *moneys designated for apportionments to a participating party, provided that those moneys are within* one or ~~both~~ *more* of the following:

~~(A) Moneys designated for apportionment to a school district pursuant to Section 42238 or to the county office of education pursuant to Section 2558, or in the case of a charter school, pursuant to Sections 47633, 47634.1, and 47634.2.~~

~~(B) Moneys, if any, designated for apportionment to a school district, county office of education, or charter school pursuant to subparagraph (B) of paragraph (3) of subdivision (e) of Section 36 of Article XIII of the California Constitution.~~

(A) Any revenue limit apportionments, without regard to the specific funding source of the apportionment, to a school district or county office of education.

(B) Any charter school block grant apportionments, without regard to the specific funding source of the apportionment, to a charter school.

(C) Any charter school categorical block grant apportionments, without regard to the specific funding source of the apportionment, to a charter school.

(4) As an alternative to the procedures set forth in paragraphs (2) and (3), the participating party may provide a transfer schedule in its notice to the Controller of its election to participate under this section. The transfer schedule shall set forth amounts to be transferred to the trustee and the date for the transfers. The Controller, subject to the limitation in paragraph (3), shall make apportionments to the trustee of those amounts on the specified date for the purpose of making those transfers. The authority may require a participating party to proceed under this subdivision.

(b) ~~(1)~~ The amount apportioned for a participating party pursuant to this section shall be deemed to be an allocation to the participating party ~~for purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution~~*, and shall be included in the computation of the allocation, limit, entitlement, or apportionment identified for the participating party*.

~~(2) For purposes of computing revenue limits pursuant to Section 42238 for any school district or pursuant to Section 2558 for any county office of education, the revenue limit for any fiscal year in which funds are apportioned for the participating party pursuant to this section shall include any amounts apportioned by the Controller pursuant to paragraphs (3) and (4) of subdivision (a).~~

~~(3) For purposes of computing the general-purpose entitlement of a charter school pursuant to Section 47633, that entitlement shall include any amounts apportioned by the Controller pursuant to paragraphs (3) and (4) of subdivision (a). For purposes of computing the categorical block grant of a charter school pursuant to Section 47634.1 or 47634.2, that grant shall include any amounts apportioned by the Controller pursuant to paragraphs (3) and (4) of subdivision (a).~~ The participating party and its creditors do not have a claim to funds apportioned or anticipated to be apportioned to the trustee by the Controller pursuant to paragraph (3) and (4) of subdivision (a), or to the funds apportioned to by the Controller to the trustee under any other provision of this section.

(c) (1) Participating parties that elect to participate under this section shall apply to the authority. The authority shall consider each of the following priorities in making funds available:

(A) First priority shall be given to school districts, charter schools, or county offices of education that apply for funding for instructional classroom space.

(B) Second priority shall be given to school districts, charter schools, or county offices of education that apply for funding of modernization of instructional classroom space.

(C) Third priority shall be given to all other eligible costs, as defined in Section 17173.

(2) The authority shall prioritize applications at appropriate intervals.

(3) A school district electing to participate under this section that has applied for revenue bond moneys for purposes of joint venture school facilities construction projects, pursuant to Article 5 (commencing with Section 17060) of Chapter 12, shall not be subject to the priorities set forth in paragraph (1).

(d) This section shall not be construed to make the State of California liable for any payments within the meaning of Section 1 of Article XVI of the California Constitution or otherwise, except as expressly provided in this section.

(e) A school district that has a qualified or negative certification pursuant to Section 42131, or a county office of education that has a qualified or negative certification pursuant to Section 1240, may not participate under this section.

SEC. 3. Section 52055.780 of the Education Code is amended to read:

52055.780. (a) School districts and chartering authorities shall receive funding at the following rate, on behalf of funded schools:

(1) For kindergarten and grades 1 to 3, inclusive, five hundred dollars ($500) per enrolled pupil in funded schools.

(2) For grades 4 to 8, inclusive, nine hundred dollars ($900) per enrolled pupil in funded schools.

(3) For grades 9 to 12, inclusive, one thousand dollars ($1,000) per enrolled pupil in funded schools.

(b) For purposes of subdivision (a), enrollment of a pupil in a funded school in the prior fiscal year shall be based on data from the CBEDS.

(c) For the 2012–13 fiscal year, three hundred sixty-one million dollars ($361,000,000) is hereby appropriated from the General Fund to be allocated as follows:

(1) Forty-eight million dollars ($48,000,000) for transfer by the Controller to Section B of the State School Fund for allocation by the Chancellor of the California Community Colleges to community colleges as required under subdivision (d).

(2) Three hundred thirteen million dollars ($313,000,000) for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent pursuant to this article.

(3) Payments made pursuant to this subdivision shall be made only on or after October 8 of the 2012–13 fiscal year.

(d) The sum transferred pursuant to paragraph (1) of subdivision (c) shall be allocated by the Chancellor of the California Community Colleges to the community colleges for the purpose of improving and expanding career technical education in public secondary education and lower division public higher education pursuant to Section 88532, including the hiring of additional faculty to expand the number of career technical education programs and course offerings.

(e) For the 2013–14 fiscal year, three hundred sixty-one million dollars ($361,000,000) is hereby appropriated from the General Fund to be allocated as follows:

(1) Forty-eight million dollars ($48,000,000) for transfer by the Controller to Section B of the State School Fund for allocation by the Chancellor of the California Community Colleges to community colleges as required under subdivision (d).

(2) Three hundred thirteen million dollars ($313,000,000) for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent pursuant to this article.

(f) From funds appropriated under subdivision (c), the Superintendent shall provide not more than two million dollars ($2,000,000) to county superintendents of schools to carry out the requirements of this article, allocated in a manner similar to that created to carry out the new duties of those superintendents under the settlement agreement in the case of Williams v. California (Super. Ct. San Francisco, No. CGC–00–312236).

(g) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, including computation of the state's minimum funding obligation to school

districts and community college districts in subsequent fiscal years, the appropriations made pursuant to subdivisions (c) and (e) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 and "General Fund revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202, for the 2012–13 *and 2013–14* fiscal ~~year~~ *years* and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for ~~that~~ *those* fiscal ~~year~~ *years*.

SEC. 4. Section 56520 of the Education Code is amended to read:

56520. (a) The Legislature finds and declares all of the following:

(1) That the state has continually sought to provide an appropriate and meaningful educational program in a safe and healthy environment for all children regardless of possible physical, mental, or emotionally disabling conditions. That many schoolage individuals with exceptional needs have significant behavioral challenges that have an adverse impact on their learning or the learning of other pupils, or both. That such individuals with exceptional needs often end up in highly segregated educational placements or are expelled or kept out of school because they exhibit serious behavior problems that, in addition to impeding learning, put the safety of the individual with exceptional needs, or the safety of others, at risk. That the adverse impact of the serious behavior on the quality of life of the impacted individual with exceptional needs is extremely high.

(2) That the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) emphasizes a proactive approach to behaviors that interfere with learning by requiring, pursuant to Section 1414(d)(3)(B)(i) of Title 20 of the United States Code, for individuals with exceptional needs whose behavior impedes their learning or the learning of other pupils, the IEP team to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

(3) That procedures for the elimination of maladaptive behaviors shall not include those deemed unacceptable under Section 49001 or those that cause pain or trauma.

(4) That significant health and safety risks to pupils and school personnel may result from individuals with exceptional needs exhibiting assaultive and injurious, including self-injurious, behaviors. These health and safety risks are minimized by the use of positive behavioral intervention services that are developed in a manner consistent with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing regulations and with recognized professional practices and principles based on peer-reviewed research as identified by the Office of Special Education Programs of the United States Department of Education.

(5) That this chapter shall not exceed the requirements of federal law, create new or separate state requirements, or result in a level of state service beyond that needed to comply with federal law and regulations.

(b) It is the intent of the Legislature:

(1) That children who need functional behavioral assessments and positive behavioral intervention plans, or other positive behavior interventions, supports, and other strategies, to succeed in school in the least restrictive environment, receive them in a timely manner.

(2) That functional behavioral assessments and positive behavioral interventions, supports, and other strategies be provided in accordance with the federal Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) and its implementing regulations.

(3) That functional behavioral assessments and positive behavioral interventions and supports be developed and implemented in a manner consistent with the practices and guidance provided by the United States Department of Education and technical assistance centers sponsored by the Office of Special Education Programs of the United States Department of Education.

(4) That behavioral emergency procedures not be used as a substitute for functional behavioral assessments and positive behavioral interventions, supports, and other strategies, that address the underlying cause of the behavior and teach the individual positive replacement behavior.

(5) That functional behavioral assessments reflect valid and reliable practices.

(6) That, whenever practicable, positive behavioral intervention plans be based on peer-reviewed research.

(7) That procedures in this chapter be used to minimize the risks, injuries, costs, and liabilities associated with the implementation of corporal techniques and other inappropriate, stigmatizing, and counterproductive responses to maladaptive behavior.

(8) That when behavioral interventions are used, they be used in consideration of the pupil's physical freedom and social interaction, be administered in a manner that respects human dignity and personal privacy, and that ensure a pupil's right to placement in the least restrictive educational environment.

(9) That behavioral intervention plans be developed and used, to the extent possible, in a consistent manner across all settings, including when the pupil is also the responsibility of another agency for residential care or related services.

(10) That training programs be developed and implemented in institutions of higher education that train teachers and that in-service training programs be made available as necessary in school districts and county offices of education to ensure that adequately trained staff are available to work effectively with the behavioral intervention needs of individuals with exceptional needs.

SEC. 5. Section 56521.1 is added to the Education Code, to read:

56521.1. (a) Emergency interventions may only be used to control unpredictable, spontaneous behavior that poses a clear and present danger of serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.

(b) Emergency interventions shall not be used as a substitute for the systematic behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior.

(c) No emergency intervention shall be employed for longer than is necessary to contain the behavior. A situation that requires prolonged use of an emergency intervention shall require staff to seek assistance of the schoolsite administrator or law enforcement agency, as applicable to the situation.

(d) Emergency interventions shall not include:

(1) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.

(2) Employment of a device, material, or objects that simultaneously immobilize all four extremities, except that techniques such as prone containment may be used as an emergency intervention by staff trained in such procedures.

(3) An amount of force that exceeds that which is reasonable and necessary under the circumstances.

(e) To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent, guardian, and residential care provider, if appropriate, shall be notified within one schoolday if an emergency intervention is used or serious property damage occurs. A behavioral emergency report shall immediately be completed and maintained in the file of the individual with exceptional needs. The behavioral emergency report shall include all of the following:

(1) The name and age of the individual with exceptional needs.

(2) The setting and location of the incident.

(3) The name of the staff or other persons involved.

(4) A description of the incident and the emergency intervention used, and whether the individual with exceptional needs is currently engaged in any systematic behavioral intervention plan.

(5) Details of any injuries sustained by the individual with exceptional needs, or others, including staff, as a result of the incident.

(f) All behavioral emergency reports shall immediately be forwarded to, and reviewed by, a designated responsible administrator.

(g) If a behavioral emergency report is written regarding an individual with exceptional needs who does not have a behavioral intervention plan, the designated responsible administrator shall, within two days, schedule an individualized education program (IEP) team meeting to review the behavioral emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim plan. The IEP team shall document the reasons for not conducting the functional behavioral assessment, not developing an interim plan, or both.

(h) If a behavioral emergency report is written regarding an individual with exceptional needs who has a positive behavioral intervention plan, an incident involving a previously unseen serious

behavior problem, or where a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the incident constitutes a need to modify the positive behavioral intervention plan.

SEC. 6. Section 56521.2 is added to the Education Code, to read:

56521.2. (a) A local educational agency or nonpublic, nonsectarian school or agency serving individuals with exceptional needs pursuant to Sections 56365 and 56366 shall not authorize, order, consent to, or pay for the following interventions, or other interventions similar to or like the following:

(1) An intervention that is designed to, or likely to, cause physical pain, including, but not limited to, electric shock.

(2) Releasing noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the face of the individual.

(3) An intervention that denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities.

(4) An intervention that is designed to subject, used to subject, or likely to subject, the individual to verbal abuse, ridicule, or humiliation, or that can be expected to cause excessive emotional trauma.

(5) Restrictive interventions that employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel as a limited emergency intervention.

(6) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.

(7) An intervention that precludes adequate supervision of the individual.

(8) An intervention that deprives the individual of one or more of his or her senses.

(b) Whenever an individualized education program (IEP) is developed, reviewed, and revised, the IEP team shall, in the case of an individual whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior in accordance with Section 1414(d)(3)(B) of Title 20 of the United States Code and Sections 300.324(a)(2) and 300.324(b)(2) of Title 34 of the Code of Federal Regulations.

SEC. 7. Section 56522 is added to the Education Code, to read:

56522. (a) The Superintendent shall issue nonmandatory program guidelines, as described in Section 33308.5, regarding the systematic use of behavioral interventions and emergency interventions, and shall provide related training.

(b) At a minimum, the nonmandatory program guidelines and training shall address all of the following:

(1) The recommended qualifications and training of personnel who participate in the implementation of the behavioral intervention plans, including training in positive behavioral interventions.

(2) Special training recommended for the use of emergency behavioral interventions and the types of interventions for which that training would be applicable.

(3) Recommended behavioral emergency procedures.

SEC. 8. Section 56523 of the Education Code is amended to read:

56523. (a) The board shall repeal those regulations governing the use of behavioral interventions with individuals with exceptional needs receiving special education and related services that are no longer supported by statute, including Section 3052, and ~~applicable provisions~~ *subdivisions (d), (e), (f), (g), and (ab)* of Section 3001, of Title 5 of the California Code of Regulations*, as those provisions exist on August 31, 2012*.

(b) This chapter is declaratory of federal law and deemed necessary to implement the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and associated federal regulations. This chapter is intended to provide the clarity, definition, and specificity necessary for local educational agencies to comply with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and shall be implemented by local educational agencies without the development by the Superintendent and adoption by the state board of any additional regulations.

(c) As a condition of receiving funding from the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), a local educational agency shall agree to adhere to this chapter and implementing federal regulations set forth in this chapter.

(d) The Superintendent may monitor local educational agency compliance with this chapter and may take appropriate action, including fiscal repercussions, if either of the following is found:

(1) The local educational agency failed to comply with this chapter and failed to comply substantially with corrective action orders issued by the department resulting from monitoring findings or complaint investigations.

(2) The local educational agency failed to implement the decision of a due process hearing officer based on noncompliance with this part, provisions of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or the federal implementing regulations, wherein noncompliance resulted in the denial of, or impeded the delivery of, a free appropriate public education for an individual with exceptional needs.

(e) Commencing with the 2010–11 fiscal year, if any activities authorized pursuant to this section and implementing regulations are found be a state reimbursable mandate pursuant to Section 6 of Article XIII B of the California Constitution, state funding provided for purposes of special education pursuant to Item 6110-161-0001 of Section 2.00 of the annual Budget Act shall first be used to directly offset any mandated costs.

(f) Pursuant to Section 17570.1 of the Government Code, the Legislature hereby requests the Department of Finance on or before December 31, 2012, to exercise its authority pursuant to subdivision (c) of Section 17570 of the Government Code and file a request with the Commission on State Mandates for the purpose of seeking the adoption of a new test claim to supersede CSM-4464 based on subsequent changes in law that may modify a requirement that the state reimburse a local government for a state mandate.

SEC. 9. Section 56525 of the Education Code is amended to read:

56525. (a) A person recognized by the national Behavior Analyst Certification Board as a Board Certified Behavior Analyst may conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs.

(b) This section does not require a district, special education local plan area, or county office to use a Board Certified Behavior Analyst to conduct behavior assessments and provide behavioral intervention services for individuals with exceptional needs.

SEC. 10. Section 69432.7 of the Education Code is amended to read:

69432.7. As used in this chapter, the following terms have the following meanings:

(a) An "academic year" is July 1 to June 30, inclusive. The starting date of a session shall determine the academic year in which it is included.

(b) "Access costs" means living expenses and expenses for transportation, supplies, and books.

(c) "Award year" means one academic year, or the equivalent, of attendance at a qualifying institution.

(d) "College grade point average" and "community college grade point average" mean a grade point average calculated on the basis of all college work completed, except for nontransferable units and courses not counted in the computation for admission to a California public institution of higher education that grants a baccalaureate degree.

(e) "Commission" means the Student Aid Commission.

(f) "Enrollment status" means part- or full-time status.

(1) "Part time," for purposes of Cal Grant eligibility, means 6 to 11 semester units, inclusive, or the equivalent.

(2) "Full time," for purposes of Cal Grant eligibility, means 12 or more semester units or the equivalent.

(g) "Expected family contribution," with respect to an applicant, shall be determined using the federal methodology pursuant to subdivision (a) of Section 69506 (as established by Title IV of the federal Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1070 et seq.)) and applicable rules and regulations adopted by the commission.

(h) "High school grade point average" means a grade point average calculated on a 4.0 scale, using all academic coursework, for the sophomore year, the summer following the sophomore year, the junior year, and the summer following the junior year, excluding physical education, reserve officer training corps (ROTC), and remedial courses, and computed pursuant to regulations of the commission. However, for high school graduates who apply after their senior year, "high school grade point average" includes senior year coursework.

(i) "Instructional program of not less than one academic year" means a program of study that results in the award of an associate

or baccalaureate degree or certificate requiring at least 24 semester units or the equivalent, or that results in eligibility for transfer from a community college to a baccalaureate degree program.

(j) "Instructional program of not less than two academic years" means a program of study that results in the award of an associate or baccalaureate degree requiring at least 48 semester units or the equivalent, or that results in eligibility for transfer from a community college to a baccalaureate degree program.

(k) "Maximum household income and asset levels" means the applicable household income and household asset levels for participants, including new applicants and renewing recipients, in the Cal Grant Program, as defined and adopted in regulations by the commission for the 2001–02 academic year, which shall be set pursuant to the following income and asset ceiling amounts:

CAL GRANT PROGRAM INCOME CEILINGS

	Cal Grant A, C, and T	Cal Grant B
Dependent and Independent students with dependents*		
Family Size		
Six or more	$74,100	$40,700
Five	$68,700	$37,700
Four	$64,100	$33,700
Three	$59,000	$30,300
Two	$57,600	$26,900
Independent		
Single, no dependents	$23,500	$23,500
Married	$26,900	$26,900

*Applies to independent students with dependents other than a spouse.

CAL GRANT PROGRAM ASSET CEILINGS

	Cal Grant A, C, and T	Cal Grant B

Dependent**	$49,600	$49,600
Independent	$23,600	$23,600

**Applies to independent students with dependents other than a spouse.

The commission shall annually adjust the maximum household income and asset levels based on the percentage change in the cost of living within the meaning of paragraph (1) of subdivision (e) of Section 8 of Article XIII B of the California Constitution. The maximum household income and asset levels applicable to a renewing recipient shall be the greater of the adjusted maximum household income and asset levels or the maximum household income and asset levels at the time of the renewing recipient's initial Cal Grant award. For a recipient who was initially awarded a Cal Grant for an academic year before the 2011–12 academic year, the maximum household income and asset levels shall be the greater of the adjusted maximum household income and asset levels or the 2010–11 academic year maximum household income and asset levels. An applicant or renewal recipient who qualifies to be considered under the simplified needs test established by federal law for student assistance shall be presumed to meet the asset level test under this section. Prior to disbursing any Cal Grant funds, a qualifying institution shall be obligated, under the terms of its institutional participation agreement with the commission, to resolve any conflicts that may exist in the data the institution possesses relating to that individual.

(*l*) (1) "Qualifying institution" means an institution that complies with paragraphs (2) and (3) and is any of the following:

(A) A California private or independent postsecondary educational institution that participates in the Pell Grant Program and in at least two of the following federal campus-based student aid programs:

(i) Federal Work-Study.

(ii) Perkins Loan Program.

(iii) Supplemental Educational Opportunity Grant Program.

(B) A nonprofit institution headquartered and operating in California that certifies to the commission that 10 percent of the

institution's operating budget, as demonstrated in an audited financial statement, is expended for purposes of institutionally funded student financial aid in the form of grants, that demonstrates to the commission that it has the administrative capacity to administer the funds, that is accredited by the Western Association of Schools and Colleges, and that meets any other state-required criteria adopted by regulation by the commission in consultation with the Department of Finance. A regionally accredited institution that was deemed qualified by the commission to participate in the Cal Grant Program for the 2000–01 academic year shall retain its eligibility as long as it maintains its existing accreditation status.

(C) A California public postsecondary educational institution.

(2) (A) The institution shall provide information on where to access California license examination passage rates for the most recent available year from graduates of its undergraduate programs leading to employment for which passage of a California licensing examination is required, if that data is electronically available through the Internet Web site of a California licensing or regulatory agency. For purposes of this paragraph, "provide" may exclusively include placement of an Internet Web site address labeled as an access point for the data on the passage rates of recent program graduates on the Internet Web site where enrollment information is also located, on an Internet Web site that provides centralized admissions information for postsecondary educational systems with multiple campuses, or on applications for enrollment or other program information distributed to prospective students.

(B) The institution shall be responsible for certifying to the commission compliance with the requirements of subparagraph (A).

(3) (A) The commission shall certify by October 1 of each year the institution's latest three-year cohort default rate and graduation rate as most recently reported by the United States Department of Education.

(B) For purposes of the 2011–12 academic year, an otherwise qualifying institution with a three-year cohort default rate reported by the United States Department of Education that is equal to or greater than 24.6 percent shall be ineligible for initial and renewal Cal Grant awards at the institution, except as provided in subparagraph (F).

(C) For purposes of the 2012–13 academic year, and every academic year thereafter, an otherwise qualifying institution with a three-year cohort default rate that is equal to or greater than 15.5 percent, as certified by the commission on October 1, 2011, and every year thereafter, shall be ineligible for initial and renewal Cal Grant awards at the institution, except as provided in subparagraph (F).

(D) (i) An otherwise qualifying institution that becomes ineligible under this paragraph for initial and renewal Cal Grant awards shall regain its eligibility ~~in~~ *for* the academic year ~~in~~ *for* which it satisfies the requirements established in subparagraph (B), (C), or (G), as applicable.

(ii) If the United States Department of Education corrects or revises an institution's three-year cohort default rate or graduation rate that originally failed to satisfy the requirements established in subparagraph (B), (C), or (G), as applicable, and the correction or revision results in the institution's three-year cohort default rate or graduation rate satisfying those requirements, that institution shall immediately regain its eligibility for the academic year to which the corrected or revised three-year cohort default rate or graduation rate would have been applied.

(E) An otherwise qualifying institution for which no three-year cohort default rate or graduation rate has been reported by the United States Department of Education shall be provisionally eligible to participate in the Cal Grant Program until a three-year cohort default rate or graduation rate has been reported for the institution by the United States Department of Education.

(F) (i) An institution that is ineligible for initial and renewal Cal Grant awards at the institution under subparagraph (B), (C), or (G) shall be eligible for renewal Cal Grant awards for recipients who were enrolled in the ineligible institution during the academic year before the academic year for which the institution is ineligible and who choose to renew their Cal Grant awards to attend the ineligible institution. Cal Grant awards subject to this subparagraph shall be reduced as follows:

(I) The maximum Cal Grant A and B awards specified in the annual Budget Act shall be reduced by 20 percent.

(II) The reductions specified in this subparagraph shall not impact access costs as specified in subdivision (b) of Section 69435.

(ii) This subparagraph shall become inoperative on July 1, 2013.

(G) For purposes of the 2012–13 academic year, and every academic year thereafter, an otherwise qualifying institution with a graduation rate of 30 percent or less for students taking 150 percent or less of the expected time to complete degree requirements, as reported by the United States Department of Education and as certified by the commission pursuant to subparagraph (A), shall be ineligible for initial and renewal Cal Grant awards at the institution, except as provided for in subparagraphs (F) and (I).

(H) Notwithstanding any other law, the requirements of this paragraph shall not apply to institutions with 40 percent or less of undergraduate students borrowing federal student loans, using information reported to the United States Department of Education for the academic year two years before the year in which the commission is certifying the three-year cohort default rate or graduation rate pursuant to subparagraph (A).

(I) Notwithstanding subparagraph (G), an otherwise qualifying institution with a three-year cohort default rate that is less than 10 percent and a graduation rate above 20 percent for students taking 150 percent or less of the expected time to complete degree requirements, as certified by the commission pursuant to subparagraph (A), shall remain eligible for initial and renewal Cal Grant awards at the institution through the 2016–17 academic year.

(J) The commission shall do all of the following:

(i) Notify initial Cal Grant recipients seeking to attend, or attending, an institution that is ineligible for initial and renewal Cal Grant awards under subparagraph (C) or (G) that the institution is ineligible for initial Cal Grant awards for the academic year for which the student received an initial Cal Grant award.

(ii) Notify renewal Cal Grant recipients attending an institution that is ineligible for initial and renewal Cal Grant awards at the institution under subparagraph (C) or (G) that the student's Cal Grant award will be reduced by 20 percent, or eliminated, as appropriate, if the student attends the ineligible institution in an academic year in which the institution is ineligible.

(iii) Provide initial and renewal Cal Grant recipients seeking to attend, or attending, an institution that is ineligible for initial and renewal Cal Grant awards at the institution under subparagraph (C) or (G) with a complete list of all California postsecondary

educational institutions at which the student would be eligible to receive an unreduced Cal Grant award.

(K) By January 1, 2013, the Legislative Analyst shall submit to the Legislature a report on the implementation of this paragraph. The report shall be prepared in consultation with the commission, and shall include policy recommendations for appropriate measures of default risk and other direct or indirect measures of quality or effectiveness in educational institutions participating in the Cal Grant Program, and appropriate scores for those measures. It is the intent of the Legislature that appropriate policy and fiscal committees review the requirements of this paragraph and consider changes thereto.

(m) "Satisfactory academic progress" means those criteria required by applicable federal standards published in Title 34 of the Code of Federal Regulations. The commission may adopt regulations defining "satisfactory academic progress" in a manner that is consistent with those federal standards.

SEC. 11. Section 69999.6 of the Education Code is amended to read:

69999.6. (a) In enacting this article, it is the intent of the Legislature to accomplish all of the following:

(1) Provide explicit authority to the board to continue to administer accounts for, and make awards to, persons who qualified for awards under the provisions of the Governor's Scholarship Programs as those provisions existed on January 1, 2003, prior to the repeal of former Article 20 (commencing with Section 69995).

(2) Provide for the management and disbursement of funds previously set aside for the scholarship programs authorized by former Article 20 (commencing with Section 69995).

(3) Provide a guarantee should additional funds be needed to cover awards authorized and made pursuant to former Article 20 (commencing with Section 69995).

(b) The board may manage and disburse the funds previously set aside for the scholarship programs authorized by former Article 20 (commencing with Section 69995).

(c) If a person has earned an award under the Governor's Scholarship Programs on or before January 1, 2003, but has not claimed the award on or before June 30, 2004, he or she still may claim the award by a date that is five years from the first June 30

that fell after he or she took the qualifying test. An award shall not be made by the board after that date.

(d) The board shall negotiate with the current manager of the Governor's Scholarship Programs and execute an amended or new management and funding agreement, before January 1, 2013, which shall include, but not be limited to, all of the following:

(1) Terms providing for the return to the General Fund by no later than January 1, 2013, of moneys appropriated to the Governor's Scholarship Programs that are not anticipated to be needed to make awards pursuant to paragraphs (1) and (2) of subdivision (a).

(2) Provisions that authorize the board to pay agreed-upon early withdrawal penalties or fees.

(3) Terms that extend *to* the final date upon which the board may withdraw funds for a person who earned an award under the Governor's Scholarship Programs.

(e) (1) If funds retained in the Golden State Scholarshare Trust after January 1, 2013, are insufficient to cover the remaining withdrawal requests, it is the intent of the Legislature to appropriate the necessary funds to the Golden State Scholarshare Trust for the purpose of funding individual beneficiary accounts.

(2) The board shall notify the Department of Finance and the Legislature no later than 10 working days after determining that a shortfall in available funding described in paragraph (1) will occur.

(f) (1) Of the funds transferred to the General Fund pursuant to paragraph (1) of subdivision (d), five million dollars ($5,000,000) is hereby appropriated to the Chancellor of the California State University, without regard to fiscal years, to fund the establishment and administration of the California Open Education Resources Council and the California Digital Open Source Library, and the development or acquisition of open education resources, or any combination thereof, pursuant to legislation enacted in the 2011–12 Regular Session of the Legislature, provided that the chancellor may provide reimbursement to the California Community Colleges and the University of California for costs those segments, or their representatives, incur in association with the activities described in this paragraph.

(2) Moneys, or a portion of moneys, appropriated pursuant to paragraph (1) shall not be encumbered unless at least 100 percent of that amount encumbered is matched by private funds. Moneys appropriated pursuant to paragraph (1) that are not matched by private funds shall revert to the Golden State Scholarshare Trust for purposes of the Governor's Scholarship Programs.

~~(f)~~

(g) The board may adopt rules and regulations for the implementation of this article.

~~SEC. 11.~~

SEC. 12. Section 17581.6 of the Government Code is amended to read:

17581.6. (a) Commencing with the 2012–13 fiscal year, funds provided in Item 6110-296-0001 of Section 2.00 of the annual Budget Act shall be allocated as block grants to school districts, charter schools, and county offices of education to support all of the mandated programs described in subdivision (d).

(b) (1) Notwithstanding any other law, each fiscal year a school district or county office of education may receive funding for the performance of the mandated activities listed in subdivision (d) either through the block grant established pursuant to this section or by claiming reimbursement pursuant to Section 17560. A school district or county office of education that claims reimbursement for any mandated activities pursuant to Section 17560 for mandated costs incurred during a fiscal year shall not be eligible for funding pursuant to this section for the same fiscal year.

(2) A school district and county office of education that elects to receive block grant funding instead of seeking reimbursement pursuant to Section 17560 shall, and any charter school that elects to receive block grant funding shall, submit a letter of intent to the Superintendent of Public Instruction on or before September 30 of each year requesting block grant funding pursuant to this section. The Superintendent of Public Instruction shall distribute funding provided pursuant to subdivision (a) to school districts, charter schools, and county offices of education pursuant to the rates set forth in Item 6110-296-0001 of Section 2.00 of the annual Budget Act. Funding distributed pursuant to this section is in lieu of reimbursement pursuant to Section 6 of Article XIII B of the California Constitution for the performance of all activities specified in subdivision (d) as those activities pertain to school

districts and county offices of education. A school district, county office of education, or charter school that submits a letter of intent and receives block grant funding pursuant to this section shall not also be eligible to submit a claim for reimbursement of costs incurred for a mandated program set forth in subdivision (d) for the fiscal year for which the block grant funding is received.

(c) Block grant funding provided to school districts, charter schools, and county offices of education pursuant to this section is subject to annual audits required by Section 41020 of the Education Code.

(d) Block grant funding provided pursuant to this section to individual school districts, charter schools, and county offices of education is to support all of the following mandated programs:

(1) Absentee Ballots (CSM 3713; Chapter 77 of the Statutes of 1978 and Chapter 1032 of the Statutes of 2002).

(2) Academic Performance Index (01-TC-22; Chapter 3 of the Statutes of 1999, First Extraordinary Session; and Chapter 695 of the Statutes of 2000).

(3) Agency Fee Arrangements (00-TC-17 and 01-TC-14; Chapter 893 of the Statutes of 2000 and Chapter 805 of the Statutes of 2001).

(4) AIDS Instruction and AIDS Prevention Instruction (CSM 4422, 99-TC-07, and 00-TC-01; Chapter 818 of the Statutes of 1991; and Chapter 403 of the Statutes of 1998).

(5) California State Teachers' Retirement System Service Credit (02-TC-19; Chapter 603 of the Statutes of 1994; Chapters 383, 634, and 680 of the Statutes of 1996; Chapter 838 of the Statutes of 1997; Chapter 965 of the Statutes of 1998; Chapter 939 of the Statutes of 1999; and Chapter 1021 of the Statutes of 2000).

(6) Caregiver Affidavits (CSM 4497; Chapter 98 of the Statutes of 1994).

(7) Charter Schools I, II, and III (CSM 4437, 99-TC-03, and 99-TC-14; Chapter 781 of the Statutes of 1992; Chapters 34 and 673 of the Statutes of 1998; Chapter 34 of the Statutes of 1998; and Chapter 78 of the Statutes of 1999).

(8) Child Abuse and Neglect Reporting (01-TC-21: Chapters 640 and 1459 of the Statutes of 1987; Chapter 132 of the Statutes of 1991; Chapter 459 of the Statutes of 1992; Chapter 311 of the Statutes of 1998; Chapter 916 of the Statutes of 2000; and Chapters 133 and 754 of the Statutes of 2001).

(9) Collective Bargaining (CSM 4425; Chapter 961 of the Statutes of 1975).

(10) Comprehensive School Safety Plans (98-TC-01 and 99-TC-10; Chapter 736 of the Statutes of 1997; Chapter 996 of the Statutes of 1999; and Chapter 828 of the Statutes of 2003).

(11) Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools (CSM 4488, CSM 4461, 99-TC-09, 00-TC-12, 97-TC-24, CSM 4453, CSM 4474, CSM 4462; Chapter 448 of the Statutes of 1975; Chapter 965 of the Statutes of 1977; Chapter 975 of the Statutes of 1980; Chapter 469 of the Statutes of 1981; Chapter 459 of the Statutes of 1985; Chapters 87 and 97 of the Statutes of 1986; Chapter 1452 of the Statutes of 1987; Chapters 65 and 1284 of the Statutes of 1988; Chapter 213 of the Statutes of 1989; Chapters 10 and 403 of the Statutes of 1990; Chapter 906 of the Statutes of 1992; Chapter 1296 of the Statutes of 1993; Chapter 929 of the Statutes of 1997; Chapters 846 and 1031 of the Statutes of 1998; Chapter 1 of the Statutes of 1999, First Extraordinary Session; Chapter 73 of the Statutes of 2000; Chapter 650 of the Statutes of 2003; Chapter 895 of the Statutes of 2004; and Chapter 677 of the Statutes of 2005).

(12) Consolidation of Law Enforcement Agency Notification and Missing Children Reports (CSM 4505; Chapter 1117 of the Statutes of 1989 and 01-TC-09; Chapter 249 of the Statutes of 1986; and Chapter 832 of the Statutes of 1999).

(13) Consolidation of Notification to Teachers: Pupils Subject to Suspension or Expulsion I and II, and Pupil Discipline Records (00-TC-10 and 00-TC-11; Chapter 345 of the Statutes of 2000).

(14) County Office of Education Fiscal Accountability Reporting (97-TC-20; Chapters 917 and 1452 of the Statutes of 1987; Chapters 1461 and 1462 of the Statutes of 1988; Chapter 1372 of the Statutes of 1990; Chapter 1213 of the Statutes of 1991; Chapter 323 of the Statutes of 1992; Chapters 923 and 924 of the Statutes of 1993; Chapters 650 and 1002 of the Statutes of 1994; and Chapter 525 of the Statutes of 1995).

(15) Criminal Background Checks (97-TC-16; Chapters 588 and 589 of the Statutes of 1997).

(16) Criminal Background Checks II (00-TC-05; Chapters 594 and 840 of the Statutes of 1998; and Chapter 78 of the Statutes of 1999).

(17) Differential Pay and Reemployment (99-TC-02; Chapter 30 of the Statutes of 1998).

(18) Expulsion of Pupil: Transcript Cost for Appeals (SMAS; Chapter 1253 of the Statutes of 1975).

(19) Financial and Compliance Audits (CSM 4498 and CSM 4498-A; Chapter 36 of the Statutes of 1977).

(20) Habitual Truants (CSM 4487 and CSM 4487-A; Chapter 1184 of the Statutes of 1975).

(21) High School Exit Examination (00-TC-06; Chapter 1 of the Statutes of 1999, First Extraordinary Session; and Chapter 135 of the Statutes of 1999).

(22) Immunization Records (SB 90-120; Chapter 1176 of the Statutes of 1977).

(23) Immunization Records—Hepatitis B (98-TC-05; Chapter 325 of the Statutes of 1978; Chapter 435 of the Statutes of 1979; Chapter 472 of the Statutes of 1982; Chapter 984 of the Statutes of 1991; Chapter 1300 of the Statutes of 1992; Chapter 1172 of the Statutes of 1994; Chapters 291 and 415 of the Statutes of 1995; Chapter 1023 of the Statutes of 1996; and Chapters 855 and 882 of the Statutes of 1997).

(24) Interdistrict Attendance Permits (CSM 4442; Chapters 172 and 742 of the Statutes of 1986; Chapter 853 of the Statutes of 1989; Chapter 10 of the Statutes of 1990; and Chapter 120 of the Statutes of 1992).

(25) Intradistrict Attendance (CSM 4454; Chapters 161 and 915 of the Statutes of 1993).

(26) Juvenile Court Notices II (CSM 4475; Chapters 1011 and 1423 of the Statutes of 1984; Chapter 1019 of the Statutes of 1994; and Chapter 71 of the Statutes of 1995).

(27) Mandate Reimbursement Process I and II (CSM 4204, CSM 4485, and 05-TC-05; Chapter 486 of the Statutes of 1975).

(28) Notification of Truancy (CSM 4133; Chapter 498 of the Statutes of 1983; Chapter 1023 of the Statutes of 1994; and Chapter 19 of the Statutes of 1995).

(29) Open Meetings/Brown Act Reform (CSM 4257 and CSM 4469; Chapter 641 of the Statutes of 1986; and Chapters 1136, 1137, and 1138 of the Statutes of 1993).

(30) Physical Performance Tests (96-365-01; Chapter 975 of the Statutes of 1995).

(31) Prevailing Wage Rate (01-TC-28; Chapter 1249 of the Statutes of 1978).

(32) Pupil Health Screenings (CSM 4440; Chapter 1208 of the Statutes of 1976; Chapter 373 of the Statutes of 1991; and Chapter 750 of the Statutes of 1992).

(33) Pupil Promotion and Retention (98-TC-19; Chapter 100 of the Statutes of 1981; Chapter 1388 of the Statutes of 1982; Chapter 498 of the Statutes of 1983; Chapter 1263 of the Statutes of 1990; and Chapters 742 and 743 of the Statutes of 1998).

(34) Pupil Safety Notices (02-TC-13; Chapter 498 of the Statutes of 1983; Chapter 482 of the Statutes of 1984; Chapter 948 of the Statutes of 1984; Chapter 196 of the Statutes of 1986; Chapter 332 of the Statutes of 1986; Chapter 445 of the Statutes of 1992; Chapter 1317 of the Statutes of 1992; Chapter 589 of the Statutes of 1993; Chapter 1172 of the Statutes of 1994; Chapter 1023 of the Statutes of 1996; and Chapter 492 of the Statutes of 2000).

(35) Pupil Expulsions (CSM 4455; Chapter 1253 of the Statutes of 1975; Chapter 965 of the Statutes of 1977; Chapter 668 of the Statutes of 1978; Chapter 318 of the Statutes of 1982; Chapter 498 of the Statutes of 1983; Chapter 622 of the Statutes of 1984; Chapter 942 of the Statutes of 1987; Chapter 1231 of the Statutes of 1990; Chapter 152 of the Statutes of 1992; Chapters 1255, 1256, and 1257 of the Statutes of 1993; and Chapter 146 of the Statutes of 1994).

(36) Pupil Expulsion Appeals (CSM 4463; Chapter 1253 of the Statutes of 1975; Chapter 965 of the Statutes of 1977; Chapter 668 of the Statutes of 1978; and Chapter 498 of the Statutes of 1983).

(37) Pupil Suspensions (CSM 4456; Chapter 965 of the Statutes of 1977; Chapter 668 of the Statutes of 1978; Chapter 73 of the Statutes of 1980; Chapter 498 of the Statutes of 1983; Chapter 856 of the Statutes of 1985; and Chapter 134 of the Statutes of 1987).

(38) School Accountability Report Cards (97-TC-21, 00-TC-09, 00-TC-13, and 02-TC-32; Chapter 918 of the Statutes of 1997; Chapter 912 of the Statutes of 1997; Chapter 824 of the Statutes of 1994; Chapter 1031 of the Statutes of 1993; Chapter 759 of the Statutes of 1992; and Chapter 1463 of the Statutes of 1989).

(39) School District Fiscal Accountability Reporting (97-TC-19; Chapter 100 of the Statutes of 1981; Chapter 185 of the Statutes of 1985; Chapter 1150 of the Statutes of 1986; Chapters 917 and 1452 of the Statutes of 1987; Chapters 1461 and 1462 of the

Statutes of 1988; Chapter 525 of the Statutes of 1990; Chapter 1213 of the Statutes of 1991; Chapter 323 of the Statutes of 1992; Chapters 923 and 924 of the Statutes of 1993; Chapters 650 and 1002 of the Statutes of 1994; and Chapter 525 of the Statutes of 1995).

(40) School District Reorganization (98-TC-24; Chapter 1192 of the Statutes of 1980; and Chapter 1186 of the Statutes of 1994).

(41) Student Records (02-TC-34; Chapter 593 of the Statutes of ~~1989).~~ *1989; Chapter 561 of the Statutes of 1993; Chapter 311 of the Statutes of 1998; and Chapter 67 of the Statutes of 2000).*

(42) The Stull Act (98-TC-25; Chapter 498 of the Statutes of 1983; and Chapter 4 of the Statutes of 1999).

(43) Threats Against Peace Officers (CSM 96-365-02; Chapter 1249 of the Statutes of 1992; and Chapter 666 of the Statutes of 1995).

(e) The Superintendent of Public Instruction shall compile a list of all school districts, charter schools, and county offices of education that received block grant funding in the prior fiscal year pursuant to this section. This list shall include the total amount each school district, charter school, and county office of education received. The Superintendent of Public Instruction shall provide this information to the appropriate fiscal and policy committees of the Legislature, the Controller, the Department of Finance, and the Legislative Analyst Office on or before September 9 of each year.

~~SEC. 12.~~

SEC. 13. Item 6110-485 of Section 2.00 of the Budget Act of 2011 is amended to read:

6110-485—Reappropriation (Proposition 98), Department of Education. The sum of $17,159,000 is hereby reappropriated from the Proposition 98 Reversion Account for the following purposes:

0001—General Fund

(1) The sum of $6,594,000 to the State Department of Education for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent of Public Instruction for apportionment for special education programs pursuant to Part 30 (com-

mencing with Section 56000) of Division 4 of Title 2 of the Education Code.

(2) The sum of $230,000 to the State Department of Education for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent of Public Instruction for the purpose of funding California School Information Services administration activities authorized pursuant to Schedule (2) of Item 6110-140-0001.

(3) The sum of $10,335,000 to the State Department of Education for the transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent of Public Instruction to support special education authorized pursuant to Schedule (1) of Item 6110-161-0001.

~~SEC. 13.~~

SEC. 14. Item 6110-488 of Section 2.00 of the Budget Act of 2011, as amended by Section 84 of Chapter 38 of the Statutes of 2012, is amended to read:

6110-488—Reappropriation, Department of Education. Notwithstanding any other provision of law, the balances from the following items are available for reappropriation for the purposes specified in Provisions 1 to 5, inclusive:

0001—General Fund

(1) $24,000,000 of the unexpended balance of the amount appropriated for child care programs in Schedules (1) and (1.5) of Item 6110-196-0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010)

(2) $6,900,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for Economic Impact Aid in Item 6110-128-0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010)

(3) $20,000,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for special education in Schedule (1) of Item 6110-161-0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010)

(4) $15,121,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for the K–3 Class Size Reduction program in paragraph (9) of subdivision (a) of Section 38 of Chapter 12 of the Statutes of 2009

(5) $40,000,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for the Quality Education Investment Act in the 2010–11 fiscal year pursuant to Section 52055.770 of the Education Code

(7) $9,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the English Language Learners Supplemental Instructional Materials program in paragraph (10) of subdivision (a) of Section 43 of Chapter 79 of the Statutes of 2006

(8) $6,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the Agricultural Career Technical Education Program in Item 6110-167-0001 of the Budget Act of 2008 (Chs. 268 and 269, Stats. 2008)

(9) $973,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the Class Size Reduction Program in Item 6110-234-0001 of the Budget Act of 2008 (Chs. 268 and 269, Stats. 2008)

(10) $422,000 or whatever greater or lesser amount represents the balance available from Schedule (1) of Item 6870-101-0001 of the Budget Act of 2006 (Chs. 47 and 48, Stats. 2006), as reappropriated in Item 6870-492 of the Budget Act of 2008 (Chs. 268 and 269, Stats. 2008)

(11) $902,000 or whatever greater or lesser amount represents the balance available from Schedules (7), (8), and (19) of Item 6870-101-0001 of the Budget Act of 2008 (Chs. 268 and 269, Stats. 2008)

(12) $1,039,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for Special Education Instruction in Schedule (2) of Item 6110-161-0001 of the Budget Act of 2009

(Ch. 1, 2009–10 3rd Ex. Sess., as revised by Ch. 1, 2009–10 4th Ex. Sess.)

(13) $82,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for Child Nutrition in Item 6110-651-0001, pursuant to Section 5 of Chapter 3 of the 2009–10 Fourth Extraordinary Session, as amended by Chapter 31 of the 2009–10 Third Extraordinary Session

(14) $267,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the Supplemental School Counseling Program in Item 6110-108-0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010)

(15) $15,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the Special Education Program in Schedule (2) of Item 6110-161-0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010)

(16) $30,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the California Partnership Academies in Item 6110-166-0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010)

(17) $418,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the California High School Exit Exam Supplemental Instruction program in Item 6110-204-0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010)

(18) $369,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the Arts and Music Block Grant program in Item 6110-265-0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010)

(19) $18,677,000 or whatever greater or lesser amount represents the balance available from Schedules (1), (7), (8), (9), and (19) of Item 6870-101-0001 of the Budget Act of 2009 (Ch. 1, 2009–10 3rd Ex. Sess., as revised by Ch. 1, 2009–10 4th Ex. Sess.)

(20) $33,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated

for the Charter Schools Facilities Grant Program in paragraph (11) of subdivision (a) of Section 43 of Chapter 79 of the Statutes of 2006.

(21) $413,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the Charter Schools Facilities Grant Program pursuant to Section 47614.5 of the Education Code (Ch. 215, Stats. 2007).

(22) $18,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the California Partnership Academies in Item 6110–166–0001 of the Budget Act of 2008 (Chs. 268 and 269, Stats. 2008).

(23) $201,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the Supplemental School Counseling Program in Item 6110–108–0001 of the Budget Act of 2009 (Ch. 1, 2009–10 3rd Ex. Sess., as revised by Ch. 1, 2009–10 4th Ex. Sess.).

(24) $14,058,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for Special Education Instruction in Schedule (1) of Item 6110–161–0001 of the Budget Act of 2009 (Ch. 1, 2009–10 3rd Ex. Sess., as revised by Ch. 1, 2009–10 4th Ex. Sess.).

(25) $1,003,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the California Partnership Academies in Item 6110–166–0001 of the Budget Act of 2009 (Ch. 1, 2009–10 3rd Ex. Sess., as revised by Ch. 1, 2009–10 4th Ex. Sess.).

(26) $1,334,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the Charter School Economic Impact Aid Program in Schedule (2) of Item 6110–211–0001 of the Budget Act of 2009 (Ch. 1, 2009–10 3rd Ex. Sess., as revised by Ch. 1, 2009–10 4th Ex. Sess.).

(27) $1,275,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for Special Education Instruction in Item

6110–650–0001 (pursuant to Sec. 5, Ch. 3, 2009–10 4th Ex. Sess., as revised by Ch. 31, 2009–10 3rd Ex. Sess.).

(28) $48,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the English Language Tutoring program in Item 6110–227–0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010).

(29) $29,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the Physical Education Incentive Grants program in Item 6110–260–0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010).

(30) $18,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the Certificated Staff Mentoring program in Item 6110–267–0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010).

(31) $5,337,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the After School Education and Safety program in Item 6110–649–0001 in the 2008–09 fiscal year, pursuant to Sections 8483.5 and 8483.51 of the Education Code.

(32) $713,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for the special education instruction in Schedule (1) of Item 6110-161-0001 of the Budget Act of 2009 (Ch. 1, 2009-10 3rd Ex. Sess., as revised by Ch. 1, 2009-10 4th Ex. Sess.)

(33) $56,717,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for special education instruction in Schedule (1) of Item 6110-161-0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010)

(34) $4,000,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for the Child Nutrition Program in Schedule (1) of Item 6110-203-0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010)

(35) $13,925,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for child care programs in Schedules (1) and (1.5) of Item 6110-196-0001 of the Budget Act of 2009 (Ch. 1, 2009-10 3rd Ex. Sess., as revised by Ch. 1, 2009-10 4th Ex. Sess.)

(36) $32,314,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for Child Care Programs in Schedule (1.5) of Item 6110-196-0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010)

(37) $11,663,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the After School Education and Safety program in Item 6110-649-0001 in the 2009-10 fiscal year, pursuant to Sections 8483.5 and 8483.51 of the Education Code.

(38) $16,801,000 or whatever greater or lesser amount reflects the unexpended balance of the amount appropriated for the After School Education and Safety program in Item 6110-649-0001 in the 2010-11 fiscal year, pursuant to Sections 8483.5 and 8483.51 of the Education Code.

(39) $45,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for Categorical Programs for charter schools in Schedule (1) of Item 6110-211-0001 of the Budget Act of 2009 (Ch. 1, 2009-10 3rd Ex. Sess., as revised by Ch. 1, 2009-10 4th Ex. Sess.)

(40) $5,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for English Language Development Assessment in Item 6110-651-0001 pursuant to Section 5 of Chapter 3 of the 2009-10 Fourth Extraordinary Session, as amended by Chapter 31 of the 2009-10 Third Extraordinary Session.

(41) $652,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for Economic Impact Aid in Item 6110-128-0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010)

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(42) $722,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for the Early Education Program for Individuals with Exceptional Needs in Schedule (2) of Item 6110-161-0001 of the Budget Act of 2010 (Ch. 712, Stats. 2010)

(43) $2,245,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for the Quality Education Investment Act in the 2010-11 fiscal year pursuant to Section 52055.770 of the Education Code.

(44) $70,000,000 or whatever greater or lesser amount of the unexpended balance of the amount appropriated for the Quality Education Investment Act in the 2011-12 fiscal year pursuant to Section 52055.770 of the Education Code.

Provisions:

2. The sum of $5,303,000 is hereby reappropriated to the State Department of Education for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent of Public Instruction to support costs during the 2011–12 fiscal year associated with the Class Size Reduction Program operated pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28 of Division 4 of Title 2 of the Education Code.

3. The sum of $5,673,000 is hereby reappropriated to the State Department of Education for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent of Public Instruction to support California School Information Services administration activities authorized pursuant to Schedule (2) of Item 6110-140-0001.

4. The sum of $142,021,000 is hereby reappropriated to the State Department of Education for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent of Public Instruction for apportionment for special education programs pursuant to Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code.

5. The sum of $209,802,000 is hereby reappropriated to the State Department of Education for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent of Public Instruction for apportionment for special education programs pursuant to Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code

~~SEC. 14.~~

SEC. 15. Item 6440-301-6048 is added to Section 2.00 of the Budget Act of 2012, to read:

6440-301-6048—For capital outlay, University of California, payable from the 2006 University Capital Outlay Bond Fund 4,750,000

Schedule:

Merced Campus

(1) 99.11.075-Classroom and Academic Office Building—Preliminary plans and working drawings 4,750,000

Provisions:

1. Identified savings in funds encumbered from this general obligation bond fund for construction contracts for capital outlay projects, remaining after completion of a capital outlay project and upon resolution of all change orders and claims, may be used prior to the appropriation reversion date: (a) to begin working drawings for a project for which preliminary plan funds have been appropriated and the plans have been approved by the State Public Works Board consistent with the scope and cost approved by the Legislature as adjusted for inflation only, (b) to proceed further with the underground tank corrections program, (c) to perform engineering evaluations on buildings that have been identified as potentially in need of seismic retro-fitting, (d) to proceed with design and construction of projects to meet requirements under the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), or (e) to fund minor capital outlay projects.

2. The funds provided in this item shall be available for expenditure only if the University of California requires the payment of prevailing wage rates by the contractors and subcontractors on all projects in this item and on all other capital outlay projects undertaken by the University of California that are funded using nonstate funds or are otherwise not financed with the funds appropriated in this item. This requirement shall represent a moratorium on granting further exceptions to paying prevailing wage rates until June 30, 2013.

~~SEC. 15.~~

SEC. 16. The Legislature expects the University of California to enroll a total of 209,977 state-supported full-time equivalent students during the 2012–13 academic year. This enrollment target does not include nonresident students and students enrolled in nonstate supported summer programs. As a condition of receipt of funds pursuant to Item 6440-001-0001 of Section 2.00 of the Budget Act of 2012, the University of California shall report to the Legislature by May 1, 2013, on whether it has met the 2012–13 academic year enrollment goal.

~~SEC. 16.~~

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

~~SEC. 17.~~

SEC. 18. The sum of two hundred thirty thousand dollars ($230,000) is hereby appropriated from federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) carryover funds to the State Department of Education to provide oversight of, and technical assistance and monitoring to, local educational agencies regarding changes to the requirements related to the identification and provision of behavior intervention services included in this act. In providing technical assistance to local educational agencies, the State Department of Education shall incorporate the policy guidance disseminated by the Office of Special Education Programs of the United States Department of Education on functional behavioral assessments and positive

behavioral interventions and plans. As part of this effort, the State Department of Education shall convene a stakeholder group made up of legislative staff, representatives from the Department of Finance, representatives from the Legislative Analyst's Office, public and private program administrators, parents and advocates, including parents and advocates of youth with disabilities, persons with expertise in functional behavioral assessment and developing and implementing positive behavioral interventions, institutions of higher education, and professional organizations to discuss the impact of changes to law and regulations, develop and disseminate nonmandatory guidance, identify and recommend practices based on peer-reviewed research, and identify model programs and adjust data collection and monitoring activities.

SEC. 19. The State Board of Education and the Health and Human Services Agency, including the Department of Health Care Services and the State Department of Social Services, shall repeal regulations related to mental health services provided by county mental health agencies that are no longer supported by statute, including Sections 60020, 60025, 60030, 60040, 60045, 60050, 60055, 60100, 60110, and 60200 of Title 2 of the California Code of Regulations, as these provisions exist on the operative date of this section.

~~SEC. 18.~~

SEC. 20. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

O

Assembly Bill No. 1610

CHAPTER 724

An act to amend Sections 2558.46, 8223, 8335.4, 8335.5, 8335.7, 8357, 8450, 14041.5, 14041.6, 37252.2, 41203.1, 42238.146, 42606, 44396, 47614.5, 47634.4, 48260.5, 48262, 52055.770, 54026, 56523, and 84043 of, to amend and repeal Section 84321.5 of, to add Sections 14041.7, 41207.4, 42238.24, 54021.1, 54021.2, 84321.6, and 99221.5 to, to add Chapter 3.5 (commencing with Section 66150) to Part 40 of Division 5 of Title 3 of, to repeal Section 92612.5 of, and to repeal Chapter 4 (commencing with Section 400) of Part 1 of Division 1 of Title 1 of, the Education Code, to amend Section 17581.5 of the Government Code, to amend Section 38 of Chapter 12 of the Third Extraordinary Session of the Statutes of 2009, to amend Section 5 of Chapter 3 of the Fourth Extraordinary Session of the Statutes of 2009, and to amend Section 1 of Chapter 221 of the Statutes of 2010, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 19, 2010. Filed with Secretary of State October 19, 2010.]

I am signing AB 1610 with the following objections.

I am deleting specific appropriations for the California community colleges contained in subdivisions (d) and (e) of Section 31 of this bill.

I am deleting the appropriation in subdivision (d) of Section 31 of this bill, which provides $25,000,000 Proposition 98 General Fund for the community college Economic Development and Workforce Development Program. While I support economic development activities, this reduction is necessary to limit program expansion, to bring ongoing expenditures in line with existing resources, and to help maintain a prudent reserve. With this reduction, the Budget Act of 2010 still provides the Economic Development categorical program with $22.9 million for workforce training and development efforts.

I am deleting the appropriation in subdivision (e) of Section 31 of this bill, which provides $35,000,000 Proposition 98 General Fund for various community college categorical programs. This appropriation is intended to backfill various categorical programs that received one-time State Fiscal Stabilization Funds in 2009-10. This federal funding was intended to soften the transition to reduced funding levels that are necessary to bring ongoing expenditures in line with existing resources. Restoring this funding would be counterproductive to the tremendous effort that has been invested to align ongoing expenditures with expected revenues.

Sincerely,

ARNOLD SCHWARZENEGGER, Governor

LEGISLATIVE COUNSEL'S DIGEST

AB 1610, Committee on Budget. Education finance.

(1) Existing law establishes the English Language Acquisition Program, which is designed for pupils enrolled in grades 4 to 8, inclusive, and requires local educational agencies, as defined, participating in the program to conduct assessments, to provide an instructional program, to provide supplemental instructional support, and to coordinate available services and funding. Existing law requires the Superintendent of Public Instruction to allocate annually to each participating local educational agency $100 for each pupil participating in the program and a one-time $100 allocation for pupils in kindergarten or grades 1 to 12, inclusive, who are reclassified to English-fluent status.

This bill would repeal the program and would require the Superintendent to increase the amount of economic impact aid received by a school district by the amount the district received from the English Language Acquisition Program for the 2009–10 fiscal year. The bill would continue in existence the English Language Development Professional Institutes and would authorize a local educational agency to use economic impact aid funds for those purposes.

(2) Existing law requires a revenue limit to be calculated for each county superintendent of schools, adjusted for various factors, and reduced, as specified. Existing law reduces the revenue limit for each county superintendent of schools for the 2009–10 fiscal year by a deficit factor of 18.250%.

This bill would maintain the deficit factor for each county superintendent of schools for the 2010–11 fiscal year at 18.621%.

(3) The Child Care and Development Services Act, administered by the State Department of Education, provides that children up to 13 years of age are eligible, with certain requirements, for child care and development services. Existing law provides for child care alternative payment programs, the purpose of which is to provide for parental choice in child care. Existing law requires reimbursement for alternative payment programs to include the cost of child care, plus administrative and support services. Under existing law, the total cost for administrative and support services is not permitted to exceed 19% of the total contract amount.

This bill would instead provide that the administrative and support services costs would not be permitted to exceed 17.5% of the total contract amount.

(4) Existing law requires the Superintendent of Public Instruction to administer child care and development programs that offer a full range of services for eligible children from infancy to 13 years of age. Existing law, until January 1, 2011, authorizes the City and County of San Francisco, as a pilot project, to develop and implement an individualized county child care subsidy plan, and provides for the repeal of those provisions on January 1, 2013.

This bill would authorize the City and County of San Francisco to implement an individualized county child care subsidy plan until July 1, 2013, and would require the city and county to phase out the plan and implement the state's requirements for child care subsidies as of July 1, 2015. The bill would require the city and county, on or before June 30, 2013,

to submit a final report to the Legislature and other specified entities that summarizes the impact of the plan. The bill would make those provisions inoperative on July 1, 2015, and would repeal those provisions on January 1, 2016.

(5) Existing law requires the cost of state-funded child care services to be governed by regional market rates and requires a regional market rate ceiling to be established at the 85th percentile of the 2005 regional market rate survey for that region.

This bill would set the reimbursement rate for license-exempt providers at 80% of the regional market rate ceiling.

(6) Existing law encourages all child development contractors to develop and maintain a reserve within the child development fund, derived from earned but unexpended funds. Existing law allows child development contractors to retain all earned funds, as defined. Existing law requires that earned but unexpended funds remain in the contractor's reserve account within the child development fund and be expended only by direct service child development programs that are funded under contract with the State Department of Education.

This bill, commencing July 1, 2011, would allow a child development contractor operating a direct service child development program to retain a reserve fund balance equal to 5% of the sum of the maximum reimbursable amounts of all contracts to which the contractor is a party, or $2,000, whichever is greater.

(7) Existing law requires the Controller to draw warrants on the State Treasury in each month of each year in specified amounts for purposes of funding school districts, county superintendents of schools, and community college districts. Existing law defers the drawing of those warrants, as specified.

This bill would defer additional specified amounts of the warrants for school districts and county superintendents of schools for April and May to July.

The bill would allow up to $100,000 of the amount of the warrants for the principal apportionments for June that are deferred until July to be drawn instead in June for a charter school or school district that will be unable to meet its financial obligation for June if specified criteria are met. The bill would authorize additional payments for school districts and county superintendents of schools of up to $300,000,000 if sufficient cash is available.

The bill also would authorize the Controller to issue warrants for a community college district that include the full amount of deferred apportionments if the president of the district certifies to the Chancellor of the California Community Colleges and the Director of Finance that the deferral of warrants will result in the district being unable to meet its expenditure obligations, as specified.

(8) Existing law limits the amount of specified revenue limit apportionments that counts towards the minimum funding obligation for the following fiscal year to $1,101,655,000.

This bill would increase that amount by $500,000,000.

(9) Existing law requires the governing board of a school district maintaining any of grades 2 to 9, inclusive, to offer programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 9, inclusive, who have been recommended for retention or who have been retained at their grade for the next year.

This bill would make this requirement inoperative from the date this bill is enacted until July 1, 2013, during which time school districts would be relieved from performing any activities under this provision that are deemed to be reimbursable state mandates.

(10) Existing law requires, for the 1990–91 fiscal year and each fiscal year thereafter, that moneys to be applied by the state for the support of school districts, community college districts, and direct elementary and secondary level instructional services provided by the state be distributed in accordance with certain calculations governing the proration of those moneys among the 3 segments of public education. Existing law makes that provision inapplicable to the fiscal years between 1992–93 and 2009–10, inclusive.

This bill would make that provision inapplicable to the 2010–11 fiscal year.

(11) Section 8 of Article XVI of the California Constitution imposes on the state annual minimum funding requirements for school districts and community college districts.

The bill would appropriate $210,100,000 from the General Fund to the Controller for allocation to school districts and community college districts for the purpose of offsetting the 2009–10 outstanding balance of the state minimum funding obligation. The bill would require this appropriation to be distributed to school districts in a manner that reflects the proportion of regular average daily attendance in school districts and to community college districts based on enrolled full-time equivalent students.

The bill would apply the appropriation to the outstanding balance of the minimum funding obligation to school districts and community college districts for the 2009–10 fiscal year, and deem the appropriations to be made and allocated in that fiscal year in which the deficiencies resulting in the outstanding balance were incurred.

The bill would require funding received by school districts and community college districts pursuant to this appropriation to first be deemed to be paid in satisfaction of any outstanding claims for reimbursement of state-mandated local costs for any fiscal year and would authorize funds received in excess of amounts offsetting mandate claims to be used for any other one-time purpose, as determined by the governing board of the school district or community college district.

(12) Existing law requires the county superintendent of schools to determine a revenue limit for each school district in the county and requires the amount of the revenue limit to be adjusted for various factors. Existing law reduces the revenue limit for each school district for the 2009–10 fiscal year by a deficit factor of 18.355%.

This bill would maintain the deficit factor for each school district for the 2010–11 fiscal year at 17.963%.

(13) Existing law specifies the courses a pupil is required to complete in order to receive a diploma of graduation from high school.

This bill would require that costs related to the salaries and benefits of teachers incurred by a school district or county office of education to provide those courses be offset by specified state funding and would require the proportion of the school district's current expense of education that is required to be expended for payment of the salaries of classroom teachers to first be allocated to fund the teacher salary costs incurred to provide the courses required by the state.

(14) Existing law authorizes a local educational agency, including a direct-funded charter school, to apply for any state categorical program funding included in the annual Budget Act on behalf of a school that begins operation in the 2008–09 to the 2012–13 fiscal years, inclusive.

This bill would require the Superintendent to allocate a supplemental categorical block grant for the 2010–11 fiscal year to a charter school that begins operation in the 2008–09, 2009–10, or 2010–11 fiscal year and would authorize the charter school to use the block grant funds to be used for any educational purpose.

(15) Existing law makes a teacher who attains certification from the National Board for Professional Teaching Standards and meets other specified criteria eligible for an award. Existing law requires a school district that receives an application for an award to certify the applicant's employment and that the applicant meets the criteria and to submit the application to the State Department of Education for its review and approval.

This bill would eliminate the school district's obligations under this program.

(16) Existing law establishes the Charter School Facility Grant Program to provide assistance with facilities rent and lease costs for pupils in charter schools and requires the Superintendent of Public Instruction to allocate annually the facilities grants to eligible charter schools no later than October 1 of each fiscal year. Existing law requires funding appropriated for this program in the 2009–10 fiscal year be used first to reimburse eligible charter schools for rent or lease costs for the 2008–09 fiscal year.

This bill would require the grants to be allocated, instead, for the current school year rent and lease costs, but would require the department to first use the funding appropriated for the program to reimburse eligible charter schools for unreimbursed rent or lease costs for the prior school year.

(17) Existing law requires a school district to notify a pupil's parent or guardian, by first-class mail or other reasonable means, when the pupil is initially classified as a truant.

This bill would require the notification instead to be made using the most cost-effective method possible and would specify that this may include electronic mail or a telephone call.

(18) Existing law deems a pupil to be an habitual truant if the pupil is reported as a truant 3 or more times per school year unless an appropriate

district officer or employee has made a conscientious effort to hold at least one conference with a parent or guardian of the pupil and the pupil himself, after the filing of specified required reports.

This bill would define "conscientious effort" for purposes of this provision.

(19) Existing law appropriates specified amounts for various fiscal years for allocation by the Superintendent of Public Instruction and the Chancellor of the California Community Colleges for purposes of improving and expanding career technical education in public secondary education and lower division public higher education.

This bill, in addition, would appropriate specified amounts for the 2009–10 and 2010–11 fiscal years for allocation by the Superintendent and the chancellor for those purposes.

(20) Existing law provides for the administration and operation of public schools in juvenile halls, juvenile homes, day centers, juvenile ranches, juvenile camps, regional youth educational facilities, or Orange County youth correctional centers, as specified. Existing law requires the Superintendent of Public Instruction to compute an inflation-adjusted revenue limit for juvenile court school programs operated by a county superintendent of schools.

This bill would make a county juvenile court school eligible to receive economic impact aid funding commencing with the 2010–11 fiscal year.

(21) Existing law requires the Superintendent of Public Instruction to develop, and the State Board of Education to adopt, regulations governing the use of behavioral interventions with individuals with exceptional needs receiving special education and related services.

This bill would specify that this provision and its implementing regulations are declaratory of federal law and are intended to provide the clarity, definition, and specificity necessary for local educational agencies to comply with the federal Individuals with Disabilities Education Act. The bill would provide that this provision and the implementing state regulations shall not exceed the requirements of federal law, create new or separate state requirements, or result in a level of state service beyond that needed to comply with federal law and regulations. The bill would require local educational agencies to agree to adhere to implementing federal and state regulations as a condition of choosing to receive funding from the federal Individuals with Disabilities Education Act. The bill would authorize the Superintendent to monitor the compliance of local educational agencies and take appropriate action, including fiscal repercussions, if a local educational agency fails to comply or fails to implement the decision of a due process hearing officer based on noncompliance, as specified.

(22) Existing law, known as the Donahoe Higher Education Act, provides for a public postsecondary education system in this state. The University of California, which is administered by the Regents of the University of California, and the California State University, which is administered by the Trustees of the California State University, are 2 of the segments of the public postsecondary education system in this state. The provisions of the Donahoe Higher Education Act apply to the University of California only

to the extent that the Regents of the University of California act by resolution to make them applicable.

Existing law authorizes the Trustees of the California State University to require that fees, among other charges, be paid by students at that institution. Existing provisions of the California Constitution require the Regents of the University of California to have all powers necessary or convenient for the effective administration of the university.

This bill would prohibit the Trustees of the California State University from allocating, and would request the Regents of the University of California to not allocate, any fees that are proposed by a student body organization, as defined, and imposed pursuant to a vote of the students registered at a campus, branch, or location of the respective institution, for purposes of supporting intercollegiate athletics programs for any purpose or in any amount not approved by the vote of the students. The bill would require the trustees, and request the regents, at the end of an academic year, to refund to each feepaying student a pro rata share of any portion of the fee that is not allocated for the authorized purposes during that academic year.

(23) Existing law, for the 2009–10 to 2012–13 fiscal years, inclusive, authorizes a community college district to use funds apportioned to the district for specified categorical programs, including career technical education, for purposes of a prescribed list of programs.

This bill would exclude funds apportioned for career technical education from the funds a community college district is authorized to use for other purposes.

(24) Existing law requires the Board of Governors of the California Community Colleges to adopt regulations for the payment of apportionments to community college districts. Existing law, notwithstanding the board of governors' authority in this respect, makes various adjustments to the payment of these apportionments.

This bill, commencing January 1, 2011, would revise the manner in which these apportionments are made according to specified criteria. The bill would appropriate $832,000,000 from the General Fund to the Board of Governors of the California Community Colleges for apportionments to community college districts, to be expended in accordance with a specified schedule.

The bill would appropriate $25,000,000 from the General Fund to the Chancellor of the California Community Colleges for the economic development program and would defer $25,000,000 of that amount to July 2011. The bill would appropriate $35,000,000 from the General Fund to the Chancellor of the California Community Colleges for specified categorical programs and would defer that amount to July 2011.

(25) Existing law expresses the intent of the Legislature that no new General Fund augmentation be made available for contributions to the University of California Retirement Plan.

This bill would repeal this provision.

(26) Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions.

Existing law provides that no local agency or school district is required to implement or give effect to any statute or Executive order, or portion thereof, that imposes a mandate during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if specified conditions are met, including that the statute or Executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. Existing law provides that only certain specified mandates are subject to that provision.

This bill would specify additional mandates relating to school districts and community college districts to those that are subject to the provision. The bill additionally would request the Department of Finance to file a request with the Commission on State Mandates, on or before December 31, 2010, for the purposes of seeking the adoption of a new test claim to supersede the collective bargaining mandate.

The bill would require the Controller to take specified actions regarding the school accountability report card mandate.

The bill would require the Legislative Analyst's Office to convene a working group, as specified, to consider the future of school district and community college district mandates and would require the working group to develop recommendations by March 15, 2011, including whether to preserve, modify, or eliminate particular mandates.

(27) Existing law appropriates $570,000,000 for class size reduction in kindergarten and grades 1 to 3, inclusive, to be expended consistent with the specified requirements.

This bill would reduce that appropriation to $230,044,000 and would identify funds that the State Department of Education would be required to use if the funds appropriated for this program are insufficient.

The bill would require the Superintendent of Public Instruction to certify to the Controller the amounts needed for the 2010–11 fiscal year to fund the class size reduction program and set forth a schedule for the transfer of that funding. The bill would require the Controller to transfer that funding from the General Fund to the State School Fund, thereby making an appropriation. The bill would require the Superintendent, before making each certification, to notify the Department of Finance, the Legislative Analyst, and the appropriate policy and fiscal committees of the Legislature regarding the amounts the Superintendent intends to certify and would require the notification to include the data used in determining the amounts to be certified.

(28) Existing law appropriates $903,845,000 from the Federal Trust Fund, pursuant to a specified schedule, to the State Department of Education, the Board of Governors of the California Community Colleges, the

University of California, and the California State University for the 2010–11 fiscal year.

This bill would increase that appropriation to $906,845,000.

(29) This bill would revert to the General Fund specified amounts from specified office reference items in the Controller's office that would have been applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution for the 2009–10 fiscal year and was unallocated, unexpended, or not liquidated as of June 30, 2010, and appropriate $339,956,000 from the General Fund to the Superintendent of Public Instruction for allocation for the 2010–11 fiscal year for special education to satisfy obligations incurred during the 2009–10 fiscal year. This appropriation would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution for the 2010–11 fiscal year.

The bill would reduce 3 prior reversions to the General Fund from specified office reference items in the Controller's office that would have been applied toward the minimum funding requirements and were unallocated, unexpended, or not liquidated as of June 30, 2009.

(30) This bill would appropriate $905,700,000 from the General Fund to the State Department of Education for 10 specified programs according to a specified schedule, and would require the department to encumber these funds by July 31, 2011. The bill would provide that, for purposes of satisfying the minimum annual funding obligation for school districts required by the California Constitution, the appropriated funds are General Fund revenues appropriated for school districts and community college districts for the 2011–12 fiscal year.

(31) This bill would set the cost-of-living adjustment for specified items in the Budget Act of 2010 at 0% for the 2010–11 fiscal year notwithstanding the cost-of-living adjustment specified in existing statutes.

(32) This bill would require funds appropriated pursuant to specified items in the Budget Act of 2009 to be encumbered by July 31, 2011.

(33) The funds appropriated by this bill would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(34) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4 (commencing with Section 400) of Part 1 of Division 1 of Title 1 of the Education Code is repealed.

SEC. 2. Section 2558.46 of the Education Code is amended to read:

2558.46. (a) (1) For the 2003–04 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 1.195 percent deficit factor.

(2) For the 2004–05 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 0.323 percent deficit factor.

(3) For the 2003–04 and 2004–05 fiscal years, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced further by a 1.826 percent deficit factor.

(4) For the 2005–06 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced further by a 0.898 percent deficit factor.

(5) For the 2008–09 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 7.839 percent deficit factor.

(6) For the 2009–10 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by an 18.621 percent deficit factor.

(7) For the 2010–11 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by an 18.250 percent deficit factor.

(b) In computing the revenue limit for each county superintendent of schools for the 2006–07 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2003–04, 2004–05, and 2005–06 fiscal years without being reduced by the deficit factors specified in subdivision (a).

(c) In computing the revenue limit for each county superintendent of schools for the 2010–11 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2009–10 fiscal year without being reduced by the deficit factors specified in subdivision (a).

(d) In computing the revenue limit for each county superintendent of schools for the 2011–12 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2010–11 fiscal year without being reduced by the deficit factors specified in subdivision (a).

SEC. 3. Section 8223 of the Education Code is amended to read:

8223. The reimbursement for alternative payment programs shall include the cost of child care paid to child care providers plus the administrative and support services costs of the alternative payment program. The total cost for administration and support services shall not exceed an amount equal to 17.5 percent of the total contract amount. The administrative costs shall not exceed the costs allowable for administration under federal requirements.

SEC. 4. Section 8335.4 of the Education Code is amended to read:

8335.4. (a) Upon approval of the plan by the Child Development Division of the department, the City and County of San Francisco shall annually prepare and submit to the Legislature, the State Department of Social Services, and the department a report that summarizes the success of the pilot project and the city and county's ability to maximize the use of funds and to improve and stabilize child care in the city and county.

(b) The City and County of San Francisco shall submit an interim report to the Legislature, the State Department of Social Services, and the department on or before December 31, 2010, and shall submit a final report to those entities on or before June 30, 2013, summarizing the impact of the plan on the child care needs of working families in the city and county.

SEC. 5. Section 8335.5 of the Education Code is amended to read:

8335.5. The City and County of San Francisco may implement an individualized child care subsidy plan until July 1, 2013, at which date the city and county shall terminate the plan. Between July 1, 2013, and July 1, 2015, the city and county shall phase out the individualized county child care subsidy plan and, as of July 1, 2015, shall implement the state's requirements for child care subsidies. A child enrolling for the first time for subsidized child care in the city and county after July 1, 2013, shall not be enrolled in the pilot program established pursuant to this article and is subject to existing state laws and regulations regarding child care eligibility and priority.

SEC. 6. Section 8335.7 of the Education Code is amended to read:

8335.7. This article shall become inoperative on July 1, 2015, and as of January 1, 2016, is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 8357 of the Education Code is amended to read:

8357. (a) The cost of child care services provided under this article shall be governed by regional market rates. Recipients of child care services provided pursuant to this article shall be allowed to choose the child care services of licensed child care providers or child care providers who are, by law, not required to be licensed, and the cost of that child care shall be reimbursed by counties or agencies that contract with the State Department of Education if the cost is within the regional market rate. For purposes of this section, "regional market rate" means care costing no more than 1.5 market standard deviations above the mean cost of care for that region. The regional market rate ceilings shall be established at the 85th percentile of the 2005 regional market rate survey for that region.

(b) Reimbursement to license-exempt child care providers shall not exceed 80 percent of the family child care home rate established pursuant to subdivision (a).

(c) Reimbursement to child care providers shall not exceed the fee charged to private clients for the same service.

(d) Reimbursement shall not be made for child care services when care is provided by parents, legal guardians, or members of the assistance unit.

(e) A child care provider located on an Indian reservation or rancheria and exempted from state licensing requirements shall meet applicable tribal standards.

(f) For purposes of this section, "reimbursement" means a direct payment to the provider of child care services, including license-exempt providers. If care is provided in the home of the recipient, payment may be made to the parent as the employer, and the parent shall be informed of his or her concomitant legal and financial reporting requirements. To allow time for the development of the administrative systems necessary to issue direct payments to providers, for a period not to exceed six months from the effective date of this article, a county or an alternative payment agency contracting with the State Department of Education may reimburse the cost of child care services through a direct payment to a recipient of aid rather than to the child care provider.

(g) Counties and alternative payment programs shall not be bound by the rate limits described in subdivision (a) when there are, in the region, no more than two child care providers of the type needed by the recipient of child care services provided under this article.

(h) Notwithstanding any other provision of law, reimbursements to child care providers based upon a daily rate may only be authorized under either of the following circumstances:

(1) A family has an unscheduled but documented need of six hours or more per occurrence, such as the parent's need to work on a regularly scheduled day off, that exceeds the certified need for child care.

(2) A family has a documented need of six hours or more per day that exceeds no more than 14 days per month. In no event shall reimbursements to a provider based on the daily rate over one month's time exceed the provider's equivalent full-time monthly rate or applicable monthly ceiling.

(3) This subdivision shall not limit providers from being reimbursed for services using a weekly or monthly rate, pursuant to subdivision (c) of Section 8222.

SEC. 8. Section 8450 of the Education Code is amended to read:

8450. (a) All child development contractors are encouraged to develop and maintain a reserve within the child development fund, derived from earned but unexpended funds. Child development contractors may retain all earned funds. For the purpose of this section, "earned funds" are those for which the required number of eligible service units have been provided.

(b) (1) Earned funds shall not be expended for any activities proscribed by Section 8406.7. Earned but unexpended funds shall remain in the contractor's reserve account within the child development fund and shall be expended only by direct service child development programs that are funded under contract with the department.

(2) Commencing July 1, 2011, a contractor may retain a reserve fund balance, separate from the reserve fund retained pursuant to subdivision (c) or (d), equal to 5 percent of the sum of the maximum reimbursable amounts of all contracts to which the contractor is a party, or two thousand dollars

($2,000), whichever is greater. This paragraph applies to direct service child development programs that are funded under contract with the department.

(c) Notwithstanding subdivisions (a) and (b), a contractor may retain a reserve fund balance for a resource and referral program, separate from the balance retained pursuant to subdivision (b) or (d), not to exceed 3 percent of the contract amount. Funds from this reserve account may be expended only by resource and referral programs that are funded under contract with the department.

(d) Notwithstanding subdivisions (a) and (b), a contractor may retain a reserve fund balance for alternative payment model and certificate child care contracts, separate from the reserve fund retained pursuant to subdivisions (b) and (c). Funds from this reserve account may be expended only by alternative payment model and certificate child care programs that are funded under contract with the department. The reserve amount allowed by this section may not exceed either of the following, whichever is greater:

(1) Two percent of the sum of the parts of each contract to which that contractor is a party that is allowed for administration pursuant to Section 8276.7 and that is allowed for supportive services pursuant to the provisions of the contract.

(2) One thousand dollars ($1,000).

(e) Each contractor's audit shall identify any funds earned by the contractor for each contract through the provision of contracted services in excess of funds expended.

(f) Any interest earned on reserve funds shall be included in the fund balance of the reserve. This reserve fund shall be maintained in an interest-bearing account.

(g) Moneys in a contractor's reserve fund may be used only for expenses that are reasonable and necessary costs as defined in subdivision (n) of Section 8208.

(h) Any reserve fund balance in excess of the amount authorized pursuant to subdivisions (b), (c), and (d) shall be returned to the department pursuant to procedures established by the department.

(i) Upon termination of all child development contracts between a contractor and the department, all moneys in a contractor's reserve fund shall be returned to the department pursuant to procedures established by the department.

(j) Expenditures from, additions to, and balances in, the reserve fund shall be included in the agency's annual financial statements and audit.

SEC. 9. Section 14041.5 of the Education Code is amended to read:

14041.5. (a) Notwithstanding subdivision (a) of Section 14041, commencing with the 2002–03 fiscal year, warrants for the principal apportionments for the month of June instead shall be drawn in July of the same calendar year pursuant to the certification made pursuant to Section 41335.

(b) Except as provided in subdivisions (c) and (d), for purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the warrants drawn pursuant to subdivision (a) shall be deemed

to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 for the fiscal year in which the warrants are drawn and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202, for the fiscal year in which the warrants are drawn.

(c) For the 2003–04 school year, the amount of apportionments for revenue limits computed pursuant to Section 42238 from any of the apportionments made pursuant to Section 14041 that are deemed "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 for the following fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202, for the 2004–05 fiscal year shall be seven hundred twenty-six million two hundred seventy thousand dollars ($726,270,000). Any amount in excess of seven hundred twenty-six million two hundred seventy thousand dollars ($726,270,000) that is apportioned in July of 2004 is deemed "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 for the 2003–04 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202, for the 2003–04 fiscal year.

(d) For the 2004–05 school year to the 2007–08 school year, inclusive, the amount of apportionments for revenue limits computed pursuant to Section 42238 from any of the apportionments made pursuant to Section 14041 that are deemed "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 for the following fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202, for the following fiscal year shall be seven hundred fifteen million one hundred eighteen thousand dollars ($715,118,000). Any amount in excess of seven hundred fifteen million one hundred eighteen thousand dollars ($715,118,000) that is apportioned in July of any year is deemed "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 for the prior fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202, for the prior fiscal year.

(e) For the 2008–09 school year, and each school year thereafter, the amount of apportionments for revenue limits computed pursuant to Section 42238 from any of the apportionments made pursuant to Section 14041 that are deemed "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 for the following fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant

to Article XIII B" as defined in subdivision (e) of Section 41202, for the following fiscal year shall be one billion six hundred one million six hundred fifty-five thousand dollars ($1,601,655,000). Any amount in excess of one billion six hundred one million six hundred fifty-five thousand dollars ($1,601,655,000) that is apportioned in July of any year is deemed "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 for the prior fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202, for the prior fiscal year.

SEC. 10. Section 14041.6 of the Education Code is amended to read:

14041.6. (a) Notwithstanding subdivision (a) of Section 14041, or any other law, commencing with the 2008–09 fiscal year, warrants for the principal apportionments for the month of February in the amount of two billion dollars ($2,000,000,000) instead shall be drawn in July of the same calendar year pursuant to the certification made pursuant to Section 41339.

(b) Notwithstanding subdivision (a) of Section 14041 or any other law, commencing with the 2009–10 fiscal year, warrants for the principal apportionments for the month of April in the amount of six hundred seventy-eight million six hundred eleven thousand dollars ($678,611,000) and for the month of May in the amount of one billion dollars ($1,000,000,000) instead shall be drawn in August of the same calendar year pursuant to the certification made pursuant to Section 41339.

(c) Notwithstanding subdivision (a) of Section 14041 or any other law, commencing with the 2010–11 fiscal year, warrants for the principal apportionments for the month of April in the amount of four hundred twenty million dollars ($420,000,000) and for the month of May in the amount of eight hundred million dollars ($800,000,000) instead shall be drawn in July of the same calendar year pursuant to the certification made pursuant to Section 41339.

(d) Except as provided in subdivisions (c) and (e) of Section 41202, for purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the warrants drawn pursuant to subdivisions (a), (b), and (c) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202, for the fiscal year in which the warrants are drawn and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for the fiscal year in which the warrants are drawn.

SEC. 11. Section 14041.7 is added to the Education Code, to read:

14041.7. (a) Commencing with the 2010–11 fiscal year, up to one hundred million dollars ($100,000,000) of the amount of the warrants for the principal apportionments for the month of June, that are instead to be drawn in July pursuant to Section 14041.5, may be drawn in June, subject to the approval of the Director of Finance, for a charter school or school district as follows:

(1) In order for a charter school to receive a payment in June pursuant to this section, the chartering authority, in consultation with the county superintendent of schools, shall certify to the Superintendent and the Director of Finance on or before April 1 that the deferral of warrants pursuant to Sections 14041.5 and 14041.6 will result in the charter school being unable to meet its financial obligations for June and shall provide the Superintendent an estimate of the amount of additional funds necessary for the charter school to meet its financial obligations for the month of June.

(2) In order for a school district to receive a payment in June pursuant to this section, the county superintendent of schools shall certify to the Superintendent and to the Director of Finance on or before April 1 that the deferral of warrants pursuant to Sections 14041.5 and 14041.6 will result in the school district being unable to meet its financial obligations for June and shall provide the Superintendent an estimate of the amount of additional funds necessary for the school district to meet its financial obligations for the month of June.

(3) The criteria, as applicable, set forth in statute and regulations to qualify a school district for an emergency apportionment shall be used to make the certification specified in paragraph (2).

(4) A charter school or school district may receive, pursuant to this section, no more than the lesser of the following:

(A) The total amount of additional funds necessary for the charter school or school district to meet its financial obligations for the month of June, as reported to the Superintendent pursuant to paragraph (1) or (2).

(B) The total payments the charter school or school district is entitled to receive in July for the prior fiscal year.

(b) If the total amount requested by charter schools and school districts pursuant to paragraph (4) of subdivision (a) exceeds one hundred million dollars ($100,000,000), the Controller, Treasurer, and Director of Finance may authorize additional payments to meet these requests, but total payments to charter schools and school districts pursuant to this section shall not exceed three hundred million dollars ($300,000,000). No later than May 1, the Controller, Treasurer, and Director of Finance shall determine whether sufficient cash is available to make payments in excess of one hundred million dollars ($100,000,000). In making the determination that cash is sufficient to make additional payments, in whole or in part, the Controller, Treasurer, and Director of Finance shall consider costs for state government, the scope of any identified cash shortage, timing, achievability, legislative direction, and the impact and hardship imposed on potentially affected programs, entities, and related public services. The Department of Finance shall notify the Joint Legislative Budget Committee within 10 days of this determination and identify the total amount of requests that will be paid.

(c) If the total amount of cash made available pursuant to subdivision (b) is less than the amount requested pursuant to paragraph (3) of subdivision (a), payments to charter schools and school districts shall be prioritized according to the date on which notification was provided to the Superintendent and the Department of Finance.

(d) Payments pursuant to this section shall be made no later than June 20.

(e) Except as provided in subdivisions (c) and (e) of Section 41202, for purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the warrants drawn pursuant to subdivision (a) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202, for the fiscal year in which the warrants are drawn and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for the fiscal year in which the warrants are drawn.

SEC. 12. Section 37252.2 of the Education Code is amended to read:

37252.2. (a) The governing board of each school district maintaining any or all of grades 2 to 9, inclusive, shall offer, and a charter school may offer, programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades 2 to 9, inclusive, who have been recommended for retention or who have been retained pursuant to Section 48070.5. A school district or charter school may require a pupil who has been retained to participate in supplemental instructional programs. Notwithstanding the requirements of this section, the school district or charter school shall provide a mechanism for a parent or guardian to decline to enroll his or her child in the program. Attendance in supplemental instructional programs shall not be compulsory within the meaning of Section 48200.

(b) Supplemental educational services pursuant to subdivision (a) may be offered during the summer, before school, after school, on Saturdays, or during intersession, or in a combination of summer school, before school, after school, Saturday, or intersession instruction. Services shall not be provided during the pupil's regular instructional day. Any minor pupil whose parent or guardian informs the school district that the pupil is unable to attend a Saturday school program for religious reasons, or any pupil 18 years of age or older who states that he or she is unable to attend a Saturday school program for religious reasons, shall be given priority for enrollment in supplemental instruction offered at a time other than Saturday, over a pupil who is not unable to attend a Saturday school program for religious reasons.

(c) For purposes of this section, a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade. Summer school instruction may also be offered to pupils who were enrolled in grade 6 during the prior school year. For ninth grade pupils identified in subdivision (a), summer school instruction may also be offered to pupils who were enrolled in grade 9 during the prior school year.

(d) Each school district or charter school shall use results from tests administered under the Standardized Testing and Reporting Program, established pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 or other evaluative criteria to identify eligible pupils pursuant to subdivision (b).

(e) An intensive remedial program in reading or written expression offered pursuant to this section shall, as needed, include instruction in phoneme awareness, systematic explicit phonics and decoding, word attack skills, spelling and vocabulary, explicit instruction of reading comprehension, writing, and study skills.

(f) Each school district or charter school shall seek the active involvement of parents and classroom teachers in the development and implementation of supplemental instructional programs provided pursuant to this section.

(g) It is the intent of the Legislature that pupils who are at risk of failing to meet state adopted standards, or who are at risk of retention, be identified as early in the school year and as early in their school careers as possible, and be provided the opportunity for supplemental instruction sufficient to assist them in attaining expected levels of academic achievement.

(h) Notwithstanding any other provision of law, neither the State Board of Education nor the Superintendent of Public Instruction may waive any provision of this section.

(i) School districts are relieved from the obligation to perform any activities under this section that are deemed to be reimbursable state mandates pursuant to Section 6 of Article XIII B of the California Constitution from the date that the act amending this subdivision in 2010 is enacted until July 1, 2013.

SEC. 13. Section 41203.1 of the Education Code is amended to read:

41203.1. (a) For the 1990–91 fiscal year and each fiscal year thereafter, allocations calculated pursuant to Section 41203 shall be distributed in accordance with calculations provided in this section. Notwithstanding Section 41203, and for the purposes of this section, school districts, community college districts, and direct elementary and secondary level instructional services provided by the State of California shall be regarded as separate segments of public education, and each of these three segments of public education shall be entitled to receive respective shares of the amount calculated pursuant to Section 41203 as though the calculation made pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution were to be applied separately to each segment and the base year for the purposes of this calculation under paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution were based on the 1989–90 fiscal year. Calculations made pursuant to this subdivision shall be made so that each segment of public education is entitled to the greater of the amounts calculated for that segment pursuant to paragraph (1) or (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

(b) If the single calculation made pursuant to Section 41203 yields a guaranteed amount of funding that is less than the sum of the amounts calculated pursuant to subdivision (a), the amount calculated pursuant to Section 41203 shall be prorated for the three segments of public education.

(c) Notwithstanding any other law, this section does not apply to the 1992–93 to 2010–11 fiscal years, inclusive.

SEC. 14. Section 41207.4 is added to the Education Code, to read:

41207.4. (a) The sum of two hundred ten million one hundred thousand dollars ($210,100,000) is hereby appropriated in the 2010–11 fiscal year from the General Fund to the Controller for allocation to school districts and community college districts for the purpose of offsetting the 2009–10 outstanding balance of the minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution.

(1) The amount appropriated pursuant to this subdivision shall be allocated to school districts and community college districts as defined in subdivision (a) of Section 41203.1.

(2) The amount allocated to school districts pursuant to this subdivision shall be distributed in a manner that reflects the proportion of regular average daily attendance in school districts, as defined in subdivision (a) of Section 41209, as those numbers are reported at the time of the second principal apportionment for the fiscal year prior to the fiscal year in which funds are to be received.

(3) The amount annually allocated to community college districts pursuant to this subdivision shall be distributed based on enrolled full-time equivalent students, as those numbers are reported at the time of the second principal apportionment for the fiscal year prior to the fiscal year in which funds are to be received.

(4) For purposes of this subdivision a school district includes a county office of education and a charter school.

(b) For purposes of Section 8 of Article XVI of the California Constitution, the amounts appropriated and allocated pursuant to this section shall be applied to the outstanding balance of the minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution for the 2009–10 fiscal year, and shall be deemed to be appropriations made and allocated in that fiscal year in which the deficiencies resulting in the outstanding balance were incurred.

(c) Funding received by school districts and community college districts pursuant to this section shall first be deemed to be paid in satisfaction of any outstanding claims pursuant to Section 6 of Article XIII B of the California Constitution for reimbursement of state-mandated local costs for any fiscal year. Notwithstanding any amounts that are deemed, pursuant to this subdivision, to be paid in satisfaction of outstanding claims for reimbursement of state-mandated local costs, the Controller may audit any claim as allowed by law and may reduce any amount owed by school districts and community college districts pursuant to an audit by reducing amounts owed for any other mandate claims. The Controller shall apply amounts received by each school district or community college district against any balances of unpaid claims for reimbursement of state-mandated local costs and interest in chronological order beginning with the earliest claim. The Controller shall report to each school district and community college district the amounts of any claims and interest that are offset from funds provided pursuant to this section and shall report a summary of the amounts offset

for each mandate for each fiscal year to the Department of Finance and the fiscal committees of the Legislature. The governing board of a school district or community college district may expend funds received pursuant to this section in excess of amounts offsetting mandate claims for any other one-time purposes, as determined by the governing board.

SEC. 15. Section 42238.146 of the Education Code is amended to read:

42238.146. (a) (1) For the 2003–04 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 1.198 percent deficit factor.

(2) For the 2004–05 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 0.323 percent deficit factor.

(3) For the 2003–04 and 2004–05 fiscal years, the revenue limit for each school district determined pursuant to this article shall be further reduced by a 1.826 percent deficit factor.

(4) For the 2005–06 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 0.892 percent deficit factor.

(5) For the 2008–09 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 7.844 percent deficit factor.

(6) For the 2009–10 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 18.355 percent deficit factor.

(7) For the 2010–11 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 17.963 percent deficit factor.

(b) In computing the revenue limit for each school district for the 2006–07 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2003–04, 2004–05, and 2005–06 fiscal years without being reduced by the deficit factors specified in subdivision (a).

(c) In computing the revenue limit for each school district for the 2010–11 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2009–10 fiscal year without being reduced by the deficit factors specified in subdivision (a).

(d) In computing the revenue limit for each school district for the 2011–12 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2010–11 fiscal year without being reduced by the deficit factors specified in subdivision (a).

SEC. 16. Section 42238.24 is added to the Education Code, to read:

42238.24. Costs related to the salaries and benefits of teachers incurred by a school district or county office of education to provide the courses specified in paragraph (1) of subdivision (a) of Section 51225.3 shall be offset by the amount of state funding apportioned to the district pursuant to

this article, or in the case of a county office of education pursuant to Article 2 (commencing with Section 2550) of Chapter 12 of Part 2 of Division 1 of Title 1, and the amount of state funding received from any of the items listed in Section 42605 that are contained in the annual Budget Act. The proportion of the school district's current expense of education that is required to be expended for payment of the salaries of classroom teachers pursuant to Section 41372 shall first be allocated to fund the teacher salary costs incurred to provide the courses required by the state.

SEC. 17. Section 42606 of the Education Code is amended to read:

42606. (a) A local educational agency, including a direct-funded charter school, may apply for any state categorical program funding included in the annual Budget Act on behalf of a school that begins operation in the 2008–09 to the 2012–13 fiscal years, inclusive, but only to the extent the school or local educational agency is eligible for funding and meets the provisions of the program that were in effect as of January 1, 2009, except that charter schools shall not apply for any of the programs contained in Section 47634.4.

(b) A local educational agency that establishes a new school by redirecting enrollment from its existing schools to the new school shall not be eligible to receive funding in addition to the amounts allocated pursuant to Section 42605 for the categorical programs specified in that section or for the class size reduction program pursuant to Sections 52122 and 52124.

(c) The Superintendent shall report the number of new schools and the programs that these schools are applying for, including an estimate of the cost for that year. This information shall by reported by November 11, 2009, and each fiscal year thereafter, to the appropriate committees of the Legislature, the Legislative Analyst's Office, and the Department of Finance.

(d) Notwithstanding subdivision (a), for the 2010–11 fiscal year, the Superintendent shall allocate a supplemental categorical block grant to a charter school that began operation in the 2008–09, 2009–10, or 2010–11 fiscal year. The supplemental categorical block grant shall equal one hundred twenty-seven dollars ($127) per unit of charter school average daily attendance as determined at the 2010–11 second principal apportionment. These supplemental categorical block grant funds may be used for any educational purpose. A locally funded charter school that converted from a preexisting school between the 2008–09 and 2010–11 fiscal years is not eligible for funding specified in this section. A charter school that receives funding pursuant to this subdivision shall not receive additional funding for programs specified in paragraph (2) of subdivision (a) of Section 42605, with the exception of the program funded pursuant to Item 6110-211-0001 of Section 2.00 of the annual Budget Act.

SEC. 18. Section 44396 of the Education Code is amended to read:

44396. (a) (1) To the extent that funds are available for that purpose, a teacher who meets the criteria approved by the state board pursuant to subdivision (b) of Section 44395 is eligible and may apply for an award by following the procedures and instructions developed pursuant to that subdivision.

(2) A teacher who attained certification from the National Board for Professional Teaching Standards before January 1, 1999, and who was employed by a school district or charter school and assigned to teach in a California public school on the date of certification may apply for an award authorized pursuant to this article if he or she meets all the other requirements for that award specified by this article. For awards pursuant to this subdivision, teaching service before July 1, 2000, may not be counted toward satisfaction of the teacher's four-year agreement to teach in a high-priority school.

(b) Teachers shall submit their applications for an award authorized by this article to the school district employing them. Teachers employed by a charter school shall submit their application through the school district granting the school's charter.

(c) The department shall approve applications submitted by school districts that meet the criteria established pursuant to subdivision (b) of Section 44395. To the extent funds are available, the department shall apportion funds to the appropriate school districts in the amount of the award authorized by Section 44395 for each approved application. The school district shall use funds apportioned to it pursuant to this subdivision to provide the amount of the award authorized by subdivision (a) of Section 44395 to each teacher whose application is approved.

SEC. 19. Section 47614.5 of the Education Code is amended to read:

47614.5. (a) The Charter School Facility Grant Program is hereby established and shall be administered by the department. The grant program is intended to provide assistance with facilities rent and lease costs for pupils in charter schools.

(b) Subject to the annual Budget Act, eligible schools shall receive an amount of up to, but not more than, seven hundred fifty dollars ($750) per unit of average daily attendance, as certified at the second principal apportionment, to provide an amount of up to, but not more than, 75 percent of the annual facilities rent and lease costs for the charter school. In any fiscal year, if the funds appropriated for the purposes of this section by the annual Budget Act are insufficient to fund the approved amounts fully, the Superintendent shall apportion the available funds on a pro rata basis.

(c) For purposes of this section, the department shall do all of the following:

(1) Inform charter schools of the grant program.

(2) Upon application by a charter school, determine eligibility, based on the geographic location of the charter schoolsite, pupil eligibility for free or reduced price meals, and a preference in admissions, as appropriate. Eligibility for funding shall not be limited to the grade level or levels served by the school whose attendance area is used to determine eligibility. Charter schoolsites are eligible for funding pursuant to this section if the charter schoolsite meets either of the following conditions:

(A) The charter schoolsite is physically located in the attendance area of a public elementary school in which 70 percent or more of the pupil enrollment is eligible for free or reduced priced meals and the schoolsite

gives a preference in admissions to pupils who are currently enrolled in that public elementary school and to pupils who reside in the elementary school attendance area where the charter schoolsite is located.

(B) Seventy percent or more of the pupil enrollment at the charter schoolsite is eligible for free or reduced price meals.

(3) Inform charter schools of their grant eligibility.

(4) Allocate funding to charter schools for eligible expenditures in a timely manner.

(5) No later than June 30, 2005, report to the Legislature on the number of charter schools that have participated in the grant program pursuant to the expanded eligibility prescribed in paragraph (2). In addition, the report shall provide recommendations and suggestions on improving the grant program.

(d) Funds appropriated for purposes of this section shall not be apportioned for any of the following:

(1) Units of average daily attendance generated through nonclassroom-based instruction as defined by paragraph (2) of subdivision (d) of Section 47612.5 or that does not comply with conditions or limitations set forth in regulations adopted by the state board pursuant to this section.

(2) Charter schools occupying existing school district or county office of education facilities.

(3) Charter schools receiving reasonably equivalent facilities from their chartering authority pursuant to Section 47614.

(e) Funds appropriated for purposes of this section shall be used for costs associated with facilities rents and leases, consistent with the definitions used in the California School Accounting Manual. These funds also may be used for costs, including, but not limited to, costs associated with remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, and improving sites.

(f) If an existing charter school located in an elementary attendance area in which less than 50 percent of pupil enrollment is eligible for free or reduced price meals relocates to an attendance area identified in paragraph (2) of subdivision (c), admissions preference shall be given to pupils who reside in the elementary school attendance area into which the charter school is relocating.

(g) The Superintendent annually shall report to the state board regarding the use of funds that have been made available during the fiscal year to each charter school pursuant to the grant program.

(h) It is the intent of the Legislature that not less than eighteen million dollars ($18,000,000) annually be appropriated for purposes of the grant program on the same basis as other elementary and secondary education categorical programs.

(i) The Superintendent shall annually allocate the facilities grants to eligible charter schools no later than October 1 of each fiscal year or 90 days after enactment of the annual Budget Act, whichever is later, for the current school year rent and lease costs. However, the department shall first

use the funding appropriated for this program to reimburse eligible charter schools for unreimbursed rent or lease costs for the prior school year.

SEC. 20. Section 47634.4 of the Education Code is amended to read:

47634.4. (a) A charter school that elects to receive its funding directly, pursuant to Section 47651, may apply individually for federal and state categorical programs, not excluded in this section, but only to the extent it is eligible for funding and meets the provisions of the program. For purposes of determining eligibility for, and allocation of, state or federal categorical aid, a charter school that applies individually shall be deemed to be a school district, except as otherwise provided in this chapter.

(b) A charter school that does not elect to receive its funding directly, pursuant to Section 47651, may, in cooperation with its chartering authority, apply for federal and state categorical programs not specified in this section, but only to the extent it is eligible for funding and meets the provisions of the program.

(c) Notwithstanding any other provision of law, for the 2006–07 fiscal year and each fiscal year thereafter, a charter school may not apply directly for categorical programs for which services are exclusively or almost exclusively provided by a county office of education.

(d) Consistent with subdivision (c), a charter school may not receive direct funding for any of the following county-administered categorical programs:

(1) American Indian Education Centers.

(2) The California Association of Student Councils.

(3) California Technology Assistance Project established pursuant to Article 15 (commencing with Section 51870) of Chapter 5 of Part 28.

(4) The Center for Civic Education.

(5) County Office Fiscal Crisis and Management Assistance Team.

(6) The K–12 High Speed Network.

(e) A charter school may apply separately for district-level or school-level grants associated with any of the categorical programs specified in subdivision (d).

(f) Notwithstanding any other provision of law, for the 2006–07 fiscal year and each fiscal year thereafter, in addition to the programs listed in subdivision (d), a charter school may not apply for any of the following categorical programs:

(1) Agricultural Career Technical Education Incentive Program, as set forth in Article 7.5 (commencing with Section 52460) of Chapter 9 of Part 28.

(2) Bilingual Teacher Training Assistance Program, as set forth in Article 4 (commencing with Section 52180) of Chapter 7 of Part 28.

(3) California Peer Assistance and Review Program for Teachers, as set forth in Article 4.5 (commencing with Section 44500) of Chapter 3 of Part 25.

(4) College preparation programs, as set forth in Chapter 12 (commencing with Section 11020) of Part 7, Chapter 8.3 (commencing with Section 52240) of Part 28, and Chapter 8 (commencing with Section 60830) of Part 33.

(5) Foster youth programs pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24.

(6) Gifted and talented pupil programs pursuant to Chapter 8 (commencing with Section 52200) of Part 28.

(7) Home-to-school transportation programs, as set forth in Article 2 (commencing with Section 39820) of Chapter 1 of Part 23.5 and Article 10 (commencing with Section 41850) of Chapter 5 of Part 24.

(8) International Baccalaureate Diploma Program, as set forth in Chapter 12.5 (commencing with Section 52920) of Part 28.

(9) Mathematics and Reading Professional Development Program, as set forth in Article 3 (commencing with Section 99230) of Chapter 5 of Part 65.

(10) Principal Training Program, as set forth in Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25.

(11) Professional Development Block Grant, as set forth in Article 5 (commencing with Section 41530) of Chapter 3.2 of Part 24.

(12) Program to Reduce Class Size in Two Courses in Grade 9 (formerly The Morgan-Hart Class Size Reduction Act of 1989), as set forth in Chapter 6.8 (commencing with Section 52080) of Part 28.

(13) Pupil Retention Block Grant, as set forth in Article 2 (commencing with Section 41505) of Chapter 3.2 of Part 24.

(14) Reader services for blind teachers, as set forth in Article 8.5 (commencing with Section 45370) of Chapter 5 of Part 25.

(15) School and Library Improvement Block Grant, as set forth in Article 7 (commencing with Section 41570) of Chapter 3.2 of Part 24.

(16) School Safety Consolidated Competitive Grant, as set forth in Article 3 (commencing with Section 41510) of Chapter 3.2 of Part 24.

(17) School safety programs, as set forth in Article 3.6 (commencing with Section 32228) and Article 3.8 (commencing with Section 32239.5) of Chapter 2 of Part 19.

(18) Specialized secondary schools pursuant to Chapter 6 (commencing with Section 58800) of Part 31.

(19) State Instructional Materials Fund, as set forth in Article 3 (commencing with Section 60240) of Chapter 2 of Part 33.

(20) Targeted Instructional Improvement Block Grant, as set forth in Article 6 (commencing with Section 41540) of Chapter 3.2 of Part 24.

(21) Teacher dismissal apportionment, as set forth in Section 44944.

(22) The deferred maintenance program, as set forth in Article 1 (commencing with Section 17565) of Chapter 5 of Part 10.5.

(23) The General Fund contribution to the State Instructional Materials Fund pursuant to Article 3 (commencing with Section 60240) of Chapter 2 of Part 33.

(24) Year-Round School Grant Program, as set forth in Article 3 (commencing with Section 42260) of Chapter 7 of Part 24.

SEC. 21. Section 48260.5 of the Education Code is amended to read:

48260.5. Upon a pupil's initial classification as a truant, the school district shall notify the pupil's parent or guardian using the most

cost-effective method possible, which may include electronic mail or a telephone call:

(a) That the pupil is truant.

(b) That the parent or guardian is obligated to compel the attendance of the pupil at school.

(c) That parents or guardians who fail to meet this obligation may be guilty of an infraction and subject to prosecution pursuant to Article 6 (commencing with Section 48290) of Chapter 2 of Part 27.

(d) That alternative educational programs are available in the district.

(e) That the parent or guardian has the right to meet with appropriate school personnel to discuss solutions to the pupil's truancy.

(f) That the pupil may be subject to prosecution under Section 48264.

(g) That the pupil may be subject to suspension, restriction, or delay of the pupil's driving privilege pursuant to Section 13202.7 of the Vehicle Code.

(h) That it is recommended that the parent or guardian accompany the pupil to school and attend classes with the pupil for one day.

SEC. 22. Section 48262 of the Education Code is amended to read:

48262. Any pupil is deemed an habitual truant who has been reported as a truant three or more times per school year, provided that no pupil shall be deemed an habitual truant unless an appropriate district officer or employee has made a conscientious effort to hold at least one conference with a parent or guardian of the pupil and the pupil himself, after the filing of either of the reports required by Section 48260 or Section 48261. For purposes of this section, a conscientious effort means attempting to communicate with the parents of the pupil at least once using the most cost-effective method possible, which may include electronic mail or a telephone call.

SEC. 23. Section 52055.770 of the Education Code is amended to read:

52055.770. (a) School districts and chartering authorities shall receive funding at the following rate, on behalf of funded schools:

(1) For kindergarten and grades 1 to 3, inclusive, five hundred dollars ($500) per enrolled pupil in funded schools.

(2) For grades 4 to 8, inclusive, nine hundred dollars ($900) per enrolled pupil in funded schools.

(3) For grades 9 to 12, inclusive, one thousand dollars ($1,000) per enrolled pupil in funded schools.

(b) For purposes of subdivision (a), enrollment of a pupil in a funded school in the prior fiscal year shall be based on data from the CBEDS. For the 2007–08 fiscal year, the funded rates shall be reduced to reflect the percentage difference in the total amounts appropriated for purposes of this section in that year compared to the amounts appropriated for purposes of this section in the 2008–09 fiscal year.

(c) The following amounts are hereby appropriated from the General Fund for the purposes set forth in subdivision (f):

(1) For the 2007–08 fiscal year, three hundred million dollars ($300,000,000), to be allocated as follows:

(A) Thirty-two million dollars ($32,000,000) for transfer by the Controller to Section B of the State School Fund for allocation by the Chancellor of the California Community Colleges to community colleges for the purpose of providing funding to the community colleges to improve and expand career technical education in public secondary education and lower division public higher education pursuant to Section 88532, including the hiring of additional faculty to expand the number of career technical education programs and course offerings.

(B) Two hundred sixty-eight million dollars ($268,000,000) for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent pursuant to this article.

(2) For each of the 2008–09, and 2011–12 to 2014–15 fiscal years, inclusive, four hundred fifty million dollars ($450,000,000) per fiscal year, to be allocated as follows:

(A) Forty-eight million dollars ($48,000,000) for transfer by the Controller to Section B of the State School Fund for allocation by the Chancellor of the California Community Colleges to community colleges as required under subdivision (e).

(B) Four hundred two million dollars ($402,000,000) for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent pursuant to this article.

(3) For the 2009–10 fiscal year, thirty million dollars ($30,000,000), to be allocated for transfer by the Controller to Section B of the State School Fund for allocation by the Chancellor of the California Community Colleges to community colleges as required under subdivision (e).

(4) For the 2010–11 fiscal year, four hundred twenty million dollars ($420,000,000), to be allocated as follows:

(A) Eighteen million dollars ($18,000,000) for transfer by the Controller to Section B of the State School Fund for allocation by the Chancellor of the California Community Colleges to community colleges as required under subdivision (e).

(B) Four hundred two million dollars ($402,000,000) for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent pursuant to this article.

(C) Commencing with the 2010–11 fiscal year, payments made pursuant to subparagraphs (A) and (B) shall be made only on or after October 8 of each fiscal year.

(d) For the 2013–14 fiscal year the amounts appropriated under subdivision (c) shall be adjusted to reflect the total fiscal settlement agreed to by the parties in California Teachers Association, et al. v. Arnold Schwarzenegger (Case Number 05CS01165 of the Superior Court for the County of Sacramento) and the sum of all fiscal years of funding provided to fund this article shall not exceed the total funds agreed to by those parties. This annual appropriation shall continue to be made until the Director of Finance reports to the Legislature, along with all proposed adjustments to the Governor's Budget pursuant to Section 13308 of the Government Code, that the sum of appropriations made and allocated pursuant to subdivision

(c) equals the total outstanding balance of the minimum state educational funding obligation to school districts and community college districts required by Section 8 of Article XVI of the California Constitution and Chapter 213 of the Statutes of 2004 for the 2004–05 and 2005–06 fiscal years, as determined in subdivision (a) or (b) of Section 41207.1.

(e) The sum transferred under subparagraph (A) of paragraph (2) of subdivision (c) for the 2008–09 fiscal year shall be allocated by the Chancellor of the California Community Colleges as follows:

(1) Thirty-eight million dollars ($38,000,000) to the community colleges for the purpose of providing funding to the community colleges to improve and expand career technical education in public secondary education and lower division public higher education pursuant to Section 88532, including the hiring of additional faculty to expand the number of career technical education programs and course offerings.

(2) Ten million dollars ($10,000,000) to the community colleges for the purpose of providing one-time block grants to community college districts to be used for one-time items of expenditure, including, but not limited to, the following purposes:

(A) Physical plant, scheduled maintenance, deferred maintenance, and special repairs.

(B) Instructional materials and support.

(C) Instructional equipment, including equipment related to career-technical education, with priority for nursing program equipment.

(D) Library materials.

(E) Technology infrastructure.

(F) Hazardous substances abatement, cleanup, and repair.

(G) Architectural barrier removal.

(H) State-mandated local programs.

(3) The Chancellor of the California Community Colleges shall allocate the amount allocated pursuant to paragraph (2) to community college districts on an equal amount per actual full-time-equivalent student (FTES) reported for the prior fiscal year, except that each community college district shall be allocated an amount not less than fifty thousand dollars ($50,000), and the equal amount per unit of FTES shall be computed accordingly.

(4) Funds allocated under paragraph (2) shall supplement and not supplant existing expenditures and may not be counted as the district contribution for physical plant projects and instructional material purchases funded in Item 6870-101-0001 of Section 2.00 of the annual Budget Act.

(f) For each fiscal year, commencing with the 2011–12 fiscal year, to the 2014–15 fiscal year, inclusive, the sum transferred pursuant to subparagraph (A) of paragraph (2) of subdivision (c) shall be allocated by the Chancellor of the California Community Colleges as follows: Forty-eight million dollars ($48,000,000) to the community colleges for the purpose of providing funding to the community colleges to improve and expand career technical education in public secondary education and lower division public higher education pursuant to Section 88532, including the hiring of additional

faculty to expand the number of career technical education programs and course offerings.

(g) The appropriations made under subdivision (c) are for the purpose of discharging in full the minimum state educational funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution and Chapter 213 of the Statutes of 2004 for the 2004–05 fiscal year, and the outstanding maintenance factor for the 2005–06 fiscal year resulting from this additional payment of the Chapter 213 amount for the 2004–05 fiscal year.

(h) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, including computation of the state's minimum funding obligation to school districts and community college districts in subsequent fiscal years, the first one billion six hundred twenty million nine hundred twenty-eight thousand dollars ($1,620,928,000) in appropriations made pursuant to subdivision (c) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 and "General Fund Revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202, for the 2004–05 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for that fiscal year. The remaining appropriations made pursuant to subdivision (c) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 and "General Fund revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202, for the 2005–06 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for that fiscal year.

(i) From funds appropriated under subdivision (c), the Superintendent shall provide both of the following:

(1) Not more than two million dollars ($2,000,000) annually to county superintendents of schools to carry out the requirements of this article, allocated in a manner similar to that created to carry out the new duties of those superintendents under the settlement agreement in the case of Williams v. California (Super. Ct. San Francisco, No. CGC-00-312236).

(2) Five million dollars ($5,000,000) in the 2007–08 fiscal year to support regional assistance under Section 52055.730. It is the intent of the Legislature that the Superintendent and the secretary, along with county offices of education, seek foundational and other financial support to sustain and expand these services. Funds provided under this paragraph that are not expended in the 2007–08 fiscal year shall be reappropriated for use in subsequent fiscal years for the same purpose.

(j) Notwithstanding any other provision of law, funds appropriated under subdivision (c) but not allocated to schools with kindergarten or grades 1 to 12, inclusive, in a fiscal year, due to program termination in any year or

otherwise, shall be available for reappropriation only in furtherance of the purposes of this article. First priority for those amounts shall be to provide cost-of-living increases and enrollment growth adjustments to funded schools.

(k) The sum of three hundred fifty thousand dollars ($350,000) is hereby appropriated from the General Fund to the State Department of Education to fund 3.0 positions to implement this article. Funding provided under this subdivision is not part of funds provided pursuant to subdivision (c).

SEC. 24. Section 54021.1 is added to the Education Code, to read:

54021.1. (a) The Superintendent shall make the following calculations for each school district:

(1) For the 2010–11 fiscal year, after calculating the economic impact aid allocation of each school district based on Section 54022, the Superintendent shall add to that allocation the amount the school district received, based on Section 404, for the English Language Acquisition Program in the 2009–10 fiscal year. A school district shall expend the funds added pursuant to this subdivision consistent with the parameters described in Section 54025 or Section 400, as it read on January 1, 2010.

(2) The Superintendent shall divide the total amount provided to each school district in the 2010–11 fiscal year pursuant to paragraph (1) by the district's total number of economic impact aid-eligible pupils in the 2010–11 fiscal year, calculated pursuant to Section 54023.

(b) For the 2011–12 fiscal year, the amount calculated in subdivision (a) shall be the prior fiscal year economic impact aid per pupil amount for purposes of Section 54022.

SEC. 25. Section 54021.2 is added to the Education Code, to read:

54021.2. (a) Commencing with the 2010–11 fiscal year and each fiscal year thereafter, a juvenile court school operated by a county superintendent of schools shall be eligible to receive economic impact aid funding.

(b) For the 2010–11 fiscal year, the Superintendent shall allocate to each juvenile court school operated by a county superintendent of schools the product of its economic impact aid-eligible pupil count calculated pursuant to Section 54023 multiplied by the current year economic impact aid statewide average per pupil rate for school districts based on subdivision (b) of Section 54021.1.

(c) For the 2011–12 fiscal year, the Superintendent shall determine the allocation of each juvenile court school operated by a county superintendent of schools pursuant to the formulas described in Section 54022.

SEC. 26. Section 54026 of the Education Code is amended to read:

54026. For purposes of this article, the following definitions apply:

(a) "Economically disadvantaged pupils" means either of the following, whichever is applicable:

(1) Pupils described in Section 101 of Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6333(c)(1)(A)(B)). Counts of the pupils described in this paragraph shall be the counts used in the current year apportionment calculations for purposes of Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(2) (A) Notwithstanding paragraph (1), for a small school district and for a juvenile court school operated by a county superintendent of schools, the product of the number of pupils eligible for participation in the free meals program for the prior fiscal year, as defined in subdivision (d), and the free meals adjustment factor. The free meals adjustment factor is the quotient, rounded to two decimal places, resulting from dividing the statewide total of economically disadvantaged pupils as defined in paragraph (1) by the statewide total of pupils eligible for participation in the free meals program for the prior fiscal year, as defined in subdivision (d).

(B) Notwithstanding paragraph (1) or subparagraph (A), for charter schools that are funded through the block grant funding model pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8 in the 2006–07 fiscal year, the department shall use counts as of October 2006 of pupils 5 to 17 years of age, inclusive, who are living with families whose annual income is at or below the federal poverty guideline, as collected through the first principal apportionment data collection process, as defined in Section 41601. Commencing in the 2007–08 fiscal year, the Superintendent shall use counts as of October of the prior year of pupils 5 to 17 years of age, inclusive, who are living with families whose annual income is at or below the federal poverty guideline, as collected through the first principal apportionment data collection process, as defined in Section 41601. For purposes of this subdivision, the department may use in the first year of operation of a charter school that is established on or after July 1, 2007, the current year counts of pupils 5 to 17 years of age, inclusive, who are living with families whose annual income is at or below the federal poverty guideline.

(C) The Superintendent may expand upon an existing process of collecting free or reduced price meal data in order to collect from small districts, as defined in subdivision (c), counts of pupils living with families whose annual income is at or below the federal poverty guideline.

(b) "English learner" means a pupil described in subdivision (a) of Section 306 or identified as a pupil of limited English proficiency, as that term is defined in subdivision (m) of Section 52163. Counts of the pupils described in this subdivision shall be the counts reported in the prior year language census.

(c) "Small school district" means a school district that has an annual enrollment of less than 600 pupils based on prior school year CBEDS data and is, for the purposes of this section, designated a rural school by the Superintendent based on the appropriate school locale codes, as used by the National Center for Education Statistics of the United States Department of Education.

(d) "Free meals" means the aggregate number of pupils meeting the income eligibility guidelines established by the federal government for free meals as reported for all schools for which the district is the authorizing agency.

(e) For purposes of subparagraph (B) of paragraph (2) of subdivision (a), the count of economically disadvantaged pupils for a charter school that is

operated pursuant to Section 47612.1 shall be calculated without regard to the age of the pupil. A pupil who resides in program housing shall be considered a family of one.

SEC. 27. Section 56523 of the Education Code is amended to read:

56523. (a) On or before September 1, 1992, the Superintendent shall develop and the board shall adopt regulations governing the use of behavioral interventions with individuals with exceptional needs receiving special education and related services.

(b) This section and the implementing regulations adopted by the board are declaratory of federal law and deemed necessary to implement the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and associated federal regulations. This section is intended to provide the clarity, definition, and specificity necessary for local educational agencies to comply with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.). This section, including the implementing state regulations needed to implement federal law and regulations, shall not exceed the requirements of federal law, create new or separate state requirements, or result in a level of state service beyond that needed to comply with federal law and regulations.

(c) As a condition of receiving funding from the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), a local educational agency shall agree to adhere to implementing federal regulations and state regulations set forth in this section.

(d) The Superintendent may monitor local educational agency compliance with this section and may take appropriate action, including fiscal repercussions, if either of the following is found:

(1) The local educational agency failed to comply with this section and implementing regulations that govern the provision of special education and related services to individuals with exceptional needs and failed to comply substantially with corrective action orders issued by the department resulting from monitoring findings or complaint investigations.

(2) The local educational agency failed to implement the decision of a due process hearing officer based on noncompliance with this part, the state implementing regulations, provisions of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or the federal implementing regulations, wherein noncompliance resulted in the denial of, or impeded the delivery of, a free appropriate public education for an individual with exceptional needs.

(e) Commencing with the 2010–11 fiscal year, if any activities authorized pursuant to this section and implementing regulations are found be a state reimbursable mandate pursuant to Section 6 of Article XIII B of the California Constitution, state funding provided for purposes of special education pursuant to Item 6110-161-0001 of Section 2.00 of the annual Budget Act shall first be used to directly offset any mandated costs.

(f) Contingent on the adoption of a statute in the 2009–10 Regular Session that adds Section 17570.1 to the Government Code, the Legislature hereby requests the Department of Finance on or before December 31, 2010, to

exercise its authority pursuant to subdivision (c) of Section 17570 of the Government Code and file a request with the Commission on State Mandates for the purpose of seeking the adoption of a new test claim to supersede CSM-4464 based on subsequent changes in law that may modify a requirement that the state reimburse a local government for a state mandate.

(g) The regulations shall do all of the following:

(1) Specify the types of positive behavioral interventions which may be utilized and specify that interventions which cause pain or trauma are prohibited.

(2) Require that, if appropriate, the pupil's individual education plan includes a description of the positive behavioral interventions to be utilized which accomplishes the following:

(A) Assesses the appropriateness of positive interventions.

(B) Assures the pupil's physical freedom, social interaction, and individual choices.

(C) Respects the pupil's human dignity and personal privacy.

(D) Assures the pupil's placement in the least restrictive environment.

(E) Includes the method of measuring the effectiveness of the interventions.

(F) Includes a timeline for the regular and frequent review of the pupil's progress.

(3) Specify standards governing the application of restrictive behavioral interventions in the case of emergencies. These emergencies must pose a clear and present danger of serious physical harm to the pupil or others. These standards shall include:

(A) The definition of an emergency.

(B) The types of behavioral interventions that may be utilized in an emergency.

(C) The duration of the intervention which shall not be longer than is necessary to contain the dangerous behavior.

(D) A process and timeline for the convening of an individual education plan meeting to evaluate the application of the emergency intervention and adjust the pupil's individual education plan in a manner designed to reduce or eliminate the negative behavior through positive programming.

(E) A process for reporting annually to the department and the Advisory Commission on Special Education the number of emergency interventions applied under this chapter.

SEC. 28. Chapter 3.5 (commencing with Section 66150) is added to Part 40 of Division 5 of Title 3 of the Education Code, to read:

Chapter 3.5. Student-Imposed Athletics Fees

66150. The following definitions govern the construction of this chapter:

(a) "Student body organization" means an entity formed or operating pursuant to Section 89300 or a student body organization that is established at a campus of the University of California.

(b) "Student-imposed athletics fee" means a fee proposed by the governing body of a student body organization, and imposed or increased pursuant to approval by a vote of a majority of the registered students voting in an election at a campus, branch, or location of the California State University or the University of California, for the purposes of supporting intercollegiate athletics programs at that institution.

66152. (a) The Trustees of the California State University shall not, and the Regents of the University of California are requested not to, allocate any student-imposed athletics fees that are collected from registered students for purposes of supporting intercollegiate athletics programs for any purpose that is not and in the amounts that is not approved pursuant to the election approving the fees.

(b) At the end of each academic year, the Trustees of the California State University shall, and the Regents of the University of California are requested to, refund to each feepaying student a pro rata share of any portion of the student-imposed athletics fee that is collected and is not allocated for the approved purposes during that academic year.

SEC. 29. Section 84043 of the Education Code is amended to read:

84043. (a) (1) Notwithstanding any other provision of law, and unless otherwise prohibited under federal law, for the 2009–10 to 2012–13 fiscal years, inclusive, community college districts may use funding received, pursuant to subdivision (b), from any of the programs listed in paragraph (2) that are contained in Item 6870-101-0001 of Section 2.00 of the annual Budget Act, for the purposes of any of the programs contained in Schedule (2) and Schedules (4) to (23), inclusive, of Item 6870-101-0001 of Section 2.00 of the Budget Act of 2009.

(2) (A) Apprenticeship.

(B) Matriculation.

(C) Academic Senate for the Community Colleges.

(D) Equal Employment Opportunity.

(E) Part-time Faculty Health Insurance.

(F) Part-time Faculty Compensation.

(G) Part-time Faculty Office Hours.

(H) Economic Development.

(I) Transfer Education and Articulation.

(J) Physical Plant and Instructional Support.

(K) Campus Childcare Tax Bailout.

(b) For the 2009–10 to 2012–13 fiscal years, inclusive, the chancellor shall apportion from the amounts provided in the annual Budget Act for the programs enumerated in paragraph (2) of subdivision (a), an amount to a community college district, based on the same relative proportion that the district received in the 2008–09 fiscal year for the programs enumerated in paragraph (2) of subdivision (a). The amounts allocated shall be adjusted for any greater or lesser amount appropriated for the items enumerated in paragraph (2) of subdivision (a).

(c) (1) This section does not obligate the state to refund or repay reductions made pursuant to this section. A decision by a district to reduce

funding pursuant to this section for a state-mandated local program shall constitute a waiver of the subvention of funds that the district is otherwise entitled to pursuant to Section 6 of Article XIII B of the California Constitution on the amount so reduced.

(2) If a community college district elects to use funding received pursuant to subdivision (b) in the manner authorized pursuant to subdivision (a), the governing board of the district shall, at a regularly scheduled open public hearing, take testimony from the public, discuss, and shall approve or disapprove the proposed use of funding.

(3) (A) If a community college district elects to use funding received pursuant to subdivision (b) in the manner authorized pursuant to subdivision (a), the district shall continue to report the expenditures pursuant to this section by using the appropriate codes to indicate the activities for which these funds were expended using the existing standard reporting process as determined by the chancellor.

(B) The chancellor shall collect the information in subparagraph (A) and shall provide that information to the Department of Finance and to the appropriate policy and budget committees of the Legislature on or before April 15, 2010, and annually thereafter by April 15 of each year, through 2014.

(d) For the 2009–10 to 2012–13 fiscal years, inclusive, community college districts that elect to use funding in the manner authorized pursuant to subdivision (a) shall be deemed to be in compliance with the program and funding requirements contained in statutory, regulatory, and provisional language, associated with the programs enumerated in subdivision (a).

SEC. 30. Section 84321.5 of the Education Code is amended to read:

84321.5. (a) Notwithstanding any other law, commencing with the 2004–05 fiscal year, warrants for the principal apportionments for the month of June, for general apportionments in the amount of two hundred million dollars ($200,000,000), shall instead be drawn in July of the same calendar year pursuant to the certification made under Section 84320.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the warrants drawn pursuant to subdivision (a) shall be deemed to be "General Fund revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202, for the fiscal year in which the warrants are drawn, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for the fiscal year in which the warrants are drawn.

(c) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 31. Section 84321.6 is added to the Education Code, to read:

84321.6. (a) Notwithstanding any other law that governs the regulations adopted by the Chancellor of the California Community Colleges to disburse

funds, the payment of apportionments to districts pursuant to Sections 84320, 84321, and 84321.5 shall be adjusted by the following:

(1) For the month of June, two hundred million dollars ($200,000,000) shall be deferred to July. This paragraph is operative commencing with the 2004–05 fiscal year. Commencing with the 2010–11 fiscal year and each fiscal year thereafter, the amount deferred pursuant to this paragraph shall be increased by twenty-one million five hundred thousand dollars ($21,500,000).

(2) For the months of January and February, one hundred fifteen million dollars ($115,000,000) in each month, and the months of March and April, in the amounts of fifty-five million dollars ($55,000,000) in each month, shall be deferred to July. The total amount of these payments deferred to the month of July shall be three hundred forty million dollars ($340,000,000). This paragraph is operative commencing with the 2008–09 fiscal year. Commencing with the 2010–11 fiscal year and each fiscal year thereafter, the amount deferred pursuant to this paragraph shall be increased by eighty-six million dollars ($86,000,000), to be split equally among the four months.

(3) For the months of April and May, eighty-one million five hundred thousand dollars ($81,500,000) in each month, shall be deferred to July. The total amount of these payments deferred to the month of July shall be one hundred sixty-three million dollars ($163,000,000). This paragraph is operative commencing with the 2009–10 fiscal year. Commencing with the 2010–11 fiscal year and each fiscal year thereafter, the amount deferred from the month of May to July, inclusive, pursuant to this paragraph shall be increased by twenty-one million five hundred thousand dollars ($21,500,000).

(b) The sum of eight hundred thirty-two million dollars ($832,000,000) is hereby appropriated from the General Fund to the Board of Governors of the California Community Colleges for apportionments to community college districts, for expenditure during the 2011–12 fiscal year, to be expended in accordance with Schedule (1) of Item 6870-101-0001 of Section 2.00 of the Budget Act of 2010.

(c) The disbursal of funds appropriated in subdivision (b) shall be made in July of the 2011–12 fiscal year and is in satisfaction of the moneys deferred pursuant to subdivision (a).

(d) The sum of twenty-five million dollars ($25,000,000) is hereby appropriated from the General Fund to the Chancellor of the California Community Colleges for the economic development program to be expended consistent with the requirements for that program specified in Schedule (16) of Item 6870-101-0001 of Section 2.00 of the Budget Act of 2010. Of the amount appropriated in this subdivision, twenty-five million dollars ($25,000,000) shall be deferred commencing with the 2010–11 fiscal year to July of the following fiscal year. These funds are available for the purpose of maintaining existing, and creating new, workforce training programs. The chancellor's office shall allocate funds on a competitive basis to districts demonstrating an ability to offer workforce training in green technology,

nursing, allied health, and other industry sectors in demand of high-skilled workers.

(e) The sum of thirty-five million dollars ($35,000,000) is hereby appropriated from the General Fund to the Chancellor of the California Community Colleges to be allocated for Schedules (2), (4), (6), (7), (9), (11), (12), (13), (14), (15), (16), (17), (19), (20), (22), and (23) of Item 6870-101-0001 of Section 2.00 of the Budget Act of 2010. The funds shall be allocated in proportion to reductions made to the same programs in the Budget Act of 2009 and shall be expended consistent with the requirements specified for each program, unless otherwise authorized. The amount appropriated in this subdivision shall be deferred commencing with the 2010–11 fiscal year to July of the following fiscal year.

(f) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by subdivisions (b), (d), and (e) shall be deemed to be "General Fund revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202, for the 2011–12 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for the 2011–12 fiscal year.

(g) This section shall become operative on January 1, 2011.

SEC. 32. Section 92612.5 of the Education Code is repealed.

SEC. 33. Section 99221.5 is added to the Education Code, to read:

99221.5. (a) The Regents of the University of California are requested to authorize the President of the University of California or his or her designee to jointly develop English Language Development Professional Institutes with the Chancellor of the California State University, the Chancellor of the California Community Colleges, the independent colleges and universities, and the Superintendent, or their designees. In order to provide maximum access, the institutes shall be offered at sites widely distributed throughout the state, which shall include programs offered through instructor-led, interactive online courses, in accordance with existing state law. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall accommodate at least 5 percent of the participants through existing state-approved online instructor-led courses, programs, or both. The California subject matter projects, an intersegmental, discipline-based professional development network administered by the University of California, is requested to be the organizing entity for the institutes and followup programs.

(b) (1) The institutes shall provide instruction for school teams from each school participating in the program established pursuant to this section. The institutes may provide instruction for school teams serving English language learners in kindergarten and grades 1 to 12, inclusive. A school team shall include teachers who do not hold crosscultural or bilingual-crosscultural certificates or their equivalents, teachers who hold those certificates or their equivalents, and a schoolsite administrator. The

majority of the team shall be teachers who do not hold those crosscultural certificates or their equivalents. If the participating school team employs instructional assistants who provide instructional services to English language learners, the team may include these instructional assistants.

(2) Commencing in July 2000, the English Language Development Institutes shall provide instruction to an additional 10,000 participants. These participants shall be in addition to the 5,000 participants authorized as of January 1, 2000. Commencing July 2001, and each fiscal year thereafter, the number of participants receiving instruction through the English Language Development Institutes shall be specified in the annual Budget Act.

(3) Criteria and priority for selection of participating school teams shall include, but not necessarily be limited to, all of the following:

(A) Schools whose pupils' reading scores are at or below the 40th percentile on the English language arts portion of the achievement test authorized by Section 60640.

(B) Schools in which a high percentage of pupils score below grade level on the English language development assessment authorized by Section 60810, when it is developed.

(C) Schools with a high number of new, underprepared, and noncredentialed teachers. Underprepared teachers shall be defined as teachers who do not possess a crosscultural or bilingual-crosscultural certificate, or their equivalents.

(D) Schools in which the enrollment of English language learners exceeds 25 percent of the total school enrollment.

(E) Schools with a full complement of team members as described in paragraph (1).

(4) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (C) of paragraph (3).

(c) Each team member who satisfactorily completes an institute authorized by this section shall receive a stipend, commensurate with the duration of the institute, of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000), as determined by the University of California.

(d) Instruction provided by the institutes shall be consistent with state-adopted academic content standards and with the English language development standards adopted pursuant to Section 60811.

(e) (1) Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 80 hours during the summer or during an intersession break or an equivalent instructor-led, online course and shall be supplemented during the following school year with no fewer than 80 hours nor more than 120 hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of English language learners at that school.

(2) Instruction at the institutes shall be of sufficient scope, depth, and duration to fully equip instructional personnel to offer a comprehensive and rigorous instructional program for English language learners and to assess

pupil progress so these pupils can meet the academic content and performance standards adopted by the state board. The instruction shall be designed to increase the capacity of teachers and other school personnel to provide and assess standards-based instruction for English language learners.

(3) The instruction shall be multidisciplinary and focus on instruction in disciplines for which the state board has adopted academic content standards. The instruction shall also be research-based and provide effective models of professional development in order to ensure that instructional personnel increase their skills, at a minimum, in all of the following:

(A) Literacy instruction and assessment for diverse pupil populations, including instruction in the teaching of reading that is research-based and consistent with the balanced, comprehensive strategies required under Section 44757.

(B) English language development and second language acquisition strategies.

(C) Specially designed instruction and assessment in English.

(D) Application of appropriate assessment instruments to assess language proficiency and utilization of benchmarks for reclassification of pupils from English language learners to fully English proficient.

(E) Examination of pupil work as a basis for the alignment of standards, instruction, and assessment.

(F) Use of appropriate instructional materials to assist English language learners to attain academic content standards.

(G) Instructional technology and its integration into the school curriculum for English language learners.

(H) Parent involvement and effective practices for building partnerships with parents.

(f) A local educational agency may use its economic impact aid funds for purposes of this section.

(g) It is the intent of the Legislature that a local educational agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of the course requirements to an enrolled candidate who satisfactorily completes a California English Language Development Institute program if the program has been certified by the Commission on Teacher Credentialing as meeting preparation standards.

(h) This section does not prohibit a team member from attending an institute authorized by this section in more than one academic year.

(i) This section shall not apply to the University of California unless and until the Regents of the University of California act, by resolution, to make it applicable.

SEC. 34. Section 17581.5 of the Government Code is amended to read:

17581.5. (a) A school district or community college district shall not be required to implement or give effect to the statutes, or a portion of the statutes, identified in subdivision (c) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or a portion of the statute, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of school districts or community college districts pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute, or a portion of the statute, or the test claim number utilized by the commission, specifically has been identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered specifically to have been identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it specifically is identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) Within 30 days after enactment of the Budget Act, the Department of Finance shall notify school districts of any statute or executive order, or portion thereof, for which reimbursement is not provided for the fiscal year pursuant to this section.

(c) This section applies only to the following mandates:

(1) School Bus Safety I (CSM-4433) and II (97-TC-22) (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

(2) County Treasury Withdrawals (96-365-03; and Chapter 784 of the Statutes of 1995 and Chapter 156 of the Statutes of 1996).

(3) Grand Jury Proceedings (98-TC-27; and Chapter 1170 of the Statutes of 1996, Chapter 443 of the Statutes of 1997, and Chapter 230 of the Statutes of 1998).

(4) Law Enforcement Sexual Harassment Training (97-TC-07; and Chapter 126 of the Statutes of 1993).

(5) Health Benefits for Survivors of Peace Officers and Firefighters (Chapter 1120 of the Statutes of 1996 and 97-TC-25).

(d) This section applies to the following mandates for the 2010–11, 2011–12, and 2012–13 fiscal years only:

(1) Removal of Chemicals (Chapter 1107 of the Statutes of 1984 and CSM 4211 and 4298).

(2) Scoliosis Screening (Chapter 1347 of the Statutes of 1980 and CSM 4195).

(3) Pupil Residency Verification and Appeals (Chapter 309 of the Statutes of 1995 and 96-384-01).

(4) Integrated Waste Management (Chapter 1116 of the Statutes of 1992 and 00-TC-07).

(5) Law Enforcement Jurisdiction Agreements (Chapter 284 of the Statutes of 1998 and 98-TC-20).

(6) Physical Education Reports (Chapter 640 of the Statutes of 1997 and 98-TC-08).

SEC. 35. Section 38 of Chapter 12 of the Third Extraordinary Session of the Statutes of 2009 is amended to read:

Sec.38. (a) The sum of five hundred sixty-five million seven hundred forty-four thousand dollars ($565,744,000) is hereby appropriated from the General Fund to the State Department of Education. This appropriation reflects the portion of the February 2010 payment for the class size reduction in kindergarten and grades 1 to 3, inclusive, and the June 2010 principal apportionment that is to be deferred until July 2010 and attributed to the 2010–11 fiscal year. Notwithstanding any other law, the department shall encumber the funds appropriated in this section by July 31, 2010. It is the intent of the Legislature that, by extending the encumbrance authority for the funds appropriated in this section to July 31, 2010, the funds will be treated in a manner consistent with Section 1.80 of the Budget Act of 2009. The appropriation is made in accordance with the following schedule:

(1) Six million two hundred twenty-seven thousand dollars ($6,227,000) for apprenticeship programs to be expended consistent with the requirements specified in Item 6110-103-0001 of Section 2.00 of the Budget Act of 2009.

(2) Ninety million one hundred seventeen thousand dollars ($90,117,000) for supplemental instruction to be expended consistent with the requirements specified in Item 6110-104-0001 of Section 2.00 of the Budget Act of 2009. Of the amount appropriated by this paragraph, fifty-one million sixty-one thousand dollars ($51,061,000) shall be expended consistent with Schedule (1) of Item 6110-104-0001 of Section 2.00 of the Budget Act of 2009, twelve million three hundred thirty thousand dollars ($12,330,000) shall be expended consistent with Schedule (2) of that item, four million six hundred ninety thousand dollars ($4,690,000) shall be expended consistent with Schedule (3) of that item, and twenty-two million thirty-six thousand dollars ($22,036,000) shall be expended consistent with Schedule (4) of that item.

(3) Thirty-nine million six hundred thirty thousand dollars ($39,630,000) for regional occupational centers and programs to be expended consistent with the requirements specified in Schedule (1) of Item 6110-105-0001 of Section 2.00 of the Budget Act of 2009.

(4) Four million two hundred ninety-four thousand dollars ($4,294,000) for the Gifted and Talented Pupil Program to be expended consistent with the requirements specified in Item 6110-124-0001 of Section 2.00 of the Budget Act of 2009.

(5) Forty-five million eight hundred ninety-six thousand dollars ($45,896,000) for adult education to be expended consistent with the requirements specified in Schedule (1) of Item 6110-156-0001 of Section 2.00 of the Budget Act of 2009.

(6) Four million seven hundred fifty-one thousand dollars ($4,751,000) for community day schools to be expended consistent with the requirements specified in Item 6110-190-0001 of Section 2.00 of the Budget Act of 2009.

(7) Five million nine hundred forty-seven thousand dollars ($5,947,000) for categorical block grants for charter schools to be expended consistent with the requirements specified in Item 6110-211-0001 of Section 2.00 of the Budget Act of 2009.

(8) Thirty-eight million seven hundred twenty thousand dollars ($38,720,000) for the School Safety Block Grant to be expended consistent

with the requirements specified in Schedule (1) of Item 6110-228-0001 of Section 2.00 of the Budget Act of 2009.

(9) Two hundred thirty million forty-four thousand dollars ($230,044,000) for class size reduction in kindergarten and grades 1 to 3, inclusive, to be expended consistent with the requirements specified in Item 6110-234-0001 of Section 2.00 of the Budget Act of 2009.

(10) One hundred million one hundred eighteen thousand dollars ($100,118,000) for the Targeted Instructional Improvement Grant Program to be expended consistent with the requirements specified in Item 6110-246-0001 of Section 2.00 of the Budget Act of 2009.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2010–11 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 2010–11 fiscal year.

SEC. 36. Section 5 of Chapter 3 of the Fourth Extraordinary Session of the Statutes of 2009, as amended by Section 2 of Chapter 31 of the Third Extraordinary Session of the Statutes of 2010, is amended to read:

Sec. 5. (a) Notwithstanding any other provision of law, the following amounts from the following Controller's office reference items, that would otherwise be in satisfaction of subdivision (b) of Section 8 of Article XVI of the California Constitution for the 2008–09 fiscal year, that were unallocated, unexpended, or not liquidated as of June 30, 2009, shall revert to the General Fund:

(1) 4450-102-0001	$ 12,256,628.09
(2) 6100-103-0001	1,403,709.00
(3) 6100-104-0001	8,921,610.00
(4) 6100-105-0001	32,359,581.00
(5) 6100-107-0001	252,000.00
(6) 6100-108-0001	176,908,000.00
(7) 6100-113-0001	26,390,134.00
(8) 6100-119-0001	6,540,534.50
(9) 6100-122-0001	3,911,000.00
(10) 6100-123-0001	90,492,100.00
(11) 6100-124-0001	767,061.00
(12) 6100-125-0001	53,533,000.00
(13) 6100-128-0001	205,749.00
(14) 6100-137-0001	48,003,000.00
(15) 6100-144-0001	4,146,000.00
(16) 6100-150-0001	2,904.00
(17) 6100-156-0001	19,691,825.00
(18) 6100-158-0001	2,522,553.00

(19)	6100-161-0001	493,295,639.51
(20)	6100-166-0001	8,612,600.00
(21)	6100-167-0001	20,379.00
(22)	6100-181-0001	64,637.00
(23)	6100-190-0001	551,546.00
(24)	6100-193-0001	5,067,793.00
(25)	6100-195-0001	3,385,000.00
(26)	6100-196-0001	233,806,508.98
(27)	6100-198-0001	27,965,147.00
(28)	6100-201-0001	1,017,000.00
(29)	6100-203-0001	6,717,856.17
(30)	6100-209-0001	19,513.86
(31)	6100-211-0001	8,650,311.00
(32)	6100-220-0001	8,054,052.00
(33)	6100-228-0001	45,926,000.00
(34)	6100-232-0001	50,252,306.00
(35)	6100-234-0001	241,243.00
(36)	6100-240-0001	1,662,629.50
(37)	6100-244-0001	45,425,175.52
(38)	6100-245-0001	12.00
(39)	6100-248-0001	14,959,417.00
(40)	6100-265-0001	37,998,248.00
(41)	6100-267-0001	9,060,000.00
(42)	6100-268-0001	1,698,856.00
(43)	6100-295-0001	38,000.00
(44)	6100-611-0001	13,114,425.00
(45)	6100-619-0001	2,356.00
(46)	6100-624-0001	31.00
(47)	6100-628-0001	11,367.00
(48)	6100-633-0001	1,790,906.00
(49)	6100-649-0001	68,164,309.06
(50)	6100-664-0001	15,560,138.00
(51)	6360-101-0001	708,537.41

(b) Notwithstanding Section 41207.5 of the Education Code, the amounts reverted pursuant to subdivision (a) shall not be deposited in the Proposition 98 Reversion Account.

(c) Notwithstanding Section 41202 of the Education Code, the amounts reverted pursuant to subdivision (a) shall not be included in the calculation of the minimum funding obligation pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution.

(d) (1) The Superintendent of Public Instruction shall calculate the following amount: one billion five hundred sixteen million dollars ($1,516,000,000) divided by the statewide sum of 2008–09 second principal apportionment average daily attendance for school districts, county offices of education, and charter schools.

(2) The Superintendent shall reduce the apportionment for each school district, county office of education, and charter school provided pursuant to Sections 2558, 42238, and 47633, respectively, of the Education Code for the 2009–10 fiscal year by the amount determined pursuant to paragraph (1) multiplied by the 2008–09 second principal apportionment average daily attendance for that local educational agency. Local educational agencies for which the reduction calculated pursuant to this paragraph exceeds their apportionment of state funds shall have their categorical funding reduced by the excess, except that the amount of the reduction shall be limited by both of the following:

(A) The amount of categorical funds to be reduced shall be limited to the extent that the provisions of Section 41975 of the Education Code cannot be met through other state aid, including amounts provided to a local educational agency pursuant to subdivision (f) of this section.

(B) Apportionments for special education, the After School Education and Safety Program, the Quality Education Investment Act of 2006, and child care and development shall not be reduced.

(e) For the amounts reverted pursuant to subdivision (a), the Superintendent shall determine the amounts that would have been allocated to each local educational agency or other recipient entity, other than amounts that would have been allocated for the High Priority School Grant Program pursuant to Article 3.5 (commencing with Section 52055.600) of Chapter 6.1 of Part 28 of Division 4 of Title 2 of the Education Code, if those funds had not been reverted.

(f) The sum of one billion five hundred sixteen million dollars ($1,516,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the 2009–10 fiscal year for allocation pursuant to paragraphs (1) and (2).

(1) The sum of three hundred fifty-five million dollars ($355,000,000) shall be allocated by the Superintendent of Public Instruction for the 2009–10 fiscal year to schoolsites selected to participate in the Quality Education Investment Act program pursuant to Section 52055.730 of the Education Code. Local educational agencies shall receive funding, on behalf of funded schools, at the rates established pursuant to subdivisions (a) and (i) of Section 52055.770 of the Education Code. Local educational agencies and schoolsites receiving this funding shall comply with all of the requirements of the Quality Education Investment Act program specified in Article 3.7 (commencing with Section 52055.700) of Chapter 6.1 of Part 28 of Division 4 of Title 2 of the Education Code. Notwithstanding any other provision of law, the amount allocated pursuant to this paragraph shall be in lieu of the appropriation required by subparagraph (B) of paragraph (2) of subdivision (c) of Section 52055.770 of the Education Code for the 2009–10 fiscal year.

(2) The Superintendent shall allocate the remaining amount to each local agency or other recipient entity identified pursuant to subdivision (e) in amounts equal to the amounts determined pursuant to subdivision (e) for that local educational agency or other recipient entity less any amount of federal State Federal Stabilization Funds allocated to that agency based on

the reductions made pursuant to subdivision (a) of this section. Amounts received pursuant to this paragraph may be used to satisfy obligations incurred during the 2008–09 fiscal year.

(A) The payments made pursuant to this paragraph shall be considered as payments for the programs identified in subdivision (e), not including the High Priority School Grant Program pursuant to Article 3.5 (commencing with Section 52055.600) of Chapter 6.1 of Part 28 of Division 4 of Title 2 of the Education Code, that are deferred from the 2008–09 fiscal year to the 2009–10 fiscal year.

(B) The Superintendent of Public Instruction shall transfer the amounts identified in paragraphs (1) and (51) of subdivision (a) to the appropriate state agency for distribution.

(C) Any of the amounts identified in paragraphs (1) to (51), inclusive, of subdivision (a) that were transferred to Section A of the State School Fund in the 2008–09 fiscal year shall be distributed through Section A of the State School Fund.

(3) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this subdivision shall be included in the "[t]otal allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in Section 41202 of the Education Code, for the 2009–10 fiscal year.

(g) The amounts reverted pursuant to subdivision (a) shall not affect the determination of base year amounts for categorical funding set forth in Section 42605 of the Education Code.

(h) The Superintendent of Public Instruction shall allocate sixty-four million eight hundred seventy-two thousand dollars ($64,872,000) in one-time carryover funds provided to the state under subsection (a) of Section 1003 of Title I of the Elementary and Secondary Education Act (20 U.S.C. Sec. 6303 et seq.), as appropriated pursuant to Provision 7 of Item 6110-134-0890 of Chapter 3 of the Fourth Extraordinary Session of the Statutes of 2009 for the purposes of awarding grants to local educational agencies that participate in the Quality Education Investment Act program in the 2009–10 fiscal year.

(i) The Superintendent of Public Instruction shall allocate one hundred million dollars ($100,000,000) in ongoing funds provided to the state under subsection (a) of Section 1003 of Title I of the Elementary and Secondary Education Act (20 U.S.C. Sec. 6303 et seq.) and one-time funds provided to the state under subsection (a) of Section 1003 of Title I of the Elementary and Secondary Education Act (20 U.S.C. Sec. 6303 et seq.) pursuant to the federal American Recovery and Reinvestment Act of 2009, as appropriated pursuant to Item 6110-134-0890 for purposes of awarding grants to local educational agencies that participate in the Quality Education Investment Act program in the 2009–10 fiscal year.

(j) The total amount appropriated in paragraph (1) of subdivision (f) shall be reduced by the sum of the federal funds allocated in subdivisions (h) and (i), to the extent these federal funds are available for the purposes of

awarding grants to local educational agencies that participate in the Quality Education Investment Act program in the 2009–10 fiscal year, as determined by the Superintendent of Public Instruction. It is the intent of the Legislature that the Superintendent of Public Instruction determine the availability of the federal funds on or before November 15, 2009.

SEC. 37. Section 1 of Chapter 221 of the Statutes of 2010 is amended to read:

Section 1. The sum of nine hundred six million eight hundred forty-five thousand dollars ($906,845,000) is hereby appropriated for the 2010–11 fiscal year, payable from the Federal Trust Fund, for allocation pursuant to the following schedule:

(a) To the State Department of Education, for allocation to local educational agencies, pursuant to the following programs and subschedule:

(1) 10.30.004-School Improvement Grant	.....$64,082,000
(2) 10.30.016-School Improvements Grants (ARRA)	..... $351,763,000

(A) The funds appropriated in subschedules (1) and (2) are for the purpose of supporting three-year school improvement grants to local educational agencies, to be provided over a three-year period.

(B) The funds shall be allocated to local educational agencies to fund school improvement grants based on school size as approved by the State Board of Education on August 24, 2010.

(C) The appropriation of funds in subschedules (1) and (2) is contingent upon approval of California's request to the United States Department of Education for a waiver to allocate 100 percent of the funds in a manner consistent with subparagraph (B).

(b) To the Office of Planning and Research, for transfer for purposes of reimbursement pursuant to the following subschedule:

(1) State Department of Education	..... $272,000,000
(2) Board of Governors of the California Community Colleges	..... $5,000,000
(3) University of California	..... $107,000,000
(4) California State University	..... $107,000,000

(A) The funds appropriated in subschedule (1) are for the purpose of reimbursement of local educational agencies for mitigating revenue limits reductions and reductions made to basic aid districts.

(B) The funds appropriated in subschedules (2) to (4), inclusive, are for the purpose of reimbursement to the entities in these subschedules for mitigating reductions made to the California Community Colleges, the University of California, and the California State University.

(C) The funds are for expenditure pursuant to Title XIV of the American Recovery and Reinvestment Act (ARRA) and related guidance for the federal State Fiscal Stabilization Fund (SFSF) Phase II grant award.

SEC. 38. (a) Notwithstanding any other provision of law, the following amounts from the following Controller's office reference items that would otherwise be in satisfaction of subdivision (b) of Section 8 of Article XVI of the California Constitution for the 2009–10 fiscal year, that were unallocated, unexpended, or not liquidated as of June 30, 2010, shall revert to the General Fund:

(1) 5225-011-0001	$11,939,000.00
(2) 6100-128-0001	$68,126,458.00
(3) 6100-161-0001	$419,956,000.00
(4) 6100-196-0001	$32,070,866.00
(5) 6100-650-0001	$167,047,393.00
(6) 6100-651-0001	$22,073,021.00
(7) 6360-651-0001	$5,025,000.00

(b) Notwithstanding Section 41207.5 of the Education Code, the amount reverted pursuant to subdivision (a) shall not be deposited in the Proposition 98 Reversion Account.

(c) Notwithstanding Section 41202 of the Education Code, the amount reverted pursuant to subdivision (a) shall not be included in the calculation of the minimum funding obligation for the 2009–10 fiscal year pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution.

(d) The sum of three hundred thirty-nine million nine hundred fifty-six thousand dollars ($339,956,000) is hereby appropriated from the General Fund to Section A of the State School Fund for allocation by the Superintendent of Public Instruction for the 2010–11 fiscal year for special education to satisfy obligations incurred during the 2009–10 fiscal year.

(e) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (d) shall be included in the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in Section 41202 of the Education Code for the 2010–11 fiscal year.

SEC. 39. (a) The sum of nine hundred five million seven hundred thousand dollars ($905,700,000) is hereby appropriated from the General Fund to the State Department of Education. This appropriation reflects the portion of the payment for class size reduction in kindergarten and grades 1 to 3, inclusive, that is to be deferred until and attributed to the 2011–12 fiscal year and the June 2011 principal apportionment that is to be deferred until July 2011 and attributed to the 2011–12 fiscal year. Notwithstanding any other law, the department shall encumber the funds appropriated in this section by July 31, 2011. It is the intent of the Legislature that, by extending the encumbrance authority for the funds appropriated in this section to July 31, 2011, the funds will be treated in a manner consistent with Section 1.80 of the Budget Act of 2010. The appropriation is made in accordance with the following schedule:

(1) Six million two hundred twenty-seven thousand dollars ($6,227,000) for apprenticeship programs to be expended consistent with the requirements specified in Item 6110-103-0001 of Section 2.00 of the Budget Act of 2010.

(2) Ninety million one hundred seventeen thousand dollars ($90,117,000) for supplemental instruction to be expended consistent with the requirements specified in Item 6110-104-0001 of Section 2.00 of the Budget Act of 2010. Of the amount appropriated by this paragraph, fifty-one million sixty-one thousand dollars ($51,061,000) shall be expended consistent with Schedule (1) of Item 6110-104-0001 of Section 2.00 of the Budget Act of 2010, twelve million three hundred thirty thousand dollars ($12,330,000) shall be expended consistent with Schedule (2) of that item, four million six hundred ninety thousand dollars ($4,690,000) shall be expended consistent with Schedule (3) of that item, and twenty-two million thirty-six thousand dollars ($22,036,000) shall be expended consistent with Schedule (4) of that item.

(3) Thirty-nine million six hundred thirty thousand dollars ($39,630,000) for regional occupational centers and programs to be expended consistent with the requirements specified in Schedule (1) of Item 6110-105-0001 of Section 2.00 of the Budget Act of 2010.

(4) Four million two hundred ninety-four thousand dollars ($4,294,000) for the Gifted and Talented Pupil Program to be expended consistent with the requirements specified in Item 6110-124-0001 of Section 2.00 of the Budget Act of 2010.

(5) Forty-five million eight hundred ninety-six thousand dollars ($45,896,000) for adult education to be expended consistent with the requirements specified in Schedule (1) of Item 6110-156-0001 of Section 2.00 of the Budget Act of 2010.

(6) Four million seven hundred fifty-one thousand dollars ($4,751,000) for community day schools to be expended consistent with the requirements specified in Item 6110-190-0001 of Section 2.00 of the Budget Act of 2010.

(7) Five million nine hundred forty-seven thousand dollars ($5,947,000) for categorical block grants for charter schools to be expended consistent with the requirements specified in Item 6110-211-0001 of Section 2.00 of the Budget Act of 2010.

(8) Thirty-eight million seven hundred twenty thousand dollars ($38,720,000) for the School Safety Block Grant to be expended consistent with the requirements specified in Schedule (1) of Item 6110-228-0001 of Section 2.00 of the Budget Act of 2010.

(9) One hundred million one hundred eighteen thousand dollars ($100,118,000) for the Targeted Instructional Improvement Grant Program to be expended consistent with the requirements specified in Item 6110-246-0001 of Section 2.00 of the Budget Act of 2010.

(b) The amount appropriated in subdivision (a) shall be reduced by the lesser of five hundred seventy million dollars ($570,000,000) or the sum of the amounts transferred pursuant to paragraphs (3) and (4) of subdivision (b) of Section 40 of this act.

(c) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by

subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2011–12 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 2011–12 fiscal year.

SEC. 40. (a) Notwithstanding any other law, the Superintendent of Public Instruction shall certify to the Controller the amounts needed for the 2010–11 fiscal year to fund the class size reduction program operated pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28 of Division 4 of Title 2 of the Education Code, pursuant to the following schedule:

(1) Within 90 days of the enactment of the Budget Act of 2010–11, the Superintendent shall certify to the Controller the amount needed to fund the advance apportionments for the 2010–11 fiscal year, consistent with paragraph (2) of subdivision (c), and paragraph (1) of subdivision (g), of Section 52126 and Section 52124.3 of the Education Code.

(2) By February 25, 2011, the Superintendent shall certify to the Controller the amount needed to fund the apportionment payments for the 2010–11 fiscal year on the basis of applications received, consistent with paragraph (2) of subdivision (c), and paragraph (2) of subdivision (g), of Section 52126 and Section 52124.3 of the Education Code.

(3) By July 25, 2011, the Superintendent shall certify to the Controller the amount needed to fund the apportionments for the 2010–11 fiscal year on the basis of actual enrollment, consistent with paragraph (2) of subdivision (c), and paragraph (3) of subdivision (g), of Section 52126 and Section 52124.3 of the Education Code.

(4) By April 30, 2012, the Superintendent shall certify to the Controller the amount needed to fund the full apportionments for the 2010–11 fiscal year on the basis of revised reports of actual enrollment, consistent with paragraph (2) of subdivision (c), and paragraph (3) of subdivision (g), of Section 52126 and Section 52124.3 of the Education Code.

(b) Not later than five days following each certification made pursuant to subdivision (a), the Controller shall transfer from the General Fund to Section A of the State School Fund for allocation by the Superintendent for purposes of Chapter 6.10 (commencing with Section 52120) of Part 28 of Division 4 of Title 2 of the Education Code the following amounts:

(1) For the certification made pursuant to paragraph (1) of subdivision (a), the amount certified.

(2) For the certification made pursuant to paragraph (2) of subdivision (a), 55 percent of the amount certified minus the amount transferred pursuant to paragraph (1).

(3) For the certification made pursuant to paragraph (3) of subdivision (a), the amount certified minus the sum of the amounts transferred pursuant to paragraphs (1) and (2).

(4) For the certification made pursuant to paragraph (4) of subdivision (a), the amount certified pursuant to paragraph (4) of subdivision (a) minus the sum of the amounts transferred pursuant to paragraphs (1), (2), and (3).

(c) Not less than 30 days before making each certification pursuant to subdivision (a), the Superintendent shall notify the Department of Finance, the Legislative Analyst, and the appropriate policy and fiscal committees of the Legislature regarding the amounts the Superintendent intends to certify to the Controller and shall include in that notification the data used in determining the amounts to be certified.

(d) The per pupil amounts for Option One and Option Two for the 2010–11 fiscal year shall be the same as those provided in the 2009–10 fiscal year.

(e) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the transfers made by paragraphs (3) and (4) of subdivision (b) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2011–12 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 2011–12 fiscal year.

SEC. 41. It is the intent of Legislature that, commencing with the audit guide authorized pursuant to Section 14502.1 of the Education Code for the 2011–12 school year, the Controller's office ensure that revisions are made to clarify that average daily attendance records for juvenile court schools operated by a county superintendent of schools are reviewed annually.

SEC. 42. (a) Notwithstanding Sections 42238.1 and 42238.15 of the Education Code or any other law, the cost-of-living adjustment for Items 6110-104-0001, 6110-105-0001, 6110-119-0001, 6110-122-0001, 6110-124-0001, 6110-128-0001, 6110-150-0001, 6110-156-0001, 6110-158-0001, 6110-161-0001, 6110-167-0001, 6110-181-0001, 6110-189-0001, 6110-190-0001, 6110-193-0001, 6110-196-0001, 6110-203-0001, 6110-209-0001, 6110-211-0001, 6110-224-0001, 6110-232-0001, 6110-244-0001, and 6110-246-0001 of Section 2.00 of the Budget Act of 2010 is zero percent for the 2010–11 fiscal year. All funds appropriated in the Budget Act of 2010 in the items identified in this section are in lieu of the amounts that would otherwise be appropriated pursuant to any other law.

(b) Notwithstanding Section 42238.1 of the Education Code or any other law, for purposes of Section 48664 of the Education Code, the cost-of-living adjustment is zero percent for the 2010–11 fiscal year.

SEC. 43. Notwithstanding any other law, the funds appropriated pursuant to Items 6110-103-0001, 6110-104-0001, 6110-105-0001, 6110-124-0001, 6110-156-0001, 6110-158-0001, 6110-161-0001, 6110-190-0001, 6110-211-0001, 6110-234-0001, and 6110-243-0001 of Section 2.00 of the Budget Act of 2010 shall be encumbered by July 31, 2011. This one-month extension of encumbrance authority is provided due to the effect of the

deferral of the June 2011 principal apportionment on the budget items specified in this section. It is the intent of the Legislature that, by extending the encumbrance authority for the funds identified in this section to July 31, 2011, the funds will be treated in a manner consistent with Section 1.80 of the Budget Act of 2010.

SEC. 44. Notwithstanding any other provision of law and subject to the approval of the Director of Finance and the Chancellor of the California Community Colleges, the Controller shall issue warrants to a community college district pursuant to Sections 84320, 84321, 84321.5, and 84321.6 of the Education Code that include the full amount of the apportionment payments for any month for which apportionments are deferred within a fiscal year if the president of the community college district certifies to the Chancellor of the California Community Colleges and to the Director of Finance, on or before December 1 of that fiscal year, that the deferral of apportionment payments will result in the college being unable to meet its expenditure obligations for the time period during which payments are deferred. The criteria, as applicable, to qualify a community college for an emergency apportionment payment shall be used to make the certification specified in this section.

SEC. 45. Contingent on the enactment of a statute in the 2009–10 Regular Session that adds Section 17570.1 to the Government Code, the Legislature hereby requests the Department of Finance, on or before December 31, 2010, to exercise its authority pursuant to subdivision (c) of Section 17570 of Government Code and file a request with the Commission on State Mandates for the purpose of seeking the adoption of a new test claim to supersede CMS 4425 (97-TC-08), relating to the Collective Bargaining mandate.

SEC. 46. (a) On or before December 1, 2010, the Controller shall confirm that school districts are no longer filing mandate claims pursuant to Section 6 of Article XIII B of the California Constitution for activities deleted from Section 33126 of the Education Code related to the School Accountability Report Cards mandate (97-TC-21), including the following:

(1) Reporting the average verbal and math Scholastic Aptitude Test scores of high school seniors, to the extent that those scores are provided, and the average percentage of seniors taking that exam for the most recent three-year period.

(2) The degree to which pupils are prepared to enter the workforce.

(b) If the Controller finds that school districts are still filing claims for either of these activities, then the Controller shall file a request with the Commission on State Mandates to amend the parameters and guidelines accordingly for the School Accountability Report Cards mandate (97-TC-21).

SEC. 47. The Legislative Analyst's Office shall convene a working group to consider the future of school district and community college district mandates. The working group shall include representatives from the Legislative Analyst's Office, the Department of Finance, the State Department of Education, the California Community Colleges Chancellor's Office, and staff of the fiscal and policy committees of the Legislature. The

working group shall consult with appropriate stakeholders and shall develop recommendations by March 15, 2011, regarding the education mandates and the ways they should be treated, including whether to preserve, modify, or eliminate particular mandates.

SEC. 48. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2010 at the earliest time possible, it is necessary that this act take effect immediately.

O

Assembly Bill No. 2856

CHAPTER 890

An act to amend Section 44763 of the Education Code, and to amend Sections 17500, 17513, 17520, 17521, 17522, 17526, 17551, 17553, 17554, 17557, 17558, 17558.5, 17561, 17561.5, 17561.6, 17562, 17564, 17579, 17612, 17615.1, 17615.4, 17616, and 17630 of, to add Sections 17517.5 and 17518.5 to, to repeal Sections 17517, 17610, and 17614 of, and to repeal and add Section 17555 of, the Government Code, relating to state mandates.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2856, Laird. State mandates: Commission on State Mandates.

Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, including school districts, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions. Existing law establishes a procedure for local governmental agencies to file claims for reimbursement of these costs with the Commission on State Mandates. The procedure requires the commission to hear and decide upon each claim for reimbursement and provides that the commission may not find costs to be mandated by the state if, after a hearing, the commission makes specified findings, including, among others, that the statute or executive order imposing the mandate provides for offsetting savings to local agencies or school districts or includes additional revenue specifically intended to sufficiently fund the costs of the state mandate. The procedure provides for payment of claims from the State Mandates Claim Fund and pursuant to a local government claims bill.

This bill would revise the procedures for receiving claims and for hearings on claims, as specified. The bill would revise the definitions of terms related to the procedure and hearings and define additional terms. The bill would abolish the State Mandates Claim Fund and delete the option of paying claims from this fund. The bill would make other technical changes and delete obsolete references.

The people of the State of California do enact as follows:

SECTION 1. Section 44763 of the Education Code is amended to read:

44763. (a) Notwithstanding Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code or any other provision of law, each state and local government agency shall provide to the Commission on Teacher Credentialing personal information regarding teachers and other certificated personnel as requested by the commission for the purposes of Section 44762.

(b) In accordance with the purpose of safeguarding the privacy rights of individuals, it is the intent of the Legislature that personal information be collected, maintained, and disseminated under this chapter only to the extent required to accomplish the purposes of Section 44762. The Commission on Teacher Credentialing shall establish and maintain specific and appropriate policies and practices that protect the privacy rights of individuals as to whom personal information has been received by the commission, and to otherwise implement the legislative intent set forth in this subdivision.

SEC. 2. Section 17500 of the Government Code is amended to read:

17500. The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 of Article XIII B of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.

It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIII B of the California Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 of Article XIII B of the California Constitution.

SEC. 3. Section 17513 of the Government Code is amended to read:

17513. ''Costs mandated by the federal government'' means any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or

regulation. ''Costs mandated by the federal government'' includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements imposed upon the state would result in substantial monetary penalties or loss of funds to public or private persons in the state whether the federal law was enacted before or after the enactment of the state law, regulation, or executive order. ''Costs mandated by the federal government'' does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

SEC. 4. Section 17517 of the Government Code is repealed.

SEC. 5. Section 17517.5 is added to the Government Code, to read:

17517.5. ''Cost savings authorized by the state'' means any decreased costs that a local agency or school district realizes as a result of any statute enacted or any executive order adopted that permits or requires the discontinuance of or a reduction in the level of service of an existing program that was mandated before January 1, 1975.

SEC. 6. Section 17518.5 is added to the Government Code, to read:

17518.5. (a) ''Reasonable reimbursement methodology'' means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:

(1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.

(2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.

(b) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

(c) A reasonable reimbursement methodology may be developed by any of the following:

(1) The Department of Finance.

(2) The Controller.

(3) An affected state agency.

(4) A claimant.

(5) An interested party.

SEC. 7. Section 17520 of the Government Code is amended to read:

17520. ''Special district'' means any agency of the state that performs governmental or proprietary functions within limited boundaries. ''Special district'' includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area. ''Special district'' does not include a city, a county, a school district, or a community college district.

County free libraries established pursuant to Chapter 2 (commencing with Section 27151) of Division 20 of the Education Code, areas receiving county fire protection services pursuant to Section 25643 of the Government Code, and county road districts established pursuant to Chapter 7 (commencing with Section 1550) of Division 2 of the Streets and Highways Code shall be considered ''special districts'' for all purposes of this part.

SEC. 8. Section 17521 of the Government Code is amended to read:

17521. ''Test claim'' means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state.

SEC. 9. Section 17522 of the Government Code is amended to read:

17522. (a) ''Initial reimbursement claim'' means a claim filed with the Controller by a local agency or school district for costs to be reimbursed for the fiscal years specified in the first claiming instructions issued by the Controller pursuant to subdivision (b) of Section 17558.

(b) ''Annual reimbursement claim'' means a claim for actual costs incurred in a prior fiscal year filed with the Controller by a local agency or school district for which appropriations are made to the Controller for this purpose.

(c) ''Estimated reimbursement claim'' means a claim filed with the Controller by a local agency or school district in conjunction with an initial reimbursement claim, annual reimbursement claim, or at other times, for estimated costs to be reimbursed during the current or future fiscal years, for which appropriations are made to the Controller for this purpose.

(d) ''Entitlement claim'' means a claim filed by a local agency or school district with the Controller for the purpose of establishing or adjusting a base year entitlement. All entitlement claims are subject to Section 17616.

SEC. 10. Section 17526 of the Government Code is amended to read:

17526. (a) All meetings of the commission shall be open to the public, except that the commission may meet in executive session to consider the appointment or dismissal of officers or employees of the

commission or to hear complaints or charges brought against a member, officer, or employee of the commission.

(b) The commission shall meet at least once every two months.

(c) The time and place of meetings may be set by resolution of the commission, by written petition of a majority of the members, or by written call of the chairperson. The chairperson may, for good cause, change the starting time or place, reschedule, or cancel any meeting.

SEC. 11. Section 17551 of the Government Code is amended to read:

17551. (a) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.

(b) Commission review of claims may be had pursuant to subdivision (a) only if the test claim is filed within the time limits specified in this section.

(c) Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

(d) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561.

SEC. 12. Section 17553 of the Government Code is amended to read:

17553. (a) The commission shall adopt procedures for receiving claims pursuant to this article and for providing a hearing on those claims. The procedures shall do all of the following:

(1) Provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, and any other interested person.

(2) Ensure that a statewide cost estimate is adopted within 12 months after receipt of a test claim, when a determination is made by the commission that a mandate exists. This deadline may be extended for up to six months upon the request of either the claimant or the commission.

(3) Permit the hearing of a claim to be postponed at the request of the claimant, without prejudice, until the next scheduled hearing.

(b) All test claims shall be filed on a form prescribed by the commission and shall contain at least the following elements and documents:

(1) A written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate and shall include all of the following:

(A) A detailed description of the new activities and costs that arise from the mandate.

(B) A detailed description of existing activities and costs that are modified by the mandate.

(C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.

(D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(F) Identification of all of the following:

(i) Dedicated state funds appropriated for this program.

(ii) Dedicated federal funds appropriated for this program.

(iii) Other nonlocal agency funds dedicated for this program.

(iv) The local agency's general purpose funds for this program.

(v) Fee authority to offset the costs of this program.

(G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

(2) The written narrative shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information or belief, and signed by persons who are authorized and competent to do so, as follows:

(A) Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

(B) Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

(C) Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program.

(3) (A) The written narrative shall be supported with copies of all of the following:

(i) The test claim statute that includes the bill number or executive order, alleged to impose or impact a mandate.

(ii) Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate.

(iii) Administrative decisions and court decisions cited in the narrative.

(B) State mandate determinations made by the Board of Control and the Commission on State Mandates and published court decisions on state mandate determinations made by the Commission on State Mandates are exempt from this requirement.

(4) A test claim shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge or information or belief. The date of signing, the declarant's title, address, telephone number, facsimile machine telephone number, and electronic mail address shall be included.

(c) If a completed test claim is not received by the commission within 30 calendar days from the date that an incomplete test claim was returned by the commission, the original test claim filing date may be disallowed, and a new test claim may be accepted on the same statute or executive order.

(d) In addition, the commission shall determine whether an incorrect reduction claim is complete within 10 days after the date that the incorrect reduction claim is filed. If the commission determines that an incorrect reduction claim is not complete, the commission shall notify the local agency and school district that filed the claim stating the reasons that the claim is not complete. The local agency or school district shall have 30 days to complete the claim. The commission shall serve a copy of the complete incorrect reduction claim on the Controller. The Controller shall have no more than 90 days after the date the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the commission.

SEC. 13. Section 17554 of the Government Code is amended to read:

17554. With the agreement of all parties to the claim, the commission may waive the application of any procedural requirement imposed by this chapter or pursuant to Section 17553. The authority granted by this section includes the consolidation of claims and the shortening of time periods.

SEC. 14. Section 17555 of the Government Code is repealed.

SEC. 15. Section 17555 is added to the Government Code, to read:

17555. (a) No later than 30 days after hearing and deciding upon a test claim pursuant to subdivision (a) of Section 17551, the commission shall notify the appropriate Senate and Assembly policy and fiscal committees, the Legislative Analyst, the Department of Finance, and the Controller of that decision.

(b) For purposes of this section, the ''appropriate policy committee'' means the policy committee that has jurisdiction over the subject matter of the statute, regulation, or executive order, and bills relating to that subject matter would have been heard.

SEC. 16. Section 17557 of the Government Code is amended to read:

17557. (a) If the commission determines there are costs mandated by the state pursuant to Section 17551, it shall determine the amount to be subvened to local agencies and school districts for reimbursement. In so doing it shall adopt parameters and guidelines for reimbursement of any claims relating to the statute or executive order. The successful test claimants shall submit proposed parameters and guidelines within 30 days of adoption of a statement of decision on a test claim. At the request of a successful test claimant, the commission may provide for one or more extensions of this 30-day period at any time prior to its adoption of the parameters and guidelines. If proposed parameters and guidelines are not submitted within the 30-day period and the commission has not granted an extension, then the commission shall notify the test claimant that the amount of reimbursement the test claimant is entitled to for the first 12 months of incurred costs will be reduced by 20 percent, unless the test claimant can demonstrate to the commission why an extension of the 30-day period is justified.

(b) In adopting parameters and guidelines, the commission may adopt a reasonable reimbursement methodology.

(c) The parameters and guidelines adopted by the commission shall specify the fiscal years for which local agencies and school districts shall be reimbursed for costs incurred. However, the commission may not specify in the parameters and guidelines any fiscal year for which payment could be provided in the annual Budget Act.

(d) A local agency, school district, or the state may file a written request with the commission to amend, modify, or supplement the parameters or guidelines. The commission may, after public notice and hearing, amend, modify, or supplement the parameters and guidelines. A parameters and guidelines amendment submitted within 90 days of the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines.

A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, and on or before January 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year.

(e) A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The claimant may thereafter amend the test claim at any time, but before the test claim is set for a hearing, without affecting the original filing date as long as the amendment substantially relates to the original test claim.

(f) In adopting parameters and guidelines, the commission shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that balances accuracy with simplicity.

SEC. 17. Section 17558 of the Government Code is amended to read:

17558. (a) The commission shall submit the adopted parameters and guidelines to the Controller. All claims relating to a statute or executive order that are filed after the adoption or amendment of parameters and guidelines pursuant to Section 17557 shall be transferred to the Controller who shall pay and audit the claims from funds made available for that purpose.

(b) Not later than 60 days after receiving the adopted parameters and guidelines from the commission, the Controller shall issue claiming instructions for each mandate that requires state reimbursement, to assist local agencies and school districts in claiming costs to be reimbursed. In preparing claiming instructions, the Controller shall request assistance from the Department of Finance and may request the assistance of other state agencies. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the commission.

(c) The Controller shall, within 60 days after receiving revised adopted parameters and guidelines from the commission or other information necessitating a revision of the claiming instructions, prepare and issue revised claiming instructions for mandates that require state reimbursement that have been established by commission action pursuant to Section 17557 or after any decision or order of the commission pursuant to Section 17551. In preparing revised claiming instructions, the Controller may request the assistance of other state agencies.

SEC. 18. Section 17558.5 of the Government Code is amended to read:

17558.5. (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter 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.

(b) The Controller may conduct a field review of any claim after the claim has been submitted, prior to the reimbursement of the claim.

(c) The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.

(d) The interest rate charged by the Controller on reduced claims shall be set at the Pooled Money Investment Account rate and shall be imposed on the dollar amount of the overpaid claim from the time the claim was paid until overpayment is satisfied.

(e) Nothing in this section shall be construed to limit the adjustment of payments when inaccuracies are determined to be the result of the intent to defraud, or when a delay in the completion of an audit is the result of willful acts by the claimant or inability to reach agreement on terms of final settlement.

SEC. 19. Section 17561 of the Government Code is amended to read:

17561. (a) The state shall reimburse each local agency and school district for all ‘‘costs mandated by the state,’’ as defined in Section 17514.

(b) (1) For the initial fiscal year during which these costs are incurred, reimbursement funds shall be provided as follows:

(A) Any statute mandating these costs shall provide an appropriation therefor.

(B) Any executive order mandating these costs shall be accompanied by a bill appropriating the funds therefor, or alternatively, an appropriation for these costs shall be included in the Budget Bill for the

next succeeding fiscal year. The executive order shall cite that item of appropriation in the Budget Bill or that appropriation in any other bill which is intended to serve as the source from which the Controller may pay the claims of local agencies and school districts.

(2) In subsequent fiscal years appropriations for these costs shall be included in the annual Governor's Budget and in the accompanying Budget Bill. In addition, appropriations to reimburse local agencies and school districts for continuing costs resulting from chaptered bills or executive orders for which claims have been awarded pursuant to subdivision (a) of Section 17551 shall be included in the annual Governor's Budget and in the accompanying Budget Bill subsequent to the enactment of the local government claims bill pursuant to Section 17600 that includes the amounts awarded relating to these chaptered bills or executive orders.

(c) The amount appropriated to reimburse local agencies and school districts for costs mandated by the state shall be appropriated to the Controller for disbursement.

(d) The Controller shall pay any eligible claim pursuant to this section within 60 days after the filing deadline for claims for reimbursement or 15 days after the date the appropriation for the claim is effective, whichever is later. The Controller shall disburse reimbursement funds to local agencies or school districts if the costs of these mandates are not payable to state agencies, or to state agencies that would otherwise collect the costs of these mandates from local agencies or school districts in the form of fees, premiums, or payments. When disbursing reimbursement funds to local agencies or school districts, the Controller shall disburse them as follows:

(1) For initial reimbursement claims, the Controller shall issue claiming instructions to the relevant local agencies and school districts pursuant to Section 17558. 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.

(A) When claiming instructions are issued by the Controller pursuant to Section 17558 for each mandate determined pursuant to Section 17551 that requires state reimbursement, each local agency or school district to which the mandate is applicable shall submit claims for initial fiscal year costs to the Controller within 120 days of the issuance date for the claiming instructions.

(B) When the commission is requested to review the claiming instructions pursuant to Section 17571, each local agency or school district to which the mandate is applicable shall submit a claim for

reimbursement within 120 days after the commission reviews the claiming instructions for reimbursement issued by the Controller.

(C) If the local agency or school district does not submit a claim for reimbursement within the 120-day period, or submits a claim pursuant to revised claiming instructions, it may submit its claim for reimbursement as specified in Section 17560. The Controller shall pay these claims from the funds appropriated therefor, provided that the Controller (i) may audit the records of any local agency or school district to verify the actual amount of the mandated costs, and (ii) may reduce any claim that the Controller determines is excessive or unreasonable.

(2) In subsequent fiscal years each local agency or school district shall submit its claims as specified in Section 17560. The Controller shall pay these claims from funds appropriated therefor, provided that the Controller (A) may audit the records of any local agency or school district to verify the actual amount of the mandated costs, (B) may reduce any claim that the Controller determines is excessive or unreasonable, and (C) shall adjust the payment to correct for any underpayments or overpayments which occurred in previous fiscal years.

(3) When paying a timely filed claim for initial reimbursement, the Controller shall withhold 20 percent of the amount of the claim until the claim is audited to verify the actual amount of the mandated costs. All initial reimbursement claims for all fiscal years required to be filed on their initial filing date for a state-mandated local program shall be considered as one claim for the purpose of computing any late claim penalty. Any claim for initial reimbursement filed after the filing deadline shall be reduced by 10 percent of the amount that would have been allowed had the claim been timely filed. The Controller may withhold payment of any late claim for initial reimbursement until the next deadline for funded claims unless sufficient funds are available to pay the claim after all timely filed claims have been paid. In no case may a reimbursement claim be paid if submitted more than one year after the filing deadline specified in the Controller's claiming instructions on funded mandates contained in a claims bill.

SEC. 20. Section 17561.5 of the Government Code is amended to read:

17561.5. The payment of an initial reimbursement claim by the Controller shall include accrued interest at the Pooled Money Investment Account rate, if the payment is being made more than 365 days after adoption of the statewide cost estimate for an initial claim or, in the case of payment of a subsequent claim relating to that same statute or executive order, if payment is being made more than 60 days after the filing deadline for, or the actual date of receipt of, the subsequent claim, whichever is later. In those instances, interest shall begin to accrue as of

the 366th day after adoption of the statewide cost estimate for an initial claim and as of the 61st day after the filing deadline for, or actual date of receipt of, the subsequent claim, whichever is later.

SEC. 21. Section 17561.6 of the Government Code is amended to read:

17561.6. A budget act item or appropriation pursuant to this part for reimbursement of claims shall include an amount necessary to reimburse any interest due pursuant to Section 17561.5.

SEC. 22. Section 17562 of the Government Code is amended to read:

17562. (a) The Legislature hereby finds and declares that the increasing revenue constraints on state and local government and the increasing costs of financing state-mandated local programs make evaluation of state-mandated local programs imperative. Accordingly, it is the intent of the Legislature to increase information regarding state mandates and establish a method for regularly reviewing the costs and benefits of state-mandated local programs.

(b) The Controller shall submit a report to the Joint Legislative Budget Committee and fiscal committees by January 1 of each year. This report shall summarize, by state mandate, the total amount of claims paid per fiscal year and the amount, if any, of mandate deficiencies or surpluses. This report shall be made available in an electronic spreadsheet format. The report shall compare the annual cost of each mandate to the statewide cost estimate adopted by the commission.

(c) After the commission submits its second semiannual report to the Legislature pursuant to Section 17600, the Legislative Analyst shall submit a report to the Joint Legislative Budget Committee and legislative fiscal committees on the mandates included in the commission's reports. The report shall make recommendations as to whether the mandate should be repealed, funded, suspended, or modified.

(d) In its annual analysis of the Budget Bill and based on information provided pursuant to subdivision (b), the Legislative Analyst shall identify mandates that significantly exceed the statewide cost estimate adopted by the commission. The Legislative Analyst shall make recommendations on whether the mandate should be repealed, funded, suspended, or modified.

(e) (1) A statewide association of local agencies or school districts or a Member of the Legislature may submit a proposal to the Legislature recommending the elimination or modification of a state-mandated local program. To make such a proposal, the association or member shall submit a letter to the Chairs of the Assembly Committee on Education or the Assembly Committee on Local Government, as the case may be,

and the Senate Committee on Education or the Senate Committee on Local Government, as the case may be, specifying the mandate and the concerns and recommendations regarding the mandate. The association or member shall include in the proposal all information relevant to the conclusions. If the chairs of the committees desire additional analysis of the submitted proposal, the chairs may refer the proposal to the Legislative Analyst for review and comment. The chairs of the committees may refer up to a total of 10 of these proposals to the Legislative Analyst for review in any year. Referrals shall be submitted to the Legislative Analyst by December 1 of each year.

(2) The Legislative Analyst shall review and report to the Legislature with regard to each proposal that is referred to the office pursuant to paragraph (1). The Legislative Analyst shall recommend that the Legislature adopt, reject, or modify the proposal. The report and recommendations shall be submitted annually to the Legislature by March 1 of the year subsequent to the year in which referrals are submitted to the Legislative Analyst.

(3) The Department of Finance shall review all statutes enacted each year that contain provisions making inoperative Section 17561 or Section 17565 that have resulted in costs or revenue losses mandated by the state that were not identified when the statute was enacted. The review shall identify the costs or revenue losses involved in complying with the statutes. The Department of Finance shall also review all statutes enacted each year that may result in cost savings authorized by the state. The Department of Finance shall submit an annual report of the review required by this subdivision, together with the recommendations as it may deem appropriate, by December 1 of each year.

(f) It is the intent of the Legislature that the Assembly Committee on Local Government and the Senate Committee on Local Government hold a joint hearing each year regarding the following:

(1) The reports and recommendations submitted pursuant to subdivision (e).

(2) The reports submitted pursuant to Sections 17570, 17600, and 17601.

(3) Legislation to continue, eliminate, or modify any provision of law reviewed pursuant to this subdivision. The legislation may be by subject area or by year or years of enactment.

SEC. 23. Section 17564 of the Government Code is amended to read:

17564. (a) No claim shall be made pursuant to Sections 17551 and 17561, nor shall any payment be made on claims submitted pursuant to Sections 17551 and 17561, unless these claims exceed one thousand dollars ($1,000), provided that a county superintendent of schools or

county may submit a combined claim on behalf of school districts, direct service districts, or special districts within their county if the combined claim exceeds one thousand dollars ($1,000) even if the individual school district's, direct service district's, or special district's claims do not each exceed one thousand dollars ($1,000). The county superintendent of schools or the county shall determine if the submission of the combined claim is economically feasible and shall be responsible for disbursing the funds to each school, direct service, or special district. These combined claims may be filed only when the county superintendent of schools or the county is the fiscal agent for the districts. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a school district, direct service district, or special district provides to the county superintendent of schools or county and to the Controller, at least 180 days prior to the deadline for filing the claim, a written notice of its intent to file a separate claim.

(b) Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines and claiming instructions.

SEC. 24. Section 17579 of the Government Code is amended to read:

17579. Any bill introduced or amended for which the Legislative Counsel has determined the bill will mandate a new program or higher level of service pursuant to Section 6 of Article XIII B of the California Constitution shall contain a section specifying that reimbursement shall be made pursuant to this chapter or that the mandate is being disclaimed and the reason therefor.

SEC. 25. Section 17610 of the Government Code is repealed.

SEC. 26. Section 17612 of the Government Code is amended to read:

17612. (a) Immediately upon receipt of the report submitted by the commission pursuant to Section 17600, a local government claims bill shall be introduced in the Legislature. The local government claims bill, at the time of its introduction, shall provide for an appropriation sufficient to pay the estimated costs of these mandates.

(b) The Legislature may amend, modify, or supplement the parameters and guidelines for mandates contained in the local government claims bill. If the Legislature amends, modifies, or supplements the parameters and guidelines, it shall make a declaration in the local government claims bill specifying the basis for the amendment, modification, or supplement.

(c) If the Legislature deletes from a local government claims bill funding for a mandate, the local agency or school district may file in the

Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement.

SEC. 27. Section 17614 of the Government Code is repealed.

SEC. 28. Section 17615.1 of the Government Code is amended to read:

17615.1. The commission shall establish a procedure for reviewing, upon request, mandated cost programs for which appropriations have been made by the Legislature for the 1982–83, 1983–84, and 1984–85 fiscal years, or any three consecutive fiscal years thereafter. At the request of the Department of Finance, the Controller, or any local agency or school district receiving reimbursement for the mandated program, the commission shall review the mandated cost program to determine whether the program should be included in the State Mandates Apportionment System. If the commission determines that the State Mandates Apportionment System would accurately reflect the costs of the state-mandated program, the commission shall direct the Controller to include the program in the State Mandates Apportionment System.

SEC. 29. Section 17615.4 of the Government Code is amended to read:

17615.4. (a) When a new mandate imposes costs that are funded either by legislation or in local government claims bills, local agencies and school districts may file reimbursement claims as required by Section 17561, for a minimum of three years after the initial funding of the new mandate.

(b) After actual cost claims are submitted for three fiscal years against such a new mandate, the commission shall determine, upon request of the Controller or a local entity or school district receiving reimbursement for the program, whether the amount of the base year entitlement adjusted by changes in the deflator and workload accurately reflects the costs incurred by the local agency or school district. If the commission determines that the base year entitlement, as adjusted, does accurately reflect the costs of the program, the commission shall direct the Controller to include the program in the State Mandates Apportionment System.

(c) The Controller shall make recommendations to the commission and the commission shall consider the Controller's recommendations for each new mandate submitted for inclusion in the State Mandates Apportionment System. All claims included in the State Mandates Apportionment System pursuant to this section are also subject to the audit provisions of Section 17616.

SEC. 30. Section 17616 of the Government Code is amended to read:

17616. The Controller shall have the authority to do either or both of the following:

(a) Audit the fiscal years comprising the base year entitlement no later than three years after the year in which the base year entitlement is established. The results of such audits shall be used to adjust the base year entitlements and any subsequent apportionments based on that entitlement, in addition to adjusting actual cost payments made for the base years audited.

(b) Verify that any local agency or school district receiving funds pursuant to this article is providing the reimbursed activities.

SEC. 31. Section 17630 of the Government Code is amended to read:

17630. Except for Article 5, the provisions of this part shall be applicable to claims for state reimbursement of costs mandated by the state on and after January 1, 1985. All claims for state reimbursement filed under Article 1 (commencing with Section 2201), Article 2 (commencing with Section 2227), and Article 3 (commencing with Section 2240) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code that have not been included in a local government claims bill pursuant to Section 2255 of the Revenue and Taxation Code enacted before January 1, 1985, shall be transferred to and considered by the commission pursuant to the provisions of this part.

O

Senate Bill No. 856

CHAPTER 719

An act to amend Sections 159.5, 160, 23399, and 23954.5 of, and to add Sections 154.2 and 210 to, the Business and Professions Code, to amend Section 337.5 of, and to add Section 348.5 to, the Code of Civil Procedure, to amend Section 94949 of, and to add and repeal Section 94874.3 of, the Education Code, to amend Sections 927, 927.2, 927.3, 927.5, 927.6, 927.7, 927.9, 7076, 7097.1, 7114.2, 7591, 7592, 11544, 16429.1, 17556, and 17557 of, to add Sections 927.13, 7072.3, 11546.4, 17570, and 17570.1 to, to repeal Sections 926.16 and 926.19 of, and to repeal Chapter 2 (commencing with Section 13996) of Part 4.7 of Division 3 of Title 2 of, the Government Code, to amend Section 50199.9 of the Health and Safety Code, to amend Sections 62.9, 1771.3, 1771.5, 1771.7, 1771.75, 1771.8, and 1777.5 of the Labor Code, to add Section 11105.8 to the Penal Code, to amend Section 5164 of the Public Resources Code, to amend Sections 11006 and 19558 of the Revenue and Taxation Code, to amend Sections 1088, 1112.5, 1113.1, 1275, 13021, and 13050 of, and to add Article 9 (commencing with Section 1900) to Chapter 7 of Part 1 of Division 1 of, the Unemployment Insurance Code, to amend Section 1673.2 of the Vehicle Code, and to amend and supplement the Budget Act of 2009 (Chapter 1 of the 2009–10 Third Extraordinary Session) by amending Item 0820-001-3086 of Section 2.00 of that act, relating to state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 19, 2010. Filed with Secretary of State October 19, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 856, Committee on Budget and Fiscal Review. State government.

(1) Existing law provides for the regulation of various professions and vocations by regulatory boards within the Department of Consumer Affairs. Existing law creates in the department a Division of Investigation and authorizes the Director of Consumer Affairs to employ investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law, the enforcement of which is charged to the department or to any board in the department. Inspectors used by the boards are not required to be employees of the Division of Investigation, but may be employees of, or under contract to, the boards. Investigators of the Division of Investigation and of the Medical Board of California and the Dental Board of California have the authority of peace officers and are in the division and appointed by the director.

This bill would authorize specified healing arts boards to employ individuals to serve as experts and would authorize those boards and the

Division of Investigation to employ individuals who are not peace officers to provide investigative services. The bill would also provide that investigators of the Medical Board of California and the Dental Board of California who have the authority of peace officers are not required to be in the division.

(2) According to the strategic plan of the Department of Consumer Affairs, the BreEZe system is an integrated, enterprisewide enforcement and licensing system. Under existing law, the office of the State Chief Information Officer is responsible for, among other things, the approval and oversight of specified information technology projects.

This bill would authorize the department to enter into a contract with a vendor for the BreEZe system no sooner than 30 days after written notification to certain committees of the Legislature. The bill would require the amount of contract funds for the system to be consistent with costs approved by the office of the State Chief Information Officer, based on information provided by the department in a specified manner. The bill would provide that this cost provision is applicable to all Budget Act items for the department with an appropriation for the BreEZe system. If the department enters into a contract for the system, the bill would also require the department, by December 1, 2014, to submit to the Legislature and specified committees a report analyzing the workload of certain licensing personnel employed by boards participating in the BreEZe system.

(3) The Alcoholic Beverage Control Act authorizes the issuance of an event permit that allows specified licenses to sell beer, wine, and distilled spirits and requires an annual fee of $100 for an event permit and a fee of not more than $10 for each event authorization.

This bill would increase the fee for each event authorization to not more than $25.

(4) Under existing law, the Alcoholic Beverage Control Act establishes various types of licenses and various annual fees for different categories of licensees. Existing law establishing a fee for an original on-sale general license or an original off-sale general license as $12,000.

This bill would increase that fee to $13,800 and would permit adjustment of the fee, as specified.

(5) Existing law provides that the period for commencement of action upon any bonds or coupons issued by the State of California is 10 years.

This bill would delete that provision and instead provide that the period for commencement of an action upon any bonds or coupons issued by the State of California shall have no limitation.

(6) Existing law establishes the California Private Postsecondary Education Act of 2009, which, among other things, provides for student protections and regulatory oversight of private postsecondary schools in the state. Existing law establishes the Bureau for Private Postsecondary Education to regulate private postsecondary institutions through the powers granted, and the duties imposed, by the act.

This bill would prohibit the bureau, for the period July 1, 2010, to July 1, 2011, inclusive, from enforcing the act against institutions that offer flight

instruction or institutions that offer Federal Aviation Administration certified educational programs in aircraft maintenance. The bill would also require those institutions to notify the bureau if they operate during that period.

(7) Existing law also requires the Bureau for Private Postsecondary Education (bureau) to contract with the Bureau of State Audits to conduct a performance audit to evaluate the effectiveness and efficiency of the bureau's operation, on or before August 1, 2013, consistent with the requirements of the act. The act requires the Bureau of State Audits to report the results of the performance audit to the Legislature and the Governor.

This bill would additionally require the performance audit to include an evaluation of whether the bureau's staffing level and expertise are sufficient to fulfill their statutory responsibilities.

(8) The California Prompt Payment Act provides that a state agency that fails to make a payment for goods and services to certain entities pursuant to a contract is subject to an interest penalty fee, according to specified criteria. Existing law provides that in order to avoid late payment penalties, state agencies shall pay promptly submitted, undisputed invoices within 45 days, and specifies procedures and exclusions relating to that requirement. Existing law provides that penalties for late payments to certain small and nonprofit businesses accrue at 0.25% of the amount due, per calendar day.

Existing law provides that, subject to specified exceptions, a state agency that fails to pay a person an undisputed payment or refund due to that person within 31 days after the agency provides notice to that person that the payment is due is liable for interest on the undisputed amount.

This bill would revise and recast these provisions by requiring state agencies to pay refunds or other undisputed payments due to individuals within 45 days after receipt of a notice of refund or undisputed payment due, and would specify procedures and exclusions related to that requirement. The bill would also provide that penalties for late payments to certain small and nonprofit businesses accrue at a rate of 10% above the United States Prime Rate on June 30 of the prior fiscal year.

This bill would also delete obsolete provisions, cross-references, and references to the Year 2000 Problem.

(9) Existing law prescribes the duties and responsibilities of the Department of Housing and Community Development in connection with the establishment of various economic development areas, including enterprise zones, manufacturing enhancement areas, targeted tax areas, and local agency military base recovery areas. Existing law authorizes the department to assess each of these economic development areas a fee of not more than $10 for each application it accepts for the issuance of a specified tax certificate issued by a local government.

This bill would revise these provisions to require the department to collect a fee of $15 for each application it accepts for the issuance of the specified tax certificate. The bill would require the fees to be deposited in the Enterprise Zone Fund, which the bill would create. These funds would be available to the department, upon appropriation by the Legislature, for the

costs of administering the programs relating to each economic development area.

(10) Existing law appropriated $15,000,000 to the Trade and Commerce Agency for a loan for allocation over 3 years in 3 equal amounts to that nonprofit organization currently named the San Diego National Sports Training Foundation for purposes of developing and constructing a California Olympic Training Center. Existing law provides that these loan allocations be repaid in full no later than 20 years from the date of receipt, as specified. Existing law creates the California Olympic Training Account in the General Fund for the receipt of moneys from fees paid for commemorative olympic license plates, which are to be used for repayment of the loan described above.

This bill would cancel any of the outstanding balance and any accrued interest on the loan for the California Olympic Training Center described above. The bill would require the Controller to annually transfer the moneys from fees paid for commemorative olympic license plates to the General Fund.

(11) Existing law creates the Technology Services Revolving Fund, administered by the State Chief Information Officer, for the purpose of receiving revenue from the sale of technology or technology services, and for payment, upon appropriation by the Legislature, of specified costs. The Governor's Reorganization Plan No. 1 of 2009 renamed and transferred the Department of Technology Services in the State and Consumer Services Agency to the Office of the Department of Technology Services within the office of the State Chief Information Officer, and renamed the Department of Technology Services Revolving Fund the Technology Services Revolving Fund, and made conforming changes. The plan also transferred duties relating to the state's procurement of information technology from the Department of Finance, the Department of General Services, and the Department of Information Technology to the office of the State Chief Information Officer.

This bill would make certain statutory codification changes made necessary by the Governor's Reorganization Plan No. 1 of 2009 in connection with the Technology Services Revolving Fund. This bill would also authorize the fund to receive revenues for other services rendered by the office of the State Chief Information Officer and to pay for other specified costs. The bill would authorize the office of the State Chief Information Officer to collect payments from public agencies for services requested from, rather than contracted for, the office of the State Chief Information Officer, as specified. The bill would also revise the conditions used to determine whether a balance remains in the Technology Services Revolving Fund at the end of a fiscal year to limit the amount that is used to determine a reduction in billing rates. The bill would provide that these provisions apply to all revenue earned on or after July 1, 2010.

(12) Existing law imposes a duty on the office of the State Chief Information Officer to be responsible for the approval and oversight of information technology projects, including, but not limited to, consulting

with agencies during initial project planning to ensure that identified needs and benefits are consistent with statewide strategies, policies, and procedures.

This bill would, notwithstanding any other law, require the office to review, approve, and oversee any service contract proposed to be entered into by an agency that contains an information technology component, as specified.

(13) Existing law establishes the Manufacturing Technology Program within the Business, Transportation and Housing Agency, requires the agency to adopt regulations to implement the program, and requires the program to award grants, as specified, and to provide technical assistance to California nonprofit organizations and public agencies for the performance of specified functions relating to the improvement of the competitiveness and viability of specified manufacturing industries.

This bill would repeal these laws thereby eliminating the Manufacturing Technology Program.

(14) Existing law establishes the Local Agency Investment Fund, in trust in the custody of the Treasurer, to which specified local governmental individuals and entities, with the required consent, may remit money in its treasury that is not required for immediate needs for the purpose of investment. Existing law requires, immediately at the conclusion of each calendar quarter, that all interest earned and other increment derived from investments be distributed by the Controller to the contributing governmental units or trustees or fiscal agents, nonprofit corporations, and quasi-governmental agencies in amounts directly proportionate to the respective amounts deposited in the fund and the length of time the amounts remained therein. Existing law requires, however, that an amount equal to the reasonable costs incurred in carrying out duties related to the administration of the fund, not to exceed ½ of 1% of the earnings of the fund, be deducted from the earnings prior to distribution, and that this amount be credited as reimbursements to the state agencies having incurred costs in carrying out duties related to the administration of the fund.

This bill would increase the amount authorized to be deducted from earnings prior to distribution to be an amount equal to the reasonable costs incurred in carrying out these provisions, not to exceed a maximum of 5% of the earnings of the fund and not to exceed the amount appropriated in the annual Budget Act for this function.

(15) Under the California Constitution, whenever the Legislature or a state agency mandates a new program or higher level of service on any local government, including school districts, the state is required to provide a subvention of funds to reimburse the local government, with specified exceptions. Existing law establishes a test claim procedure for local governmental agencies to file claims for reimbursement of these costs with the Commission on State Mandates.

This bill would authorize specified entities to request that the commission adopt a new test claim decision to supersede a previously adopted test claim. This bill would authorize the commission to adopt a new test claim decision only upon a showing that the state's liability for the previously adopted test

claim decision has been modified based upon a subsequent change in law, as defined.

This bill would require that the commission adopt procedures for receiving these requests and for providing notice and a hearing on those requests, as prescribed, including a requirement that the submitted request be signed under penalty of perjury. Because this bill would expand the scope of an existing crime, this bill would impose a state-mandated local program.

(16) Existing law prohibits the commission from determining that certain costs in a test claim are mandated by the state if the costs meet specified conditions, including, among others, where the challenged costs result from a statute or executive order that imposes requirements mandated by federal law or regulation. Existing law provides that this prohibition applies regardless of whether the federal mandate was enacted before or after the statute or executive order.

This bill would provide that the exceptions for the other specified conditions likewise remain applicable regardless of whether the conditions occurred before or after the enactment of the statute or the adoption of the executive order that is the subject of the test claim.

(17) Existing law requires that the commission adopt parameters and guidelines for the reimbursement of approved test claims. Existing law authorizes a local agency, school district, or the state to file a written request with the commission to amend, modify, or supplement the parameters and guidelines, as specified.

This bill would authorize these entities to file a written request with the commission to amend the parameters and guidelines, and prescribe the types of changes for which the request may be filed, including, among others, deleting a reimbursable activity that has been repealed by statute or executive order.

(18) Existing law requires the California Tax Credit Allocation Committee to allocate specified tax credits for purposes of low-income housing projects. Existing law requires the committee to establish and charge fees it determines are reasonably sufficient to cover the costs in carrying out the responsibilities related to the low-income housing credit program and to deposit these fees in the Tax Credit Allocation Fee Account and the Occupancy Compliance Monitoring Account for specified purposes.

Existing law also authorizes the Governor, in certain circumstances, to direct the Controller to make transfers of money from any special funds and other accounts to the General Cash Revolving Fund.

This bill would authorize the Controller to use the fees deposited in the Tax Credit Allocation Fee Account and the Occupancy Compliance Monitoring Account for daily cash flow loans to the General Fund or the General Cash Revolving Fund in accordance with specified provisions of existing law.

(19) Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an injured employee for injuries sustained in the course of his or her employment. Existing law requires that the

Director of Industrial Relations levy and collect assessments from employers in an amount determined by the director to be sufficient to fund specified workers' compensation programs implemented in the state. In that connection, existing law requires the director to include in the total assessment amount the Department of Industrial Relations' costs for administering the assessment, including the collections process and the cost of reimbursing the Franchise Tax Board for its cost of collection activities.

This bill would also require the director to include in the total assessment amount the department's costs for administering the assessment, including the collections process and the cost of reimbursing another agency or department other than the Franchise Tax Board.

(20) Existing law authorizes the Director of Industrial Relations, with the approval of the Director of Finance, to determine and assess a fee on any awarding body using funds derived from any bond issued by the state to fund public works projects, and requires the fees collected to be deposited in the State Public Works Enforcement Fund, a continuously appropriated fund.

This bill would require the fee to be payable by the board, commission, department, agency, or official responsible for the allocation of bond proceeds from the bond funds awarded to each project, at the time the funds are released to the project or any other time agreed upon by the department and the allocating entity.

(21) Existing law requires an awarding body that chooses to use funds from the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project to pay a fee to the Department of Industrial Relations sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project and labor compliance, and requires the fees collected to be deposited in the State Public Works Enforcement Fund. Existing law requires the department to notify the State Allocation Board of awarding bodies that have paid the fee.

This bill would instead require the State Allocation Board to notify the department of awarding bodies that are awarded funds subject to the fee. This bill would also require the State Allocation Board to pay the fee to the department at the time bond funds are released to the awarding body.

(22) Existing law authorizes the awarding body for a public works project to not require the payment of the general prevailing rate of per diem wages on public works projects of specified sizes and types of work if the awarding body elects to meet certain requirements with regard to any public works project under its authority, including payment of a fee to the Department of Industrial Relations for the enforcement of prevailing wage obligations, in lieu of authorizing the awarding body to initiate and enforce a labor compliance program, for contracts awarded after the effective date of regulations and fees adopted by the department, as specified.

This bill would make technical, conforming changes to those provisions.

(23) Existing law requires that every apprentice employed upon public works, as defined, be paid the prevailing rate of per diem wages for

apprentices in the trade to which he or she is registered, and requires that the apprentice be employed only at the work of the craft or trade to which he or she is registered. Existing law requires a contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade, to contribute to the California Apprenticeship Council the same amount that the Director of Industrial Relations determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. Existing law requires that all training contributions received pursuant to those provisions be deposited in the Apprenticeship Training Contribution Fund, and continuously appropriates that fund for purposes related to apprenticeship training and to pay the expenses of the Division of Apprenticeship Standards.

This bill would eliminate this continuous appropriation and instead specify that, upon appropriation by the Legislature, all moneys in the fund be used for apprenticeship training and to pay the expenses of the Division of Apprenticeship Standards.

(24) Existing law requires the Department of Justice to maintain a master record of information pertaining to the identification and criminal history of persons, as specified. Existing law authorizes the department to provide that information to various entities for law enforcement and other purposes, as specified, including providing that information through the California Law Enforcement Telecommunications System.

This bill would authorize nonprofit organizations that are funded by certain federal grants or contracts for identifying, targeting, or removing criminal and terrorist conspiracies and activities to access local, state, or federal criminal justice system information that is available to law enforcement agencies, including access to the California Law Enforcement Telecommunications System, provided that the nonprofit organization meet state and federal requirements for access to that information or system.

(25) Existing law prohibits a county, city, city and county, or special district from hiring a person for employment or a volunteer to perform services, at a county, city, city and county, or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over a minor, if that person has been convicted of specified offenses. Existing law requires a county, city, city and county, or special district to require each of those prospective employees and volunteers to complete an application that inquires as to whether that person has been convicted of one of those offenses, and imposes a screening requirement on the county, city, city and county, or special district with respect to those prospective employees and volunteers.

This bill would authorize a county, city, city and county, or special district to charge those prospective employees and volunteers a fee to cover all of the county, city, city and county, or special district's costs attributable to those requirements.

(26) The Vehicle License Fee (VLF) Law establishes, in lieu of any ad valorem property tax upon vehicles, an annual license fee for any vehicle

subject to registration in this state in the amount of 2% of the market value of that vehicle, as specified. Existing law requires the Controller, in consultation with the Department of Motor Vehicles and the Department of Finance, to calculate certain allocation amounts with respect to the vehicle license fees paid by commercial vehicle operators, and to transfer moneys in those amounts from the General Fund.

This bill would eliminate the requirement that the Controller transfer one of the allocation amounts from the General Fund, as provided.

(27) Existing law prohibits the Franchise Tax Board and specified individuals who have access to certain documents filed with the board from disclosing information set forth in the documents, except as provided. Existing law authorizes the board to provide the Public Employees' Retirement System with identification and location information from income tax returns or other records solely for the purposes of disbursing unclaimed benefits and distributing member statements on an annual basis. Under existing law, unauthorized disclosure is a misdemeanor. Existing federal law establishes the Early Retiree Reinsurance Program, which provides federal reimbursement to participating employment-based group health benefits plans, as provided.

This bill would, until June 30, 2016, authorize the board to provide the Public Employees' Retirement System with identification and location information from income tax returns or other records for the purpose of filing required data pursuant to the federal Early Retiree Reinsurance Program and related regulations and departmental directives. By expanding the definition of a crime, the bill would impose a state-mandated local program.

(28) Existing law requires each employer to file with the Director of the Employment Development Department, within a specified time period for the payment of employer contributions, a report of contributions and a report of wages paid to his or her workers in the form and containing any information as the director prescribes. Existing law also requires every employer who pays wages to an employee for services performed in this state to withhold from those wages, except as provided, specified income taxes, to file specified reports with the director, and to pay the withheld taxes.

This bill would, instead, require each employer, beginning with the first calendar quarter of 2011, to file with the director a quarterly return, including certain information regarding the total amount of wages, employer contributions, worker contributions required to be withheld by the employer, taxes withheld, and any other information prescribed by the director, as specified.

Existing law also requires each employer, in addition to the aforementioned reports, to file with the director an annual reconciliation return showing specified information pertaining to amounts required to be withheld for employer contributions, as determined by wages and other specified criteria, and taxes withheld as prescribed.

This bill also would eliminate the requirement that an employer file an annual reconciliation form with the director beginning in the 2012 calendar year, and would make related changes.

(29) Existing law provides for unemployment compensation benefits for eligible individuals in the state who are unemployed through no fault of their own. Existing law, for new claims filed on or after a specified date, but no later than April 3, 2011, for which a valid claim or benefit year cannot be established under the currently defined base periods, establish alternative base periods, as provided. Existing law also requires a claimant to submit specified information regarding wages to the Employment Development Department via an affidavit, under specified conditions, and requires the department to implement the technical changes necessary to establish claims under the alternative base period, as specified, as soon as possible, but no later than April 3, 2011.

This bill would extend to September 3, 2011, the time period within which the department is required to implement those changes related to the establishment of unemployment compensation benefit claims under the alternative base period program.

Existing law requires the department, until April 3, 2013, to report to the Joint Legislative Budget Committee, no less than quarterly, on the progress and effectiveness of implementation of the alternative base period program, as specified.

This bill would extend to September 3, 2013, the period during which those reports are required to be provided to the Joint Legislative Budget Committee.

This bill would authorize the Department of Industrial Relations to enter into an agreement that transfers all or part of the responsibility from the Department of Industrial Relations, or any office or division within the department, to the Employment Development Department for the collection of items including, but not limited to, delinquent fees, wages, penalties, judgments, assessments, costs, citations, debts, and any interest thereon, arising out of the enforcement of any law within the jurisdiction of the department, in accordance with specified requirements.

(30) Existing law creates in the State Treasury the Indian Gaming Special Distribution Fund for the receipt and deposit of moneys received by the state from certain Indian tribes pursuant to the terms of gaming compacts entered into with the state. Existing law authorizes moneys in that fund to be used for specified purposes, including for grants for the support of state and local government agencies impacted by tribal government gaming.

Existing law, until January 1, 2021, creates a County Tribal Casino Account in the treasury of each county that contains a tribal casino. Existing law requires the Controller to divide the County Tribal Casino Account for each county that has gaming devices that are subject to an obligation to make contributions to the Indian Gaming Special Distribution Fund into a separate account, known as an Individual Tribal Casino Account, for each tribe that operates a casino within the county. Each Individual Tribal Casino Account is required to be funded in proportion to the amount that each

individual tribe paid in the prior fiscal year to the Indian Gaming Special Distribution Fund, and used for grants to local agencies impacted by tribal casinos, as specified.

This bill would appropriate $30,000,000 from the Indian Gaming Special Distribution Fund to restore funding deleted from the Budget Act of 2007 for the purpose of providing grants to local government agencies impacted by tribal government gaming under the provisions described above.

(31) The Budget Act of 2009 (Chapter 1 of the 2009–10 3rd Extraordinary Session) and revisions to the Budget Act of 2009 (Chapter 1 of the 2009–10 4th Extraordinary Session) made appropriations for the support of state government during the 2009–10 fiscal year.

This bill would make an additional appropriation of moneys from the DNA Identification Fund to the Department of Justice for its support.

(32) Existing law gives the Citizens Redistricting Commission the responsibility for redrawing district boundaries for state Senate, Assembly, and Board of Equalization districts after each national decennial census. Existing law further directs the State Auditor to oversee the selection of members of the commission, and directs the Secretary of State to assist the commission in carrying out its redistricting responsibilities. Existing law requires the Legislature to include in the Budget Act, in each year ending in 9, an appropriation to meet the expenses of the commission, the State Auditor, and the Secretary of State in implementing the redistricting process. The appropriation is required to be a minimum of $3,000,000 and is required to be available for a 3-year period. The Legislature is permitted to make additional appropriations in any year in which it determines that the commission requires additional funding. The Budget Act of 2009 appropriated $3,000,000 for allocation by the Director of Finance among the Citizens Redistricting Commission, the Secretary of State, and the Bureau of State Audits to meet the expenses of those entities in implementing the redistricting process in connection with the 2010 national census.

This bill would provide that funds appropriated in the Budget Act of 2009 for expenses of the commission, the Secretary of State, and the Bureau of State Audits in connection with implementing the redistricting process shall be available until June 30, 2012, and would further provide that funds allocated pursuant to the Budget Act of 2010 for those purposes shall be available until June 30, 2013. The bill would prohibit those funds from being allocated by the Director of Finance until the State Auditor has selected the first 8 members of the commission and the Department of Finance has submitted to the Joint Legislative Budget Committee a 30-days' notice of intent to allocate those funds. The bill would require, in order for the Bureau of State Audits to receive an allocation of funds, that the bureau submit a request with a detailed cost estimate to the Chairperson of the Joint Legislative Budget Committee and the Director of Finance, and that the chairperson of the joint committee provide a written notification to the director that the requested allocation, or a lesser amount, is needed to carry out expenses of the bureau as set forth in the detailed cost estimate.

(33) Existing law creates the California Infrastructure and Economic Development Bank for the purpose of, among other things, providing financial assistance for public development facilities located in California. Existing law establishes the California Infrastructure Guarantee Trust Fund within which there is a guarantee reserve account to fund secure commitments under contracts to guarantee all or part of the bonds in the bank. Existing law permits the Legislature to establish for the guarantee reserve account a reserve account requirement. Existing law requires the bank to take all reasonable steps to maintain the reserve account requirement, and if the bank determines that the amount in the reserve account is below the reserve account requirement, the executive director of the bank is to certify to various parties in the Legislature the sum required to restore the reserve fund to the requirement, and upon making the certification, request an appropriation. Existing law provides that the obligation of the bank and the state to pay any guarantee is a limited obligation of the bank payable solely from amounts deposited in the guarantee trust fund that are made available under the respective contracts of guarantee, and prohibits the guarantee of loans or bonds from directly, indirectly, or contingently obligating the state to levy or to pledge any form of taxation or to make any appropriation for their payment. In 2003, the California Infrastructure and Economic Development Bank and the Imperial Irrigation District entered into a preliminary loan guarantee agreement.

This bill would require that funds in the California Infrastructure Guarantee Trust Fund, as of January 1, 2010, held for the benefit of the Imperial Irrigation District, be deposited in a guarantee reserve account in the fund, which the bill would establish, and would provide that this amount is the reserve account requirement, as specified, for the purpose of meeting the obligations of the Imperial Irrigation District up to $150,000,000 in connection with certain water agreements. The bill would require that the California Infrastructure and Economic Development Bank guarantee certain bonds relating to the Imperial Irrigation District projects, and that the reserve account be paid for the benefit of bondholders in the event of a shortfall, as specified. The bill would specify the characteristics of these bonds, and would establish the limits of the liability of the Imperial Irrigation District, the California Infrastructure and Economic Development Bank, and the state in connection to them.

(34) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(35) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 154.2 is added to the Business and Professions Code, to read:

154.2. (a) The healing arts boards within Division 2 (commencing with Section 500) may employ individuals, other than peace officers, to perform investigative services.

(b) The healing arts boards within Division 2 (commencing with Section 500) may employ individuals to serve as experts.

SEC. 2. Section 159.5 of the Business and Professions Code is amended to read:

159.5. There is in the department the Division of Investigation. The division is in the charge of a person with the title of chief of the division.

Except as provided in Section 160, investigators who have the authority of peace officers, as specified in subdivision (a) of Section 160 and in subdivision (a) of Section 830.3 of the Penal Code, shall be in the division and shall be appointed by the director.

SEC. 3. Section 160 of the Business and Professions Code is amended to read:

160. (a) The Chief and all investigators of the Division of Investigation of the department and all investigators of the Medical Board of California and the Dental Board of California have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them or the division in investigating the laws administered by the various boards comprising the department or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters set forth in this section.

(b) The Division of Investigation of the department, the Medical Board of California, and the Dental Board of California may employ individuals, who are not peace officers, to provide investigative services.

SEC. 4. Section 210 is added to the Business and Professions Code, to read:

210. (a) (1) The department may enter into a contract with a vendor for the BreEZe system, the integrated, enterprisewide enforcement case management and licensing system described in the department's strategic plan, no sooner than 30 days after notification in writing to the chairpersons of the Appropriations Committees of each house of the Legislature and the Chairperson of the Joint Legislative Budget Committee.

(2) The amount of BreEZe system vendor contract funds, authorized pursuant to this section, shall be consistent with the project costs approved by the office of the State Chief Information Officer based on its review and approval of the most recent BreEZe Special Project Report to be submitted by the department prior to contract award at the conclusion of procurement activities.

(3) Paragraph (2) shall apply to all Budget Act items for the department that have an appropriation for the BreEZe system.

(b) (1) If the department enters into a contract with a vendor for the BreEZe system pursuant to subdivision (a), the department shall, by December 31, 2014, submit to the Legislature, the Senate Committee on Business, Professions and Economic Development, the Assembly Committee on Business, Professions and Consumer Protection, and the budget committees of each house, a report analyzing the workload of licensing personnel employed by boards within the department participating in the BreEZe system.

(2) A report to the Legislature pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(3) This subdivision shall become inoperative on December 1, 2018, pursuant to Section 10231.5 of the Government Code.

SEC. 5. Section 23399 of the Business and Professions Code is amended to read:

23399. (a) An on-sale general license authorizes the sale of beer, wine, and distilled spirits for consumption on the premises where sold. Any licensee under an on-sale general license, an on-sale beer and wine license, a club license, or a veterans' club license may apply to the department for a caterer's permit. A caterer's permit under an on-sale general license shall authorize the sale of beer, wine, and distilled spirits for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events held any place in the state approved by the department. A caterer's permit under an on-sale beer and wine license shall authorize the sale of beer and wine for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events held any place in the state approved by the department. A caterer's permit under a club license or a veterans' club license shall authorize sales at these events only upon the licensed club premises.

(b) Any licensee under an on-sale general license or an on-sale beer and wine license may apply to the department for an event permit. An event permit under an on-sale general license or an on-sale beer and wine license shall authorize, at events held no more frequently than four days in any single calendar year, the sale of beer, wine, and distilled spirits only under an on-sale general license or beer and wine only under an on-sale beer and wine license for consumption on property adjacent to the licensed premises and owned or under the control of the licensee. This property shall be secured and controlled by the licensee and not visible to the general public.

(c) This section shall in no way limit the power of the department to issue special licenses under the provisions of Section 24045 or to issue daily on-sale general licenses under the provisions of Section 24045.1. Consent for sales at each event shall be first obtained from the department in the form of a catering or event authorization issued pursuant to rules prescribed by it. Any event authorization shall be subject to approval by the appropriate local law enforcement agency. The fee for each catering or event authorization shall be issued at a fee not to exceed twenty-five dollars ($25)

and this fee shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

(d) At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the act pertaining to the conduct of on-sale premises and violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises.

(e) The fee for a caterer's permit for a licensee under an on-sale general license, a caterer's permit for a licensee under an on-sale beer and wine license, or an event permit for a licensee under an on-sale general license or an on-sale beer and wine license shall be one hundred four dollars ($104) for permits issued during the 2002 calendar year, one hundred seven dollars ($107) for permits issued during the 2003 calendar year, one hundred ten dollars ($110) for permits issued during the 2004 calendar year, and for permits issued during the years thereafter, the annual fee shall be calculated pursuant to subdivisions (b) and (c) of Section 23320, and the fee for a caterer's permit for a licensee under a club license or a veterans' club license shall be as specified in Section 23320, and the permit may be renewable annually at the same time as the licensee's license. A caterer's or event permit shall be transferable as a part of the license.

SEC. 6. Section 23954.5 of the Business and Professions Code is amended to read:

23954.5. (a) An applicant for an original on-sale general license shall, at the time of filing the application for the license, accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. At the time of filing an application for a license, an applicant for an original on-sale general license for seasonal business shall accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. An applicant for an original on-sale beer and wine license shall accompany the application with a fee of three hundred dollars ($300). An applicant for an original on-sale beer license shall accompany the application with a fee of two hundred dollars ($200). An applicant for an original off-sale general license shall, at the time of filing the application for the license, accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. An applicant for an original off-sale beer and wine license or an original license not specified in this section, shall accompany the application with a fee of one hundred dollars ($100).

"Original on-sale general license," "original on-sale general license for seasonal business," "original on-sale beer and wine license," "original on-sale beer license," "original off-sale general license," and "original off-sale beer and wine license," as used in this division, do not include a license issued upon renewal or transfer of a license.

(b) The fee for an original on-sale general license or an original off-sale general license shall be thirteen thousand eight hundred dollars ($13,800).

Beginning January 1, 2011, and each January thereafter, the department may adjust this fee as provided in subdivisions (c) and (d) of Section 23320.

(c) All money collected from the fees provided for in this section shall be in the Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 7. Section 337.5 of the Code of Civil Procedure is amended to read:

337.5. Within 10 years:

(a) An action upon any general obligation bonds or coupons, not secured in whole or in part by a lien on real property, issued by any county, city and county, municipal corporation, district (including school districts), or other political subdivision of the State of California.

(b) An action upon a judgment or decree of any court of the United States or of any state within the United States.

SEC. 8. Section 348.5 is added to the Code of Civil Procedure, to read:

348.5. An action upon any bonds or coupons issued by the State of California shall have no limitation.

SEC. 9. Section 94874.3 is added to the Education Code, to read:

94874.3. (a) For the period July 1, 2010, to July 1, 2011, inclusive, the bureau shall not enforce this chapter against an institution that offers flight instruction or an institution that offers Federal Aviation Administration certified educational programs in aircraft maintenance.

(b) An institution identified in subdivision (a) shall notify the bureau if the institution operates during the period of July 1, 2010, to July 1, 2011, inclusive.

(c) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 10. Section 94949 of the Education Code is amended to read:

94949. (a) On or before October 1, 2013, the Legislative Analyst's Office shall report to the Legislature and the Governor on the appropriateness of the exemptions provided in this chapter, with particular attention to the exemptions provided by Article 4 (commencing with Section 94874) that are based on accreditation. The report shall examine and make recommendations regarding the degree to which regional and national accrediting agencies provide oversight of institutions and protection of student interests, whether that oversight results in the same level of protection of students as provided by this chapter, and whether the exemptions provided in Article 4 (commencing with Section 94874) that are based on accreditation should be continued, adjusted, or removed.

(b) (1) On or before August 1, 2013, the bureau shall contract with the Bureau of State Audits to conduct a performance audit to evaluate the effectiveness and efficiency of the bureau's operations, consistent with the requirements of this chapter, and the Bureau of State Audits shall report the results of that audit to the Legislature and the Governor.

(2) The performance audit required by paragraph (1) shall include, but shall not be limited to, an evaluation of all of the following:

(A) The Student Tuition Recovery Fund, including the adequacy of its balance; the quality, timeliness, and consistency of claims processing; and the degree to which it has been, or will be, able to reimburse tuition for students.

(B) The bureau's enforcement program, including the means by which the bureau makes students and school employees aware of their ability to file complaints; the average time for investigating complaints; the standards for referring complaints to investigation; the average time to complete investigations; the adequacy of the bureau's inspections; the bureau's record of imposing discipline; the bureau's record of initiating investigations based upon publicly available information; the bureau's record of coordinating with law enforcement and public prosecutors; and whether the bureau has the enforcement resources necessary to protect consumers and ensure a fair and prompt resolution of complaints and investigations for both students and institutions.

(C) The bureau's efforts with respect to, and extent of institution compliance with, the public and student disclosure requirements of this chapter.

(D) Whether the bureau's staffing level and expertise are sufficient to fulfill its statutory responsibilities.

(c) Bureau staff and management shall cooperate with the Legislative Analyst's Office and the Bureau of State Audits and shall provide those agencies with access to data, case files, employees, and information as those agencies may, in their discretion, require for the purposes of this section.

SEC. 11. Section 926.16 of the Government Code is repealed.

SEC. 12. Section 926.19 of the Government Code is repealed.

SEC. 13. Section 927 of the Government Code is amended to read:

927. (a) This chapter shall be known and may be cited as the California Prompt Payment Act.

(b) It is the intent of the Legislature that state agencies pay properly submitted, undisputed invoices, refunds, or other undisputed payments due to individuals within 45 days of receipt or notification thereof, or automatically calculate and pay the appropriate late payment penalties as specified in this chapter.

(c) Notwithstanding any other provision of law, this chapter shall apply to all state agencies, including, but not limited to, the Public Employees' Retirement System, the State Teachers' Retirement System, the Treasurer, and the Department of General Services.

SEC. 14. Section 927.2 of the Government Code is amended to read:

927.2. The following definitions apply to this chapter:

(a) "Claim schedule" means a schedule of payment requests prepared and submitted by a state agency to the Controller for payment to the named claimant.

(b) "Grant" means a signed final agreement between any state agency and a local government agency or organization authorized to accept grant funding for victim services or prevention programs administered by any state agency. Any such grant is a contract and subject to this chapter.

(c) "Invoice" means a bill or claim that requests payment on a contract under which a state agency acquires property or services or pursuant to a signed final grant agreement.

(d) "Medi-Cal program" means the program established pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(e) "Nonprofit public benefit corporation" means a corporation, as defined by subdivision (b) of Section 5046 of the Corporations Code, that has registered with the Department of General Services as a small business.

(f) "Nonprofit service organization" means a nonprofit entity that is organized to provide services to the public.

(g) "Notice of refund or other payment due" means a state agency provides notice to the person that a refund or payment is owed to that person or the state agency receives notice from the person that a refund or undisputed payment is due.

(h) "Payment" means any form of the act of paying, including, but not limited to, the issuance of a warrant or a registered warrant by the Controller, or the issuance of a revolving fund check by a state agency, to a claimant in the amount of an undisputed invoice.

(i) "Reasonable cause" means a determination by a state agency that any of the following conditions are present:

(1) There is a discrepancy between the invoice or claimed amount and the provisions of the contract or grant.

(2) There is a discrepancy between the invoice or claimed amount and either the claimant's actual delivery of property or services to the state or the state's acceptance of those deliveries.

(3) Additional evidence supporting the validity of the invoice or claimed amount is required to be provided to the state agency by the claimant.

(4) The invoice has been improperly executed or needs to be corrected by the claimant.

(5) There is a discrepancy between the refund or other payment due as calculated by the person to whom the money is owed and by the state agency.

(j) "Received by a state agency" means the date an invoice is delivered to the state location or party specified in the contract or grant or, if a state location or party is not specified in the contract or grant, wherever otherwise specified by the state agency.

(k) "Required payment approval date" means the date on which payment is due as specified in a contract or grant or, if a specific date is not established by the contract or grant, 30 calendar days following the date upon which an undisputed invoice is received by a state agency.

(*l*) "Revolving fund" means a fund established pursuant to Article 5 (commencing with Section 16400) of Division 4 of Title 2.

(m) "Small business" means a business certified as a "small business" in accordance with subdivision (d) of Section 14837.

(n) "Small business" and "nonprofit organization" mean, in reference to providers under the Medi-Cal program, a business or organization that meets all of the following criteria:

(1) The principal office is located in California.
(2) The officers, if any, are domiciled in California.
(3) If a small business, it is independently owned and operated.
(4) The business or organization is not dominant in its field of operation.
(5) Together with any affiliates, the business or organization has gross receipts from business operations that do not exceed three million dollars ($3,000,000) per year, except that the Director of Health Services may increase this amount if the director deems that this action would be in furtherance of the intent of this chapter.

SEC. 15. Section 927.3 of the Government Code is amended to read:

927.3. (a) Except where payment is made directly by a state agency pursuant to Section 927.6, an undisputed invoice received by a state agency shall be submitted to the Controller for payment by the required payment approval date. A state agency may dispute an invoice submitted by a claimant for reasonable cause if the state agency notifies the claimant within 15 working days from receipt of the invoice, or delivery of property or services, whichever is later. No state employee shall dispute an invoice, on the basis of minor or technical defects, in order to circumvent or avoid the general intent or any of the specific provisions of this chapter.

(b) Except where payment is made directly by a state agency pursuant to Section 927.13, a notice of refund or other payment due received by a state agency shall be submitted to the Controller within 30 calendar days of the agency's receipt of the notice. A state agency may dispute a refund request for reasonable cause if the state agency notifies the claimant within 15 working days after the state agency receives notice from the individual that the refund is due.

SEC. 16. Section 927.5 of the Government Code is amended to read:

927.5. This chapter shall not apply to claims for reimbursement for health care services provided under the Medi-Cal program, unless the Medi-Cal health care services provider is a small business or nonprofit organization. In applying this section to claims submitted to the state, or its fiscal intermediary, by providers of services or equipment under the Medi-Cal program, payment for claims shall be due 30 days after a claim is received by the state or its fiscal intermediary, unless reasonable cause for nonpayment exists. With regard to Medi-Cal claims, reasonable cause shall include review of claims to determine medical necessity, review of claims for providers subject to special prepayment fraud and abuse controls, and claims that require review by the fiscal intermediary or State Department of Health Care Services due to special circumstances. Claims requiring special review as specified above shall not be eligible for a late payment penalty.

SEC. 17. Section 927.6 of the Government Code is amended to read:

927.6. (a) State agencies shall pay applicable penalties, without requiring that the claimant submit an additional invoice for these amounts, whenever the state agency fails to submit a correct claim schedule to the Controller by the required payment approval date and payment is not issued within 45 calendar days from the state agency receipt of an undisputed invoice. The

penalty shall cease to accrue on the date the state agency submits the claim schedule to the Controller for payment or pays the claimant directly, and shall be paid for out of the state agency's support appropriation. If the claimant is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the state agency shall pay to the claimant a penalty at a rate of 10 percent above the United States Prime Rate on June 30 of the prior fiscal year. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract or grant in an amount less than five hundred thousand dollars ($500,000). If the amount of the penalty is ten dollars ($10) or less, the penalty shall be waived and not paid by the state agency.

(b) For all other businesses, the state agency shall pay a penalty at a rate of 1 percent above the Pooled Money Investment Account daily rate on June 30 of the prior fiscal year, not to exceed a rate of 15 percent. If the amount of the penalty is one hundred dollars ($100) or less, the penalty shall be waived and not paid by the state agency. On an exception basis, state agencies may avoid payment of penalties for failure to submit a correct claim schedule to the Controller by the required payment approval date by paying the claimant directly from the state agency's revolving fund within 45 calendar days following the date upon which an undisputed invoice is received by the state agency.

SEC. 18. Section 927.7 of the Government Code is amended to read:

927.7. The Controller shall pay claimants within 15 calendar days of receipt of a correct claim schedule from the state agency. If the Controller fails to make payment within 15 calendar days of receipt of the claim schedule from a state agency, and payment is not issued within 45 calendar days from state agency receipt of an undisputed invoice, the Controller shall pay applicable penalties to the claimant without requiring that the claimant submit an invoice for these amounts. Penalties shall cease to accrue on the date full payment is made, and shall be paid for out of the Controller's funds. If the claimant is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the Controller shall pay to the claimant a penalty at a rate of 10 percent above the United States Prime Rate on June 30 of the prior fiscal year, from the 16th calendar day following receipt of the claim schedule from the state agency. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract or grant in an amount less than five hundred thousand dollars ($500,000). If the amount of the penalty is ten dollars ($10) or less, the penalty shall be waived and not paid by the Controller. For all other businesses, the Controller shall pay penalties at a rate of 1 percent above the Pooled Money Investment Account daily rate on June 30 of the prior fiscal year, not to exceed a rate of 15 percent. If the amount of the penalty is one hundred dollars ($100) or less, the penalty shall be waived and not paid by the Controller.

SEC. 19. Section 927.9 of the Government Code is amended to read:

927.9. (a) On an annual basis, within 90 calendar days following the end of each fiscal year, state agencies shall provide the Director of General Services with a report on late payment penalties that were paid by the state agency in accordance with this chapter during the preceding fiscal year.

(b) The report shall separately identify the total number and dollar amount of late payment penalties paid to small businesses, other businesses, and refunds or other payments to individuals. State agencies may, at their own initiative, provide the director with other relevant performance measures. The director shall prepare a report separately listing the number and total dollar amount of all late payment penalties paid to small businesses, other businesses, and refunds and other payments to individuals by each state agency during the preceding fiscal year, together with other relevant performance measures, and shall make the information available to the public.

SEC. 20. Section 927.13 is added to the Government Code, to read:

927.13. (a) Unless otherwise provided for by statute, any state agency that fails to submit a correct claim schedule to the Controller within 30 days of receipt of a notice of refund or other payment due, and fails to issue payment within 45 days from the notice of refund or other payment due, shall be liable for penalties on the undisputed amount pursuant to this section. The penalties shall be paid out of the agency's funds at a rate equal to the Pooled Money Investment Account daily rate on June 30 of the prior fiscal year minus 1 percent. The penalties shall cease to accrue on the date full payment or refund is made. If the amount of the penalty is ten dollars ($10) or less, the penalty shall be waived and not paid by the state agency. On an exception basis, state agencies may avoid payment of penalties for failure to submit a correct claim schedule to the Controller by paying the claimant directly from the state agency's revolving fund within 45 calendar days following the agency's receipt of the notice of refund or other payment due.

(b) The Controller shall pay claimants within 15 calendar days of receipt of a correct claim schedule from the state agency. If the Controller fails to make payment within 15 calendar days of receipt of the claim schedule from a state agency, and payment is not issued within 45 calendar days following the agency's receipt of a notice of refund or undisputed payment due, the Controller shall pay applicable penalties to the claimant. Penalties shall cease to accrue on the date full payment is made, and shall be paid out of the Controller's funds. If the amount of the penalty is ten dollars ($10) or less, the penalty shall be waived and not paid by the Controller.

(c) No person shall receive an interest payment pursuant to this section if it is determined that the person has intentionally overpaid on a liability solely for the purpose of receiving a penalty payment.

(d) No penalty shall accrue during any time period for which there is no Budget Act in effect, nor on any payment or refund that is the result of a federally mandated program or that is directly dependent upon the receipt of federal funds by a state agency.

(e) This section shall not apply to any of the following:

(1) Payments, refunds, or credits for income tax purposes.

(2) Payment of claims for reimbursement for health care services or mental health services provided under the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(3) Any payment made pursuant to a public social service or public health program to a recipient of benefits under that program.

(4) Payments made on claims by the California Victim Compensation and Government Claims Board.

(5) Payments made by the Commission on State Mandates.

(6) Payments made by the Department of Personnel Administration pursuant to Section 19823.

SEC. 21. Section 7072.3 is added to the Government Code, to read:

7072.3. The department shall deposit funds collected pursuant to subdivision (c) of Section 7076, subdivision (a) of Section 7097.1, and subdivision (a) of Section 7114.2 into the Enterprise Zone Fund, which is hereby created in the State Treasury. Moneys deposited into the fund shall be available to the department, upon appropriation by the Legislature, for expenditure in carrying out the provisions of this chapter, Chapter 12.93 (commencing with Section 7097), and Chapter 12.97 (commencing with Section 7105), including, but not limited to, establishing a reasonable reserve in the fund.

SEC. 22. Section 7076 of the Government Code is amended to read:

7076. (a) (1) The department shall provide technical assistance to the enterprise zones designated pursuant to this chapter with respect to all of the following activities:

(A) Furnish limited onsite assistance to the enterprise zones when appropriate.

(B) Ensure that the locality has developed a method to make residents, businesses, and neighborhood organizations aware of the opportunities to participate in the program.

(C) Help the locality develop a marketing program for the enterprise zone.

(D) Coordinate activities of other state agencies regarding the enterprise zones.

(E) Monitor the progress of the program.

(F) Help businesses to participate in the program.

(2) Notwithstanding existing law, the provision of services in subparagraphs (A) to (F), inclusive, shall be a high priority of the department.

(3) The department may, at its discretion, undertake other activities in providing management and technical assistance for successful implementation of this chapter.

(b) The applicant shall be required to begin implementation of the enterprise zone plan contained in the final application within six months after notification of final designation or the enterprise zone shall lose its designation.

(c) The department shall assess a fee of fifteen dollars ($15) on each enterprise zone and manufacturing enhancement area for each application

for issuance of a certificate pursuant to subdivision (j) of Section 17053.47 of, subdivision (c) of Section 17053.74 of, subdivision (c) of Section 23622.7 of, or subdivision (i) of Section 23622.8 of, the Revenue and Taxation Code. The department shall collect the fee for deposit into the Enterprise Zone Fund, pursuant to Section 7072.3, for the costs of administering this chapter. The enterprise zone or manufacturing enhancement area administrator shall collect this fee at the time an application is submitted for issuance of a certificate.

SEC. 23. Section 7097.1 of the Government Code is amended to read:

7097.1. (a) The department shall assess each targeted tax area a fee of fifteen dollars ($15) for each application for issuance of a certificate pursuant to subdivision (d) of Section 17053.34 of the Revenue and Taxation Code and subdivision (d) of Section 23634 of the Revenue and Taxation Code. The department shall collect the fee for deposit into the Enterprise Zone Fund, pursuant to Section 7072.3, for the costs of administering this chapter. The targeted tax area administrator shall collect this fee at the time an application is submitted for issuance of a certificate.

(b) The department shall adopt regulations governing the issuance of certificates pursuant to subdivision (d) of Section 17053.34 and subdivision (d) of Section 23634 of the Revenue and Taxation Code. The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding subdivision (c) of Section 11346.1, the regulations shall remain in effect for not more than 360 days unless the department complies with all the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 as required by subdivision (e) of Section 11346.1.

SEC. 24. Section 7114.2 of the Government Code is amended to read:

7114.2. (a) The department shall assess each LAMBRA a fee of fifteen dollars ($15) for each application for issuance of a certificate pursuant to subdivision (c) of Section 17053.46 of the Revenue and Taxation Code and subdivision (c) of Section 23646 of the Revenue and Taxation Code. The department shall collect the fee for deposit into the Enterprise Zone Fund, pursuant to Section 7072.3, for the costs of administering this chapter. The LAMBRA administrator shall collect this fee at the time an application is submitted for issuance of a certificate.

(b) The department shall adopt regulations governing the imposition and collection of fees pursuant to this section and the issuance of certificates pursuant to subdivision (c) of Section 17053.46 of the Revenue and Taxation Code and subdivision (c) of Section 23646 of the Revenue and Taxation Code. The regulations shall provide for a notice or invoice to fee payers as to the amount and purpose of the fee. The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall remain in effect for no more than 360 days unless the agency complies with all the provisions

of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 as required by subdivision (e) of Section 11346.1.

SEC. 25. Section 7591 of the Government Code is amended to read:

7591. (a) The amount of fifteen million dollars ($15,000,000) is appropriated, subject to subdivision (b), from the General Fund to the Trade and Commerce Agency for a loan for allocation over three years in three equal amounts to that nonprofit organization currently named the San Diego National Sports Training Foundation, for purposes of developing and constructing, with the participation and advice of the United States Olympic Committee, a California Olympic Training Center.

(b) The loan allocations provided for by this section shall be made no earlier than December 31, of 1990, 1991, and 1992, and shall be made only if the San Diego National Sports Training Foundation is able and willing by each of those dates to provide the sum of five million dollars ($5,000,000), for purposes of developing and constructing, with the participation and advice of the United States Olympic Committee, a California Olympic Training Center.

(c) Notwithstanding any other provision of law, any outstanding loan balance and any accrued interest that exist on the operative date of the act adding this subdivision shall not be required to be repaid.

SEC. 26. Section 7592 of the Government Code is amended to read:

7592. There is in the General Fund the California Olympic Training Account. The account shall consist of those revenues derived from the additional vehicle registration fees provided for in Section 5023 of the Vehicle Code and shall be annually transferred to the General Fund by the Controller.

SEC. 27. Section 11544 of the Government Code, as added by Section 1 of Chapter 533 of the Statutes of 2006, is amended to read:

11544. (a) The Technology Services Revolving Fund, hereafter known as the fund, is hereby created within the State Treasury. The fund shall be administered by the State Chief Information Officer to receive all revenues from the sale of technology or technology services provided for in this chapter, for other services rendered by the office of the State Chief Information Officer, and all other moneys properly credited to the office of the State Chief Information Officer from any other source, to pay, upon appropriation by the Legislature, all costs arising from this chapter and rendering of services to state and other public agencies, including, but not limited to, employment and compensation of necessary personnel and expenses, such as operating and other expenses of the board and the office of the State Chief Information Officer, and costs associated with approved information technology projects, and to establish reserves. At the discretion of the State Chief Information Officer, segregated, dedicated accounts within the fund may be established. The amendments made to this section by the act adding this sentence shall apply to all revenues earned on or after July 1, 2010.

(b) The fund shall consist of all of the following:

(1) Moneys appropriated and made available by the Legislature for the purposes of this chapter.

(2) Any other moneys that may be made available to the office of the State Chief Information Officer from any other source, including the return from investments of moneys by the Treasurer.

(c) The office of the State Chief Information Officer may collect payments from public agencies for providing services to those agencies that the agencies have requested from the office of the State Chief Information Officer. The office of the State Chief Information Officer may require monthly payments by client agencies for the services the agencies have requested. Pursuant to Section 11255, the Controller shall transfer any amounts so authorized by the office of the State Chief Information Officer, consistent with the annual budget of each department, to the fund. The office of the State Chief Information Officer shall notify each affected state agency upon requesting the Controller to make the transfer.

(d) At the end of any fiscal year, if the balance remaining in the fund at the end of that fiscal year exceeds 25 percent of the portion of the office of the State Chief Information Officer's current fiscal year budget used for support of data center and other client services, the excess amount shall be used to reduce the billing rates for services rendered during the following fiscal year.

SEC. 28. Section 11546.4 is added to the Government Code, to read:

11546.4. Notwithstanding any other law, any service contract proposed to be entered into by an agency that would not otherwise be subject to review, approval, or oversight by the office of the State Chief Information Officer but that contains an information technology component that would be subject to oversight by the office of the State Chief Information Officer if it was a separate information technology project, shall be subject to review, approval, and oversight by the office of the State Chief Information Officer as set forth in Section 11546.

SEC. 29. Chapter 2 (commencing with Section 13996) of Part 4.7 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 30. Section 16429.1 of the Government Code is amended to read:

16429.1. (a) There is in trust in the custody of the Treasurer the Local Agency Investment Fund, which fund is hereby created. The Controller shall maintain a separate account for each governmental unit having deposits in this fund.

(b) Notwithstanding any other provisions of law, a local governmental official, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

(c) Notwithstanding any other provisions of law, an officer of any nonprofit corporation whose membership is confined to public agencies or public officials, or an officer of a qualified quasi-governmental agency, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the

Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

(d) Notwithstanding any other provision of law or of this section, a local agency, with the approval of its governing body, may deposit in the Local Agency Investment Fund proceeds of the issuance of bonds, notes, certificates of participation, or other evidences of indebtedness of the agency pending expenditure of the proceeds for the authorized purpose of their issuance. In connection with these deposits of proceeds, the Local Agency Investment Fund is authorized to receive and disburse moneys, and to provide information, directly with or to an authorized officer of a trustee or fiscal agent engaged by the local agency, the Local Agency Investment Fund is authorized to hold investments in the name and for the account of that trustee or fiscal agent, and the Controller shall maintain a separate account for each deposit of proceeds.

(e) The local governmental unit, the nonprofit corporation, or the quasi-governmental agency has the exclusive determination of the length of time its money will be on deposit with the Treasurer.

(f) The trustee or fiscal agent of the local governmental unit has the exclusive determination of the length of time proceeds from the issuance of bonds will be on deposit with the Treasurer.

(g) The Local Investment Advisory Board shall determine those quasi-governmental agencies which qualify to participate in the Local Agency Investment Fund.

(h) The Treasurer may refuse to accept deposits into the fund if, in the judgment of the Treasurer, the deposit would adversely affect the state's portfolio.

(i) The Treasurer may invest the money of the fund in securities prescribed in Section 16430. The Treasurer may elect to have the money of the fund invested through the Surplus Money Investment Fund as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

(j) Money in the fund shall be invested to achieve the objective of the fund which is to realize the maximum return consistent with safe and prudent treasury management.

(k) All instruments of title of all investments of the fund shall remain in the Treasurer's vault or be held in safekeeping under control of the Treasurer in any federal reserve bank, or any branch thereof, or the Federal Home Loan Bank of San Francisco, with any trust company, or the trust department of any state or national bank.

(*l*) Immediately at the conclusion of each calendar quarter, all interest earned and other increment derived from investments shall be distributed by the Controller to the contributing governmental units or trustees or fiscal agents, nonprofit corporations, and quasi-governmental agencies in amounts directly proportionate to the respective amounts deposited in the Local Agency Investment Fund and the length of time the amounts remained therein. An amount equal to the reasonable costs incurred in carrying out the provisions of this section, not to exceed a maximum of 5 percent of the

earnings of this fund and not to exceed the amount appropriated in the annual Budget Act for this function, shall be deducted from the earnings prior to distribution. The amount of this deduction shall be credited as reimbursements to the state agencies, including the Treasurer, the Controller, and the Department of Finance, having incurred costs in carrying out the provisions of this section.

(m) The Treasurer shall prepare for distribution a monthly report of investments made during the preceding month.

(n) As used in this section, "local agency," "local governmental unit," and "local governmental official" includes a campus or other unit and an official, respectively, of the California State University who deposits moneys in funds described in Sections 89721, 89722, and 89725 of the Education Code.

SEC. 31. Section 17556 of the Government Code is amended to read:

17556. The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

(a) The claim is submitted by a local agency or school district that requests or previously requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision. This subdivision applies regardless of whether the resolution from the governing body or a letter from a delegated representative of the governing body was adopted or sent prior to or after the date on which the statute or executive order was enacted or issued.

(b) The statute or executive order affirmed for the state a mandate that has been declared existing law or regulation by action of the courts. This subdivision applies regardless of whether the action of the courts occurred prior to or after the date on which the statute or executive order was enacted or issued.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for additional revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

SEC. 32. Section 17557 of the Government Code is amended to read:

17557. (a) If the commission determines there are costs mandated by the state pursuant to Section 17551, it shall determine the amount to be subvened to local agencies and school districts for reimbursement. In so doing it shall adopt parameters and guidelines for reimbursement of any claims relating to the statute or executive order. The successful test claimants shall submit proposed parameters and guidelines within 30 days of adoption of a statement of decision on a test claim. The proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program. At the request of a successful test claimant, the commission may provide for one or more extensions of this 30-day period at any time prior to its adoption of the parameters and guidelines. If proposed parameters and guidelines are not submitted within the 30-day period and the commission has not granted an extension, then the commission shall notify the test claimant that the amount of reimbursement the test claimant is entitled to for the first 12 months of incurred costs will be reduced by 20 percent, unless the test claimant can demonstrate to the commission why an extension of the 30-day period is justified.

(b) In adopting parameters and guidelines, the commission may adopt a reasonable reimbursement methodology.

(c) The parameters and guidelines adopted by the commission shall specify the fiscal years for which local agencies and school districts shall be reimbursed for costs incurred. However, the commission may not specify in the parameters and guidelines any fiscal year for which payment could be provided in the annual Budget Act.

(d) (1) A local agency, school district, or the state may file a written request with the commission to amend the parameters or guidelines. The commission may, after public notice and hearing, amend the parameters and guidelines. A parameters and guidelines amendment submitted within 90 days of the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, and on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year.

(2) For purposes of this subdivision, the request to amend parameters and guidelines may be filed to make any of the following changes to parameters and guidelines, consistent with the statement of decision:

(A) Delete any reimbursable activity that has been repealed by statute or executive order after the adoption of the original or last amended parameters and guidelines.

(B) Update offsetting revenues and offsetting savings that apply to the mandated program and do not require a new legal finding that there are no costs mandated by the state pursuant to subdivision (e) of Section 17556.

(C) Include a reasonable reimbursement methodology for all or some of the reimbursable activities.

(D) Clarify what constitutes reimbursable activities.

(E) Add new reimbursable activities that are reasonably necessary for the performance of the state-mandated program.

(F) Define what activities are not reimbursable.

(G) Consolidate the parameters and guidelines for two or more programs.

(H) Amend the boilerplate language. For purposes of this section, "boilerplate language" means the language in the parameters and guidelines that is not unique to the state-mandated program that is the subject of the parameters and guidelines.

(e) A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The claimant may thereafter amend the test claim at any time, but before the test claim is set for a hearing, without affecting the original filing date as long as the amendment substantially relates to the original test claim.

(f) In adopting parameters and guidelines, the commission shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that balances accuracy with simplicity.

SEC. 33. Section 17570 is added to the Government Code, to read:

17570. (a) For purposes of this section the following definitions shall apply:

(1) "Mandates law" means published court decisions arising from state mandate determinations by the State Board of Control or the Commission

on State Mandates, or that address this part or Section 6 of Article XIII B of the California Constitution. "Mandates law" also includes statutory amendments to this part and amendments to Section 6 of Article XIII B of the California Constitution.

(2) "Subsequent change in law" is a change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a "subsequent change in law" does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A "subsequent change in law" also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.

(3) "Test claim decision" means a decision of the Commission on State Mandates on a test claim filed pursuant to Section 17551 or a decision of the State Board of Control on a claim for state reimbursement filed pursuant to Article 1 (commencing with Section 2201), Article 2 (commencing with Section 2227), and Article 3 (commencing with Section 2240) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code prior to January 1, 1985.

(b) The commission may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that the state's liability for that test claim decision pursuant to subdivision (a) of Section 6 of Article XIII B of the California Constitution has been modified based on a subsequent change in law.

(c) A local agency or school district, statewide association of local agencies or school districts, or the Department of Finance, the Controller, or other affected state agency may file a request with the commission to adopt a new test claim decision pursuant to this section.

(d) The commission shall adopt procedures for receiving requests to adopt a new test claim decision pursuant to this section and for providing notice and a hearing on those requests. The procedures shall do all of the following:

(1) Specify that all requests for adoption of a new test claim decision shall be filed on a form prescribed by the commission that shall contain at least the following elements and documents:

(A) The name, case number, and adoption date of the prior test claim decision.

(B) A detailed analysis of how and why the state's liability for mandate reimbursement has been modified pursuant to subdivision (a) of Section 6 of Article XIII B of the California Constitution based on a subsequent change in law.

(C) The actual or estimated amount of the annual statewide change in the state's liability for mandate reimbursement pursuant to subdivision (a) of Section 6 of Article XIII B of the California Constitution based on a subsequent change in law.

(D) Identification of all of the following, if relevant:

(i) Dedicated state funds appropriated for the program.
(ii) Dedicated federal funds appropriated for the program.
(iii) Fee authority to offset the costs of the program.
(iv) Federal law.
(v) Court decisions.
(vi) State or local ballot measures and the corresponding date of the election.

(E) All assertions of fact shall be supported with declarations made under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and be signed by persons who are authorized and competent to do so, including, but not limited to, the following:

(i) Declarations of actual or estimated annual statewide costs that will or will not be incurred to implement the alleged mandate.

(ii) Declarations identifying all local, state, or federal funds, or fee authority that may or may not be used to offset the increased costs that will or will not be incurred by claimants to implement the alleged mandate or result in a finding of no costs mandated by the state pursuant to Section 17556.

(iii) Declarations describing new activities performed to implement specific provisions of the test claim statute or executive order alleged to impose a reimbursable state-mandated program.

(F) Specific references shall be made to chapters, articles, sections, or page numbers that are alleged to impose or not impose a reimbursable state-mandated program.

(2) Require that a request for the adoption of a new test claim decision be signed at the end of the document, under penalty of perjury, by the requester or its authorized representative, along with a declaration that the request is true and complete to the best of the declarant's personal knowledge, information, or belief. The procedures shall also require that the date of signing, the declarant's title, address, telephone number, facsimile machine telephone number, and electronic mail address be included.

(3) Provide that the commission shall return a submitted request that is incomplete to the requester and allow the requester to remedy the deficiencies. The procedures shall also provide that the commission may disallow the original filing if a complete request is not received by the commission within 30 calendar days from the date that the incomplete request was returned to the requester.

(4) Establish a two-step hearing process to consider requests for adoption of a new test claim decision pursuant to this section. As the first step, the commission shall conduct a hearing to determine if the requester has made a showing that the state's liability pursuant to subdivision (a) of Section 6 of Article XIII B of the California Constitution has been modified based on a subsequent change in law. If the commission determines that the requester has made this showing, then pursuant to the commission's authority in subdivision (b) of this section, the commission shall notice the request for a hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

(5) Provide for presentation of evidence and legal argument at the hearings by the requester, interested parties, the Department of Finance, the Controller, any other affected state agency, and interested persons.

(6) Permit a hearing to be postponed at the request of any party, without prejudice, until the next scheduled hearing.

(e) To implement the procedures described in subdivision (d), the commission shall initially adopt regulations as emergency regulations and, for purposes of Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall be repealed within 180 days after their effective date, unless the commission complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in subdivision (e) of Section 11346.1.

(f) A request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.

(g) The commission shall notify interested parties, the Controller, the Department of Finance, affected state agencies, and the Legislative Analyst of any complete request for the adoption of a new test claim decision that the commission receives.

(h) If the commission determines that the requester has made a showing that the state's liability pursuant to subdivision (a) of Section 6 of Article XIII B of the California Constitution has been modified based on a subsequent change in law, and the commission notices the request for a hearing to determine whether a new test claim decision shall be adopted that supersedes a prior test claim decision, the Controller shall notify eligible claimants that the request has been filed with the commission and that the original test claim decision may be superseded by a new decision adopted by the commission. The notification may be included in the next set of claiming instructions issued to eligible claimants.

(i) If the commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the commission shall adopt new parameters and guidelines or amend existing parameters and guidelines or reasonable reimbursement methodology pursuant to Sections 17557, 17557.1, and 17557.2.

(j) Any new parameters and guidelines adopted or amendments made to existing parameters and guidelines or a reasonable reimbursement methodology shall conform to the new test claim decision adopted by the commission.

(k) The Controller shall follow the procedures in Sections 17558, 17558.5, 17560, 17561, and 17561.5, as applicable, for a new test claim decision adopted by the commission pursuant to this section.

(*l*) If the commission adopts a new test claim decision that will result in reimbursement pursuant to Section 6 of Article XIII B of the California Constitution because a cost is a cost mandated by the state, as defined in Section 17514, the commission shall determine the amount to be subvened

to local agencies and school districts by adopting a new statewide cost estimate pursuant to Section 17557.

(m) In addition to the reports required pursuant to Sections 17600 and 17601, the commission shall notify the Legislature within 30 days of adopting a new test claim decision that supersedes a prior test claim decision and determining the amount to be subvened to local agencies and school districts for reimbursement pursuant to this section.

SEC. 34. Section 17570.1 is added to the Government Code, to read:

17570.1. As part of its review and consideration pursuant to Sections 17581 and 17581.5, the Legislature may, by statute, request that the Department of Finance consider exercising its authority pursuant to subdivision (c) of Section 17570.

SEC. 45. Section 50199.9 of the Health and Safety Code is amended to read:

50199.9. (a) The committee shall establish and charge fees which it determines are reasonably sufficient to cover all of the costs of the committee in carrying out its responsibilities under this chapter. The Tax Credit Allocation Fee Account is hereby established in the State Treasury. The fees shall be deposited by the committee in the Tax Credit Allocation Fee Account and shall be available, upon appropriation by the Legislature, to the committee for the purpose of covering all of those costs, except that fees may be shared, in an amount determined by the committee, with any state or local agency that assists the committee in performing its duties.

(b) Funds deposited in the Tax Credit Allocation Fee Account are continuously appropriated without regard to fiscal year for purposes of sharing with state and local agencies pursuant to subdivision (a).

(c) Until the time that sufficient fee revenue is received by the committee, the committee may borrow any money as may be required for the purpose of meeting necessary expenses of the operation of the committee, not to exceed the amount appropriated. Any loan made to the committee pursuant to this subdivision shall be repayable solely from moneys appropriated to the committee from the Tax Credit Allocation Fee Account and shall not constitute a general obligation for which the faith and credit of the state are pledged.

(d) There shall be established a subaccount within the Tax Credit Allocation Fee Account named the Occupancy Compliance Monitoring Account.

(e) Fees collected for the purpose of paying the costs of monitoring projects with allocations of tax credits for compliance with federal and state law, as required by Section 42(m) of the federal Internal Revenue Code, and Section 50199.15, shall be deposited in the Occupancy Compliance Monitoring Account to be used solely for this purpose. Any performance deposits forfeited to the committee shall be deposited in the Occupancy Compliance Monitoring Account.

(f) Notwithstanding any other law, the Controller may use the fees deposited in the accounts established by this section for daily cash flow

loans to the General Fund or the General Cash Revolving Fund, as provided in Sections 16310 and 16381 of the Government Code.

SEC. 46. Section 62.9 of the Labor Code is amended to read:

62.9. (a) (1) The director shall levy and collect assessments from employers in accordance with this section. The total amount of the assessment collected shall be the amount determined by the director to be necessary to produce the revenue sufficient to fund the programs specified by Section 62.7, except that the amount assessed in any year for those purposes shall not exceed 50 percent of the amounts appropriated from the General Fund for the support of the occupational safety and health program for the 1993–94 fiscal year, adjusted for inflation. The director also shall include in the total assessment amount the department's costs for administering the assessment, including the collections process and the cost of reimbursing the Franchise Tax Board or another agency or department for its cost of collection activities pursuant to subdivision (c).

(2) The insured employers and private sector self-insured employers that, pursuant to subdivision (b), are subject to assessment shall be assessed, respectively, on the basis of their annual payroll subject to premium charges or their annual payroll that would be subject to premium charges if the employer were insured, as follows:

(A) An employer with a payroll of less than two hundred fifty thousand dollars ($250,000) shall be assessed one hundred dollars ($100).

(B) An employer with a payroll of two hundred fifty thousand dollars ($250,000) or more, but not more than five hundred thousand dollars ($500,000), shall be assessed two hundred dollars ($200).

(C) An employer with a payroll of more than five hundred thousand dollars ($500,000), but not more than seven hundred fifty thousand dollars ($750,000), shall be assessed four hundred dollars ($400).

(D) An employer with a payroll of more than seven hundred fifty thousand dollars ($750,000), but not more than one million dollars ($1,000,000), shall be assessed six hundred dollars ($600).

(E) An employer with a payroll of more than one million dollars ($1,000,000), but not more than one million five hundred thousand dollars ($1,500,000), shall be assessed eight hundred dollars ($800).

(F) An employer with a payroll of more than one million five hundred thousand dollars ($1,500,000), but not more than two million dollars ($2,000,000), shall be assessed one thousand dollars ($1,000).

(G) An employer with a payroll of more than two million dollars ($2,000,000), but not more than two million five hundred thousand dollars ($2,500,000), shall be assessed one thousand five hundred dollars ($1,500).

(H) An employer with a payroll of more than two million five hundred thousand dollars ($2,500,000), but not more than three million five hundred thousand dollars ($3,500,000), shall be assessed two thousand dollars ($2,000).

(I) An employer with a payroll of more than three million five hundred thousand dollars ($3,500,000), but not more than four million five hundred

thousand dollars ($4,500,000), shall be assessed two thousand five hundred dollars ($2,500).

(J) An employer with a payroll of more than four million five hundred thousand dollars ($4,500,000), but not more than five million five hundred thousand dollars ($5,500,000), shall be assessed three thousand dollars ($3,000).

(K) An employer with a payroll of more than five million five hundred thousand dollars ($5,500,000), but not more than seven million dollars ($7,000,000), shall be assessed three thousand five hundred dollars ($3,500).

(L) An employer with a payroll of more than seven million dollars ($7,000,000), but not more than twenty million dollars ($20,000,000), shall be assessed six thousand seven hundred dollars ($6,700).

(M) An employer with a payroll of more than twenty million dollars ($20,000,000) shall be assessed ten thousand dollars ($10,000).

(b) (1) In the manner as specified by this section, the director shall identify those insured employers having a workers' compensation experience modification rating of 1.25 or more, and private sector self-insured employers having an equivalent experience modification rating of 1.25 or more as determined pursuant to subdivision (e).

(2) The assessment required by this section shall be levied annually, on a calendar year basis, on those insured employers and private sector self-insured employers, as identified pursuant to paragraph (1), having the highest workers' compensation experience modification ratings or equivalent experience modification ratings, that the director determines to be required numerically to produce the total amount of the assessment to be collected pursuant to subdivision (a).

(c) The director shall collect the assessment from insured employers as follows:

(1) Upon the request of the director, the Department of Insurance shall direct the licensed rating organization designated as the department's statistical agent to provide to the director, for purposes of subdivision (b), a list of all insured employers having a workers' compensation experience rating modification of 1.25 or more, according to the organization's records at the time the list is requested, for policies commencing the year preceding the year in which the assessment is to be collected.

(2) The director shall determine the annual payroll of each insured employer subject to assessment from the payroll that was reported to the licensed rating organization identified in paragraph (1) for the most recent period for which one full year of payroll information is available for all insured employers.

(3) On or before September 1 of each year, the director shall determine each of the current insured employers subject to assessment, and the amount of the total assessment for which each insured employer is liable. The director immediately shall notify each insured employer, in a format chosen by the insurer, of the insured's obligation to submit payment of the assessment to the director within 30 days after the date the billing was

mailed, and warn the insured of the penalties for failure to make timely and full payment as provided by this subdivision.

(4) The director shall identify any insured employers that, within 30 days after the mailing of the billing notice, fail to pay, or object to, their assessments. The director shall mail to each of these employers a notice of delinquency and a notice of the intention to assess penalties, advising that, if the assessment is not paid in full within 15 days after the mailing of the notices, the director will levy against the employer a penalty equal to 25 percent of the employer's assessment, and will refer the assessment and penalty to the Franchise Tax Board or another agency or department for collection. The notices required by this paragraph shall be sent by United States first-class mail.

(5) If an assessment is not paid by an insured employer within 15 days after the mailing of the notices required by paragraph (4), the director shall refer the delinquent assessment and the penalty to the Franchise Tax Board, or another agency or department, as deemed appropriate by the director, for collection pursuant to Section 19290.1 of the Revenue and Taxation Code, or Section 1900 of the Unemployment Insurance Code.

(d) The director shall collect the assessment directly from private sector self-insured employers. The failure of any private sector self-insured employer to pay the assessment as billed constitutes grounds for the suspension or termination of the employer's certificate to self-insure.

(e) The director shall adopt regulations implementing this section that include provision for a method of determining experience modification ratings for private sector self-insured employers that is generally equivalent to the modification ratings that apply to insured employers and is weighted by both severity and frequency.

(f) The director shall determine whether the amount collected pursuant to any assessment exceeds expenditures, as described in subdivision (a), for the current year and shall credit the amount of any excess to any deficiency in the prior year's assessment or, if there is no deficiency, against the assessment for the subsequent year.

SEC. 47. Section 1771.3 of the Labor Code is amended to read:

1771.3. (a) (1) The State Public Works Enforcement Fund is hereby created as a special fund in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys in the fund shall be continuously appropriated for the purposes the Department of Industrial Relations' enforcement of prevailing wage requirements applicable to public works pursuant to this chapter, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55, and shall not be used or borrowed for any other purpose.

(2) The Director of Industrial Relations, with the approval of the Director of Finance, shall determine and assess a fee on any awarding body using funds derived from any bond issued by the state to fund public works projects, in an amount not to exceed one-fourth of 1 percent of the bond proceeds. The fee shall be set to cover the expenses of the Department of Industrial Relations for administering the prevailing wage requirements on

public works projects using those bond funds. The fee shall be payable by the board, commission, department, agency, or official responsible for the allocation of bond proceeds from the bond funds awarded to each project at the time the funds are released to the project or other such time the Department of Industrial Relations and the entity responsible for allocation of the bond proceeds may agree. All fees collected pursuant to this section shall be deposited in the State Public Works Enforcement Fund, and shall be used only for enforcement of prevailing wage requirements on projects using bond funds and other projects for which awarding bodies pay into the fund. The administration and enforcement of prevailing wage requirements is an administrative expense associated with public works construction.

(b) The fee imposed by this section shall not apply to any contract awarded prior to the effective date of regulations adopted by the department pursuant to paragraph (2) of subdivision (b) of Section 1771.55.

(c) The department shall report to the Legislature, not later than March 1, 2011, on its administration of the State Public Works Enforcement Fund, and the prevailing wage enforcement activities undertaken by the department utilizing that funding.

SEC. 48. Section 1771.5 of the Labor Code is amended to read:

1771.5. (a) Notwithstanding Section 1771, an awarding body may not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars ($15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to initiate and enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

(c) For purposes of this chapter, "labor compliance program" means a labor compliance program that is approved, as specified in state regulations, by the Director of the Department of Industrial Relations.

(d) For purposes of this chapter, the Director of the Department of Industrial Relations may revoke the approval of a labor compliance program in the manner specified in state regulations.

SEC. 49. Section 1771.7 of the Labor Code is amended to read:

1771.7. (a) (1) An awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.

(2) If an awarding body described in paragraph (1) chooses to contract with a third party to initiate and enforce a labor compliance program for a project described in paragraph (1), that third party shall not review the payroll records of its own employees or the employees of its subcontractors, and the awarding body or an independent third party shall review these payroll records for purposes of the labor compliance program.

(b) This section applies to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the "awarding body" is the Chancellor of the California State University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 shall be reviewed on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(d) (1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has

contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2) (A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board shall not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of the Department of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.

(e) Notwithstanding Section 17070.63 of the Education Code, for purposes of this act, the State Allocation Board shall increase the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code to accommodate the state's share of the increased costs of a new construction or modernization project due to the initiation and enforcement of the labor compliance program.

(f) This section shall not apply to a contract awarded on or after the latter of the effective date of regulations adopted by the Department of Industrial Relations pursuant to paragraph (2) of subdivision (b) of Section 1771.55 or the effective date of the fees adopted by the department pursuant to Section 1771.75.

SEC. 50. Section 1771.75 of the Labor Code is amended to read:

1771.75. (a) An awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall pay a fee to the Department of Industrial Relations, in an amount that the department shall establish, and as it may from time to time amend, in an amount not to exceed one-fourth of 1 percent of the bond proceeds, sufficient to support the department's costs in ensuring compliance with and enforcing prevailing wage requirements on the project, and labor compliance enforcement as set forth in subdivision (b) of Section 1771.55. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund

created by Section 1771.3, and shall be used only for enforcement of prevailing wage requirements on those projects. The department may waive the fee set forth in this section for an awarding body that has previously been granted approval by the director to initiate and operate a labor compliance program on the awarding body's projects, and requests to continue to operate that labor compliance program on its projects in lieu of labor compliance by the department pursuant to subdivision (b) of Section 1771.55. This fee shall not be waived for an awarding body that contracts with a third party to initiate and enforce labor compliance programs on the awarding body's projects.

(b) This section applies to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the awarding body is the Chancellor of the California State University and the chancellor is required by subdivision (a) to pay a fee to the Department of Industrial Relations.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to pay a fee to the Department of Industrial Relations, then the university shall review the payroll records on at least a monthly basis to ensure the university's compliance with prevailing wage obligations.

(d) The State Allocation Board shall notify the Department of Industrial Relations of awarding bodies that are awarded funds subject to the fee required by subdivision (a).

(e) Notwithstanding Section 17070.63 of the Education Code, for purposes of this section, the State Allocation Board shall increase the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code to accommodate the state's share of the increased costs of a new construction or modernization project due to the fee required to be paid to the Department of Industrial Relations to ensure compliance with and enforcement of prevailing wage laws on the project. The State Allocation Board shall pay the fee to the Department of Industrial Relations at the time bond funds are released to the awarding body. All fees collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3.

(f) This section shall only apply to a contract awarded on or after both the effective date of the department's adoption of the fee set forth in subdivision (a) and of regulations pursuant to paragraph (2) of subdivision (b) of Section 1771.55.

SEC. 51. Section 1771.8 of the Labor Code is amended to read:

1771.8. (a) The body awarding any contract for a public works project financed in any part with funds made available by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Division 26.5 (commencing with Section 79500) of the Water Code) shall adopt and enforce, or contract with a third party to adopt and enforce, a labor compliance program pursuant to subdivision (b) of Section 1771.5 for application to that public works project.

(b) This section shall become operative only if the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Division 26.5 (commencing with Section 79500) of the Water Code) is approved by the voters at the November 5, 2002, statewide general election.

(c) This section shall not apply to a contract awarded on or after the latter of the effective date of the regulations adopted by the Department of Industrial Relations pursuant to paragraph (2) of subdivision (b) of Section 1771.55 or the effective date of the fees adopted by the department pursuant to Section 1771.85.

SEC. 52. Section 1777.5 of the Labor Code is amended to read:

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts

under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship

program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(*l*) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002–03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the

expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all money in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000).

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

SEC. 53. Section 11105.8 is added to the Penal Code, to read:

11105.8. A nonprofit organization that is funded pursuant to subsection (a) of Section 3796h of Title 42 of the United States Code may be granted access to local, state, or federal criminal justice system information available to law enforcement agencies, including access to the California Law Enforcement Telecommunications System, provided that the nonprofit agency meets all other federal and state requirements for access to that information or system.

SEC. 54. Section 5164 of the Public Resources Code is amended to read:

5164. (a) (1) A county, city, city and county, or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county, city, city and county, or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over a minor, if that person has been convicted of an offense specified in paragraph (2).

(2) (A) A violation or attempted violation of Section 220, 261.5, 262, 273a, 273d, or 273.5 of the Penal Code, or a sex offense listed in Section 290 of the Penal Code, except for the offense specified in subdivision (d) of Section 243.4 of the Penal Code.

(B) A felony or misdemeanor conviction specified in subparagraph (C) within 10 years of the date of the employer's request.

(C) A felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of an offense specified in Chapter 3 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, an offense specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or an offense specified in subdivision (c) of Section 667.5 of the Penal Code, provided that a record of a misdemeanor conviction shall not be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years.

(b) (1) To give effect to this section, a county, city, city and county, or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of an offense specified in subdivision (a). The county, city, city and county, or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over a minor, for that person's criminal background.

(2) A local agency request for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. A fee shall not be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.

(3) A county, city, city and county, or special district may charge a prospective employee or volunteer described in subdivision (a) a fee to cover all of the county, city, city and county, or special district's costs attributable to the requirements imposed by this section.

SEC. 55. Section 11006 of the Revenue and Taxation Code is amended to read:

11006. (a) Commencing on December 31, 2001, the Controller, in consultation with the Department of Motor Vehicles and the Department of Finance, shall recalculate the distribution of the amount of motor vehicle

license fees paid by commercial vehicles that are subject to Section 9400.1 of the Vehicle Code and transfer the following sums from the General Fund in the following order:

(1) An amount sufficient to cover all allocations and interception of funds associated with all pledges, liens, encumbrances and priorities as set forth in Section 25350.6 of the Government Code, which shall be transferred so as to pay that allocation.

(2) An amount sufficient to continue allocations to the State Treasury to the credit of the Vehicle License Fee Account of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code, which would be in the same amount had the amendments made by the act that added this section to Section 10752 of the Revenue and Taxation Code not been enacted, which shall be deposited in the State Treasury to the credit of the Vehicle License Fee Account of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code. This paragraph shall be inoperative commencing with the 2010–11 fiscal year.

(3) An amount sufficient to continue allocations to the State Treasury to the credit of the Vehicle License Fee Growth Account of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code, which would be in the same amount had the amendments made by the act that added this section to Section 10752 of the Revenue and Taxation Code not been enacted, which shall be deposited in the State Treasury to the credit of the Vehicle License Fee Growth Account of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code.

(4) An amount sufficient to cover all allocations and interception of funds associated with all pledges, liens, encumbrances and priorities, other than those referred to in paragraph (1), as set forth in Section 25350 and following of, Section 53584 and following of, 5450 and following of, the Government Code, which shall be transferred so as to pay those allocations.

(b) The balance of any funds not otherwise allocated pursuant to subdivision (a) shall continue to be deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and allocated to each city, county, and city and county as otherwise provided by law.

(c) In enacting paragraphs (1) and (4) of subdivision (a), the Legislature declares that paragraphs (1) and (4) of subdivision (a), shall not be construed to obligate the State of California to make any payment to a city, city and county, or county from the Motor Vehicle License Fee Account in the Transportation Tax Fund in any amount or pursuant to any particular allocation formula, or to make any other payment to a city, city and county, or county, including, but not limited to, any payment in satisfaction of any debt or liability incurred or so guaranteed if the State of California had not so bound itself prior to the enactment of this section.

(d) Notwithstanding subdivisions (a) and (b), on and after July 1, 2010, that amount equal to the amount that would have been transferred pursuant

to paragraph (2) of subdivision (a) had the act adding this subdivision not been enacted, shall not be transferred from the General Fund.

SEC. 56. Section 19558 of the Revenue and Taxation Code is amended to read:

19558. (a) Subject to the limitations of this section and federal law, the Franchise Tax Board may provide the Public Employees' Retirement System with the names and addresses or other identification or location information from income tax returns or other records required under Part 10 (commencing with Section 17001) or this part, for both of the following:

(1) Solely for the purposes of disbursing unclaimed benefits pursuant to Chapter 13 (commencing with Section 21250) and Chapter 14 (commencing with Section 21490) of Part 3 of Division 5 of Title 2 of the Government Code and distributing member statements on an annual basis.

(2) Until June 30, 2016, solely for the purpose of filing required data pursuant to the Early Retiree Reinsurance Program (Sec. 1102, Public Law 111-148; 42 U.S.C. Sec. 18002), Part 149 of Title 45 of the Code of Federal Regulations, and related departmental directives.

(b) Neither the Public Employees' Retirement System, nor its agents, nor any of its current or former officers or employees, shall disclose or use any information obtained pursuant to this section except as provided in this section. Any disclosure not authorized by this section is a misdemeanor.

(c) The Franchise Tax Board may from time to time review the use of information provided to the Public Employees' Retirement System pursuant to this section and the Public Employees' Retirement System shall provide the Franchise Tax Board with access for that purpose. The reviews shall be limited to ensuring that the Public Employees' Retirement System uses the information provided by the Franchise Tax Board only in the manner specified in subdivision (a). The Franchise Tax Board shall report all findings to the Public Employees' Retirement System.

SEC. 57. Section 1088 of the Unemployment Insurance Code is amended to read:

1088. (a) (1) Each employer shall file with the director within the time required by subdivision (a) or (d) of Section 1110 for payment of employer contributions, a report of contributions, a quarterly return, and a report of wages paid to his or her workers in the form and containing any information as the director prescribes. An electronic funds transfer of contributions pursuant to subdivision (f) of Section 1110 shall satisfy the requirement for a report of contributions. The quarterly return shall include the total amount of wages, employer contributions required under Sections 976 and 976.6, worker contributions required under Section 984, the amounts required to be withheld under Section 13020, or withheld under Section 13028, and any other information as the director shall prescribe. The report of wages shall include individual amounts required to be withheld under Section 13020 or withheld under Section 13028.

(2) (A) In order to enhance efforts to reduce tax fraud and to reduce the personal income tax reporting burden, effective January 1, 1997, the report of wages shall also include the full first name of the employee and total

wages, as defined in Section 13009, paid to each employee. This paragraph shall apply to reports of wages for all periods ending on or before December 31, 1999.

(B) For all periods beginning on or after January 1, 2000, the report of wages shall also include total wages subject to personal income tax, as defined in Section 13009.5, paid to each employee.

(b) Each employer shall file with the director within the time required by subdivision (b) or (d) of Section 1110 for payment of worker contributions, a report of contributions containing the employer's business name, address, and account number, the total amount of worker contributions due, and any other information as the director shall prescribe. The director shall prescribe the form for the report of contributions. An electronic funds transfer of contributions pursuant to subdivision (f) of Section 1110 shall satisfy the requirement for a report of contributions.

(c) In addition to the report of contributions, quarterly return, and report of wages required by employers under subdivision (a), an individual who has elected coverage under subdivision (a) of Section 708 is also required to file a separate report of contributions, and quarterly return, subject to Part 2 (commencing with Section 2601).

(d) Any employer making an election under subdivision (d) of Section 1110 shall submit the report of wages described in subdivision (a), within the time required for submitting employer contributions under subdivision (a) of Section 1110.

(e) (1) In addition to the report of contributions, quarterly return, and report of wages described in subdivision (a), each employer shall file with the director an annual reconciliation return showing the total amount of wages, employer contributions required under Sections 976 and 976.6, worker contributions required under Section 984, the amounts required to be withheld under Section 13020 or withheld under Section 13028, and any other information as the director shall prescribe. This annual reconciliation return shall be due on the first day of January following the close of the prior calendar year and shall become delinquent if not filed on or before the last day of that month.

(2) This subdivision shall not apply to individuals electing coverage under Section 708 or 708.5 or employers electing financing under Section 821.

(3) The requirement to file the annual reconciliation return for the prior calendar year under this subdivision shall not apply to the 2012 calendar year and thereafter.

(f) For purposes of making a report of wages under subdivision (a), employers who are required under Section 6011 of the Internal Revenue Code and authorized regulations thereunder to file magnetic media returns, shall, within 90 days of becoming subject to this requirement, do one of the following:

(1) Submit a magnetic media format to the department for approval, and upon receiving approval from the department, submit any subsequent reports of wages on magnetic media.

(2) Establish to the satisfaction of the director that there is a lack of automation, a severe economic hardship, a current exemption from submitting magnetic media information returns for federal purposes, or other good cause for not complying with the provisions of this subdivision. Approved waivers shall be valid for six months or longer, at the discretion of the director.

(g) The Franchise Tax Board shall be allowed access to the information filed with the department pursuant to this section.

(h) The requirement in subdivision (a) to file a quarterly return shall begin with the first calendar quarter of the 2011 calendar year.

SEC. 58. Section 1112.5 of the Unemployment Insurance Code is amended to read:

1112.5. (a) Any employer who without good cause fails to file the return and reports required by subdivision (a) of Section 1088 and subdivision (a) of Section 13021 within 60 days of the time required under subdivision (a) of Section 1110 shall pay a penalty of 10 percent of the amount of contributions and personal income tax withholding required by this report. This penalty shall be in addition to the penalties required by Sections 1112 and 1126.

(b) For purposes of subdivision (a), the amount of contributions and personal income tax required by the report of contributions shall be reduced by the amount of any contributions and personal income tax paid on or before the prescribed payment dates.

SEC. 59. Section 1113.1 of the Unemployment Insurance Code is amended to read:

1113.1. An employer who, through an error caused by excusable neglect, makes an underpayment of the amount due on a report of contributions pursuant to subdivision (b) of Section 1088 shall not be liable for penalty or interest under Sections 1112, 1113, 1127 or 1129 if proper adjustment is made at the time of the filing of the quarterly report of contributions and quarterly return, for the same calendar quarter under subdivision (a) of Section 1088 and an explanation of the error is attached to the report or return.

SEC. 60. Section 1275 of the Unemployment Insurance Code is amended to read:

1275. (a) Unemployment compensation benefit award computations shall be based on wages paid in the base period. "Base period" means: for benefit years beginning in October, November, or December, the four calendar quarters ended in the next preceding month of June; for benefit years beginning in January, February, or March, the four calendar quarters ended in the next preceding month of September; for benefit years beginning in April, May, or June, the four calendar quarters ended in the next preceding month of December; for benefit years beginning in July, August, or September, the four calendar quarters ended with the next preceding month of March. Wages used in the determination of benefits payable to an individual during any benefit year may not be used in determining that individual's benefits in any subsequent benefit year.

(b) For any new claim filed on or after September 3, 2011, or earlier if the department implements the technical changes necessary to establish claims under the alternate base period, as specified in subdivision (c), if an individual cannot establish a claim under subdivision (a), then "base period" means: for benefit years beginning in October, November, or December, the four calendar quarters ended in the next preceding month of September; for benefit years beginning in January, February, or March, the four calendar quarters ended in the next preceding month of December; for benefit years beginning in April, May, or June, the four calendar quarters ended in the next preceding month of March; for benefit years beginning in July, August, or September, the four calendar quarters ended in the next preceding month of June. As provided in Section 1280, the quarter with the highest wages shall be used to determine the individual's weekly benefit amount. Wages used in the determination of benefits payable to an individual during any benefit year may not be used in determining that individual's benefits in any subsequent benefit year.

(c) The department shall implement the technical changes necessary to establish claims under the alternate base period specified in subdivision (b) as soon as possible, but no later than September 3, 2011.

SEC. 61. Article 9 (commencing with Section 1900) is added to Chapter 7 of Part 1 of Division 1 of the Unemployment Insurance Code, to read:

Article 9. Penalty Assessments

1900. (a) (1) Notwithstanding any other law, the Department of Industrial Relations may enter into an agreement with the department that provides for the transfer of all or part of the responsibility from the Department of Industrial Relations, or any office or division within that department, to the department for the collection of penalty assessments including, but not limited to, delinquent fees, wages, penalties, judgments, assessments, costs, citations, debts, and any interest thereon, arising out of the enforcement of any law within the jurisdiction of the Department of Industrial Relations or any office or division within. The agreement shall specify the terms under which those items and interest shall become subject to collection by the department.

(2) The agreement shall also prescribe a procedure for the Department of Industrial Relations to reimburse the department for the costs of collection, and provide that the amount of any reimbursement shall not exceed the actual costs of collection, including court costs and reasonable attorney's fees. Wherever possible the collection costs shall be borne by the debtor.

(b) For amounts referred for collection under subdivision (a), interest shall accrue at the adjusted annual rate and by the method established pursuant to Section 685.010 of the Code of Civil Procedure from and after the date of notice until paid.

(c) Amounts referred for collection under subdivision (a) shall be treated as final liabilities and due and payable to the State of California and may

be collected from the debtor by the department in any manner authorized under the law for collection of any amount imposed under this division. Any information, information sources, enforcement remedies, and capabilities available to the Department of Industrial Relations shall be available to the department to be used in conjunction with, or independent of, the information, information sources, remedies, and capabilities available to the department for purposes of administering this code.

(d) The provisions of Article 8 (commencing with Section 1870) and Section 1110.1 shall not apply to amounts referred for collection under subdivision (a).

SEC. 62. Section 13021 of the Unemployment Insurance Code is amended to read:

13021. (a) Every employer required to withhold any tax under Section 13020 shall for each calendar quarter, whether or not wages or payments are paid in the quarter, file a withholding report, a quarterly return, as prescribed in subdivision (a) of Section 1088, and a report of wages in a form prescribed by the department, and pay over the taxes so required to be withheld. The report of wages shall include individual amounts required to be withheld under Section 13020 or withheld under Section 13028. Except as provided in subdivisions (c) and (d), the employer shall file a withholding report, a quarterly return, as prescribed in subdivision (a) of Section 1088, and a report of wages, and remit the total amount of income taxes withheld during the calendar quarter on or before the last day of the month following the close of the calendar quarter.

(b) Every employer electing to file a single annual return under subdivision (d) of Section 1110 shall report and pay any taxes withheld under Section 13020 on an annual basis within the time specified in subdivision (d) of Section 1110.

(c) (1) Effective January 1, 1995, whenever an employer is required, for federal income tax purposes, to remit the total amount of withheld federal income tax in accordance with Section 6302 of the Internal Revenue Code and regulations thereunder, and the accumulated amount of state income tax withheld is more than five hundred dollars ($500), the employer shall remit the total amount of income tax withheld for state income tax purposes within the number of banking days as specified for withheld federal income taxes by Section 6302 of the Internal Revenue Code, and regulations thereunder.

(2) Effective January 1, 1996, the five hundred dollar ($500) amount referred to in paragraph (1) shall be adjusted annually as follows, based on the annual average rate of interest earned on the Pooled Money Investment Fund as of June 30 in the prior fiscal year:

Average Rate of Interest	
Greater than or equal to 9 percent:	$ 75
Less than 9 percent, but greater than or equal to 7 percent:	250

Less than 7 percent, but greater than or equal to 4 percent:	400
Less than 4 percent:	500

(d) (1) Notwithstanding subdivisions (a) and (c), for calendar years beginning prior to January 1, 1995, if in the 12-month period ending June 30 of the prior year the cumulative average payment made pursuant to this division or Section 1110, for eight-month periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was fifty thousand dollars ($50,000) or more, the employer shall remit the total amount of income tax withheld within three banking days following the close of each eight-month period, as defined by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required to make payment by electronic funds transfer of these requirements.

(2) Notwithstanding subdivisions (a) and (c), for calendar years beginning on or after January 1, 1995, if in the 12-month period ending June 30 of the prior year, the cumulative average payment made pursuant to this division or Section 1110 for any deposit periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was twenty thousand dollars ($20,000) or more, the employer shall remit the total amount of income tax withheld within the number of banking days as specified for federal income taxes by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required by this paragraph to make payments by electronic funds transfer of these requirements.

(3) Notwithstanding paragraph (2), effective January 1, 1995, electronic funds transfer payments that are subject to the one-day deposit rule, as defined by Section 6302 of the Internal Revenue Code and regulations thereunder, shall be deemed timely if the payment settles to the state's

demand account within three banking days after the date the employer meets the threshold for the one-day deposit rule.

(4) Any taxpayer required to remit payments pursuant to paragraphs (1) and (2) may request from the department a waiver of those requirements. The department may grant a waiver only if it determines that the particular amounts paid in excess of fifty thousand dollars ($50,000) or twenty thousand dollars ($20,000), as stated in paragraphs (1) and (2), respectively, were the result of an unprecedented occurrence for that employer, and were not representative of the employer's cumulative average payment in prior years.

(5) Any state agency required to remit payments pursuant to paragraphs (1) and (2) may request a waiver of those requirements from the department. The department may grant a waiver if it determines that there will not be a negative impact on the interest earnings of the General Fund. If there is a negative impact to the General Fund, the department may grant a waiver if the requesting state agency follows procedures designated by the department to mitigate the impact to the General Fund.

(e) Any employer not required to make payment pursuant to subdivision (d) of this section may elect to make payment by electronic funds transfer in accordance with Section 13021.5 under the following conditions:

(1) The election shall be made in a form, and shall contain information, as prescribed by the director, and shall be subject to approval by the department.

(2) If approved, the election shall be effective on the date specified in the notification to the employer of approval.

(3) The election shall be operative from the date specified in the notification of approval, and shall continue in effect until terminated by the employer or the department.

(4) Funds remitted by electronic funds transfer pursuant to this subdivision shall be deemed complete in accordance with subdivision (d) or as deemed appropriate by the director to encourage use of this payment method.

(f) Notwithstanding Section 1112, no interest or penalties shall be assessed against any employer who remits at least 95 percent of the amount required by subdivision (c) or (d) if the failure to remit the full amount is not willful and any remaining amount due is paid with the next payment. The director may allow any employer to submit the amounts due from multiple locations upon a showing that those submissions are necessary to comply with subdivision (c) or (d).

(g) The department may, if it believes that action is necessary, require any employer to make the report or return required by this section and pay to it the tax deducted and withheld at any time, or from time to time but no less frequently than provided for in subdivision (a).

(h) Any employer required to withhold any tax and who is not required to make payment under subdivision (c) shall remit the total amount of income tax withheld during each month of each calendar quarter, on or before the 15th day of the subsequent month if the income tax withheld for any of the

three months or, cumulatively for two or more months, is three hundred fifty dollars ($350) or more.

(i) For purposes of subdivisions (a), (c), and (h), payment is deemed complete when it is placed in a properly addressed envelope, bearing the correct postage, and it is deposited in the United States mail.

(j) (1) In addition to the withholding report, quarterly return, and report of wages described in subdivision (a), each employer shall file with the director an annual reconciliation return showing the amount required to be withheld under Section 13020, and any other information the director shall prescribe. This annual reconciliation return shall be due on the first day of January following the close of the prior calendar year and shall become delinquent if not filed on or before the last day of that month.

(2) The requirement to file the annual reconciliation return for the prior calendar year under this subdivision shall not apply to the 2012 calendar year and thereafter.

(k) The requirement in subdivision (a) to file a quarterly return shall begin with the first calendar quarter of the 2011 calendar year.

SEC. 63. Section 13050 of the Unemployment Insurance Code is amended to read:

13050. (a) Every employer or person required to deduct and withhold from an employee a tax under Section 986, 3260, or 13020, or who would have been required to deduct and withhold a tax under Section 13020 (determined without regard to Section 13025) if the employee had claimed no more than one withholding exemption, shall furnish to each employee in respect of the remuneration paid by the person to the employee during the calendar year, on or before January 31 of the succeeding year, or, if his or her employment is terminated before the close of the calendar year, on the day on which the last payment of remuneration is made, a written statement showing all of the following:

(1) The name of the person.

(2) The name of the employee, and his or her social security or identifying number if wages have been paid.

(3) The total amount of wages subject to personal income tax, as defined by Section 13009.5.

(4) The total amount deducted and withheld as tax under Section 13020.

(5) The total amount of worker contributions paid by the employee pursuant to Section 986.

(6) The total amount of worker contributions paid by the employee pursuant to Section 3260.

(7) The total amount of elective deferrals (within the meaning of Section 402(g)(3) of the Internal Revenue Code) and compensation deferred pursuant to Section 457 of the Internal Revenue Code.

(b) The statement required to be furnished pursuant to this section in respect of any remuneration shall be furnished at other times, shall contain other information, and shall be in a form, as the department may by authorized regulations prescribe.

(c) If, during any calendar year, any person makes a payment of third-party sick pay to an employee, that person shall, on or before January 15 of the succeeding year, furnish a written statement to the employer in respect of whom the payment was made showing all of the following:

(1) The name and, if there is withholding under this division, the social security number of that employee.

(2) The total amount of the third-party sick pay paid to that employee during the calendar year.

(3) The total amount, if any, deducted and withheld from that sick pay under this division. For purposes of the preceding sentence, the term "third-party sick pay" means any sick pay, as defined in subdivision (b) of Section 13028.6, which does not constitute wages for purposes of this division, determined without regard to subdivision (a) of Section 13028.6.

(A) For purposes of Chapter 10 (commencing with Section 2101) of Part 1 of Division 1, the statements required to be furnished by this subdivision shall be treated as statements required under this section to be furnished to employees.

(B) Every employer who receives a statement under this subdivision with respect to sick pay paid to any employee during any calendar year shall, on or before January 31 of the succeeding year, furnish a written statement to that employee showing all of the information shown on the statement furnished under this subdivision.

(d) The Franchise Tax Board shall be allowed access to the information filed with the department pursuant to this section.

SEC. 64. Section 1673.2 of the Vehicle Code is amended to read:

1673.2. (a) The department, in coordination with the Department of Finance, shall do all of the following:

(1) Search its records to identify the registered owner or lessee. Except as required under Section 1673.4, the department shall mail to the registered owner or lessee a refund notification form notifying the registered owner or lessee that he or she is eligible for a refund of the smog impact fee. This form shall identify the vehicle make and year, and include a refund claim that shall be signed, under penalty of perjury, and returned to the department.

(2) Shall acknowledge by mail claims for refund from registered owners or lessees received prior to the effective date of this section.

(3) Except as provided in Section 1673.4, shall verify whether the information provided in any claim is true and correct and shall refund the three hundred dollar ($300) smog impact fee, plus the amount of any penalty collected for late payment of the smog impact fee, and any interest earned on those charges, to the person shown to be the registered owner or lessee.

(b) Notwithstanding any other provision of law, interest shall be paid on all claims at a single annual rate, calculated by the Department of Finance, that averages the annualized interest rates earned by the Pooled Money Investment Account for the period beginning October 1990 and ending on the effective date of this section. Interest on each refund shall be calculated from the date the smog impact fee and vehicle registration transaction was

completed to the date the refund is issued. Accrual of interest shall terminate one year after the effective date of this section.

(c) (1) Notwithstanding any other provision of law, those who paid the smog impact fee between October 15, 1990, and October 19, 1999, may file a claim for refund.

(2) Claims for refund by a registered owner or lessee shall be filed with the Department of Motor Vehicles within three years of the effective date of this section.

SEC. 65. (a) The Legislature finds and declares all of the following:

(1) The Legislature appropriated thirty million two hundred eighty-three thousand dollars ($30,283,000) in Item 0855-101-0367 of the Budget Act of 2007 for the purpose of providing grants to local government agencies to mitigate impacts from tribal government gaming.

(2) The Governor deleted thirty million dollars ($30,000,000) for grants to local government agencies, citing a Bureau of State Audits report finding in which some local governments were not using grant moneys for their sole intended purpose.

(3) In 2008, the Legislature passed, and the Governor signed into law, Chapter 754 of the Statutes of 2008 (A.B. 158), enacting several recommendations from the Bureau of State Audits to help ensure grant funds be spent for their intended purpose.

(b) The sum of thirty million dollars ($30,000,000) is hereby appropriated from the Indian Gaming Special Distribution Fund to restore funding deleted from the Budget Act of 2007 for the purpose of providing grants to local government agencies pursuant to Section 12715 of the Government Code. For the purpose of this specific appropriation, distribution of appropriations to local government agencies impacted by tribal gaming shall be in accordance with the method for determining appropriations into individual tribal casino accounts in effect in the 2006–07 fiscal year, and based on payments made into the Indian Gaming Special Distribution Fund in the 2006–07 fiscal year.

SEC. 66. The provisions of Section 67 this act are subject to the applicable provisions of the Budget Act of 2009 (Chapter 1 of the 2009–10 Third Extraordinary Session).

SEC. 67. Item 0820-001-3086 of Section 2.00 of the Budget Act of 2009, as amended by Section 72 of Chapter 1 of the 2009–10 Fourth Extraordinary Session, is amended to read:

0820-001-3086—For support of Department of Justice, for payment to Item 0820-001-0001, payable from the DNA Identification Fund.....	45,355,000

SEC. 68. (a) The remaining funds appropriated in Item 0911-001-0001 of Section 2.00 of the Budget Act of 2009 (Ch. 1, 2009–10 3rd Ex. Sess., as revised by Ch. 1, 2009–10 4th Ex. Sess.) shall be available until June 30, 2012. Any funds allocated pursuant to Item 0911-001-0001 of Section 2.00 of the Budget Act of 2010 shall be available until June 30, 2013. The

Director of Finance shall allocate those funds among the Citizens Redistricting Commission, the Secretary of State, and the Bureau of State Audits not sooner than the date that both of the following have occurred:

(1) The State Auditor has randomly drawn the names of eight individuals who shall serve on the Citizens Redistricting Commission pursuant to subdivision (f) of Section 8252 of the Government Code.

(2) Thirty days have elapsed since the Department of Finance has submitted to the Chairperson of the Joint Legislative Budget Committee a written notification of intent to allocate those funds, or whatever lesser time the chairperson of the joint committee may determine.

(b) In order to receive an allocation of funds under this section, the Bureau of State Audits shall submit a request with a detailed cost estimate to the Chairperson of the Joint Legislative Budget Committee and the Director of Finance. If the chairperson of the joint committee provides a written notification to the director that the requested allocation, or a lesser amount, is needed to carry out expenses of the Bureau of State Audits as set forth in the detailed cost estimate, the director shall make an allocation of funds as identified in the written notification.

SEC. 69. (a) For the purpose of this section, the following words and terms shall have the following meanings:

(1) "Bank" means the California Infrastructure and Economic Development Bank.

(2) "IID" means the Imperial Irrigation District.

(3) "IID Infrastructure Guarantee Trust Account" means the account within the California Infrastructure Guarantee Trust Fund established by this section.

(4) "Infrastructure Bank IID Guaranteed Project Bonds" means obligations of IID issued in a principal amount providing net project proceeds of up to one hundred fifty million dollars ($150,000,000) in 2003 dollars as adjusted to their present value by the construction cost index, comprising the net of costs of issuance and the funding of a reserve account in the maximum amount provided by federal law with respect to tax exempt obligations, the net project proceeds of which are for the purpose of completing Transfer Agreement Project Improvements.

(5) "SDCWA" means the San Diego County Water Authority.

(6) "Shortfall" means, to the extent the number is negative, revenues received by IID pursuant to the transfer agreement, less the operation and maintenance costs, administrative costs, other noncapital costs related to the Transfer Agreement Project Improvements, and debt service on the Infrastructure Bank IID Guaranteed Project Bonds, not to exceed the amount due as debt service on the Infrastructure Bank IID Guaranteed Project Bonds on any payment date for those bonds and subject to offset as set forth in this section.

(7) "Transfer agreement" means that Agreement for Transfer of Conserved Water by and between IID and SDCWA dated April 29, 1998, as amended as of October 10, 2003.

(8) "Transfer Agreement Project Improvements" means projects or programs undertaken by IID for the purposes of the development of "conserved water" as that term is used in, and for the purposes of, the Quantification Settlement Agreement that was executed on October 10, 2003, that are financed with proceeds of the Infrastructure Bank IID Guaranteed Project Bonds.

(9) "Triggering event" means any of the following:

(A) Termination of the transfer agreement on or before October 3, 2048, for reasons other than set forth in subparagraph (B) or (C).

(B) A default under the transfer agreement by SDCWA resulting in a reduction in revenues payable to IID, provided that IID has assigned to the bank that portion of its payment rights under the transfer agreement sufficient for the bank to be made whole in the event recovery is obtained from the SDCWA.

(C) A court or administrative body order or other action that results in a reduction or elimination of revenues under the transfer agreement.

(b) The amount in the California Infrastructure Guarantee Trust Fund or any account in that fund on January 1, 2010, that is held for the benefit of the IID pursuant to Resolution No. 03-18, adopted by the California Infrastructure and Economic Development Bank on June 27, 2003, shall be deposited in a guarantee reserve account within the fund, which is hereby established as the IID Infrastructure Guarantee Trust Account. This amount shall also constitute the "reserve account requirement" for the account for the purposes of Section 63064 of the Government Code.

(c) The Infrastructure Bank IID Guaranteed Project Bonds shall be guaranteed by the bank, and the IID Infrastructure Guarantee Trust Account shall constitute the guarantee reserve account for the Infrastructure Bank IID Guaranteed Project Bonds as provided in Section 63063 of the Government Code. Moneys in the IID Infrastructure Guarantee Trust Account, including any amounts appropriated to this account, shall be paid for the benefit of the holders of the Infrastructure Bank IID Guaranteed Project Bonds in the amount of the shortfall upon the occurrence of all of the following: (1) a triggering event; (2) the exhaustion of the bond reserve account funded in the maximum amount provided by federal law with respect to tax exempt obligations by the Infrastructure Bank IID Guaranteed Project Bonds; and (3) funding by IID of debt service payments for 12 consecutive months. Moneys shall be transferred from the IID Infrastructure Guarantee Trust Account by the bank to the trustee for the Infrastructure Bond IID Guaranteed Project Bonds in an amount not to exceed the shortfall for the purpose of making principal or interest payments on the Infrastructure Bank IID Guaranteed Project Bonds.

(d) If a triggering event occurs and IID enters into a water transfer agreement with one or more parties, or a subsequent water transfer agreement with SDCWA, for all or any portion of the water that otherwise would have been transferred to SDCWA pursuant to the transfer agreement, IID shall apply the net revenues received under the water transfer agreement or agreements as an offset against the shortfall.

(e) The Infrastructure Bank IID Guaranteed Project Bonds shall have maturities not to exceed 30 years from the date of issuance of each series of these obligations and bear a fixed rate of interest. The Infrastructure Bank IID Guaranteed Project Bonds shall be structured with level debt service unless the board of directors of the bank approves non-level debt service. The date or dates of issuance shall be as determined by IID.

(f) The guarantee by the bank of the Infrastructure Bank IID Guaranteed Project Bonds and any payment thereunder shall be without any rights of recourse, subrogation, reimbursement, contribution, or indemnity against IID, provided that IID shall reimburse any guarantee payments received in any IID fiscal year to the extent that transfer revenues in that fiscal year received under the transfer agreement, or under any subsequent water transfer agreements described in subdivision (d) exceed the amount required for IID to pay the operation and maintenance costs, administrative costs, and other noncapital costs related to the Transfer Agreement Project Improvements plus debt service on the Infrastructure Bank IID Guaranteed Project Bonds.

(g) The obligation of the bank and of the state to pay any guarantee benefit for the Infrastructure Bank IID Guaranteed Project Bonds shall be a limited obligation of the bank payable solely from amounts deposited in the IID Infrastructure Guarantee Trust Account pursuant to this section, or subsequently appropriated for deposit in the IID Infrastructure Guarantee Trust Account pursuant to subdivision (d) of Section 63064 of the Government Code. Upon the occurrence of a triggering event and satisfaction of the conditions precedent for funding described in subdivision (c), the executive director of the bank shall take the action as provided in Section 63064 of the Government Code. The guarantee of the Infrastructure Bank IID Guaranteed Project Bonds under this section shall not directly or indirectly or contingently obligate the state or any of its political subdivisions to levy or to pledge any form of taxation whatever for them or to make any appropriation for their payment. The contract of guarantee to be entered into by the bank shall contain on its face a statement to the following effect: "Neither the faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this contract of guarantee."

(h) The bank shall enter into a guarantee agreement with IID that is consistent with the terms of this section, as approved by the board of directors of the bank. Article 3 (commencing with Section 63040), Article 4 (commencing with Section 63042), and Article 5 (commencing with Section 63043) of Chapter 2 of Division 1 of Title 6.7 of the Government Code shall not apply to the guarantee by the bank of the Infrastructure Bank IID Guaranteed Project Bonds.

(i) Pursuant to Section 63066 of the Government Code, the bank may charge and collect an insurance guarantee premium upon the issuance of the guarantee of the Infrastructure Bank IID Guaranteed Project Bonds, not to exceed 1 percent of the principal amount thereof from the proceeds of the bonds, in an amount established by the board of directors of the bank.

SEC. 70. The Employment Development Department until September 3, 2013, shall report to the Joint Legislative Budget Committee, no less than quarterly, on the progress and effectiveness of implementation of the alternative base period program prescribed in Sections 1275, 1277.1, 1277.5, and 1329.5 of the Unemployment Insurance Code.

SEC. 71. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 72. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the Budget Act of 2010 as soon as possible, it is necessary for this act to take immediate effect.

O

Senate Bill No. 982

CHAPTER 203

An act to add Sections 56836.156 and 56836.157 to the Education Code, relating to special education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 12, 2001. Filed with Secretary of State August 13, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 982, O'Connell. Special education.

Existing law requires, if the Commission on State Mandates determines that an act contains costs mandated by the state, that reimbursement to local agencies and school districts for those costs be made, as specified.

Under existing law, every individual with exceptional needs, who is eligible to receive educational instruction, related services, or both, is required to receive educational instruction, services, or both, at no cost to his or her parents or, as appropriate, to him or her.

This bill would require the Superintendent of Public Instruction to perform specified computations with respect to special education local planning areas and affected pupils and to permanently increase the amount per unit of average daily attendance for those areas. The bill would also state that, commencing with the 2001–02 fiscal year, to the 2010–11 fiscal year, $25,000,000 shall be appropriated, on a one-time basis each fiscal year, for allocation to school districts pursuant to a prescribed calculation.

The bill would appropriate $100,000,000 in augmentation of Item 6110-161-0001 of Section 2.00 of the Budget Act of 2001 for the purposes of the actions taken by the superintendent, as stated above. The bill would appropriate $270,000,000 to the Superintendent of Public Instruction for allocation on a one-time basis to school districts, county offices of education, and special education local plan areas. The bill would also appropriate $25,000,000 in augmentation of Item 6110-161-0001 of Section 2.00 of the Budget Act of 2001 for purposes of making the first one-time allocation in each fiscal year for the 2001–02 fiscal year to school districts, as provided for above. The bill would state that the allocation of certain of those funds is in full satisfaction and in lieu of any reimbursable mandate claims relating to special education programs and services, as specified.

Section 8 of Article XVI of the California Constitution (Proposition 98) sets forth a formula for computing the minimum amount of General Fund revenues that the state is required to appropriate for the support of school districts, as defined, and community college districts for each fiscal year. That formula is adjusted in certain fiscal years for changes in pupil enrollment, as specified. Certain funds appropriated by this bill would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that it is in the state's interest that legislation be enacted immediately to provide funding for special education and resolve a contested state mandate issue of 20-year standing. The Legislature anticipates that the Governor will request the enactment of the legislation prior to the enactment of the 2001–02 Budget Act.

SEC. 2. Section 56836.156 is added to the Education Code, to read:

56836.156. (a) The Superintendent of Public Instruction shall determine the statewide total average daily attendance used for the purposes of Section 56836.08 for the 2001–02 fiscal year. For the purposes of this calculation, the 2000–01 second principal average daily attendance for the court, community school, and special education programs served by the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area shall be used in lieu of the average daily attendance used for that agency for the purposes of Section 56836.08.

(b) The superintendent shall divide one hundred million dollars ($100,000,000) by the amount determined pursuant to subdivision (a).

(c) For each special education local plan area, the superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of Section 56836.08 for the 2001–02 fiscal year by the quotient determined pursuant to subdivision (b). This increase shall be effective beginning in the 2001–02 fiscal year.

(d) Notwithstanding subdivision (c), for the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area, the superintendent shall permanently increase the amount per unit of average daily attendance

determined pursuant to subdivision (b) of Section 56836.08 by the ratio of the amount determined pursuant to subdivision (b) to the statewide target per unit of average daily attendance determined pursuant to Section 56836.11 for the 2000–01 fiscal year. This increase shall be effective beginning in the 2001–02 fiscal year.

(e) The superintendent shall increase the statewide target per unit of average daily attendance determined pursuant to Section 56836.11 for the 2001–02 fiscal year by the amount determined pursuant to subdivision (b).

(f) The funds provided in subdivisions (a) to (e), inclusive, shall be used for the costs of any state-mandated special education programs and services established pursuant to Sections 56000 to 56885, inclusive, and Sections 3000 to 4671, inclusive, of Title 5 of the California Code of Regulations, as those sections read on or before July 1, 2000. These funds shall be considered in full satisfaction of, and are in lieu of, any reimbursable mandate claims relating to special education programs and services, with the exception of the programs and services delineated in subdivision (g). By providing this funding, the state in no way concedes the existence of any unfunded special education reimbursable mandate. These funds shall be used exclusively for programs operated under this part and, as a first priority, for the following programs, which shall be deemed to be fully funded within the meaning of subdivision (e) of Section 17556 of the Government Code:

(1) Community advisory committees established pursuant to Sections 56190 to 56192, inclusive, and Section 56194, as these sections read on July 1, 2000.

(2) Governance structure established pursuant to subdivision (a) of Section 56195.3, as this section read on July 1, 2000.

(3) Enrollment caseloads established pursuant to subdivision (c) of Section 56362, and Section 56363.3, as these sections read on July 1, 2000.

(4) Extended school year established pursuant to subdivision (d) of Section 3043 of Title 5 of the California Code of Regulations, as this section read on July 1, 2000.

(5) Resource specialist program established pursuant to subdivisions (d), (e), and (f) of Section 56362, as this section read on July 1, 2000.

(6) Maximum age limit established pursuant to paragraph (4) of subdivision (c) of Section 56026, as this section read on July 1, 2000.

(7) Interim placements established pursuant to subdivision (b) of Section 56325, as this section read on July 1, 2000, and Section 3067 of Title 5 of the California Code of Regulations, as this section read on December 31, 1994.

(8) Written consent established pursuant to Sections 56321 and 56346, as these sections read on July 1, 2000.

(9) Preschool transportation programs for ages 3 to 5, inclusive, not requiring intensive services (Not-RIS) established pursuant to Section 56441.14, as this section read on July 1, 2000.

(10) Special education for pupils ages 3 to 5, inclusive, and 18 to 21, inclusive, established pursuant to Section 56026, as this section read on July 1, 2000.

(11) With the exception of the programs delineated in subdivision (g), any other state-mandated special education programs and services established by Sections 56000 to 56885, inclusive, and Sections 3000 to 4671, inclusive, of Title 5 of the California Code of Regulations, as those sections read on or before July 1, 2000, whether or not such a mandate has been found by the Commission on State Mandates. Pursuant to subdivision (e) of Section 17556 of the Government Code, these funds shall be deemed to be additional revenue specifically intended to fund the costs of any such state-mandated special education programs and services.

(g) Notwithstanding subdivision (f), the following existing mandate test claim remains subject to the normal mandate procedure, including judicial review, if any: behavioral interventions established pursuant to Section 56523 and Sections 3001 and 3052 of Title 5 of the California Code of Regulations, as those sections read on July 1, 2000 (CSM-4464 filed by the San Diego Unified School District, the San Joaquin County Office of Education, and the Butte County Office of Education). The exclusion of this claim from subdivision (f) in no way constitutes a concession by the state that any unfunded special education mandate exists.

(h) Within the meaning of subdivision (e) of Section 17556 of the Government Code, the funds appropriated for purposes of this section are not specifically intended to fund any state-mandated special education programs and services resulting from amendments enacted after July 1, 2000, to any of the following statutes and regulations:

(1) The Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), if the amendments result in circumstances where state law exceeds federal law.

(2) Federal regulations implementing the Individuals with Disabilities Education Act (34 C.F.R. 300 and 303), if the amendments result in circumstances where state law exceeds federal law.

(3) Part 30 (commencing with Section 56000).

(4) Sections 3000 to 4671, inclusive, of Title 5 of the California Code of Regulations.

(i) State funds otherwise allocated to each special education local plan area pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30 and appropriated through the annual Budget Act shall supplement and not supplant these funds.

SEC. 3. Section 56836.157 is added to the Education Code, to read:

56836.157. (a) Commencing with the 2001–02 fiscal year to the 2010–11 fiscal year, inclusive, the amount of twenty-five million dollars ($25,000,000) shall be appropriated, on a one-time basis each fiscal year, from the General Fund for allocation to school districts on a per pupil basis. The Superintendent of Public Instruction shall compute the amount per pupil by dividing twenty-five million dollars ($25,000,000) by the total average daily attendance, excluding attendance for regional occupational centers and programs, adult education, and programs operated by the county superintendents of schools, for all pupils in kindergarten through grade 12 in all school districts as used by the Superintendent of Public Instruction for the second principal apportionment for the 1999–2000 fiscal year. Each school district's allocation shall equal the per pupil amount times the district's average daily attendance as reported to the Superintendent of Public Instruction for the second principal apportionment for the 1999–2000 fiscal year. The amount allocated to each school district shall be the same in all subsequent fiscal years as it is in the first fiscal year.

(1) In any fiscal year in which the provisions of paragraph (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution are operative, the annual appropriation shall not be required to be made.

(2) The Director of Finance shall notify, in writing, the fiscal committees of both houses of the Legislature, the Controller, and the Superintendent of Public Instruction no later than May 14 that the appropriation for the following fiscal year is not required, pursuant to paragraph (1). If an appropriation is not made for a specific fiscal year, or years, it shall instead be made in the fiscal year, or years, immediately succeeding the final payment pursuant to subdivision (a).

(b) (1) From the funds appropriated for purposes of this section in subdivision (b) of Section 4 of the act adding this section, the Superintendent of Public Instruction shall allocate the following:

(A) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of ten million eight hundred thousand dollars ($10,800,000) shall be allocated by the superintendent to county offices of education on an equal per pupil amount. The superintendent shall determine the per pupil amount by dividing ten million eight hundred thousand dollars ($10,800,000) by the total statewide county special education pupil count only, reported by county offices of education as of December 1999. The allotment for each county

office of education shall be the per pupil amount times the county's special education pupil count reported as of December 1999.

(B) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of two million seven hundred thousand dollars ($2,700,000) shall be allocated by the superintendent to SELPAs that existed for the 1999–2000 fiscal year. The superintendent shall determine the amount of each agency's allotment by dividing the two million seven hundred thousand dollars ($2,700,000) by the total statewide special education pupil count as of December 1999. The allotment for each agency shall be the statewide per pupil amount times the SELPA's special education pupil count reported as of December 1999. The superintendent shall adjust the computations in such a manner as to ensure that the minimum allotment to each SELPA is at least ten thousand dollars ($10,000).

(C) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of six million dollars ($6,000,000) shall be allocated by the superintendent to the Riverside County Office of Education.

(2) The superintendent shall compute a per pupil amount from the balance of the appropriation provided by subdivision (b) of Section 4 of the act adding this section, after the appropriation has been reduced by the amounts in paragraph (1), by dividing the remaining portion of the appropriation by the total average daily attendance, excluding attendance for regional occupational centers and programs, adult education, and programs operated by the county superintendents of schools, for all pupils in kindergarten through grade 12 in all school districts as used by the Superintendent of Public Instruction for the second principal apportionment for the 1999–2000 fiscal year.

The superintendent shall apportion to each school district an amount equal to the per pupil amount times the district's reported average daily attendance for the second principal apportionment for the 1999–2000 fiscal year, excluding attendance for regional occupational centers and programs, adult education, and programs operated by the county superintendent of schools.

(c) The amounts appropriated by subdivisions (a) and (b) of Section 4 of the act adding this section are in full satisfaction and in lieu of mandate claims resulting from the Commission on State Mandates cases identified as (1) Riverside County Superintendent of Schools, et al., CSM-3986 on remand from the Superior Court of Sacramento County, No. 352795, and (2) Long Beach Unified School District, CSM-3986A (consolidated with the Santa Barbara County Superintendent of Schools, SB 90-3453).

SEC. 4. (a) The amount of one hundred million dollars ($100,000,000) is hereby appropriated from the General Fund in augmentation of Item 6110-161-0001 of Section 2.00 of the Budget Act of 2001 to the Superintendent of Public Instruction for the purposes of Section 56836.156 of the Education Code.

(b) (1) The amount of two hundred seventy million dollars ($270,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation on a one-time basis to school districts, county offices of education, and special education local plan areas (SELPAs), as specified in subdivision (b) of Section 56836.157 of the Education Code.

(2) For the purposes of making the computation required by Section 8 of Article XVI of the California Constitution, this appropriation shall be deemed to be ''General Fund revenues appropriated for school districts,'' as defined in subdivision (a) of Section 41202 of the Education Code, for the 1999–2000 fiscal year, and included with the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202 of the Education Code, for the 1999–2000 fiscal year.

(c) The amount of twenty-five million dollars ($25,000,000) is hereby appropriated from the General Fund in augmentation of Item 6110-161-0001 of Section 2.00 of the Budget Act of 2001 for purposes of making the first one-time allocation in each fiscal year for the 2001–02 fiscal year, as required by subdivision (a) of Section 56836.157 of the Education Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to alleviate the fiscal hardship to local educational agencies caused by persistent shortfalls in federal funding for special education; to increase state funding for the special education program, thereby reducing encroachment; to facilitate the settlement of current litigation regarding those programs and the funding thereof; to obviate new litigation; and to resolve related school finance issues, it is necessary for this act to take effect immediately.

O

Effective: October 5, 2010

United States Code Annotated Currentness
Title 20. Education
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)
Subchapter I. General Provisions
§ 1401. Definitions

Except as otherwise provided, in this chapter:

(1) Assistive technology device

(A) In general

The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

(B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such device.

(2) Assistive technology service

The term "assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes--

(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assist-

ive technology devices;

(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

(3) Child with a disability

(A) In general

The term "child with a disability" means a child--

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) Child aged 3 through 9

The term "child with a disability" for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child--

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

(ii) who, by reason thereof, needs special education and related services.

(4) Core academic subjects

The term "core academic subjects" has the meaning given the term in section 9101 of the Elementary and Sec-

ondary Education Act of 1965 [20 U.S.C.A. § 7801].

(5) Educational service agency

The term "educational service agency"--

(A) means a regional public multiservice agency--

(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

(6) Elementary school

The term "elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

(7) Equipment

The term "equipment" includes--

(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(8) Excess costs

The term "excess costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school stu-

dent, as may be appropriate, and which shall be computed after deducting--

(A) amounts received--

(i) under subchapter II;

(ii) under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6311 et seq.]; and

(iii) under parts A and B of title III of that Act [20 U.S.C.A. § 6811 et seq. and 20 U.S.C.A. § 6891 et seq.]; and

(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

(9) Free appropriate public education

The term "free appropriate public education" means special education and related services that--

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

(10) Highly qualified

(A) In general

For any special education teacher, the term "highly qualified" has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801], except that such term also--

(i) includes the requirements described in subparagraph (B); and

(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

(B) Requirements for special education teachers

When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that--

(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) the teacher holds at least a bachelor's degree.

(C) Special education teachers teaching to alternate achievement standards

When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6311(b)(1)], such term means the teacher, whether new or not new to the profession, may either--

(i) meet the applicable requirements of section 9101 of such Act [20 U.S.C.A. § 7801] for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) Special education teachers teaching multiple subjects

When used with respect to a special education teacher who teaches 2 or more core academic subjects ex-

clusively to children with disabilities, such term means that the teacher may either--

(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801] for any elementary, middle, or secondary school teacher who is new or not new to the profession;

(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

(E) Rule of construction

Notwithstanding any other individual right of action that a parent or student may maintain under this subchapter, nothing in this section or subchapter shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

(F) Definition for purposes of the ESEA

A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 6301 et seq.].

(11) Homeless children

The term “homeless children” has the meaning given the term “homeless children and youths” in section 11434a of Title 42.

(12) Indian

The term “Indian” means an individual who is a member of an Indian tribe.

(13) Indian tribe

The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

(14) Individualized education program; IEP

The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 1414(d) of this title.

(15) Individualized family service plan

The term "individualized family service plan" has the meaning given the term in section 1436 of this title.

(16) Infant or toddler with a disability

The term "infant or toddler with a disability" has the meaning given the term in section 1432 of this title.

(17) Institution of higher education

The term "institution of higher education"--

(A) has the meaning given the term in section 1001 of this title; and

(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled Colleges and Universities Assistance Act of 1978.

(18) Limited English proficient

The term "limited English proficient" has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 7801].

(19) Local educational agency

(A) In general

The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(B) Educational service agencies and other public institutions or agencies

The term includes--

(i) an educational service agency; and

(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(C) BIA funded schools

The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(20) Native language

The term "native language", when used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a child, the language normally used by the parents of the child.

(21) Nonprofit

The term "nonprofit", as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(22) Outlying area

The term "outlying area" means the United States Virgin Islands, Guam, American Samoa, and the Common-

wealth of the Northern Mariana Islands.

(23) Parent

The term “parent” means--

(A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);

(B) a guardian (but not the State if the child is a ward of the State);

(C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(D) except as used in sections 1415(b)(2) and 1439(a)(5) of this title, an individual assigned under either of those sections to be a surrogate parent.

(24) Parent organization

The term “parent organization” has the meaning given the term in section 1471(g) of this title.

(25) Parent training and information center

The term “parent training and information center” means a center assisted under section 1471 or 1472 of this title.

(26) Related services

(A) In general

The term “related services” means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a dis-

ability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such device.

(27) Secondary school

The term "secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(28) Secretary

The term "Secretary" means the Secretary of Education.

(29) Special education

The term "special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including--

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.

(30) Specific learning disability

(A) In general

The term "specific learning disability" means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

(B) Disorders included

Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(C) Disorders not included

Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(31) State

The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(32) State educational agency

The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(33) Supplementary aids and services

The term "supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 1412(a)(5) of this title.

(34) Transition services

The term "transition services" means a coordinated set of activities for a child with a disability that--

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(35) Universal design

The term "universal design" has the meaning given the term in section 3002 of Title 29.

(36) Ward of the State

(A) In general

The term "ward of the State" means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.

(B) Exception

The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).

CREDIT(S)

(Pub.L. 91-230, Title VI, § 602, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2652; amended Pub.L. 110-315, Title IX, § 941(k)(2)(C), Aug. 14, 2008, 122 Stat. 3466; Pub.L. 111-256, § 2(b)(2), Oct. 5, 2010, 124 Stat. 2643.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2004 Acts. House Conference Report No. 108-779, see 2004 U.S. Code Cong. and Adm. News, p. 2480.

Statement by President, see 2004 U.S. Code Cong. and Adm. News, p. S43.

2008 Acts. House Conference Report No. 110-803, see 2008 U.S. Code Cong. and Adm. News, p. 1124.

References in Text

This chapter, referred to in text, originally read "this title", meaning Title VI of Pub.L. 91-230, Title VI, §§ 601

to 682, as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2647, popularly known as the Individuals with Disabilities Education Act, also known as IDEA, which is classified to this chapter.

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub.L. 89-10, April 11, 1965, 79 Stat. 27, as generally amended by the No Child Left Behind Act of 2001, Pub.L. 107-110, Jan. 8, 2002, 115 Stat. 1425, which is classified principally to chapter 70 of this title, 20 U.S.C.A. § 6301 et seq. Section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 is Pub.L. 89-10, Title IX, § 1111(b), as added Pub.L. 107-110, Title I, § 101, Jan. 8, 2002, 115 Stat. 1444, and amended, which is classified to 20 U.S.C.A. § 6311(b)(1). Section 9101 of the Elementary and Secondary Education Act of 1965 is Pub.L. 89-10, Title IX, § 9101, as added Pub.L. 107-110, Title IX, § 901, Jan. 8, 2002, 115 Stat. 1956, which is classified to 20 U.S.C.A. § 7801. For historical perspective on the Act, see Codifications note set out preceding 20 U.S.C.A. § 6301. For complete classification, see Short Title notes set out under 20 U.S.C.A. § 6301 and Tables.

Part A of title I of the Elementary and Secondary Education Act of 1965, referred to in par. (8)(A)(ii), is Pub.L. 89-10, Title I, Part A, §§ 1111 to 1127, as added Pub.L. 107-110, Title I, § 101, Jan. 8, 2002, 115 Stat. 1444, which is classified to part A of subchapter I of chapter 70 of this title, 20 U.S.C.A. § 6311 et seq. Parts A and B of Title III of that Act, referred to in par. (8)(A)(iii), are Pub.L. 89-10, Title III, Parts A and B, § 3101 et seq. and § 3201 et seq., as added Pub.L. 107-110, Title III, § 301, Jan. 8, 2002, 115 Stat. 1690, 1706, which are classified to parts A and B of subchapter III of chapter 70 of this title, 20 U.S.C.A. §§ 6811 et seq. and 6891 et seq.

This subchapter, referred to in par. (10)(E), originally read “this part”, meaning part A of the Individuals with Disabilities Education Act, Pub.L. 91-230, Title VI, §§ 601 to 610, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2647, which is classified to this subchapter.

The Alaska Native Claims Settlement Act, referred to in par. (13), is Pub.L. 92-203, Dec. 18, 1971, 85 Stat. 688, also known as ANCSA, which is classified principally to chapter 33 of Title 43, 43 U.S.C.A. § 1601 et seq.

The Tribally Controlled Colleges and Universities Assistance Act of 1978, referred to in par. (17)(B), is Pub.L. 95-471, Oct. 17, 1978, 92 Stat. 1325, as amended, formerly known as the Tribally Controlled College or University Assistance Act of 1978, which is classified principally to chapter 20 of Title 25, 25 U.S.C.A. § 1801 et seq. For complete classification, see Short Title note set out under 25 U.S.C.A. § 1801 and Tables.

Codifications

Title VI of Pub.L. 91-230, as amended by Pub.L. 108-446, is set out as subchapters I to IV of this chapter consisting of 20 U.S.C.A. §§ 1400 to 1482. These sections are shown as having been added by Pub.L. 108-446 without reference to the intervening amendments to Pub.L. 91-230 between 1970 and 2004 because of the extensive revision of the provisions of Title VI of Pub.L. 91-230 pursuant to Pub.L. 108-446.

Amendments

2010 Amendments. Subsec. (3)(A)(i). Pub.L. 111-256, § 2(b)(2)(A), struck out "with mental retardation" and inserted "with intellectual disabilities".

Subsec. (30)(C). Pub.L. 111-256, § 2(b)(2)(B), struck out "of mental retardation" and inserted "of intellectual disabilities".

2008 Amendments. Par. (17)(B). Pub.L. 110-315, § 941(k)(2)(C), struck out "the Tribally Controlled College or University Assistance Act of 1978" and inserted "the Tribally Controlled Colleges and Universities Assistance Act of 1978".

Effective and Applicability Provisions

2008 Acts. Except as otherwise provided, Pub.L. 110-315 and the amendments made by such Act shall take effect on Aug. 14, 2008, see Pub.L. 110-315, § 3, set out as an Effective and Applicability Provisions note under 20 U.S.C.A. § 1001.

2004 Acts. Except for par. (10)(A), (C) to (F), which shall take effect on Dec. 3, 2004 for purposes of the Elementary and Secondary Education Act of 1965 [chapter 70 of this title, 20 U.S.C.A. § 6301 et seq.], amendments by Pub.L. 108-446, Title I, which revised this section, are effective July 1, 2005, see Pub.L. 108-446, § 302(a), (b), set out as a note under 20 U.S.C.A. § 1400.

Prior Provisions

A prior section 1401, Pub.L. 91-230, Title VI, § 602, as added Pub.L. 105-17, Title I, § 101, June 4, 1997, 111 Stat. 42 and amended Pub.L. 105-244, Title IX, § 901(d), Oct. 7, 1998, 112 Stat. 1828, which provided definitions for the chapter, was omitted in the general amendment of Pub.L. 91-230, Title VI, § 602, by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2652.

Another prior section 1401, Pub.L. 91-230, Title VI, § 602, Apr. 13, 1970, 84 Stat. 175; Pub.L. 94-142, § 4(a), Nov. 29, 1975, 89 Stat. 775; Pub.L. 98-199, §§ 2, 3(b), Dec. 2, 1983, 97 Stat. 1357, 1358; Pub.L. 99-457, Title IV, § 402, Oct. 8, 1986, 100 Stat. 1172; Pub.L. 100-630, Title I, § 101(a), Nov. 7, 1988, 102 Stat. 3289, 3290; Pub.L. 101-476, Title I, § 101, Title IX, § 901(b)(10) to (20), Oct. 30, 1990, 104 Stat. 1103, 1142, 1143; Pub.L. 102-73, Title VIII, § 802(d)(1), July 25, 1991, 105 Stat. 361; Pub.L. 102-119, §§ 3, 25(a)(1),(b), Oct. 7, 1991, 105 Stat. 587, 605, 607; Pub.L. 103-382, Title III, § 391(f)(1), Oct. 20, 1994, 108 Stat. 4023, which also provided definitions for the chapter, was omitted in the general amendment of Pub.L. 91-230, Title VI, § 602, by Pub.L. 105-17, Title I, § 101, June 4, 1997, 111 Stat. 42.

References for Purposes of Pub.L. 111-256, § 2 Amendments

References to intellectual disability as meaning condition previously referred to as mental retardation for pur-

poses of provisions amended by Pub.L. 111-256, § 2, see Pub.L. 111-256, § 2(k), set out as a note under 20 U.S.C.A. § 1400.

Regulations

For purposes of regulations issued to carry out provisions amended by Pub.L. 111-256, references in regulations to mental retardation shall be considered to be references to an intellectual disability, with provisions for amending regulations to conform to that fact, see Pub.L. 111-256, § 3, set out as a note under 20 U.S.C.A. § 1400.

Rule of Construction of Pub.L. 111-256

Pub.L. 111-256 shall be construed to amend provisions of Federal law to substitute "an intellectual disability" for "mental retardation" and substitute "individuals with intellectual disabilities" for "the mentally retarded" or "individuals who are mentally retarded" without any intent to change coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions, or to compel States to change terminology in State laws for individuals covered by such amendments, see Pub.L. 111-256, § 4, set out as a note under 20 U.S.C.A. § 1400.

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Federal Procedural Forms § 10:270, Complaint--For Declaratory and Injunctive Relief--Denial of Free Appropriate Public Education--Refusal to Provide Physical Therapy During Summer--Failure to Provide Timely And...

Federal Procedural Forms § 10:272, Complaint--For Injunctive Relief and Attorney's Fees--Denial of Free Appropriate Public Education--Refusal to Accommodate in Regular Classroom [20 U.S.C.A. §§ 1400 et Seq.; Fed. R.

Federal Procedural Forms § 10:276, Complaint--For Declaration Approving Residential Placement--For Reimbursement of Educational Expenses--For Attorney Fees [20 U.S.C.A. §§ 1401(3), 1415(i)(3); 28 U.S.C.A. §§ 1331, 1391,...

Federal Procedural Forms § 10:278, Paragraphs in Answer--To Complaint Under Individuals With Disabilities Education Act--Admissions--Insufficient Knowledge to Admit or Deny Truth of Allegations [20 U.S.C.A. §§ 1400 Et...

Federal Procedural Forms § 45:270, Interrogatories--Discrimination on the Basis of Disability--In Recruitment and Hiring--Plaintiff to Defendant [29 U.S.C.A. §§ 701 et Seq.].

Federal Procedural Forms § 45:272, Interrogatories--Discrimination on the Basis of Disability--In Recruitment and Hiring--Defendant to Plaintiff [29 U.S.C.A. §§ 701 et Seq.].

2 West's Federal Forms § 1580, Failure to Provide Preschool Student With Free Appropriate Public Education.

Am. Jur. Pl. & Pr. Forms Schools § 133, Complaint in Federal District Court--For Declaratory and Injunctive Relief--Improper Placement--Of Minority Children--In Special Educational Class for Educable Mentally Disabled...

Am. Jur. Pl. & Pr. Forms Schools § 134, Complaint in Federal District Court--For Declaratory and Injunctive Relief--Improper Placement--Of "Trainable Mentally Handicapped" Child With Aids-Related Complex--In Homebound...

Am. Jur. Pl. & Pr. Forms Schools § 146, Complaint in Federal District Court--For Declaratory and Injunctive Relief--Denial of Free Appropriate Public Education Under Individuals With Disabilities Act...

Treatises and Practice Aids

Americans With Disab. Pract. & Compliance Manual § 1:9, Individuals With Disabilities Education Act.

Americans With Disab. Pract. & Compliance Manual § 11:2, Purposes of Idea.

Americans With Disab. Pract. & Compliance Manual § 11:5, Assistive Technology Device; Assistive Technology Service.

Americans With Disab. Pract. & Compliance Manual § 11:6, Child With Disability.

Americans With Disab. Pract. & Compliance Manual § 11:7, Child With Disability--Disability Terms Defined.

Americans With Disab. Pract. & Compliance Manual § 11:9, Core Academic Subjects.

Americans With Disab. Pract. & Compliance Manual § 12:3, Individuals With Disabilities Education Act

(IDEA).

Americans With Disab. Pract. & Compliance Manual § 13:2, Class Action Complaint for Improper Placement of African-American Children in Special Educational Class for Educable Mentally Disabled With Request for Declaratory and Injunctive Relief [20 U.S.C.A....

Americans With Disab. Pract. & Compliance Manual § 13:3, Complaint for Improper Placement of "Trainable Mentally Handicapped" Child With Aids-Related Complex in Homebound Education Program, With Request for Declaratory and Injunctive Relief [20 U.S.C.A....

Americans With Disab. Pract. & Compliance Manual § 13:6, Complaint for Declaration Approving Residential Placement, Reimbursement of Educational Expenses and Attorneys Fees [20 U.S.C.A. §§ 1401(3), 1415(i)(3); 28 U.S.C.A. §§ 1331, 1391, 2201, 2202; Fed. R....

Americans With Disab. Pract. & Compliance Manual § 13:8, Complaint for Denial of Free Appropriate Public Education Through Refusal to Accommodate Student in Regular Classroom, With Request for Injunctive Relief and Attorney's Fees [20 U.S.C.A. §§ 1400...

Americans With Disab. Pract. & Compliance Manual § 2:47, Fourteenth Amendment.

Americans With Disab. Pract. & Compliance Manual § 2:48, Individuals With Disabilities Education Act.

Americans With Disab. Pract. & Compliance Manual § 6:30, Consent Decree in Class Action Under Ada Title II--Architectural Changes to School Buildings--Integration of Disabled Students Into Academic Programs and Extra-Curricular...

Americans With Disab. Pract. & Compliance Manual § 1:207, Exhaustion of Remedies.

Americans With Disab. Pract. & Compliance Manual § 11:11, Educational Service Agency (ESA).

Americans With Disab. Pract. & Compliance Manual § 11:12, Elementary School; Secondary School; Charter School; Institution of Higher Education.

Americans With Disab. Pract. & Compliance Manual § 11:13, Equipment.

Americans With Disab. Pract. & Compliance Manual § 11:15, Excess Costs.

Americans With Disab. Pract. & Compliance Manual § 11:16, Free Appropriate Public Education (Fape).

Americans With Disab. Pract. & Compliance Manual § 11:17, Indian; Indian Tribe.

Americans With Disab. Pract. & Compliance Manual § 11:18, Individualized Education Program (Iep).

Americans With Disab. Pract. & Compliance Manual § 11:19, Infant or Toddler With a Disability.

Americans With Disab. Pract. & Compliance Manual § 11:20, Individualized Family Service Plan (Ifsp).

Americans With Disab. Pract. & Compliance Manual § 11:21, Local Educational Agency (Lea).

Americans With Disab. Pract. & Compliance Manual § 11:22, Native Language; Limited English Proficient.

Americans With Disab. Pract. & Compliance Manual § 11:23, Outlying Area.

Americans With Disab. Pract. & Compliance Manual § 11:24, Parent; Parent Organization; Parent Training and Information Center.

Americans With Disab. Pract. & Compliance Manual § 11:26, Related Services.

Americans With Disab. Pract. & Compliance Manual § 11:29, Special Education.

Americans With Disab. Pract. & Compliance Manual § 11:31, State; State Educational Agency (Sea).

Americans With Disab. Pract. & Compliance Manual § 11:32, Supplementary Aids and Services.

Americans With Disab. Pract. & Compliance Manual § 11:33, Transition Services.

Americans With Disab. Pract. & Compliance Manual § 11:67, Availability.

Americans With Disab. Pract. & Compliance Manual § 11:74, Nonacademic Services.

Americans With Disab. Pract. & Compliance Manual § 11:78, Child Find.

Americans With Disab. Pract. & Compliance Manual § 11:80, Individualized Education Program.

Americans With Disab. Pract. & Compliance Manual § 11:85, Placements.

Americans With Disab. Pract. & Compliance Manual § 11:86, Placements--Residential.

Americans With Disab. Pract. & Compliance Manual § 13:13, Paragraphs in Answer to Complaint Under Individuals With Disabilities Education Act: Insufficient Knowledge to Admit or Deny Truth of Allegations [20 U.S.C.A. §§ 1400 et Seq.; Fed. R. Civ. P. 8(B)(6)]...

Americans With Disab. Pract. & Compliance Manual § 13:31, Complaint for Denial of Free Appropriate Public Education Through Refusal to Provide Physical Therapy During Summer and Failure to Provide Timely and Impartial Hearing With Request for Declaratory...

Americans With Disab. Pract. & Compliance Manual § 2:155, Exhaustion of Administrative Remedies.

Americans With Disab. Pract. & Compliance Manual § 11:109, Reimbursement for Private School Placement.

Americans With Disab. Pract. & Compliance Manual § 11:110, Limitation on Reimbursement; Notice.

Americans With Disab. Pract. & Compliance Manual § 11:155, Hearing Procedures--Generally.

Americans With Disab. Pract. & Compliance Manual § 11:157, Hearing Procedures--Presentation of Evidence; Request for Hearing.

Americans With Disab. Pract. & Compliance Manual § 11:162, Judicial Review.

Americans With Disab. Pract. & Compliance Manual § 11:208, Reevaluations.

Americans With Disab. Pract. & Compliance Manual § 11:222, Individualized Education Program.

Americans With Disab. Pract. & Compliance Manual § 11:223, Individualized Education Program (Iep) Team.

Americans With Disab. Pract. & Compliance Manual § 11:225, Individualized Education Program (Iep) Team--Meeting Attendance--Parent Participation.

Americans With Disab. Pract. & Compliance Manual § 11:226, Individualized Education Program (Iep) Team--Transition Services Participants.

Americans With Disab. Pract. & Compliance Manual § 11:236, Sufficiency.

Americans With Disab. Pract. & Compliance Manual § 11:237, Failure to Implement.

Americans With Disab. Pract. & Compliance Manual § 11:251, Filing a Complaint.

Americans With Disab. Pract. & Compliance Manual § 11:261, Hearing Officer.

Americans With Disab. Pract. & Compliance Manual § 11:267, Appeal of Decision.

Americans With Disab. Pract. & Compliance Manual § 11:293, Right to Bring Civil Action.

Americans With Disab. Pract. & Compliance Manual § 11:296, Exhaustion of Administrative Remedies.

Americans With Disab. Pract. & Compliance Manual § 11:298, Mootness.

Americans With Disab. Pract. & Compliance Manual § 11:300, Parties--Defendants.

Americans With Disab. Pract. & Compliance Manual § 11:302, Standard and Scope of Review.

Americans With Disab. Pract. & Compliance Manual § 11:304, Standard and Scope of Review--Deference to Administrative Findings.

Americans With Disab. Pract. & Compliance Manual § 11:305, Burden of Proof.

Americans With Disab. Pract. & Compliance Manual § 11:307, Relief Available Under Idea.

Federal Procedure, Lawyers Edition § 69:5, Concurrent Jurisdiction.

Federal Procedure, Lawyers Edition § 11:86, Rights, Privileges, and Immunities Secured by Any Act of Congress Providing for Equal Rights.

Federal Procedure, Lawyers Edition § 11:196, Partially Successful Suit; Recovery of Nominal Damages.

Federal Procedure, Lawyers Edition § 42:1556, Relationship to Action Under Civil Rights Laws.

Federal Procedure, Lawyers Edition § 42:1568, Recovery of Monetary Damages.

West's Federal Administrative Practice App. N, Title 20 --Individuals With Disabilities Education Act.

Wright & Miller: Federal Prac. & Proc. § 3573, Civil Rights Actions in General.

NOTES OF DECISIONS

1. Construction

This chapter is a remedial statute and should be broadly applied and liberally construed in favor of providing appropriate education to handicapped students. Espino v. Besteiro, S.D.Tex.1981, 520 F.Supp. 905. Schools 148(2.1)

2. Rules and regulations

Regulation promulgated by Secretary of Education excluding from definition of medical services, which schools are not required to provide under this chapter except for purposes of diagnosis or evaluation, the services of a school nurse otherwise qualifying as a related service was reasonable interpretation of congressional intent. Irving Independent School Dist. v. Tatro, U.S.Tex.1984, 104 S.Ct. 3371, 468 U.S. 883, 82 L.Ed.2d 664, on remand 741 F.2d 82. Schools 148(4)

Department of Education regulations excluding mapping of cochlear implants from "audiology services" within list of related services were not contrary to the plain language of the Individuals with Disabilities Education Act (IDEA); "audiology services" as used in "related services" provision of IDEA was ambiguous as to whether it encompassed the full panoply of services that might be described as audiology services in other contexts, and agency's mapping regulations embodied a permissible statutory construction which was rationally related to the purposes of the IDEA. Petit v. U.S. Dept. of Educ., C.A.D.C.2012, 675 F.3d 769. Schools 148(4)

School districts did not fail to comply with Individuals with Disabilities Education Act (IDEA) in failing to provide handicapped student with coordinated plan of transition or vocational services that were required under regulations not in existence at time student was receiving transition services. Chuhran v. Walled Lake Consol. Schools, E.D.Mich.1993, 839 F.Supp. 465, affirmed 51 F.3d 271. Schools 148(2.1)

Individuals with Disabilities Education Act (IDEA) applied to school-aged pretrial detainees' claims of inadequate education, in light of application of Act to state correctional facilities by Department of Education's Office of Special Education and Rehabilitative Services, and absent any showing that Department's regulations were arbitrary or capricious. Donnell C. v. Illinois State Bd. of Educ., N.D.Ill.1993, 829 F.Supp. 1016. Schools 148(2.1)

3. Children with disabilities

A new Massachusetts regulation barring the use of certain aversive interventions on students with disabilities did not render moot an appeal challenging a New York regulation prohibiting all aversive interventions on disabled New York students who attended a Massachusetts residential facility, as violative of the IDEA, the Rehabilitation Act, due process, and equal protection; New York's prohibition on aversive interventions remained in effect and applicable to students. Bryant v. New York State Educ. Dept., C.A.2 (N.Y.) 2012, 2012 WL 3553361. Federal Courts 724

In determining whether student's Ehlers-Danlos Syndrome (EDS) adversely affected his educational performance, in school district's IDEA action challenging determination of Administrative Law Judge (ALJ) that student was still in need of special education services, ALJ applied the wrong legal standard by concluding that the EDS adversely affected the student's educational performance because it caused him to experience pain and fatigue which could affect his educational performance; the correct formulation of the test was not whether something in the abstract could adversely affect the student's educational performance, but whether in reality it did. Marshall Joint School Dist. No. 2 v. C.D. ex rel. Brian D., C.A.7 (Wis.) 2010, 616 F.3d 632, rehearing and rehearing en banc denied. Schools 148(2.1)

Allegations that student who was diagnosed with chronic fatigue syndrome and fibromyalgia had disabling physical ailments that limited her strength, vitality, and alertness and made it impossible for her to attend school, and as a result of her inability to attend classes, she required special education in the form of home instruction, was sufficient to support claim that student was a “disabled child” within the meaning of the IDEA. Weixel v. Board of Educ. of City of New York, C.A.2 (N.Y.) 2002, 287 F.3d 138. Schools 148(2.1)

Child suffered from a “serious emotional disturbance” within the meaning of the relevant state and federal regulations, so as to be entitled to free appropriate education under IDEA, and not from mere conduct disorder, where record clearly established that child displayed an inability to learn that was not explained solely by intellectual, sensory, or health factors, and also exhibited both a generally pervasive mood of unhappiness or depression and inappropriate types of behavior or feelings under normal circumstances, both for a long period of time and to a marked degree. Muller on Behalf of Muller v. Committee on Special Educ. of East Islip Union Free School Dist., C.A.2 (N.Y.) 1998, 145 F.3d 95. Schools 148(3)

Child with orthopedic impairment caused by her cerebral palsy had disability within the meaning of IDEA which adversely affected her educational performance and, thus, school was required to develop individualized education program (IEP) for child which included transition services; child's unique needs included slowness and fatigue when writing and stiffness and lack of dexterity in her right hand and to meet these needs teachers shortened or modified length and nature of her writing assignments, provided her with copies of their notes, and taught her how to type using only her left hand and first finger of her right hand. Yankton School Dist. v. Schramm, C.A.8 (S.D.) 1996, 93 F.3d 1369, rehearing and suggestion for rehearing en banc denied. Schools 148(2.1)

A child who suffers from serious emotional disturbance and/or specific learning disabilities who by reason thereof, needs special education and related services, qualifies under the IDEA as a "child with a disability." Linda E. v. Bristol Warren Regional School Dist., D.R.I.2010, 758 F.Supp.2d 75. Schools 148(3)

High school student who suffered from Asperger's Syndrome, attention deficit hyperactivity disorder, and anxiety disorder was "child with a disability" as defined by Individuals with Disabilities Education Act (IDEA). Dracut School Committee v. Bureau of Special Educ. Appeals of the Massachusetts Dept. of Elementary and Secondary Educ., D.Mass.2010, 737 F.Supp.2d 35. Schools 148(3)

Student's psychological disorders and learning disabilities, including attention deficit hyperactivity disorder (ADHD) and Asperger's syndrome, did not adversely affect her academic performance, and thus student did not qualify for special education services under Individuals With Disabilities Education Act (IDEA); student was high performing student throughout her public school years, and in seventh grade, before her parents enrolled her in private school, she continued to excel, as evidenced by her 90.5 grade average, and neuro-psychologist retained by parents to evaluate her at onset of seventh grade determined that her academic skills were strong, with reading comprehension and written expression at eighth grade level and math at twelfth grade level. Maus v. Wappingers Cent. School Dist., S.D.N.Y.2010, 688 F.Supp.2d 282. Schools 148(3)

Determination whether student's disability adversely affects his or her "educational performance," as required for student to be eligible for special education benefits under IDEA, is to be assessed by reference to student's academic performance as the principal, if not only, guiding factor, rather than by reference to emotional or behavioral troubles caused by disability. A.J. v. Board of Educ., E.D.N.Y.2010, 679 F.Supp.2d 299. Schools 148(3)

Administrative law judge's determination that student's health issues, which included Ehlers-Danlos Syndrome, had adverse effect on educational performance, as required for services under Individuals with Disabilities Education Act (IDEA) and Wisconsin law, was supported by preponderance of evidence and was not clearly erroneous, although there was evidence that student was performing within average range and had made improvement; tests showed student's body coordination, strength, and agility were below average to low average, and that student would need physical therapy and modifications to physical activities, student's physicians stated that joint instability and resulting pain and fatigue would affect student's ability to perform certain activities fully and safely, and recommended restricting or modifying student's activities at school, and judge included string citations from administrative record that supported decision, including citations to private physical therapist's

testimony and psychologist's testimony. Marshall Joint School Dist. No. 2 v. C.D. ex rel. Brian D., W.D.Wis.2009, 592 F.Supp.2d 1059, reversed and remanded 616 F.3d 632, rehearing and rehearing en banc denied. Schools 155.5(4)

Student with diabetes mellitus, adjustment disorder, and social anxiety disorder was not a "child with a disability" under federal or state law, as would qualify her for special education and related benefits under Individuals with Disabilities Education Act (IDEA); although student was being treated for diabetes and had been treated at times for emotional problems, those conditions did not affect her educational performance to extent that she required special services and programs, and until student stopped attending classes and making up her work, she was achieving well and did not need specialized instruction. Loch v. Board of Educ. of Edwardsville Community School Dist. No. 7, S.D.Ill.2008, 573 F.Supp.2d 1072, motion to amend denied 2008 WL 4899437, affirmed 327 Fed.Appx. 647, 2009 WL 1747897, certiorari denied 130 S.Ct. 1736, 176 L.Ed.2d 212. Schools 148(3)

Fact that college applicant was diagnosed and classified as having a "perceptual impairment," pursuant to state law and the Individuals with Disabilities Education Act (IDEA), and that, as a result, received special education services under an individualized education program (IEP) for many years, did not establish as a matter of law that he was disabled within the meaning of Americans with Disabilities Act (ADA) and Rehabilitation Act. Bowers v. National Collegiate Athletic Ass'n, D.N.J.2008, 563 F.Supp.2d 508. Civil Rights 1019(3)

Child's Asperger's Syndrome adversely affected her educational performance, as required for special education services under IDEA, even though she excelled academically and her behavior for most part was nondisruptive, inasmuch as she experienced problems that were considered under Maine regulations to be related to "educational performance," in that she was withdrawn from peers, had communication deficits, was inflexible, and mutilated herself during school time, demonstrating failure to understand relationship between healthy behaviors and injury prevention. Mr. I v. Maine School Administrative Dist. 55, D.Me.2006, 416 F.Supp.2d 147, affirmed 480 F.3d 1. Schools 148(3)

Junior high school student diagnosed with attention deficit disorder (ADD) who was enrolled in magnet program for gifted children but who skipped class, failed to do homework, smoked dope, and neglected to take his ADD medication did not need special education, and thus, was not a "child with a disability" within meaning of Individuals with Disabilities Education Act (IDEA), even if he was "other health impaired and emotionally disturbed" as also set forth in the definition; rather, what he needed was to commit to doing homework and regularly attending classes. Austin Independent School Dist. v. Robert M., W.D.Tex.2001, 168 F.Supp.2d 635, affirmed 54 Fed.Appx. 413, 2002 WL 31718424. Schools 148(3)

Although child's "average" performance in school was an indication that he did not qualify for special education services, child met three distinct disability classifications under Individual with Disabilities Education Act (IDEA), "other health impaired," speech impaired, and learning disabled; child had regular uncontrolled seizures which affected his alertness in class, stuttered, and had relatively low academic achievements despite an I.Q. of 130, placing him in the "very superior" range of intelligence. Corchado v. Board of Educ. Rochester City School Dist., W.D.N.Y.2000, 86 F.Supp.2d 168. Schools 148(2.1); Schools 148(3)

Student who suffered from speech impairment was "child with disability" and eligible for services under Individuals with Disabilities Education Act (IDEA); although child was performing at age appropriate educational level, his disability was severe enough to affect his educational performance due to his impairment's effect on his overall ability to communicate. Mary P. v. Illinois State Bd. of Educ., N.D.Ill.1996, 919 F.Supp. 1173, amended 934 F.Supp. 989. Schools 148(2.1)

Student's orthopedic impairment adversely affected her educational performance for her to be eligible for special education under Individuals with Disability Education Act (IDEA), where she required educational modifications and related services to ensure that classroom instruction was available to her. Yankton School Dist. v. Schramm, D.S.D.1995, 900 F.Supp. 1182, affirmed as modified 93 F.3d 1369, rehearing and suggestion for rehearing en banc denied. Schools 148(2.1)

4. Developmental disability

State violated Education for All Handicapped Children Act by requiring parents to pay any part of living expenses of handicapped children who were placed in private facility on ground of developmental disability rather than educational need; "developmental disability," far from being exempted category, was important subcategory of handicaps covered by Act. Parks v. Pavkovic, C.A.7 (Ill.) 1985, 753 F.2d 1397, certiorari denied 105 S.Ct. 3529, 473 U.S. 906, 87 L.Ed.2d 653, certiorari denied 106 S.Ct. 246, 474 U.S. 918, 88 L.Ed.2d 255. Schools 148(2.1)

5. Handicapped children

Students with chronic asthma, allergies, migraine syndrome, and sinusitis were encompassed within ambit of Individuals with Disabilities Education Act (IDEA), despite students' claim that they did not require "special education and related services" as result of their disabilities but required only "related services." Babicz v. School Bd. of Broward County, C.A.11 (Fla.) 1998, 135 F.3d 1420, certiorari denied 119 S.Ct. 53, 525 U.S. 816, 142 L.Ed.2d 41. Schools 148(2.1)

Seriously emotionally disturbed children are "handicapped" for purposes of the Education of the Handicapped Act. Babb v. Knox County School System, C.A.6 (Tenn.) 1992, 965 F.2d 104, certiorari denied 113 S.Ct. 380, 506 U.S. 941, 121 L.Ed.2d 290. Schools 148(3)

Evidence supported school district's rejection of claim that child was entitled to benefits under the Education for All Handicapped Children's Act as a student who was "seriously emotionally disturbed," even though she was acknowledged to be socially maladjusted, had disrupted classes on various occasions, and had attempted to commit suicide after being suspended from class. A.E. By and Through Evans v. Independent School Dist. No. 25, of Adair County, Okl., C.A.10 (Okla.) 1991, 936 F.2d 472. Schools 155.5(4)

A severely handicapped and profoundly retarded child was a handicapped child in need of special education and related services because of his handicap, and therefore, was entitled under the Education for All Handicapped Children Act to have school district provide him with individualized education program, based on statutory lan-

guage of the Act, its legislative history and case law construing it all. Timothy W. v. Rochester, N.H., School Dist., C.A.1 (N.H.) 1989, 875 F.2d 954, certiorari denied 110 S.Ct. 519, 493 U.S. 983, 107 L.Ed.2d 520. Schools 148(2.1)

Child was not a "handicapped child" entitled to special education under the Education of All Handicapped Children Act, though he had emotional and behavioral difficulties, including depression, where these difficulties did not adversely affect his educational performance, which was satisfactory or above. Doe By and Through Doe v. Board of Educ. of State of Conn., D.Conn.1990, 753 F.Supp. 65. Schools 148(3)

Under either New York or federal law, parents of child who exhibited weak attention span and difficulties in copying from blackboard to his own paper failed to show that child was "handicapped child" within meaning of Education for All Handicapped Children Act (EAHCA) so that school was under no obligation to refer child to committee on special education and remedial program developed by school was both legally sufficient and appropriate for child's academic needs; testimony by child's teachers and school's expert psychological witnesses showed that child had average to above average scores in most areas and that, while he had difficulty with handwriting and attention span, his difficulties did not meet level of "disability." Hiller by Hiller v. Board of Educ. of Brunswick Cent. School Dist., N.D.N.Y.1990, 743 F.Supp. 958.

Student who had been diagnosed as having AIDS (Acquired Immune Deficiency Syndrome) related complex was not "handicapped" within meaning of Education for All Handicapped Children Act where his learning and behavioral problems were not result of his health condition and, therefore, student and his mother were not required to exhaust administrative remedies before seeking order directing placement of student back in normal classroom setting. Robertson by Robertson v. Granite City Community Unit School Dist. No. 9, S.D.Ill.1988, 684 F.Supp. 1002. Administrative Law And Procedure 229; Schools 148(3); Schools 155.5(3)

The Education for All Handicapped Children Act applies to AIDS victims only if their physical condition is such that it adversely affects their educational performance; that is, their ability to learn and to do the required classroom work. Doe by Doe v. Belleville Public School Dist. No. 118, S.D.Ill.1987, 672 F.Supp. 342. Schools 148(2.1)

Fifteen-year-old learning disabled minor who, since he entered first grade in 1971, had suffered from educational disabilities which greatly impaired his reading and writing skills, whose difficulties were first formally recognized by a school board in 1974 when educational reevaluation disclosed that minor was in fact learning disabled, and who alleged that the reevaluation was deficient in failing to fully identify the extent of the problem, and that the education which minor subsequently received had been deficient due to lack of educational resources within the school system was one of the class for whose special benefit this chapter was enacted. Loughran v. Flanders, D.C.Conn.1979, 470 F.Supp. 110. Schools 148(3)

Special master's Vaccine Act award of compensation for special education and special therapy services without offset for any services provided under Education for All Handicapped Children Act (EAHCA) was not arbitrary and capricious; special master was only required to reduce such an award if there had been actual payment under EAHCA or if special master could reasonably anticipate actual payment. Stotts v. Secretary of Dept. of Health

and Human Services, Cl.Ct.1991, 23 Cl.Ct. 352. Health 389

6. Health impaired children

Student's educational performance was adversely affected by his attention deficit and hyperactivity disorder (ADHD), and therefore, student met requirements of "other health impairment," as required to be a child with a disability under the Individuals with Disabilities Education Act (IDEA), where student's tutor stated student was unable to concentrate and that his concentration improved when student began taking ADHD medication, student initially failed a standardized test required to advance to the seventh grade but passed when allowed to retake while on ADHD medication. Hansen ex rel. J.H. v. Republic R-III School Dist., C.A.8 (Mo.) 2011, 632 F.3d 1024, rehearing and rehearing en banc denied. Schools 148(3)

Evidence supported administrative hearing officer's determination that elementary school student who suffered from attention deficit and hyperactivity disorder was not "other health impaired" and, thus, was not eligible for special education under IDEA; hearing officer found that student's alertness was not affected by disorder and hearing officer's conclusions included references to both student's superior academic performance and his difficulties interacting socially with other children and adults. Lyons by Alexander v. Smith, D.D.C.1993, 829 F.Supp. 414. Schools 155.5(4)

7. Learning disabled

Student, whose truancy and defiance resulted from emotional disability which affected student's learning and prevented her from receiving educational benefit, although student had no cognitive impairment or learning disability, was qualified for special education services under IDEA; Independent Educational Evaluation (IEE) evaluator, school psychologist, and school district's assessment all concluded that student's behavioral and emotional problems needed to be addressed if student was to succeed academically. Independent School Dist. No. 284 v. A.C., by and through her Parent, C.C., C.A.8 (Minn.) 2001, 258 F.3d 769. Schools 148(3)

In IDEA case, ALJ did not err in finding that student did not have specific learning disability in area of "reading fluency" which was not defined in IDEA; taking into consideration words of statute and plain meaning of "fluency," "reading fluency" contained decidedly oral component, although not exclusively oral in its meaning, and therefore oral reading had to be considered in assessing student's reading fluency along with other measures that showed her ability to read easily such as comprehending what she read, and while special education teacher, social worker, learning disabilities teacher and consultant, parents' expert, and student's mother all testified that student had problem or weakness with oral reading, witnesses for school district qualified their testimony with statements that student's overall reading fluency, when taking reading comprehension into consideration, was at her grade level. H.M. ex rel. B.M. v. Haddon Heights Bd. of Educ., D.N.J.2011, 822 F.Supp.2d 439. Schools 148(3)

Student did not have a specific learning disability under the Individuals with Disabilities Education Act (IDEA), even though doctor diagnosed student with general learning disorder, where student's achievement scores exceeded his aptitude scores in all but two areas, the difference in those two areas was small, and teachers described student as "very bright." Nguyen v. District of Columbia, D.D.C.2010, 681 F.Supp.2d 49. Schools

148(3)

Elementary school student's Asperger's Disorder on the Autism spectrum did not adversely affect his educational performance, as required for student to be eligible for special education benefits under IDEA, although disorder caused student to be impulsive, to require frequent redirection, and to exhibit inappropriate social behaviors and peer interactions, where student was performing at average to above average levels in the classroom and was progressing well academically, and there was no evidence that student's behavioral problems were preventing him from reaching his full academic potential. A.J. v. Board of Educ., E.D.N.Y.2010, 679 F.Supp.2d 299. Schools 148(3)

Reports prepared by student's Admission, Review, and Dismissal (ARD) Committee indicating that student's teachers were evaluating her to determine whether she needed speech therapy did not create issue of material fact sufficient to survive school district's motion for summary judgment on student's claim, under Individuals with Disabilities Education Act (IDEA), that she was speech and language impaired and entitled to free appropriate public education (FAPE). Carter by Ward v. Prince George's County Public Schools, D.Md.1998, 23 F.Supp.2d 585. Federal Civil Procedure 2491.5

Child with dyslexia and attention deficit disorder was "learning disabled" within meaning of Individuals with Disabilities Education Act (IDEA), so as to be entitled to receive, at public expense, specially designed instruction to meet his unique needs. Straube v. Florida Union Free School Dist., S.D.N.Y.1991, 778 F.Supp. 774. Schools 148(3)

Under either New York or federal regulations, child was not "learning disabled" during school year in which his overall scores on psychological tests ranged from above average to low average and any below average scores were attributed by expert witnesses to child's personal style and not to physical or mental capabilities. Hiller by Hiller v. Board of Educ. of Brunswick Cent. School Dist., N.D.N.Y.1990, 743 F.Supp. 958. Schools 148(3)

Student did not have "specific learning disability," and thus her parents were not entitled under Individuals with Disabilities Education Act (IDEA) to reimbursement for tuition they incurred by reason of their decision to send student to private school, where student's achievement levels ranged from low average to superior for child of her age and intelligence, and discrepancy between her achievement scores and intelligence scores was less than two standard deviations. Kruvant v. District of Columbia, C.A.D.C.2004, 99 Fed.Appx. 232, 2004 WL 1156355, Unreported. Schools 154(4)

8. Emotionally disturbed

Student met the eligibility requirements for "emotional disturbance," as required to be a child with a disability under the Individuals with Disabilities Education Act (IDEA), where student received numerous disciplinary referrals over a four-year period for threatening students and teachers and fighting with other students, school's mental health clinician described student as socially unsuccessful due to limited social skills, student consistently struggled to pass his classes and failed standardized test, and student suffered from bipolar disorder. Hansen ex rel. J.H. v. Republic R-III School Dist., C.A.8 (Mo.) 2011, 632 F.3d 1024, rehearing and rehearing en

banc denied. Schools 148(3)

Fact that child is socially maladjusted is not by itself conclusive evidence that child is seriously emotionally disturbed, within meaning of Individuals with Disabilities Education Act (IDEA). Springer v. Fairfax County School Bd., C.A.4 (Va.) 1998, 134 F.3d 659. Schools 148(3)

Disabled student did not suffer any inability to learn that could not be explained by intellectual, sensory, or health factors, as required for student to be designated as "emotionally disturbed" under applicable New York regulations and eligible for Free Appropriate Public Education (FAPE) under IDEA; before student's heavy drug abuse his grades were mediocre, during period when he daily abused drugs he failed several classes, and after he vanquished his drug habit his grades improved, and, even during his heavy drug phase, school district found that his overall cognitive functioning was average, his processing skills were in borderline range, his decoding, math, spelling, and listening comprehension skills were average, and his oral expression skills were in superior range. P.C. v. Oceanside Union Free School Dist., E.D.N.Y.2011, 818 F.Supp.2d 516. Schools 148(3)

Record in IDEA case did not support classification of plaintiffs' minor child as a "child with a disability" under emotional disturbance prong, and they were not entitled to reimbursement for costs of his unilateral out-of-state placement at residential therapeutic school; evidence preponderated that academic problems he presented were result of his truancy, i.e., that he failed his classes because he refused to attend school, and that his refusal behavior was principally the product of a conduct disorder, narcissistic personality tendencies and substance abuse rather than of depression. W.G. v. New York City Dept. of Educ., S.D.N.Y.2011, 801 F.Supp.2d 142. Schools 154(3); Schools 155.5(4)

Student did not have an emotional disturbance within the meaning of the Individuals with Disabilities Education Act (IDEA), even though student suffered from depression and a mood disorder; causal link between student's school performance and alleged emotional disturbance was speculative. Nguyen v. District of Columbia, D.D.C.2010, 681 F.Supp.2d 49. Schools 148(3)

High school student's trichotillomania, self-cutting, and suicide attempt were inappropriate behaviors under otherwise normal circumstances under federal and state regulations, as required to qualify her as seriously emotionally disturbed under Individuals with Disabilities Education Act (IDEA). Eschenasy v. New York City Dept. of Educ., S.D.N.Y.2009, 604 F.Supp.2d 639. Schools 148(3)

School district's obligation under IDEA to find and evaluate student suspected of having disability was triggered by its knowledge that student had attempted suicide and was hospitalized in ninth grade, that student had been hospitalized for severe suicidal ideation in tenth grade, that student's grades began to deteriorate severely in eighth grade, and by notification of child's medical diagnosis of severe depression and parents' letters to teachers setting forth her condition and its relation to her performance. N.G. v. District of Columbia, D.D.C.2008, 556 F.Supp.2d 11. Schools 148(3)

Minor who had been sexually abused by relative during his freshman year of high school and experienced slight

decline in academic performance during his sophomore year concomitant with increasing drug use was not a "child with a disability" under IDEA and federal regulations or a "student with a disability" under New York regulations because he did not meet requirements for having an "emotional disturbance"; it was not clear he suffered from inability to learn over long period of time or to marked degree despite highly traumatic experience he suffered, he did not have difficulty building or maintaining satisfactory interpersonal relationships with peers and teachers, though his heightened aggression and worsening substance abuse problem did not represent behavior that could be considered appropriate under normal circumstances they were not enough, without more, to qualify him for classification as emotionally disturbed, and record did not persuasively demonstrate he exhibited generally pervasive mood of unhappiness or depression for long period of time and to marked degree. N.C. ex rel M.C. v. Bedford Cent. School Dist., S.D.N.Y.2007, 473 F.Supp.2d 532, affirmed 300 Fed.Appx. 11, 2008 WL 4874535. Schools 148(3)

Evidence did not support finding that high school student was "seriously emotionally disturbed" as required to entitle him to tuition reimbursement for his placement in private school under Individuals with Disabilities Education Act (IDEA) and regulations thereunder; diagnosis of serious emotional disturbance contained in letter from psychiatrist was made at request of student's parents to persuade juvenile court judge considering student's disposition for car theft to commit him to three-week camp in Idaho instead of period of incarceration or other more stringent penalty and was insufficient to use as basis for factual finding of disability, there was no evidence that student suffered from alcoholism or that his use of alcohol or drugs was sign of emotional disturbance. Springer v. Fairfax County School Bd., E.D.Va.1997, 960 F.Supp. 89, affirmed 134 F.3d 659. Schools 155.5(4)

9. Socially maladjusted

High school student was "socially maladjusted," within meaning of exception to coverage under Individuals with Disabilities Education Act (IDEA), in view of evidence that student suffered only conduct disorder and displayed disregard for social demands or expectations. Springer v. Fairfax County School Bd., C.A.4 (Va.) 1998, 134 F.3d 659. Schools 148(3)

10. Free appropriate public education

Only material failures to implement individualized educational program (IEP) constituted violations of IDEA; there was no statutory requirement of perfect adherence to IEP and there was no reason rooted in statutory text to view minor implementation failures as denials of free appropriate public education (FAPE). Van Duyn ex rel. Van Duyn v. Baker School Dist. 5J, C.A.9 (Or.) 2007, 502 F.3d 811. Schools 148(2.1)

District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education violated Rehabilitation Act in connection with their failure to provide disabled students with free appropriate public education (FAPE) required by IDEA and to comply with their Child Find obligations under IDEA, as they showed bad faith or gross misjudgment; defendants knew they were not in compliance with their legal obligations yet failed to change their actions, their relative provision of services under IDEA was lower than that of every state in the country, in most cases significantly so, and their failures were departure from accepted educational practices throughout the country. DL v. District of Columbia, D.D.C.2010, 730 F.Supp.2d 84

. Schools 148(2.1)

Autistic student's parents did not meet their burden of proving expired individualized education program (IEP) as implemented did not permit student to benefit educationally consistent with the Individuals with Disabilities Education Act (IDEA), although it was unclear whether school district implemented IEPs with respect to data collection and methodologies during two school years and absence of data reports impacted measuring progress; student received supportive instruction from a wide variety of education specialists, including speech-language pathologist, occupational therapist, physical therapist, and had benefit of integration with his peers and one on one assistant with oversight by district consultant and weekly meetings among specialists. Doe ex rel. Doe v. Hampden-Wilbraham Regional School Dist., D.Mass.2010, 715 F.Supp.2d 185. Schools 155.5(4)

Alleged academic progress of behaviorally disabled students was not sole measure of whether students received free appropriate public education (FAPE), within meaning of IDEA, following implementation of emergency regulations by New York State Board of Regents (NYSBR), upon recommendation of New York State Education Department (NYSED), that limited the use of "aversives," including contingent food programs, the use of helmets on some children, mechanical restraints, and the application of electric skin shocks through a graduated electronic decelerator (GED). Alleyne v. New York State Educ. Dept., N.D.N.Y.2010, 691 F.Supp.2d 322. Schools 148(3)

IDEA's definition of free appropriate public education (FAPE) does not require school district to maximize potential of handicapped children; rather, FAPE requires that education to which access is provided be sufficient to confer some educational benefit upon handicapped child. Mr. C. v. Maine School Administrative Dist. No. 6, D.Me.2008, 538 F.Supp.2d 298. Schools 148(2.1)

Individualized education plan (IEP) providing for oral hearing impaired child's school day to be divided between mainstream instruction in public school and total communication program at school for deaf, with cued speech interpreter provided at each facility, was "free appropriate education" within meaning of IDEA; placement in full-time oral program for hearing impaired at school for deaf was not required. Brougham by Brougham v. Town of Yarmouth, D.Me.1993, 823 F.Supp. 9. Schools 154(4)

Individuals with Disabilities Education Act (IDEA) requires school districts to supplement their resources in order to meet special needs of children with disabilities, but does not require every conceivable supplementary aid or service to assist child; school districts must provide services of physical, occupational and speech therapists and must assign supplementary teacher's aide to regular classroom, on full-time or part-time basis, if necessary to accommodate children's special needs. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 789 F.Supp. 1322. Schools 148(2.1)

Free appropriate education, as contemplated by Individuals with Disabilities Education Act (IDEA), requires personalized instruction with sufficient support services to permit child to benefit educationally from that instruction. Straube v. Florida Union Free School Dist., S.D.N.Y.1991, 778 F.Supp. 774. Schools 148(2.1)

11. Individual education plan

School district acted in good faith when it relied on current staff members to carry out individualized education programs (IEP) for disabled student during his third-grade year without giving those staff members additional training; earlier IEPs that had correlated with significant progress were carried out by staff with about the same level of training. Alex R., ex rel. Beth R. v. Forrestville Valley Community Unit School Dist. No. 221, C.A.7 (Ill.) 2004, 375 F.3d 603, certiorari denied 125 S.Ct. 628, 543 U.S. 1009, 160 L.Ed.2d 474. Schools 148(2.1)

More stringent individual education plan (IEP) standard of Massachusetts law was applicable in federal court on appeal from state hearing officer's decision, as IDEA incorporated by reference state IEP standards insofar as they were not inconsistent with federal rights. Wanham v. Everett Public Schools, D.Mass.2007, 515 F.Supp.2d 175, amended 550 F.Supp.2d 152. Schools 155.5(2.1)

12. Related services

Continuous nursing services required by quadriplegic, ventilator-dependent student were "related services" that had to be provided by school district during school hours, under Individuals with Disabilities Education Act (IDEA), because such services were supportive services but did not constitute medical services. Cedar Rapids Community School Dist. v. Garret F. ex rel. Charlene F., U.S.Iowa 1999, 119 S.Ct. 992, 526 U.S. 66, 161 A.L.R. Fed. 683, 143 L.Ed.2d 154. Schools 148(4)

School district's refusal to transport elementary school student, who suffered from epileptic seizures, to day care center outside her designated "cluster site" boundary after school did not violate the Individuals with Disabilities Education Act (IDEA), where parent's request for such transportation was made for personal reasons unrelated to student's educational needs. Fick ex rel. Fick v. Sioux Falls School Dist. 49-5, C.A.8 (S.D.) 2003, 337 F.3d 968, rehearing and rehearing en banc denied. Schools 159.5(4)

Hospital charges incurred by parents of disabled student when they were forced to commit student to a psychiatric hospital for several months, which occurred while Indiana Department of Education (IDOE) was processing individualized education plan (IEP) prepared by local school under Individuals with Disabilities Education Act (IDEA) which recommended that student be placed in a residential facility, were not for "education or related services," within meaning of IDEA, and thus were not reimbursable under agreed order settling class action, in which plaintiffs had alleged that delays in placements by IDOE violated IDEA. Butler v. Evans, C.A.7 (Ind.) 2000, 225 F.3d 887. Schools 154(3)

Individuals with Disabilities Education Act (IDEA) requires transportation of disabled child as service related to child's special education if that service is necessary for child to benefit from special education, even if that child has no ambulatory impairment that directly causes unique need for some form of specialized transport; only education, not related services, had to correlate to "unique needs" associated with child's specific disability. Donald B. By and Through Christine B. v. Board of School Com'rs of Mobile County, Ala., C.A.11 (Ala.) 1997, 117 F.3d 1371. Schools 159.5(4)

Individuals with Disabilities Education Act (IDEA) would require school district to provide psychological counseling services to disabled student, in event student were found in administrative proceeding to have suffered psychological damage from teacher's allegedly misconceived educational strategy; counseling services were among those required by IDEA to be provided if necessary to assist child with disability to benefit from special education, and student's request for monetary damages unavailable under IDEA would not remove proceeding from process mandated by IDEA. Charlie F. by Neil F. v. Board of Educ. of Skokie School Dist. 68, C.A.7 (Ill.) 1996, 98 F.3d 989. Schools 148(3)

Department of Education regulation excluding cochlear implant mapping as service covered under Individuals with Disabilities Education Act (IDEA) did not contravene IDEA, since mapping was not "related service" designed to meet disabled students' unique needs and prepare them for further education, employment, and independent living; regulation was necessary for agency's compliance with IDEA and did not substantively alter protections embodied in prior regulations, and agency properly determined that fitting of hearing devices did not include technical adjustments. Petit v. U.S. Dept. of Educ., D.D.C.2010, 756 F.Supp.2d 11, affirmed 675 F.3d 769. Schools 148(4)

School committee's individualized education programs (IEP) for high school student who suffered from Asperger's Syndrome, attention deficit hyperactivity disorder, and anxiety disorder were not reasonably calculated to confer meaningful benefit in critical area of independent living skills, thus depriving student of free and appropriate education (FAPE) under Individuals with Disabilities Education Act (IDEA) and Massachusetts law; although IEPs offered social skills class and direct services delivered by special education teacher to address student's organizational deficits, and student received meaningful academic benefit from that support, services were not reasonably calculated to supporting independent living out of high school, such as maintaining self-hygiene and learning transportation skills. Dracut School Committee v. Bureau of Special Educ. Appeals of the Massachusetts Dept. of Elementary and Secondary Educ., D.Mass.2010, 737 F.Supp.2d 35. Schools 148(3)

Although illegal drug use may impede student's ability to take advantage of educational opportunities, drug prevention or intervention by school are not type of "supportive services" required by IDEA in order to provide disabled student with free appropriate public education. Armstrong ex rel. Steffensen v. Alicante School, E.D.Cal.1999, 44 F.Supp.2d 1087. Schools 148(2.1)

The suctioning of a tracheostomy tube is a common, standard maintenance procedure that need not be performed by a physician and therefore is not a "medical service" excluded from school district's obligation to provide related services to disabled child, under the IDEA, even if a nurse is required to perform the procedure, and even if suctioning was to be considered a "medical" service based on Illinois regulations allegedly requiring that a licensed nurse provide the evaluative judgment during child's bus rides regarding whether suctioning was necessary, district was obligated to provide medical services that are "evaluative." Skelly v. Brookfield Lagrange Park School Dist. 95, N.D.Ill.1997, 968 F.Supp. 385. Schools 148(4)

Student whose speech impairment made him "child with a disability" under Individuals with Disabilities Education Act (IDEA) was entitled to weekly speech therapy. Mary P. v. Illinois State Bd. of Educ., N.D.Ill.1996, 919 F.Supp. 1173, amended 934 F.Supp. 989. Schools 148(2.1)

Under IDEA, handicapped school student was entitled to transportation, as related service to her individualized education program, from sidewalk of parochial school to her special education classes at public school; school district representatives had agreed that transportation was necessary due to student's lack of mobility, visual impairment and school location. Felter v. Cape Girardeau School Dist., E.D.Mo.1993, 810 F.Supp. 1062, on reconsideration. Schools 8; Schools 159.5(4)

13. Medical services

The phrase "medical services," as excepted from Individuals with Disabilities Education Act (IDEA) definition of related services that must be provided to disabled child by school district, does not embrace all forms of care that might loosely be described as medical in other contexts, such as a claim for an income tax deduction, but refers to those services that must be performed by a physician. Cedar Rapids Community School Dist. v. Garret F. ex rel. Charlene F., U.S.Iowa 1999, 119 S.Ct. 992, 526 U.S. 66, 161 A.L.R. Fed. 683, 143 L.Ed.2d 154. Schools 148(4)

14. Transition services

Although handicapped student's individualized education plan (IEP) lacked explicit statement of transition services since it did not designate a specific outcome for child when he reached the age of 21 or contain specific set of activities for meeting that outcome, this procedural defect did not deny child free appropriate education under Individuals With Disabilities Education Act (IDEA) where child was not denied transitional services and benefitted from program with which he was provided and IEP completely complied with other requirements of IDEA. Urban by Urban v. Jefferson County School Dist. R-1, C.A.10 (Colo.) 1996, 89 F.3d 720. Schools 148(2.1)

15. Parental placements

Individual with Disabilities Education Act (IDEA) requirements for free appropriate public education are not applicable to parental placements. Florence County School Dist. Four v. Carter By and Through Carter, U.S.S.C.1993, 114 S.Ct. 361, 510 U.S. 7, 126 L.Ed.2d 284. Schools 148(2.1)

Although residential placement was not current educational placement during administrative process began because student's parent had unilaterally placed him there, where no current educational placement had existed, the residential facility was present educational placement to which the "stay put" provisions of Individuals with Disability Education Act (IDEA) applied at the time of judicial hearing. Stockton by Stockton v. Barbour County Bd. of Educ., N.D.W.Va.1995, 884 F.Supp. 201, affirmed 112 F.3d 510. Schools 154(3)

16. Local education agency

Parochial school attended by student who suffered from hearing impairment and learning disability was not a "local education agency" (LEA) within meaning of IDEA, and thus was not subject to liability under IDEA in suit brought by student's parents. Ullmo ex rel. Ullmo v. Gilmour Academy, C.A.6 (Ohio) 2001, 273 F.3d 671. Schools 8

Department of Army was not state or local education agency subject to Individuals with Disabilities Act (IDEA), and thus Department of Defense was not required under IDEA to admit children into Domestic Dependent Elementary and Secondary Schools (DDESS) who lacked fundamental eligibility to attend those schools. Millet v. U.S. Dept. of Army, D.Puerto Rico 2002, 245 F.Supp.2d 344, on reconsideration. Schools 154(2.1)

17. Charter schools

For-profit charter schools were ineligible for federal funding under Individuals with Disabilities Education Act (IDEA) and Elementary and Secondary Education Act (ESEA), which defined eligible schools as "nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law"; natural reading of statute established that only nonprofit schools were eligible for funding, to read statute as including for-profit charter schools would not be rational interpretation, and legislative history conveyed Congress's clear intent to exclude for-profit schools from funding. Arizona State Bd. For Charter Schools v. U.S. Dept. of Educ., C.A.9 (Ariz.) 2006, 464 F.3d 1003. Schools 19(1); Schools 148(2.1)

Under Pennsylvania's statutory scheme, charter schools are independent local educational agencies (LEAs) and assume duty to ensure that free appropriate public education (FAPE) is available to a child with a disability in compliance with IDEA and its implementing regulations. R.B. ex rel. Parent v. Mastery Charter School, E.D.Pa.2010, 762 F.Supp.2d 745, stay denied 2011 WL 121901. Schools 148(2.1)

For-profit charter schools were not eligible to receive federal funds under the Elementary and Secondary Education Act (ESEA) and the Individuals with Disabilities Education Act (IDEA); provisions of the statutes making nonprofit schools, "including charter schools," eligible for federal funding plainly required charter schools to be nonprofit to receive such funding. Arizona State Bd. for Charter Schools v. U.S. Dept. of Educ., D.Ariz.2005, 391 F.Supp.2d 800. Schools 19(1)

20 U.S.C.A. § 1401, 20 USCA § 1401

Current through P.L. 112-207 (excluding P.L. 112-199 and 112-206) approved 12-7-12

END OF DOCUMENT

Effective: July 1, 2005

United States Code Annotated Currentness
Title 20. Education
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)
Subchapter II. Assistance for Education of All Children with Disabilities
§ 1411. Authorization; allotment; use of funds; authorization of appropriations

(a) Grants to States

(1) Purpose of grants

The Secretary shall make grants to States, outlying areas, and freely associated States, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this subchapter.

(2) Maximum amount

The maximum amount of the grant a State may receive under this section--

(A) for fiscal years 2005 and 2006 is--

(i) the number of children with disabilities in the State who are receiving special education and related services--

(I) aged 3 through 5 if the State is eligible for a grant under section 1419 of this title; and

(II) aged 6 through 21; multiplied by

(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; and

(B) for fiscal year 2007 and subsequent fiscal years is--

(i) the number of children with disabilities in the 2004-2005 school year in the State who received special

education and related services--

(I) aged 3 through 5 if the State is eligible for a grant under section 1419 of this title; and

(II) aged 6 through 21; multiplied by

(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by

(iii) the rate of annual change in the sum of--

(I) 85 percent of such State's population described in subsection (d)(3)(A)(i)(II); and

(II) 15 percent of such State's population described in subsection (d)(3)(A)(i)(III).

(b) Outlying areas and freely associated States; Secretary of the Interior

(1) Outlying areas and freely associated States

(A) Funds reserved

From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve not more than 1 percent, which shall be used--

(i) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

(ii) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this subchapter, but only if the freely associated State meets the applicable requirements of this subchapter, as well as the requirements of section 1411(b)(2)(C) of this title as such section was in effect on the day before December 3, 2004.

(B) Special rule

The provisions of Public Law 95-134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to the outlying areas or the freely associated States under this section.

(C) Definition

In this paragraph, the term “freely associated States” means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(2) Secretary of the Interior

From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (h).

(c) Technical assistance

(1) In general

The Secretary may reserve not more than 1/2 of 1 percent of the amounts appropriated under this subchapter for each fiscal year to provide technical assistance activities authorized under section 1416(i) of this title.

(2) Maximum amount

The maximum amount the Secretary may reserve under paragraph (1) for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(d) Allocations to States

(1) In general

After reserving funds for technical assistance, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under subsections (b) and (c) for a fiscal year, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

(2) Special rule for use of fiscal year 1999 amount

If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or

(4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

(3) Increase in funds

If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

(A) Allocation of increase

(i) In general

Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year--

(I) to each State the amount the State received under this section for fiscal year 1999;

(II) 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education under this subchapter; and

(III) 15 percent of those remaining funds to States on the basis of the States' relative populations of children described in subclause (II) who are living in poverty.

(ii) Data

For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(B) Limitations

Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

(i) Preceding year allocation

No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

(ii) Minimum

No State's allocation shall be less than the greatest of--

(I) the sum of--

(aa) the amount the State received under this section for fiscal year 1999; and

(bb) 1/3 of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

(II) the sum of--

(aa) the amount the State received under this section for the preceding fiscal year; and

(bb) that amount multiplied by the percentage by which the increase in the funds appropriated for this section from the preceding fiscal year exceeds 1.5 percent; or

(III) the sum of--

(aa) the amount the State received under this section for the preceding fiscal year; and

(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated for this section from the preceding fiscal year.

(iii) Maximum

Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of--

(I) the amount the State received under this section for the preceding fiscal year; and

(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

(C) Ratable reduction

If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

(4) Decrease in funds

If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(A) Amounts greater than fiscal year 1999 allocations

If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of--

(i) the amount the State received under this section for fiscal year 1999; and

(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

(B) Amounts equal to or less than fiscal year 1999 allocations

(i) In general

If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999, each State shall be allocated the amount the State received for fiscal year 1999.

(ii) Ratable reduction

If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

(e) State-level activities

(1) State administration

(A) In general

For the purpose of administering this subchapter, including paragraph (3), section 1419 of this title, and the coordination of activities under this subchapter with, and providing technical assistance to, other programs

that provide services to children with disabilities--

(i) each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or $800,000 (adjusted in accordance with subparagraph (B)), whichever is greater; and

(ii) each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under subsection (b)(1) for the fiscal year or $35,000, whichever is greater.

(B) Cumulative annual adjustments

For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust--

(i) the maximum amount the State was eligible to reserve for State administration under this subchapter for fiscal year 2004; and

(ii) $800,000,

by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(C) Certification

Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 1412(a)(12)(A) of this title are current.

(D) Subchapter III

Funds reserved under subparagraph (A) may be used for the administration of subchapter III, if the State educational agency is the lead agency for the State under such subchapter.

(2) Other State-level activities

(A) State-level activities

(i) In general

Except as provided in clause (iii), for the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

(ii) Small State adjustment

Notwithstanding clause (i) and except as provided in clause (iii), in the case of a State for which the maximum amount reserved for State administration is not greater than $850,000, the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2005 and 2006, not more than 10.5 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, such State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

(iii) Exception

If a State does not reserve funds under paragraph (3) for a fiscal year, then--

(I) in the case of a State that is not described in clause (ii), for fiscal year 2005 or 2006, clause (i) shall be applied by substituting “9.0 percent” for “10 percent”; and

(II) in the case of a State that is described in clause (ii), for fiscal year 2005 or 2006, clause (ii) shall be applied by substituting “9.5 percent” for “10.5 percent”.

(B) Required activities

Funds reserved under subparagraph (A) shall be used to carry out the following activities:

(i) For monitoring, enforcement, and complaint investigation.

(ii) To establish and implement the mediation process required by section 1415(e) of this title, including providing for the cost of mediators and support personnel.

(C) Authorized activities

Funds reserved under subparagraph (A) may be used to carry out the following activities:

(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.

(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.

(iii) To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.

(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.

(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.

(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.

(vii) To assist local educational agencies in meeting personnel shortages.

(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

(ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools.

(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 6311(b) and 7301 of this title.

(xi) To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services as defined in 6316(e) of this title to children with disabilities, in schools or local educational agencies identified for improvement under section 6316 of this title on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including

providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 6311(b)(2)(G) of this title.

(3) Local educational agency risk pool

(A) In general

(i) Reservation of funds

For the purpose of assisting local educational agencies (including a charter school that is a local educational agency or a consortium of local educational agencies) in addressing the needs of high need children with disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under paragraph (2)(A)--

(I) to establish and make disbursements from the high cost fund to local educational agencies in accordance with this paragraph during the first and succeeding fiscal years of the high cost fund; and

(II) to support innovative and effective ways of cost sharing by the State, by a local educational agency, or among a consortium of local educational agencies, as determined by the State in coordination with representatives from local educational agencies, subject to subparagraph (B)(ii).

(ii) Definition of local educational agency

In this paragraph the term "local educational agency" includes a charter school that is a local educational agency, or a consortium of local educational agencies.

(B) Limitation on uses of funds

(i) Establishment of high cost fund

A State shall not use any of the funds the State reserves pursuant to subparagraph (A)(i), but may use the funds the State reserves under paragraph (1), to establish and support the high cost fund.

(ii) Innovative and effective cost sharing

A State shall not use more than 5 percent of the funds the State reserves pursuant to subparagraph (A)(i)

for each fiscal year to support innovative and effective ways of cost sharing among consortia of local educational agencies.

(C) State plan for high cost fund

(i) Definition

The State educational agency shall establish the State's definition of a high need child with a disability, which definition shall be developed in consultation with local educational agencies.

(ii) State plan

The State educational agency shall develop, not later than 90 days after the State reserves funds under this paragraph, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan shall--

(I) establish, in coordination with representatives from local educational agencies, a definition of a high need child with a disability that, at a minimum--

(aa) addresses the financial impact a high need child with a disability has on the budget of the child's local educational agency; and

(bb) ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 7801 of this title) in that State;

(II) establish eligibility criteria for the participation of a local educational agency that, at a minimum, takes into account the number and percentage of high need children with disabilities served by a local educational agency;

(III) develop a funding mechanism that provides distributions each fiscal year to local educational agencies that meet the criteria developed by the State under subclause (II); and

(IV) establish an annual schedule by which the State educational agency shall make its distributions from the high cost fund each fiscal year.

(iii) Public availability

The State shall make its final State plan publicly available not less than 30 days before the beginning of

the school year, including dissemination of such information on the State website.

(D) Disbursements from the high cost fund

(i) In general

Each State educational agency shall make all annual disbursements from the high cost fund established under subparagraph (A)(i) in accordance with the State plan published pursuant to subparagraph (C).

(ii) Use of disbursements

Each State educational agency shall make annual disbursements to eligible local educational agencies in accordance with its State plan under subparagraph (C)(ii).

(iii) Appropriate costs

The costs associated with educating a high need child with a disability under subparagraph (C)(i) are only those costs associated with providing direct special education and related services to such child that are identified in such child's IEP.

(E) Legal fees

The disbursements under subparagraph (D) shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure a free appropriate public education for such child.

(F) Assurance of a free appropriate public education

Nothing in this paragraph shall be construed--

(i) to limit or condition the right of a child with a disability who is assisted under this subchapter to receive a free appropriate public education pursuant to section 1412(a)(1) of this title in the least restrictive environment pursuant to section 1412(a)(5) of this title; or

(ii) to authorize a State educational agency or local educational agency to establish a limit on what may be spent on the education of a child with a disability.

(G) Special rule for risk pool and high need assistance programs in effect as of January 1, 2004

Notwithstanding the provisions of subparagraphs (A) through (F), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to high need students based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in subparagraph (C)(ii)(I).

(H) Medicaid services not affected

Disbursements provided under this paragraph shall not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act [42 U.S.C.A. § 1396 et seq.].

(I) Remaining funds

Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) shall be allocated to local educational agencies for the succeeding fiscal year in the same manner as funds are allocated to local educational agencies under subsection (f) for the succeeding fiscal year.

(4) Inapplicability of certain prohibitions

A State may use funds the State reserves under paragraphs (1) and (2) without regard to--

(A) the prohibition on commingling of funds in section 1412(a)(17)(B) of this title; and

(B) the prohibition on supplanting other funds in section 1412(a)(17)(C) of this title.

(5) Report on use of funds

As part of the information required to be submitted to the Secretary under section 1412 of this title, each State shall annually describe how amounts under this section--

(A) will be used to meet the requirements of this chapter; and

(B) will be allocated among the activities described in this section to meet State priorities based on input from local educational agencies.

(6) Special rule for increased funds

A State may use funds the State reserves under paragraph (1)(A) as a result of inflationary increases under paragraph (1)(B) to carry out activities authorized under clause (i), (iii), (vii), or (viii) of paragraph (2)(C).

(7) Flexibility in using funds for subchapter III

Any State eligible to receive a grant under section 1419 of this title may use funds made available under paragraph (1)(A), subsection (f)(3), or section 1419(f)(5) of this title to develop and implement a State policy jointly with the lead agency under subchapter III and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with subchapter III to children with disabilities who are eligible for services under section 1419 of this title and who previously received services under subchapter III until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

(f) Subgrants to local educational agencies

(1) Subgrants required

Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 1413 of this title for use in accordance with this subchapter.

(2) Procedure for allocations to local educational agencies

For each fiscal year for which funds are allocated to States under subsection (d), each State shall allocate funds under paragraph (1) as follows:

(A) Base payments

The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 1411(d) of this title as section 1411(d) was then in effect.

(B) Allocation of remaining funds

After making allocations under subparagraph (A), the State shall--

(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency's jurisdiction; and

(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

(3) Reallocation of funds

If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this subchapter that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other local educational agencies.

(g) Definitions

In this section:

(1) Average per-pupil expenditure in public elementary schools and secondary schools in the United States

The term “average per-pupil expenditure in public elementary schools and secondary schools in the United States” means--

(A) without regard to the source of funds--

(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia; plus

(ii) any direct expenditures by the State for the operation of those agencies; divided by

(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(2) State

The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(h) Use of amounts by Secretary of the Interior

(1) Provision of amounts for assistance

(A) In general

The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (b)(2) for that fiscal year. Of the amount described in the preceding sentence--

(i) 80 percent shall be allocated to such schools by July 1 of that fiscal year; and

(ii) 20 percent shall be allocated to such schools by September 30 of that fiscal year.

(B) Calculation of number of children

In the case of Indian students aged 3 to 5, inclusive, who are enrolled in programs affiliated with the Bureau of Indian Affairs (referred to in this subsection as the “BIA”) schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to October 7, 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this subchapter for those children, in accordance with paragraph (2).

(C) Additional requirement

With respect to all other children aged 3 to 21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this subchapter are implemented.

(2) Submission of information

The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that--

(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 1412 of this title (including monitoring and evaluation activities) and 1413 of this title;

(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this subchapter with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures related to the requirements described in subparagraph (A);

(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 1418 of this title;

(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this subchapter, and will fulfill its duties under this subchapter.

(3) Applicability

The Secretary shall withhold payments under this subsection with respect to the information described in paragraph (2) in the same manner as the Secretary withholds payments under section 1416(e)(6) of this title.

(4) Payments for education and services for Indian children with disabilities aged 3 through 5

(A) In general

With funds appropriated under subsection (i), the Secretary of Education shall make payments to the Secret-

ary of the Interior to be distributed to tribes or tribal organizations (as defined under section 450b of Title 25) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (b)(2).

(B) Distribution of funds

The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(C) Submission of information

To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

(D) Use of funds

The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The tribe or tribal organization shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(E) Biennial report

To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

(F) Prohibitions

None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

(5) Plan for coordination of services

The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this chapter. Such plan shall provide for the coordination of services benefiting those children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. The plan shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State educational agencies and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

(6) Establishment of advisory board

To meet the requirements of section 1412(a)(21) of this title, the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 1441 of this title in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall--

(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

(B) advise and assist the Secretary of the Interior in the performance of the Secretary of the Interior's responsibilities described in this subsection;

(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention services or educational programming for

Indian infants, toddlers, and children with disabilities; and

(E) provide assistance in the preparation of information required under paragraph (2)(D).

(7) Annual reports

(A) In general

The advisory board established under paragraph (6) shall prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

(B) Availability

The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

(i) Authorization of appropriations

For the purpose of carrying out this subchapter, other than section 1419 of this title, there are authorized to be appropriated--

(1) $12,358,376,571 for fiscal year 2005;

(2) $14,648,647,143 for fiscal year 2006;

(3) $16,938,917,714 for fiscal year 2007;

(4) $19,229,188,286 for fiscal year 2008;

(5) $21,519,458,857 for fiscal year 2009;

(6) $23,809,729,429 for fiscal year 2010;

(7) $26,100,000,000 for fiscal year 2011; and

(8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.

CREDIT(S)

(Pub.L. 91-230, Title VI, § 611, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2662.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2004 Acts. House Conference Report No. 108-779, see 2004 U.S. Code Cong. and Adm. News, p. 2480.

Statement by President, see 2004 U.S. Code Cong. and Adm. News, p. S43.

References in Text

This subchapter, referred to in text, originally read "this part", meaning part B of the Individuals with Disabilities Education Act, Pub.L. 91-230, Title VI, § 611 et seq., as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2662, which is classified to this subchapter.

Public Law 95-134, referred to in subsec. (b)(1)(B), is the Omnibus Territories Act of 1977, Pub.L. 95-134, Oct. 15, 1977, 91 Stat. 1159. The provisions of that law relating to the consolidation of grants are contained in section 501 thereof, which is classified to 48 U.S.C.A. § 1469a.

Subchapter III, referred to in subsec. (e)(1)(D), (7), originally read "part C", meaning part C of the Individuals with Disabilities Education Act, Pub.L. 91-230, Title VI, § 631 et seq., as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2744, which is classified to subchapter III of this chapter, 20 U.S.C.A. § 1431 et seq.

Title XIX of the Social Security Act, referred to in subsec. (e)(3)(H), is Act Aug. 14, 1935, c. 531, Title XIX, § 1901 et seq., as added July 30, 1965, Pub.L. 89-97, Title I, § 121(a), 79 Stat. 343, and amended, which is classified to subchapter XIX of chapter 7 of Title 42, 42 U.S.C.A. § 1396 et seq.

This chapter, referred to in subsecs. (e)(5)(A), (h)(5), originally read "this title", meaning Title VI of Pub.L. 91-230, Title VI, §§ 601 to 682, as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2647, popularly known as the Individuals with Disabilities Education Act, also known as IDEA, which is classified to this chapter.

Codifications

Title VI of Pub.L. 91-230, as amended by Pub.L. 108-446, is set out as subchapters I to IV of this chapter consisting of 20 U.S.C.A. §§ 1400 to 1482. These sections are shown as having been added by Pub.L. 108-446 without reference to the intervening amendments to Pub.L. 91-230 between 1970 and 2004 because of the ex-

tensive revision of the provisions of Title VI of Pub.L. 91-230 pursuant to Pub.L. 108-446.

Effective and Applicability Provisions

2004 Acts. Amendments by Pub.L. 108-446, Title I, which revised this section, effective July 1, 2005, see Pub.L. 108-446, § 302(a), (b), set out as a note under 20 U.S.C.A. § 1400.

Prior Provisions

A prior section 1411, Pub.L. 91-230, Title VI, § 611, as added Pub.L. 105-17, Title I, § 101, June 4, 1997, 111 Stat. 49, relating to allotments, use of funds, and appropriations, was omitted in the general amendment of Pub.L. 91-230, Title VI, § 611, by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2662.

Another prior section 1411, Pub.L. 91-230, Title VI, § 611, Apr. 13, 1970, 84 Stat. 178; Pub.L. 93-380, Title VI, § 614(a), (e)(1), (2), Aug. 21, 1974, 88 Stat. 580, 582; Pub.L. 94-142, §§ 2(a)(1) to (3), 5(a), (c), Nov. 29, 1975, 89 Stat. 773, 776, 794; Pub.L. 95-561, Title XIII, 1341(a), Nov. 1, 1978, 92 Stat. 2364; Pub.L. 96-270, § 13, June 14, 1980, 94 Stat. 498; Pub.L. 98-199, §§ 3(b), 15, Dec. 2, 1983, 97 Stat. 1358, 1374; Pub.L. 99-159, Title VI, § 601, Nov. 22, 1985, 99 Stat. 904; Pub.L. 99-362, § 2, July 9, 1986, 100 Stat. 769; Pub.L. 99-457, Title II, § 201(b), Title IV, §§ 403, 404, Oct. 8, 1986, 100 Stat. 1158, 1173; Pub.L. 100-630, Title I, § 102(a), Nov. 7, 1988, 102 Stat. 3290; Pub.L. 101-476, Title II, § 201, Title IX, § 901(b)(25) to (32), Oct. 30, 1990, 104 Stat. 1111, 1143; Pub.L. 102-73, Title VIII, § 802(d)(2), (3), July 25, 1991, 105 Stat. 361; Pub.L. 102-119, § 25(b), Oct. 7, 1991, 105 Stat. 607; Pub.L. 102-119, §§ 4, 25(a)(4),(19), (b), Oct. 7, 1991, 105 Stat. 587, 606, 607; Pub.L. 103-382, Title III, § 311, Oct. 20, 1994, 108 Stat. 3931, relating to entitlements and allocations, was omitted in the general amendment of Pub.L. 91-230, Title VI, § 611, by Pub.L. 105-17, Title I, § 101, June 4, 1997, 111 Stat. 49.

Authorization of Appropriations

Section 2(e) of Pub.L. 94-142 provided that: "Notwithstanding the provisions of section 611 of the Act [this section] as in effect during the fiscal years 1976 and 1977, there are authorized to be appropriated $100,000,000 for the fiscal year 1976, such sums as may be necessary for the period beginning July 1, 1976, and ending September 30, 1976, and $200,000,000 for the fiscal year 1977, to carry out the provisions of part B of the Act [this subchapter], as in effect during such fiscal years."

Duties and Responsibilities of Secretary of Interior Respecting Funds

Pub.L. 92-318, Title IV, § 421(b)(2), June 23, 1972, 86 Stat. 341, which related to duties and responsibilities of the Secretary of the Interior with respect to funds, for purposes of subchapters I and II [section 821 et seq.] of chapter 24 of this title, this section, and sections 1412 to 1414 of this title, was repealed by Pub.L. 100-297, Title V, § 5352(4), Apr. 28, 1988, 102 Stat. 414.

Handicapped Children Eligible for Services Provided by Bureau of Indian Affairs; Study and Report to Congress

Pub.L. 100-297, Title V, § 5107(b), Apr. 28, 1988, 102 Stat. 369, as amended Pub.L. 100-427, § 2(b)(2), Sept. 9, 1988, 102 Stat. 1604, directed the Comptroller General to conduct a study relating to the numbers of children with disabilities eligible for services provided by the Bureau of Indian Affairs, with a report to be submitted to Congress on the results of the study no later than Apr. 28, 1989.

Rules and Regulations for Determining Specific Learning Disabilities, Diagnostic Procedures, and Monitoring Procedures; Promulgation by Commissioner of Education; Review of Regulations by Congressional Committees

Section 5(b) of Pub.L. 94-142, authorized the Commissioner of Education to prescribe specified rules and regulations to determine specific learning disabilities, diagnostic procedures, and monitoring procedures, subject to review and comment by Congressional Committees.

LAW REVIEW COMMENTARIES

Education for All Handicapped Children Act: Trends and Problems with the "related services" provision. Comment, 18 Golden Gate U.L.Rev. 427 (1988).

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27 ALR, Fed. 2nd Series 341, Jurisdiction of Court to Award Attorney's Fees as Part of Costs Under Individuals With Disabilities Education Act, 20 U.S.C.A. § 1415(i)(3)(B).

161 ALR, Fed. 1, What Constitutes Services that Must be Provided by Federally Assisted Schools Under the In-

dividuals With Disabilities Education Act (IDEA) (20 U.S.C.A. §§ 1400 et seq.).

147 ALR, Fed. 613, Construction and Application of 28 U.S.C.A. § 2403 (And Similar Predecessor Provisions), Concerning Intervention by United States or by State in Certain Federal Court Cases Involving Constitutionality Of...

62 ALR, Fed. 376, Exhaustion of State Administrative Remedies Under § 615 of the Education for All Handicapped Children Act (20 U.S.C.A. § 1415).

63 ALR, Fed. 215, Actions, Under 42 U.S.C.A. § 1983, for Violations of Federal Statutes Pertaining to Rights of Handicapped Persons.

64 ALR, Fed. 792, Appropriateness of State Administrative Procedures Under § 615 of Education for All Handicapped Children Act (20 U.S.C.A. § 1415).

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Americans With Disab. Pract. & Compliance Manual § 11:3, Applicability of 34 C.F.R. Part 300 to State, Local, and Private Agencies.

Americans With Disab. Pract. & Compliance Manual § 11:12, Elementary School; Secondary School; Charter School; Institution of Higher Education.

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Americans With Disab. Pract. & Compliance Manual § 11:43, Maximum Amounts.

Americans With Disab. Pract. & Compliance Manual § 11:44, Funds Reserved for Outlying Areas and Freely Associated States, Secretary of Interior, Technical Assistance.

Americans With Disab. Pract. & Compliance Manual § 11:45, Application for Funds by Freely Associated State.

Americans With Disab. Pract. & Compliance Manual § 11:47, Increase in Funds.

Americans With Disab. Pract. & Compliance Manual § 11:48, Decrease in Funds.

Americans With Disab. Pract. & Compliance Manual § 11:49, State Administration.

Americans With Disab. Pract. & Compliance Manual § 11:50, State Administration--Use of Funds for Infants and Toddlers With Disabilities.

Americans With Disab. Pract. & Compliance Manual § 11:51, Other State-Level Activities.

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Americans With Disab. Pract. & Compliance Manual § 11:53, Local Educational Agency High Cost Fund--Sea Development of State Plan.

Americans With Disab. Pract. & Compliance Manual § 11:54, Local Educational Agency High Cost Fund--Limits on Disbursements.

Americans With Disab. Pract. & Compliance Manual § 11:55, Report on Use of Funds.

Americans With Disab. Pract. & Compliance Manual § 11:56, Subgrants Required.

Americans With Disab. Pract. & Compliance Manual § 11:57, Reallocation of Funds.

Americans With Disab. Pract. & Compliance Manual § 11:58, Provision of Amounts for Assistance.

Americans With Disab. Pract. & Compliance Manual § 11:59, Submission of Information.

Americans With Disab. Pract. & Compliance Manual § 11:61, Payments for Education and Services for Indian Children With Disabilities Aged Three Through Five.

Americans With Disab. Pract. & Compliance Manual § 11:62, Payments for Education and Services for Indian Children With Disabilities Aged Three Through Five--Use of Funds.

Americans With Disab. Pract. & Compliance Manual § 11:63, Payments for Education and Services for Indian Children With Disabilities Aged Three Through Five--Biennial Report; Prohibitions.

Americans With Disab. Pract. & Compliance Manual § 11:64, Plan for Coordination of Services.

Americans With Disab. Pract. & Compliance Manual § 11:65, Establishment of Advisory Board.

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Americans With Disab. Pract. & Compliance Manual § 11:312, Annual Report.

Americans With Disab. Pract. & Compliance Manual § 11:315, Disproportionality.

Americans With Disab. Pract. & Compliance Manual § 11:317, Duty to Provide; Eligibility.

Americans With Disab. Pract. & Compliance Manual § 11:394, Identification and Coordination of Services.

West's Federal Administrative Practice § 4806, Special Education--State Grants (Federal Program No. 84.027).

NOTES OF DECISIONS

1. Distribution by States to local districts

The IDEA does not entitle a local school district to reimbursement from the state for some or all of the expense when district must reimburse parents for a disabled child's private education; a local educational agency that has received its share of the federal appropriation must provide for services out of that share, and it cannot collect more from the state by way of contribution, and section of IDEA providing that a state is liable to the same extent as any other public entity does not authorize contribution. Board of Educ. of Oak Park and River Forest High School Dist. No. 200 v. Kelly E., C.A.7 (Ill.) 2000, 207 F.3d 931, certiorari denied 121 S.Ct. 70, 531 U.S.

824, 148 L.Ed.2d 34. Schools 155.5(5)

In light of federal regulations which required state of Missouri to distribute only 75% of discretionary funds to local districts and fact that there was no persuasive evidence that state's handling of such funds resulted in local districts refusing to consider the needs of handicapped children for summer school, District Court would not order state defendants to provide 85% of its discretionary funds to local districts for summer programming for handicapped students. Yaris v. Special School Dist. of St. Louis County, E.D.Mo.1984, 599 F.Supp. 926, amended 604 F.Supp. 914, affirmed 780 F.2d 724, certiorari denied 106 S.Ct. 2896, 476 U.S. 1172, 90 L.Ed.2d 982. Schools 155.5(5)

2. State regulations

Emergency regulations adopted by New York State Board of Regents (NYSBR), upon recommendation of New York State Education Department (NYSED), that limited the use of "aversives," including contingent food programs, the use of helmets on some children, mechanical restraints, and the application of electric skin shocks through a graduated electronic decelerator (GED), on students with severe behavioral problems, did not facially violate IDEA; regulations' limitation and gradual phasing out of aversives was consistent with IDEA's focus on positive behavioral modification methods, there existed a split of authority in the professional community as to the benefits of aversives versus positive behavior, United States Department of Education reviewed the finalized regulations and indicated belief that they could be implemented consistent with IDEA, emergency regulations were promulgated after consideration of numerous articles on behavioral interventions, unsolicited public commentary, and consultations with educational experts, emergency passage was warranted based on suit against state authorities alleging aversive abuse at a special education school, and finalized regulations were adopted after three public hearings and a public comment period, during which there was a substantial outcry for the complete prohibition of aversives. Alleyne v. New York State Educ. Dept., N.D.N.Y.2010, 691 F.Supp.2d 322. Schools 148(3)

20 U.S.C.A. § 1411, 20 USCA § 1411

Current through P.L. 112-207 (excluding P.L. 112-199 and 112-206) approved 12-7-12

END OF DOCUMENT

Effective: July 1, 2005

United States Code Annotated Currentness
Title 20. Education
Chapter 33. Education of Individuals with Disabilities (Refs & Annos)
Subchapter II. Assistance for Education of All Children with Disabilities
§ 1412. State eligibility

(a) In general

A State is eligible for assistance under this subchapter for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(1) Free appropriate public education

(A) In general

A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

(B) Limitation

The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children--

(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this subchapter be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility--

(I) were not actually identified as being a child with a disability under section 1401 of this title; or

(II) did not have an individualized education program under this subchapter.

(C) State flexibility

A State that provides early intervention services in accordance with subchapter III to a child who is eligible for services under section 1419 of this title, is not required to provide such child with a free appropriate public education.

(2) Full educational opportunity goal

The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

(3) Child find

(A) In general

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

(B) Construction

Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed in section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this subchapter.

(4) Individualized education program

An individualized education program, or an individualized family service plan that meets the requirements of section 1436(d) of this title, is developed, reviewed, and revised for each child with a disability in accordance with section 1414(d) of this title.

(5) Least restrictive environment

(A) In general

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(B) Additional requirement

(i) In general

A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.

(ii) Assurance

If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

(6) Procedural safeguards

(A) In general

Children with disabilities and their parents are afforded the procedural safeguards required by section 1415 of this title.

(B) Additional procedural safeguards

Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this chapter will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(7) Evaluation

Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 1414 of this title.

(8) Confidentiality

Agencies in the State comply with section 1417(c) of this title (relating to the confidentiality of records and information).

(9) Transition from subchapter III to preschool programs

Children participating in early intervention programs assisted under subchapter III, and who will participate in preschool programs assisted under this subchapter, experience a smooth and effective transition to those preschool programs in a manner consistent with section 1437(a)(9) of this title. By the third birthday of such a child, an individualized education program or, if consistent with sections 1414(d)(2)(B) and 1436(d) of this title, an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 1435(a)(10) of this title.

(10) Children in private schools

(A) Children enrolled in private schools by their parents

(i) In general

To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this subchapter by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

(I) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this subchapter.

(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.

(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.

(ii) Child find requirement

(I) In general

The requirements of paragraph (3) (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools.

(II) Equitable participation

The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.

(III) Activities

In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency's public school children.

(IV) Cost

The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).

(V) Completion period

Such child find process shall be completed in a time period comparable to that for other students attend-

ing public schools in the local educational agency.

(iii) Consultation

To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding--

(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

(II) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;

(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.

(iv) Written affirmation

When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

(v) Compliance

(I) In general

A private school official shall have the right to submit a complaint to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

(II) Procedure

If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

(vi) Provision of equitable services

(I) Directly or through contracts

The provision of services pursuant to this subparagraph shall be provided--

(aa) by employees of a public agency; or

(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.

(II) Secular, neutral, nonideological

Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

(vii) Public control of funds

The control of funds used to provide special education and related services under this subparagraph, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the

uses and purposes provided in this chapter, and a public agency shall administer the funds and property.

(B) Children placed in, or referred to, private schools by public agencies

(i) In general

Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this subchapter or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

(ii) Standards

In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served have all the rights the children would have if served by such agencies.

(C) Payment for education of children enrolled in private schools without consent of or referral by the public agency

(i) In general

Subject to subparagraph (A), this subchapter does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

(ii) Reimbursement for private school placement

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

(iii) Limitation on reimbursement

The cost of reimbursement described in clause (ii) may be reduced or denied--

(I) if--

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa);

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 1415(b)(3) of this title, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(iv) Exception

Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement--

(I) shall not be reduced or denied for failure to provide such notice if--

(aa) the school prevented the parent from providing such notice;

(bb) the parents had not received notice, pursuant to section 1415 of this title, of the notice requirement in clause (iii)(I); or

(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and

(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if--

(aa) the parent is illiterate or cannot write in English; or

(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.

(11) State educational agency responsible for general supervision

(A) In general

The State educational agency is responsible for ensuring that--

(i) the requirements of this subchapter are met;

(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency--

(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

(II) meet the educational standards of the State educational agency; and

(iii) in carrying out this subchapter with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

(B) Limitation

Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

(C) Exception

Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this subchapter are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(12) Obligations related to and methods of ensuring services

(A) Establishing responsibility for services

The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

(i) Agency financial responsibility

An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

(ii) Conditions and terms of reimbursement

The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

(iii) Interagency disputes

Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(iv) Coordination of services procedures

Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

(B) Obligation of public agency

(i) In general

If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any ser-

vices that are also considered special education or related services (such as, but not limited to, services described in section 1401(1) relating to assistive technology devices, 1401(2) relating to assistive technology services, 1401(26) relating to related services, 1401(33) relating to supplementary aids and services, and 1401(34) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

(ii) Reimbursement for services by public agency

If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

(C) Special rule

The requirements of subparagraph (A) may be met through--

(i) State statute or regulation;

(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

(13) Procedural requirements relating to local educational agency eligibility

The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this subchapter without first affording that agency reasonable notice and an opportunity for a hearing.

(14) Personnel qualifications

(A) In general

The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this subchapter are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(B) Related services personnel and paraprofessionals

The qualifications under subparagraph (A) include qualifications for related services personnel and paraprofessionals that--

(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this subchapter to be used to assist in the provision of special education and related services under this subchapter to children with disabilities.

(C) Qualifications for special education teachers

The qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school is highly qualified by the deadline established in section 6319(a)(2) of this title.

(D) Policy

In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this subchapter to children with disabilities.

(E) Rule of construction

Notwithstanding any other individual right of action that a parent or student may maintain under this subchapter, nothing in this paragraph shall be construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be

highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this subchapter.

(15) Performance goals and indicators

The State--

(A) has established goals for the performance of children with disabilities in the State that--

(i) promote the purposes of this chapter, as stated in section 1400(d) of this title;

(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 6311(b)(2)(C) of this title;

(iii) address graduation rates and dropout rates, as well as such other factors as the State may determine; and

(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 6311(b)(2)(C)(v)(II)(cc) of this title; and

(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A), which may include elements of the reports required under section 6311(h) of this title.

(16) Participation in assessments

(A) In general

All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 6311 of this title, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

(B) Accommodation guidelines

The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

(C) Alternate assessments

(i) In general

The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.

(ii) Requirements for alternate assessments

The guidelines under clause (i) shall provide for alternate assessments that--

(I) are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and

(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 6311(b)(1) of this title, measure the achievement of children with disabilities against those standards.

(iii) Conduct of alternate assessments

The State conducts the alternate assessments described in this subparagraph.

(D) Reports

The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

(E) Universal design

The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.

(17) Supplementation of State, local, and other Federal funds

(A) Expenditures

Funds paid to a State under this subchapter will be expended in accordance with all the provisions of this subchapter.

(B) Prohibition against commingling

Funds paid to a State under this subchapter will not be commingled with State funds.

(C) Prohibition against supplantation and conditions for waiver by Secretary

Except as provided in section 1413 of this title, funds paid to a State under this subchapter will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this subchapter and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

(18) Maintenance of State financial support

(A) In general

The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(B) Reduction of funds for failure to maintain support

The Secretary shall reduce the allocation of funds under section 1411 of this title for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

(C) Waivers for exceptional or uncontrollable circumstances

The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that--

(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this subchapter.

(D) Subsequent years

If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(19) Public participation

Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

(20) Rule of construction

In complying with paragraphs (17) and (18), a State may not use funds paid to it under this subchapter to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student

attendance or enrollment, or inflation.

(21) State advisory panel

(A) In general

The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

(B) Membership

Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population, and be composed of individuals involved in, or concerned with, the education of children with disabilities, including--

(i) parents of children with disabilities (ages birth through 26);

(ii) individuals with disabilities;

(iii) teachers;

(iv) representatives of institutions of higher education that prepare special education and related services personnel;

(v) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.);

(vi) administrators of programs for children with disabilities;

(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

(viii) representatives of private schools and public charter schools;

(ix) not less than 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

(x) a representative from the State child welfare agency responsible for foster care; and

(xi) representatives from the State juvenile and adult corrections agencies.

(C) Special rule

A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities (ages birth through 26).

(D) Duties

The advisory panel shall--

(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 1418 of this title;

(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this subchapter; and

(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

(22) Suspension and expulsion rates

(A) In general

The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--

(i) among local educational agencies in the State; or

(ii) compared to such rates for nondisabled children within such agencies.

(B) Review and revision of policies

If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this chapter.

(23) Access to instructional materials

(A) In general

The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register.

(B) Rights of State educational agency

Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(C) Preparation and delivery of files

If a State educational agency chooses to coordinate with the National Instructional Materials Access Center, not later than 2 years after December 3, 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to--

(i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or

(ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(D) Assistive technology

In carrying out this paragraph, the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

(E) Definitions

In this paragraph:

(i) National Instructional Materials Access Center

The term "National Instructional Materials Access Center" means the center established pursuant to section 1474(e) of this title.

(ii) National Instructional Materials Accessibility Standard

The term "National Instructional Materials Accessibility Standard" has the meaning given the term in section 1474(e)(3)(A) of this title.

(iii) Specialized formats

The term "specialized formats" has the meaning given the term in section 1474(e)(3)(D) of this title.

(24) Overidentification and disproportionality

The State has in effect, consistent with the purposes of this chapter and with section 1418(d) of this title, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 1401 of this title.

(25) Prohibition on mandatory medication

(A) In general

The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 1414 of this title, or receiving services under this chapter.

(B) Rule of construction

Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).

(b) State educational agency as provider of free appropriate public education or direct services

If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency--

(1) shall comply with any additional requirements of section 1413(a) of this title, as if such agency were a local educational agency; and

(2) may use amounts that are otherwise available to such agency under this subchapter to serve those children without regard to section 1413(a)(2)(A)(i) of this title (relating to excess costs).

(c) Exception for prior State plans

(1) In general

If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this subchapter as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this subchapter.

(2) Modifications made by State

Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

(3) Modifications required by the Secretary

If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this chapter are amended (or the regulations developed to carry out this chapter are amended), there is a new interpretation of this chapter by a Federal court or a State's highest court, or there is an official finding

of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this subchapter.

(d) Approval by the Secretary

(1) In general

If the Secretary determines that a State is eligible to receive a grant under this subchapter, the Secretary shall notify the State of that determination.

(2) Notice and hearing

The Secretary shall not make a final determination that a State is not eligible to receive a grant under this subchapter until after providing the State--

(A) with reasonable notice; and

(B) with an opportunity for a hearing.

(e) Assistance under other Federal programs

Nothing in this chapter permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act [42 U.S.C.A. §§ 701 et seq.,1396 et seq.] with respect to the provision of a free appropriate public education for children with disabilities in the State.

(f) By-pass for children in private schools

(1) In general

If, on December 2, 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements that shall be subject to the requirements of such subsection.

(2) Payments

(A) Determination of amounts

If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing--

(i) the total amount received by the State under this subchapter for such fiscal year; by

(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 1418 of this title.

(B) Withholding of certain amounts

Pending final resolution of any investigation or complaint that may result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).

(C) Period of payments

The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

(3) Notice and hearing

(A) In general

The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

(B) Review of action

If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's

action, as provided in section 2112 of Title 28.

(C) Review of findings of fact

The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Jurisdiction of court of appeals; review by United States Supreme Court

Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

CREDIT(S)

(Pub.L. 91-230, Title VI, § 612, as added Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2676.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2004 Acts. House Conference Report No. 108-779, see 2004 U.S. Code Cong. and Adm. News, p. 2480.

Statement by President, see 2004 U.S. Code Cong. and Adm. News, p. S43.

References in Text

This subchapter, referred to in text, originally read “this part”, meaning part B of the Individuals with Disabilities Education Act, Pub.L. 91-230, Title VI, § 611 et seq., as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2662, which is classified to this subchapter.

This chapter, referred to in text, originally read “this title”, meaning Title VI of Pub.L. 91-230, Title VI, §§ 601 to 682, as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2647, popularly known as the Individuals with Disabilities Education Act, also known as IDEA, which is classified to this chapter.

Subchapter III, referred to in subsec. (a)(1)(C), (9) originally read “part C”, meaning part C of the Individuals

with Disabilities Education Act, Pub.L. 91-230, Title VI, § 631 et seq., as revised generally by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2744, which is classified to subchapter III of this chapter, 20 U.S.C.A. § 1431 et seq.

Subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, referred to in subsec. (a)(11)(A)(iii), (21)(B)(v), is Pub.L. 100-77, Title VII, Subtitle B, § 721 et seq., as added Pub.L. 107-110, Title X, § 1032, Jan. 8, 2002, 115 Stat. 1989, as amended, which is classified principally to part B of subchapter VI of chapter 119 of Title 42, 42 U.S.C.A. § 11431 et seq.

The Controlled Substances Act, referred to in subsec. (a)(25)(A), is Title II of Pub.L. 91-513, Title II, § 101, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (section 801 et seq.) of chapter 13 of Title 21, 21 U.S.C.A. § 801 et seq. For complete classification, see Short Title note set out under 21 U.S.C.A. § 801 and Tables.

The effective date of the Individuals with Disabilities Education Improvement Act of 2004, referred to in subsec. (c)(1), is the effective date of Pub.L. 108-446, Dec. 3, 2004, 118 Stat. 2647, which enacted this section. See Pub.L. 108-446, § 302, set out as an Effective and Applicability Provisions note under 20 U.S.C.A. § 1400, which provides an effective date of July 1, 2005 for this section.

Title V of the Social Security Act, referred to in subsec. (e), is Act Aug. 14, 1935, c. 531, Title V, § 501 et seq., as added Aug. 13, 1981, Pub.L. 97-35, Title XXI, § 2192(a), 95 Stat. 818, and amended, which is classified to subchapter V of chapter 7 of Title 42, 42 U.S.C.A. § 701 et seq.

Title XIX of the Social Security Act, referred to in subsec. (e), is Act Aug. 14, 1935, c. 531, Title XIX, § 1901 et seq., as added July 30, 1965, Pub.L. 89-97, Title I, § 121(a), 79 Stat. 343, and amended, which is classified to subchapter XIX of chapter 7 of Title 42, 42 U.S.C.A. § 1396 et seq.

Codifications

Title VI of Pub.L. 91-230, as amended by Pub.L. 108-446, is set out as subchapters I to IV of this chapter consisting of 20 U.S.C.A. §§ 1400 to 1482. These sections are shown as having been added by Pub.L. 108-446 without reference to the intervening amendments to Pub.L. 91-230 between 1970 and 2004 because of the extensive revision of the provisions of Title VI of Pub.L. 91-230 pursuant to Pub.L. 108-446.

Effective and Applicability Provisions

2004 Acts. Amendments by Pub.L. 108-446, Title I, which revised this section, effective July 1, 2005, see Pub.L. 108-446, § 302(a), (b), set out as a note under 20 U.S.C.A. § 1400.

Prior Provisions

A prior section 1412, Pub.L. 91-230, Title VI, § 612, as added Pub.L. 105-17, Title I, § 101, June 4, 1997, 111 Stat. 60, relating to State eligibility, was omitted in the general amendment of Pub.L. 91-230, Title VI, § 612, by Pub.L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2676.

Another prior section 1412, Pub.L. 91-230, Title VI, § 612, Apr. 13, 1970, 84 Stat. 178; Pub.L. 92-318, Title IV, § 421(b)(1)(C), June 23, 1972, 86 Stat. 341; Pub.L. 93-380, Title VI, §§ 614(b), (f)(1), 615(a), Title VIII, § 843(b), Aug. 21, 1974, 88 Stat. 581, 582, 611; Pub.L. 94-142, §§ 2(a)(4), (c), (d), 5(a), Nov. 29, 1975, 89 Stat. 773, 774, 780; Pub.L. 98-199, § 3(b), Dec. 2, 1983, 97 Stat. 1358; Pub.L. 99-457, Title II, § 203(a), Oct. 8, 1986, 100 Stat. 1158; Pub.L. 100-630, Title I, § 102(b), Nov. 7, 1988, 102 Stat. 3291; Pub.L. 101-476, Title IX, § 901(b)(33) to (46), (c), Oct. 30, 1990, 104 Stat. 1143, 1144, 1151; Pub.L. 102-119, § 25(a)(5), (b), Oct. 7, 1991, 105 Stat. 606, 607, relating to eligibility requirements, was omitted in the general amendment of Pub.L. 91-230, Title VI, § 612, by Pub.L. 105-17, Title I, § 101, June 4, 1997, 111 Stat. 60.

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Federal Procedure, Lawyers Edition § 42:1530, Establishing State Eligibility for Assistance.

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Federal Procedure, Lawyers Edition § 42:1548, Placement in Alternative Educational Setting.

West's Federal Administrative Practice App. N, Title 20 --Individuals With Disabilities Education Act.

NOTES OF DECISIONS

I. GENERALLY

<Subdivision Index>

1. Law governing

The Education of the Handicapped Act (EHA) creates only federal minimum which must be complied with by states regarding provision of services to handicapped children, although states may structure educational programs which exceed the federal level. In re Conklin, C.A.4 (Md.) 1991, 946 F.2d 306. Schools 148(2.1)

Placement of children at private facility by Oregon agency for medical reasons was related to goal of providing children with free appropriate public education in accordance with Education for All Handicapped Children Act, even though children were referred from variety of sources including parents; Mental Health Division of Oregon Department of Human Resources determined which children were admitted and which children remained at facility. Kerr Center Parents Ass'n v. Charles, C.A.9 (Or.) 1990, 897 F.2d 1463, on remand. Schools 154(4)

Massachusetts standard requiring its Department of Education to administer special education programs to assure maximum possible development of child with special needs required a level of substantive benefits superior to that under the Education of the Handicapped Act, §§ 602-620, as amended, 20 U.S.C.A. §§ 1401-1420, and thus, Massachusetts standard would be incorporated into the federal Act to require that individualized implementation plan for adolescent child with Down's Syndrome address child's special educational needs so as to assure his maximum possible development in least restrictive environment consistent with such goal. David D. v. Dartmouth School Committee, C.A.1 (Mass.) 1985, 775 F.2d 411, certiorari denied 106 S.Ct. 1790, 475 U.S. 1140, 90 L.Ed.2d 336. Schools 148(3)

Education of Handicapped Act (EHA) establishes minimum requirements, or floor, that states must meet, but states may exceed that federal minimum; EHA incorporates by reference state standards that exceed federal floor. Norton School Committee v. Massachusetts Dept. of Educ., D.Mass.1991, 768 F.Supp. 900. Schools 148(2.1)

When handicapped student seeks review under Education of the Handicapped Act of state agency's decision regarding appropriate education, state standard for educating the handicapped may be enforced when it exceeds federal standard. Pink by Crider v. Mt. Diablo Unified School Dist., N.D.Cal.1990, 738 F.Supp. 345. Federal Courts 433

When state's special education statute mandates that state and subordinate governmental units provide higher level of educational opportunity for handicapped students, content of term "free appropriate education," as found in portion of Education of the Handicapped Act which incorporates state standards, necessarily changes. Barwacz v. Michigan Dept. of Educ., W.D.Mich.1987, 674 F.Supp. 1296. Schools 148(2.1)

State regulations enacted pursuant to this chapter do not confer greater rights to therapeutic services than those mandated directly by this chapter. Max M. v. Thompson, N.D.Ill.1984, 592 F.Supp. 1437, on reconsideration 629 F.Supp. 1504. Schools 148(2.1)

2. Construction with other laws

Parent of disabled student failed to state claim for relief under § 1983 based on IDEA violations; parent did not allege facts from which court could infer that District of Columbia Public Schools (DCPS) had custom or practice that was moving force behind alleged IDEA violation, that exceptional circumstances existed, or that normal remedies offered under IDEA were inadequate to compensate student for harm he allegedly suffered. Jackson v. District of Columbia, D.D.C.2011, 826 F.Supp.2d 109. Schools 155.5(2.1)

Student's parents alleged only that school district deemed student eligible for accommodation under Rehabilitation Act, but did not assert that district acted in bad faith or with gross misjudgment or that district denied student access to Free Appropriate Public Education (FAPE) because of his disability, thus precluding parents' claim under Act. P.C. v. Oceanside Union Free School Dist., E.D.N.Y.2011, 818 F.Supp.2d 516. Schools 148(2.1)

Garden-variety IDEA violations did not reasonably suggest existence of bad faith or gross misconduct, and thus did not give rise to viable discrimination claim under Rehabilitation Act. Alston v. District of Columbia, D.D.C.2011, 770 F.Supp.2d 289. Schools 148(2.1)

A school's failure to notify parents of its Individuals with Disabilities Education Act (IDEA) duties could violate the Rehabilitation Act. Taylor v. Altoona Area School Dist., W.D.Pa.2010, 737 F.Supp.2d 474. Schools 148(2.1)

Requirement of Individuals with Disabilities Education Act (IDEA) to provide learning-disabled child with "free appropriate education" does not displace compensation for "special education" authorized under National Childhood Vaccine Injury Act; statutes seek accomplishment of different objectives and, thus, what may suffice as acceptable special education plan under IDEA is not to be taken as measure of compensation awardable under Vaccine Act. Thomas v. Secretary of Department of Health and Human Services, Fed.Cl.1992, 27 Fed.Cl. 384. Health 389

Need of student for behavioral modification for basic education skills was encompassed by IDEA, and so residential placement necessary for those skills was primary responsibility of the state under IDEA, not the Vaccine Act. Taylor By and Through Taylor v. Secretary of Dept. of Health and Human Services, Cl.Ct.1991, 24 Cl.Ct. 433. Health 389

3. Retroactive effect

Court of Appeals would not, in interpreting provisions of prior version of Individuals with Disabilities Education Act (IDEA) governing provision of educational services in parochial school setting, give retroactive effect to amendments thereto, or to rationale behind those amendments. Peter v. Wedl, C.A.8 (Minn.) 1998, 155 F.3d 992, rehearing and suggestion for rehearing en banc denied , on remand 35 F.Supp.2d 1134. Schools 154(4)

IDEA amendments which related to use of federal funds for benefit of children voluntarily enrolled in private schools did not apply retroactively, absent clear indication that Congress intended amendments merely to clarify IDEA, rather than change IDEA. Fowler v. Unified School Dist. No. 259, Sedgwick County, Kan., C.A.10 (Kan.) 1997, 128 F.3d 1431. Schools 8; Schools 148(2.1)

Statute, which requires schools to provide free, appropriate public education for handicapped children, did not become effective until October 1, 1977 and, therefore, conferred no rights upon handicapped student who had been enrolled before effective date. Gallagher v. Pontiac School Dist., C.A.6 (Mich.) 1986, 807 F.2d 75. Schools 10

4. State regulation or control

The public school district's failure to conduct a functional behavioral assessment (FBA), in accordance with New York State regulation, in developing the individualized education program (IEP) for a student diagnosed with autism and other behavioral disabilities was not a procedural violation of the Individuals with Disabilities in Education Act (IDEA) that deprived the student of a free appropriate public education (FAPE); the IEP provided for strategies to address student's behavioral problems, by requiring a personal aide to prompt student to focus during class, and by providing for psychiatric and psychological assessments and services, and the special education teacher did not believe that an FBA was warranted. A.C. ex rel. M.C. v. Board of Educ. of The Chappaqua Central School Dist., C.A.2 (N.Y.) 2009, 553 F.3d 165. Schools 148(3)

Graduation of disabled student violated the IDEA where, at the time of her graduation, student was 18 and had not completed Arkansas's secondary education program, nor had her parent been given prior written notice of the graduation decision or an opportunity challenge it, and where the graduation took place in 1995, before IDEA was amended to provide for the transfer of parental rights to the disabled child at age 18 if child is not adjudicated incompetent. Birmingham v. Omaha School Dist., C.A.8 (Ark.) 2000, 220 F.3d 850, rehearing and rehearing en banc denied. Schools 148(2.1)

New Hampshire administrative regulation requiring public school district to either present acceptable individual-

ized education program or seek administrative enforcement for disabled student was authorized by both Individuals with Disabilities Education Act and state implementing statute. Murphy v. Timberlane Regional School Dist., C.A.1 (N.H.) 1994, 22 F.3d 1186, certiorari denied 115 S.Ct. 484, 513 U.S. 987, 130 L.Ed.2d 396. Schools 155.5(1)

California's statutory scheme mandating that handicapped three to five-year-old students may, when appropriate, be placed in program that only provides designed instruction and services (DIS) without simultaneous special education was not inconsistent with Individuals with Disabilities Education Act (IDEA) and therefore, Court of Appeals would enforce California's statutory scheme. Union School Dist. v. Smith, C.A.9 (Cal.) 1994, 15 F.3d 1519, certiorari denied 115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 341. Schools 148(2.1); States 18.25

Appropriate educational goals for disabled student under Individuals with Disabilities Education Act (IDEA) and method of best achieving those goals are matters which are to be established in first instance by states; courts must be careful to avoid imposing their view of preferable educational methods upon states, and primary responsibility for formulating education to be accorded disabled child, and for choosing educational method most suitable to child's needs, was left by Congress to state and local educational agencies in cooperation with child's parents or guardian. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 155.5(2.1)

Florida statute governing education of handicapped children did not provide learning disabled high school student with independent state law right to remain in particular school during pendency of proceeding under Individuals with Disabilities Education Act (IDEA) challenging his transfer to another school; statute's use of term "educational assignment" in its "stay put" provision, rather than term "educational placement" employed in IDEA, did not create any substantive rights beyond those enforceable under IDEA. Hill By and Through Hill v. School Bd. for Pinellas County, M.D.Fla.1997, 954 F.Supp. 251, affirmed 137 F.3d 1355. Schools 154(2.1)

Ohio statute permitting county to charge home for tuition for two disabled resident children, although it did not directly permit charging children's nonresident parents, contravened IDEA, which did not permit state which received federal funding to charge parents or guardians of resident disabled children, since home was demanding that parents reimburse it for tuition expense. Wise v. Ohio Dept. of Educ., N.D.Ohio 1994, 863 F.Supp. 570, reversed 80 F.3d 177, rehearing and suggestion for rehearing en banc denied. Schools 148(2.1); States 18.25

New Jersey imposes higher standard of special education than the basic floor required by Individuals with Disabilities Education Act (IDEA) and as a result, local school boards in New Jersey are required to provide educational services according to how the student can best achieve success in learning. D.R. by M.R. v. East Brunswick Bd. of Educ., D.N.J.1993, 838 F.Supp. 184, on remand 94 N.J.A.R.2d (EDS) 145, 1994 WL 514779. Schools 148(2.1)

While this chapter intrudes somewhat into a state's traditional decision-making role in educating the handicapped, it was not intended to totally supplant a state's prerogative in allocating limited financial resources and, hence, competing interests must be balanced to reach a reasonable accommodation, with consideration given

fact that excessive expenditures to meet the demands of one handicapped child ultimately reduce the amount that can be spent to meet the needs of the other handicapped children. Pinkerton v. Moye, W.D.Va.1981, 509 F.Supp. 107. Schools 148(2.1)

5. Rules and regulations

Term "placement" in IDEA implementing regulation does not mean a particular school, but rather a setting, such as regular classes, special education classes, special schools, home instruction, or hospital or institution-based instruction. White ex rel. White v. Ascension Parish School Bd., C.A.5 (La.) 2003, 343 F.3d 373. Schools 154(2.1)

Regulation adopted pursuant to Education of the Handicapped Act requiring school district to choose location that is "as close as possible" to child's home did not mandate that school district place handicapped child at elementary school nearest to her home, where individualized education program team would not have chosen that school as location of her placement, given inadequate physical access for handicapped children in that school. Schuldt v. Mankato Independent School, Dist. No. 77, C.A.8 (Minn.) 1991, 937 F.2d 1357, rehearing denied, certiorari denied 112 S.Ct. 937, 502 U.S. 1059, 117 L.Ed.2d 108. Schools 154(2.1)

Regulation requiring that handicapped children be given equal opportunity for participation in extracurricular activities conflicts with the Education for All Handicapped Children Act, which only requires that child's individualized educational plan, in its entirety, be reasonably calculated to enable child to receive educational benefits. Rettig v. Kent City School Dist., C.A.6 (Ohio) 1986, 788 F.2d 328, certiorari denied 106 S.Ct. 3297, 478 U.S. 1005, 92 L.Ed.2d 711. Schools 148(2.1)

Regulations giving local school boards the right to initiate due process appeals in IDEA disputes with parents were valid; absent standing for board, decisionmaking authority could be transferred from school board to parents, contravening IDEA, and board's fulfillment of statutory obligations would be impaired, although parents complained that board's right would inconvenience parents who wish to make unilateral placement of student. Yates v. Charles County Bd. of Educ., D.Md.2002, 212 F.Supp.2d 470. Schools 155.5(1)

Approval by United States Department of Education's Office of Special Education Programs (OSEP) of state Board of Education's plan for compliance with least restrictive environment (LRE) requirements of Individuals with Disabilities Education Act (IDEA) did not preclude judicial review of plan for IDEA compliance; IDEA expressly provided for independent judicial review, and both IDEA and other statutes provided private right of action for parents and guardians of disabled students. Corey H. v. Board of Educ. of City of Chicago, N.D.Ill.1998, 995 F.Supp. 900. Schools 155.5(2.1)

Individuals with Disabilities Education Act (IDEA) imposes dual requirements on states and their school districts; they must provide personalized instruction with sufficient support services to permit child to benefit educationally from that instruction, and construct program in least restrictive educational environment appropriate to needs of child. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 148(2.1)

Although regulations implementing this chapter direct that placement be as close as possible to child's home and that unless an individualized education program require some other arrangement placement must be at the school the child would attend if not handicapped, county did not violate by placing learning disabled child in a suitable "self-contained" program at a school in a neighboring county as there were limited number of students needing such program, no program existed at school child would normally attend and school to which child would be sent was centrally located although six miles farther from child's home. Pinkerton v. Moye, W.D.Va.1981, 509 F.Supp. 107. Schools 154(2.1)

6. Competing interests

Both strong preference for mainstreaming disabled students and requirement that schools provide individualized programs tailored to specific needs of each disabled child are clearly and strongly reflected in Individuals with Disabilities Education Act (IDEA) as written, and public school officials must devise means to reconcile these conflicting but compelling interests. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 148(2.1)

7. Right to education

Education of the Handicapped Act confers upon handicapped child an enforceable substantive right to a free appropriate public education that includes special education and related services designed to meet child's unique needs. Andrews v. Ledbetter, C.A.11 (Ga.) 1989, 880 F.2d 1287. Schools 148(2.1)

Handicapped adolescent's right to education stemmed from provisions of Education of Handicapped Children Act guaranteeing appropriate education to all children between ages of 5 and 18 and Mississippi Constitution and statutes providing for maintenance and establishment of free public schools for all children between 6 and 21 years of age. Jackson v. Franklin County School Bd., C.A.5 (Miss.) 1986, 806 F.2d 623. Schools 148(2.1)

8. Due process

Parents asserted property interest protected by due process when they alleged that county's social services department had placed Medicaid liens on personal injury awards of minor disabled children to recover for costs of education-related services to be provided to children with disabilities as part of their individual education plans under Individuals with Disabilities Education Act (IDEA). Andree ex rel. Andree v. County of Nassau, E.D.N.Y.2004, 311 F.Supp.2d 325. Constitutional Law 4416

9. Proportional services

School district satisfied the requirement of the 1975 Amendment to this chapter, that it provide educational services to handicapped students 18 and older in at least the same proportion as it provides similar services to nonhandicapped peers where ten of 418 handicapped students enrolled in school district were 18 and over and 24 of 3,175 nonhandicapped students enrolled during that year were 18 or over. Timms on Behalf of Timms v. Metropolitan School Dist. of Wabash County, Ind., C.A.7 (Ind.) 1983, 722 F.2d 1310. Schools 148(2.1)

10. Educational agency--Generally

Once local school district informed state department of education that it was unable to provide an appropriate program for severely disabled child who was deaf and blind, and that school district was not a special district, state department became, under Missouri law, direct provider of child's education and thus was required, in order to satisfy its obligation under IDEA and Missouri law to provide child with free appropriate public education (FAPE), to have representative from state department present at child's individualized education program (IEP) meetings. Missouri Dept. of Elementary and Secondary Educ. v. Springfield R-12 School Dist., C.A.8 (Mo.) 2004, 358 F.3d 992. Schools 148(3)

Court, having determined that residential placement was appropriate for severely retarded child, did not err in assigning responsibility to the State Board of Education rather than the local school district. Kruelle v. New Castle County School Dist., C.A.3 (Del.) 1981, 642 F.2d 687. Schools 154(3)

California Department of Education had responsibility by default under IDEA for providing free appropriate public education (FAPE) to parentless child in absence of any California law designating local entity responsible for that education. Orange County Dept. of Educ. v. A.S., C.D.Cal.2008, 567 F.Supp.2d 1165, question certified 650 F.3d 1268, opinion after certified question declined 668 F.3d 1052. Schools 148(2.1)

Where there were at least two means by which children could be placed at school for mentally retarded, either through local education agency or through Division of Mental Health, state scheme of placement violated federal mandate established by subsec. (6) of this section that there be one centralized agency which assumes responsibility for providing a free and appropriate education to handicapped children. Garrity v. Gallen, D.C.N.H.1981, 522 F.Supp. 171. Schools 154(2.1)

11. ---- Duties of educational agency

Substantial evidence supported ALJ's determination that goals in individualized education program (IEP) prepared for non-cognitively impaired student were not based upon reasoned criteria or student's current skill levels, failed to meet student's need for phonemic awareness, failed to provide measurable standards for success, and failed to use prior term's achievements to set next term's goals, and thus that school district violated its duty under IDEA to provide student with free appropriate public education (FAPE), where psychoeducational evaluation did not provide any indication of what, if any, skills student had in area of mathematics, spelling goal was too vague to determine what area of need it addressed, objectives for each reporting period were too vague to be meaningful, and reading goals did not address phonemic awareness or information as to what questions he was expected to ask or answer. Ravenswood City School Dist. v. J.S., N.D.Cal.2012, 2012 WL 2510844. Schools 155.5(4)

Under Pennsylvania's statutory scheme, charter schools are independent local educational agencies (LEAs) and assume duty to ensure that free appropriate public education (FAPE) is available to a child with a disability in compliance with IDEA and its implementing regulations. R.B. ex rel. Parent v. Mastery Charter School, E.D.Pa.2010, 762 F.Supp.2d 745, stay denied 2011 WL 121901. Schools 148(2.1)

State public education department had obligation to compel school district to provide free and appropriate public education (FAPE) for public-school student who qualified for receipt of special education based on autism, or provide direct services to student, under Individuals with Disabilities Education Act (IDEA); local education agency failed to provide student FAPE for two full school years, state department was on notice through letter from parents and conversation with parent that local agency was not providing FAPE to student, and state department had ample time to compel school district to provide FAPE to student or to provide direct services to student before onset of administrative proceedings. Chavez v. Board of Educ. of Tularosa Municipal Schools, D.N.M.2008, 614 F.Supp.2d 1184, clarification denied, motion to amend denied, affirmed in part , reversed in part 621 F.3d 1275. Schools 148(2.1)

Once Kentucky accepted funds from federal government and acceded to administrative and appellate scheme of Education for Handicapped Children Act, state had overriding duty to provide appropriate individualized education program for every handicapped child capable of benefiting from one, and that obligation could require that some children be placed at Kentucky School for the Blind, even if children did not meet school's admission criteria, if placement would be the only way for appropriate IEP to be designed for student. Eva N. v. Brock, E.D.Ky.1990, 741 F.Supp. 626, affirmed 943 F.2d 51. Schools 154(2.1)

State board of education was not relieved from ultimate responsibility for the provision of educational benefits to a handicapped child by the possibility of financial or in-kind assistance from other government or private agencies. William S. v. Gill, N.D.Ill.1983, 572 F.Supp. 509. Schools 148(2.1)

12. ---- Individualized educational program, educational agency

Because education provided each disabled child must be uniquely appropriate for child's educational needs, state must prepare individualized education program (IEP) for each child through joint participation of local education agency, child's teacher, and child's parents. Curtis K. by Delores K. v. Sioux City Community School Dist., N.D.Iowa 1995, 895 F.Supp. 1197.

13. ---- Liability of educational agency

Individuals with Disabilities Education Act (IDEA) does not dictate which district or agency within a state must assume financial liability for special education services, but rather, leaves the assignment and allocation of financial responsibility for special education cost of local school districts to each individual state's legislature. Manchester School Dist. v. Crisman, C.A.1 (N.H.) 2002, 306 F.3d 1. Schools 148(2.1)

District court has authority to award reimbursement costs for private school placement of disabled child against state educational agency, local educational agency, or both in any particular case under Individuals with Disabilities Education Act (IDEA); either or both entities may be held liable for failure to provide free appropriate public education, as district court deems appropriate after considering all relevant factors. St. Tammany Parish School Bd. v. State of La., C.A.5 (La.) 1998, 142 F.3d 776, certiorari dismissed 119 S.Ct. 587, 525 U.S. 1036, 142 L.Ed.2d 490. Schools 155.5(5)

State education agency may be held liable for failure to comply with its duty to assure that substantive requirements of Individuals with Disabilities Education Act (IDEA) are implemented at state and local levels, as agency is statutorily required to ensure that each child within its jurisdiction is provided free appropriate public education, even when local education agency is unwilling or unable to do so. Gadsby by Gadsby v. Grasmick, C.A.4 (Md.) 1997, 109 F.3d 940. Schools 148(2.1)

Office of the State Superintendent of Education (OSSE) could not be held liable in mother's Individuals with Disabilities Education Act (IDEA) action for alleged failure of a local education agency (LEA) charter to provide son with free appropriate public education (FAPE), where District of Columbia Public Schools (DCPS), rather than OSSE, was acting as the state education agency (SEA) responsible for supervision and enforcement. Thomas v. District of Columbia, D.D.C.2011, 773 F.Supp.2d 15. Schools 148(2.1)

When a residential placement of a disabled student is made necessary by a combination of problems, the local education agency (LEA) may be found financially responsible for the placement under the Individuals with Disabilities Education Act (IDEA). Mohawk Trail Regional School Dist. v. Shaun D. ex rel. Linda D., D.Mass.1999, 35 F.Supp.2d 34. Schools 154(3)

14. Delegation of duties

For purposes of determining contract's enforceability, Ohio school district did not abdicate or bargain away its obligation under IDEA to provide disabled student with free appropriate public education (FAPE) by allegedly contracting with private academy, a facility better equipped to deal with student's autism, and in so contracting school district did not relieve itself of obligations to monitor academy for compliance with state-set educational standards or to ensure that academy was meeting requirements of the individualized education program (IEP). Bishop v. Oakstone Academy, S.D.Ohio 2007, 477 F.Supp.2d 876. Schools 154(4)

15. Eligibility for services

Since-repealed Hawai'i regulation, conditioning eligibility for special education on existence of "severe discrepancy" between academic achievement and intellectual ability without permitting use of "response to intervention model," violated IDEA provision prohibiting states from requiring exclusive reliance on "severe discrepancy model" and requiring states to allow use of "response to intervention model." Michael P. v. Department of Educ., C.A.9 (Hawai'i) 2011, 656 F.3d 1057. Schools 148(2.1)

Record in IDEA case did not support classification of plaintiffs' minor child as a "child with a disability" under emotional disturbance prong, and they were not entitled to reimbursement for costs of his unilateral out-of-state placement at residential therapeutic school; evidence preponderated that academic problems he presented were result of his truancy, i.e., that he failed his classes because he refused to attend school, and that his refusal behavior was principally the product of a conduct disorder, narcissistic personality tendencies and substance abuse rather than of depression. W.G. v. New York City Dept. of Educ., S.D.N.Y.2011, 801 F.Supp.2d 142. Schools 154(3); Schools 155.5(4)

Disabilities of student who suffered from major depressive disorder and attention deficit hyperactivity disorder (ADHD), who had undergone psychiatric hospitalizations and made multiple suicide attempts, and who also had other behavioral problems, adversely impacted her educational performance, such that she was entitled to special education services under IDEA, notwithstanding that she had performed well under appropriate programs provided in private schools, in which her parents had unilaterally enrolled her, after school district failed to evaluate her. N.G. v. District of Columbia, D.D.C.2008, 556 F.Supp.2d 11. Schools 148(3)

Student did not exhibit characteristics of emotional disturbance "over a long period of time and to a marked degree," as required to qualify student for special education services under Individuals with Disabilities Education Act (IDEA); student was personable and well-liked by teachers and students and got along well with both groups, and did not demonstrate verbal aggression, physically assaultive behavior, authority conflicts, general pervasive mood of unhappiness or depression, despondency, mood swings, or other conduct typically associated with emotional disturbance while at school. Tracy v. Beaufort County Bd of Ed., D.S.C.2004, 335 F.Supp.2d 675. Schools 148(3)

16. Domicile

Individuals with Disabilities Education Act (IDEA) does not forbid a state from providing and funding a free appropriate public education to a disabled child who may not be a domiciliary of that state, even if the state is not required to do so and the child is a charge under the IDEA upon the custodial parent's state. Manchester School Dist. v. Crisman, C.A.1 (N.H.) 2002, 306 F.3d 1. Schools 148(2.1)

Under the Education of the Handicapped Act (EHA), Arizona was required to provide special education services tuition free to American citizen born to Mexican parents who was within borders of state of Arizona for bona fide reasons, regardless of child's residency status. Sonya C. By and Through Olivas v. Arizona School for the Deaf and Blind, D.Ariz.1990, 743 F.Supp. 700. Schools 153

Domicile plays no role where no state has assumed responsibility for providing education to handicapped person who has resided nearly all her life within borders of the state, and state, at minimum, under such circumstances has obligation to provide child with education. Rabinowitz v. New Jersey State Bd. of Educ., D.C.N.J.1982, 550 F.Supp. 481. Schools 153

17. Private school

Private high school's requirement of performance at the fifth grade level as a condition of placement in mainstream academic high school classes could not violate IDEA because the school was not directly subject to the IDEA's standards, though disabled student was placed there because local school district lacked its own high school. St. Johnsbury Academy v. D.H., C.A.2 (Vt.) 2001, 240 F.3d 163. Schools 8

State department of education's conduct of allegedly failing to promulgate standards governing the operation of private entities which provided vocational opportunities to special education students, as required by IDEA, supported a claim under IDEA brought by parents of child who was raped while enrolled in a community based

training program. J.R. ex rel. R. v. Waterbury Bd. of Educ., D.Conn.2001, 272 F.Supp.2d 174. Schools 155.5(2.1)

Once appropriate program is offered by public school system, further enhancements are not required by Education of the Handicapped Act (EHA); moreover, where school system proposes appropriate program, it has no duty to consider nonpublic programs. Doyle v. Arlington County School Bd., E.D.Va.1992, 806 F.Supp. 1253, affirmed 39 F.3d 1176. Schools 148(2.1); Schools 154(4)

18. Transfer of student

School board was not legally obligated, under Individuals with Disabilities Education Act (IDEA), to provide on-site sign language interpreter to student at private school, where student was offered free appropriate individualized education program (IEP) at public schools before voluntarily transferring to private school. Cefalu on Behalf of Cefalu v. East Baton Rouge Parish School Bd., C.A.5 (La.) 1997, 117 F.3d 231. Schools 8; Schools 148(2.1)

When responsibility for providing a disabled child a free appropriate public education (FAPE) under the IDEA transfers from one public agency to another, the new public agency is required only to provide a program that is in conformity with the placement in the last agreed upon individualized education plan (IEP) or individual family service plan (IFSP); the new agency need not, and probably could not, provide the exact same educational program. Pardini v. Allegheny Intermediate Unit, W.D.Pa.2003, 280 F.Supp.2d 447, reversed and remanded 420 F.3d 181, certiorari denied 126 S.Ct. 1646, 547 U.S. 1050, 164 L.Ed.2d 353, on remand 2006 WL 3940563. Schools 148(2.1)

When disabled student changed parochial schools, school committee should have, pursuant to the IDEA, conducted individualized education plan (IEP) meeting to evaluate student's educational needs and ensure that she was provided resource services that complied with the IDEA and its regulatory framework. Bristol Warren Regional School Committee v. Rhode Island Dept. of Educ. and Secondary Educations, D.R.I.2003, 253 F.Supp.2d 236. Schools 148(2.1)

No change in learning disabled high school student's "then current educational placement" under Individuals with Disabilities Education Act (IDEA) resulted from his transfer by school board from high school outside his area of residence to one within his area of residence, where student's individualized educational program (IEP) did not change as result of transfer. Hill By and Through Hill v. School Bd. for Pinellas County, M.D.Fla.1997, 954 F.Supp. 251, affirmed 137 F.3d 1355. Schools 148(2.1)

19. Expelled or suspended students

Individuals with Disabilities Education Act (IDEA) does not require provision of free appropriate public education (FAPE) to handicapped students expelled or suspended for criminal or other serious misconduct wholly unrelated to their disabilities; statute requires only that all handicapped students be provided with right to FAPE, and such right is susceptible of forfeiture through conduct unrelated to a student's disability which so completely

disrupts classroom as to prevent continuation of educational process or which constitutes crime against society. Com. of Va., Dept. of Educ. v. Riley, C.A.4 1997, 106 F.3d 559. Schools 148(2.1)

Charter school denied free appropriate public education (FAPE) to adult learning disabled student when it failed to conduct Functional Behavioral Assessment (FBA) and implement Behavioral Intervention Plan (BIP) following student's suspension and expulsion. Shelton v. Maya Angelou Public Charter School, D.D.C.2008, 578 F.Supp.2d 83. Schools 148(3)

20. Incarcerated children

District of Columbia's failure to provide special education services, pursuant to IDEA individualized education program (IEP), for learning disabled student incarcerated in another state, which provided its own special education services for student, did not breach agreement with student for provision of services, under District of Columbia law, since state officials made it impracticable for District to provide special education services by refusing to allow its educators entry into prison for security reasons. Hester v. District of Columbia, C.A.D.C.2007, 505 F.3d 1283, 378 U.S.App.D.C. 272, rehearing en banc denied. Schools 148(3)

District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education failed to comply with their "Child Find" duties to disabled students in violation of IDEA, at least through and including the year 2007; their attempts to find disabled children in the District through public awareness, outreach, and even direct referrals were inadequate, they actually failed to find these disabled children, proven by the large number of children to whom defendants denied a free appropriate public education (FAPE), and defendants' initial evaluations were inadequate, proven by low number of 65.80% of children that received timely evaluation and by U.S. Office of Special Education Programs' (OSEP's) annual determinations that District did not meet requirement for timely evaluations. DL v. District of Columbia, D.D.C.2010, 730 F.Supp.2d 84. Schools 148(2.1)

Learning disabled student who resided in District of Columbia did not lose his D.C. residence by virtue of being incarcerated in Maryland; thus, District was obligated to provide educational services required under IDEA in accordance with explicit terms of consent order and hearing officer's determination (HOD). Hester v. District of Columbia, D.D.C.2006, 433 F.Supp.2d 71, reversed and remanded 505 F.3d 1283, 378 U.S.App.D.C. 272, rehearing en banc denied. Schools 148(3)

City officials would be required, in order modifying education plan, to include appropriate goals and objectives in temporary education plans (TEP) for city prison inmates who were between ages of 16 and 21 and who were also special education students, on IDEA claims, in class action against city officials by inmates who sought educational services; TEPs developed for inmates attending prison schools did not include goals and objectives to address behavioral or social skills. Handberry v. Thompson, S.D.N.Y.2002, 219 F.Supp.2d 525, vacated and remanded , reinstated 2003 WL 194205, affirmed in part, vacated in part and remanded 436 F.3d 52, opinion amended on rehearing 446 F.3d 335, stay granted in part 2003 WL 1797850. Infants 3135

New individual education plan (IEP) need not be developed for juveniles when they are incarcerated at reception

and evaluation center, and the IEP formulated by the transferor school district must be utilized and implemented to the extent possible; new IEP must be formulated if and when juvenile is sent to long-term institutions. Alexander S. By and Through Bowers v. Boyd, D.S.C.1995, 876 F.Supp. 773, modified on denial of rehearing. Infants 3135

Although incarcerated status of those inmates of Massachusetts county houses of correction under age of 22 and in need of special education services might require adjustments in the particular special education programs available to them as compared to programs available to children with special education needs who were not incarcerated, their incarcerated status did not eviscerate their entitlement to such services under federal and state law. Green v. Johnson, D.C.Mass.1981, 513 F.Supp. 965. Schools 150

21. Duty to identify student with disabilities

School district had reason to suspect that student had disability, and that student may have required special education, as required to comply with its obligation under Individuals with Disabilities Education Act's (IDEA's) Child Find provision to identify, locate, and timely evaluate students with disabilities and to develop methods to ensure that those students received necessary special education, where student exhibited hyperactivity in class, impulsive behaviors, uncontrollable vocalizations, and other related behavioral problems. D.G. ex rel. B.G. v. Flour Bluff Independent School Dist., S.D.Tex.2011, 832 F.Supp.2d 755, subsequent determination 2011 WL 2446375, vacated 2012 WL 1992302. Schools 148(3)

School district's obligation under IDEA's child-find provision to identify student who suffered from an affective disorder and provide her special education services did not end after her parents unilaterally withdrew her from district and placed her in an out-of-state private educational setting, even though district had not previously denied student a free appropriate public education (FAPE); parents continued to reside in district and could seek a FAPE from district as part of a plan to bring student home to a public placement. J.S. v. Scarsdale Union Free School Dist., S.D.N.Y.2011, 826 F.Supp.2d 635. Schools 148(3)

Under District of Columbia law, even if public charter school acting as a local education agency (LEA) violated its child find obligations under IDEA by failing to identify and evaluate student diagnosed with major depressive disorder in order to provide her with free appropriate public education (FAPE), District of Columbia Public Schools (DCPS), which had assumed role as the state education agency (SEA) was not liable to student's mother for LEA's IDEA violations, since public charter school had not notified DCPS that it needed assistance, nor had DCPS been ordered by hearing officer to provide FAPE to student. B.R. ex rel. Rempson v. District of Columbia, D.D.C.2011, 802 F.Supp.2d 153. Schools 148(2.1)

Hearing officer's conclusions regarding school board's duties under IDEA "child find" provisions were supported by substantial evidence; hearing officer concluded that school board "overlooked clear signs of disability" and thus failed to fully evaluate student's suspected disabilities which adversely impacted his academic performance during two school years. School Bd. of the City of Norfolk v. Brown, E.D.Va.2010, 769 F.Supp.2d 928. Schools 155.5(4)

State Department of Public Instruction (DPI) did not satisfy Individuals with Disabilities Education Act (IDEA) requirement that children in need of special education be found and placed, when DPI inspected school district, determined that compliance was unsatisfactory, but then took insufficient action to bring about compliance. Jamie S. v. Milwaukee Public Schools, E.D.Wis.2007, 519 F.Supp.2d 870, clarification denied 2007 WL 4365799, vacated 668 F.3d 481. Schools 148(2.1)

Under Individuals with Disabilities Education Act (IDEA), school board was not required to identify student as special education student, based on psychiatric institute's discharge form for student, before it was entitled to conduct psychological evaluation, and therefore parents were not justified in refusing consent to evaluation on such grounds, given that there was no statutory requirement that student be identified before evaluations that could aid in formulation of individualized education program (IEP) were conducted, that discharge could not alone have formed basis for identification, and that psychological evaluation was relevant to identification. P.S. v. Brookfield Bd. of Educ., D.Conn.2005, 353 F.Supp.2d 306, adhered to on reconsideration 364 F.Supp.2d 237, affirmed 186 Fed.Appx. 79, 2006 WL 1788293. Schools 148(3)

School did not violate its duty, under IDEA, to identify student with disabilities, where all testimony indicated that student's poor marks resulted not from inability to comprehend or understand classroom material, but rather from student's failure or refusal to turn in assignments. Clay T. v. Walton County School Dist., M.D.Ga.1997, 952 F.Supp. 817. Schools 148(2.1)

22. Child find provisions

School district's failure to evaluate student for disabilities until his first-grade year, failure to employ functional behavioral assessment in his evaluation, and refusal to label him disabled under IDEA until his second-grade year was not child find violation under IDEA or Rehabilitation Act, thus foreclosing compensatory education remedy, where school district was not required to jump to conclusion that student's misbehavior denoted disability, as his hyperactivity, difficulty following instructions, and tantrums were typical during early primary school years, student's report cards and conference forms indicated intermittent progress and some academic success, evaluation included four tests covering discrepant skill sets, probed for indicia of varying disabilities, and did not require inclusion of functional behavioral test, student's continuing misbehavior post-evaluation was typical of boys his age rather than requiring immediate reevaluation, and his teachers took proactive steps to provide him extra assistance. D.K. v. Abington School Dist., C.A.3 (Pa.) 2012, 2012 WL 4829193. Schools 148(3)

School district satisfied its child find obligations under the Individuals with Disabilities Education Act (IDEA) and §§ 504 of the Rehabilitation Act; school district routinely posted child find notices in local paper, made information available on its website, sent residents the information in their tax bills, and posters and pamphlets were placed in private schools. P.P. ex rel. Michael P. v. West Chester Area School Dist., C.A.3 (Pa.) 2009, 585 F.3d 727. Schools 148(2.1)

School district could not force child to be evaluated under Individuals with Disabilities Education Act (IDEA) to determine whether child needed special services, under IDEA's child-find provision, since child was privately educated at home by parents who refused to consent to the testing and expressly waived all benefits under the IDEA; purpose of IDEA was to make free appropriate public education (FAPE) available to all children with

disabilities and parents could waive child's right to services. Fitzgerald v. Camdenton R-III School Dist., C.A.8 (Mo.) 2006, 439 F.3d 773. Schools 148(2.1)

Pennsylvania's formula for allocating special-education funding to school districts did not violate IDEA's child-find requirement by creating a disincentive to identify students as eligible for special education services; there was no evidence establishing systematic, or even isolated, violations of child-find requirement as a result of funding formula. CG v. Pennsylvania Dept. of Educ., M.D.Pa.2012, 2012 WL 3639063. Schools 19(1); Schools 148(2.1)

From 2008 to first day of trial in IDEA case, District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education failed to provide free appropriate public education (FAPE) to a substantial number of District of Columbia children with disabilities, ages three to five years old; in 2008 approximately 5.68% of children ages three to five nationwide received Part B special education services whereas that year District of Columbia identified and provided Part B services to 2.72% of children in that age group, the lowest rate in the country and lower than percentage reported for previous year. DL v. District of Columbia, D.D.C.2011, 845 F.Supp.2d 1. Schools 148(2.1)

School district had no obligation under IDEA's child-find provision to identify disabled student and provide her special education services prior to her withdrawal from district during her junior year of high school; student's educational performance did not measurably decline between her freshman and sophomore years, when her affective disorder first manifested itself, her homework and attendance problems during her junior year came on gradually, not becoming problematic until two months before she withdrew, and her psychiatric therapy had previously allowed her to bounce back from her bouts with depression. J.S. v. Scarsdale Union Free School Dist., S.D.N.Y.2011, 826 F.Supp.2d 635. Schools 148(3)

Under IDEA, for purposes of determining whether student was provided with free appropriate public education (FAPE), student was "located and identified" as a potential special education candidate, and school's child find obligations were triggered, upon charter school's referral of student to school district's specialist for psycho-educational evaluation; evaluation diagnosed student with a learning disorder, a developmental coordination disorder, and a possible language disorder, and recommended that school further assess student with a speech-language evaluation, an occupational therapy (OT) evaluation, a clinical evaluation, and a behavior intervention plan (BIP). Long v. District of Columbia, D.D.C.2011, 780 F.Supp.2d 49. Schools 148(3)

School district's actions supported finding that, rather than breaching "child find" provision, it never considered high school student with orthopedic impairment in form of genetic progressive neurological disorder known as Charcot-Marie-Tooth Disease (CMT) to be eligible under the IDEA; district had been aware of student's CMT since she began attending high school in district and was provided Section 504/Americans with Disabilities Act (ADA) plan, and since that time district had made no attempts at assessing student to determine her eligibility under IDEA even when she requested due process hearing. D.R. ex rel. Courtney R. v. Antelope Valley Union High School Dist., C.D.Cal.2010, 746 F.Supp.2d 1132. Schools 148(3)

School district's "child find" duty under the Individuals with Disabilities Education Act (IDEA) was not

triggered to create an individualized education program (IEP) for student with asthma, where student was not experiencing any difficulties with educational performance that would require specially designed instruction, student had average grades, and student was social with other students. Taylor v. Altoona Area School Dist., W.D.Pa.2010, 737 F.Supp.2d 474. Schools 148(2.1)

School officials did not violate their "Child Find" obligation under Individuals with Disabilities Education Act (IDEA) as result of their failure to identify fourth-grade student as suffering from disability requiring his referral to special education, even though student was later diagnosed with non-verbal learning disorder, where school conducted screening for attention deficit disorder (ADD), screening did not diagnose student with ADD, teacher was in regular contact with student's parents about his progress throughout year, teacher used special interventions with student in order to help him with inattention and handwriting, and student had reasonable academic and behavioral performance. A.P. ex rel. Powers v. Woodstock Bd. of Educ., D.Conn.2008, 572 F.Supp.2d 221, affirmed 370 Fed.Appx. 202, 2010 WL 1049297. Schools 148(3)

School district violated provision of Individuals with Disabilities Education Act (IDEA), that children in need of special education be found and placed; identification of prospective referral prospects was not adequate, statutory period following referral during which student was required to be evaluated was exceeded and deadline exceptions were too readily granted, excessive reliance was placed on alternate behavior interventions such as suspensions, and parents were not sufficiently encouraged to attend evaluations. Jamie S. v. Milwaukee Public Schools, E.D.Wis.2007, 519 F.Supp.2d 870, clarification denied 2007 WL 4365799, vacated 668 F.3d 481. Schools 148(3)

State's "child-find" duty under Individuals with Disabilities Education Act (IDEA) includes a requirement that children who are suspected of having a qualifying disability must be identified and evaluated within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability. O.F. ex rel. N.S. v. Chester Upland School Dist., E.D.Pa.2002, 246 F.Supp.2d 409. Schools 148(2.1)

State violated the "child find" provisions of Individuals with Disabilities Education Act (IDEA) by failing to evaluate emotionally impaired student earlier, since state had numerous warning signs much earlier than date when student was evaluated; fact that student subsequently graduated from high school did not demonstrate that State fulfilled the IDEA by providing the student a free and appropriate public education (FAPE). Department of Educ., State of Hawaii v. Cari Rae S., D.Hawai'i 2001, 158 F.Supp.2d 1190. Schools 148(3)

23. Testing and evaluation

State education department's procedures for selecting type of evaluation to administer to potentially disabled child upon request by parent violated Individuals with Disabilities Education Act (IDEA) and Rehabilitation Act; department chose either comprehensive evaluation meant to determine whether child was disabled or evaluation which department purportedly administered to children not suspected of having handicap but still exhibiting "achievement delays," and department had no clear distinction between situations that called for either particular type of test. Pasatiempo by Pasatiempo v. Aizawa, C.A.9 (Hawai'i) 1996, 103 F.3d 796. Schools 155.5(1)

Public school district's failure to evaluate child for purpose of IDEA when child returned to district after year in private school was not violation of IDEA; child was not enrolled in special education at private school, evidence indicated that child was not learning disabled, and informal educational strategy was prepared for child at direction of parents, who did not wish to stigmatize child. Salley v. St. Tammany Parish School Bd., C.A.5 (La.) 1995, 57 F.3d 458. Schools 148(3)

Evidence of disparate impact which use of IQ test had on black children in determining which children should be placed in classes for the educable mentally retarded and absence of evidence of validation of test sustained finding that school officials violated provisions of the Rehabilitation Act and Education for All Handicapped Children Act by not ensuring that tests were validated for specific purpose for which they were used and by not using a variety of statutorily mandated evaluation tools. Larry P. By Lucille P. v. Riles, C.A.9 (Cal.) 1984, 793 F.2d 969. Schools 164

Imposition of minimal competency test requirement on handicapped children does not violate subsec. (5)(C) of this section mandating that no single procedure shall be sole criteria for determining appropriate education program for child where graduation requirements of school district were threefold, earning 17 credits, completing state requirements and passing competency test. Brookhart v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1983, 697 F.2d 179. Schools 178

District failed to properly consider whether child's behavior was impeding his academic progress, and failed to properly evaluate child under Individuals with Disabilities Education Act (IDEA) in light of his considerable intellectual potential; additionally, district denied child a FAPE for period during which district failed to convene individualized education program (IEP) team meeting and develop an IEP with a positive behavior support plan. G.D. ex rel. G.D. v. Wissahickon School Dist., E.D.Pa.2011, 832 F.Supp.2d 455, entered 2011 WL 2411065. Schools 148(3)

School district did not evaluate student within reasonable time after noticing behavioral issues, and therefore violated its obligation under Individuals with Disabilities Education Act's (IDEA's) Child Find provision to identify, locate, and timely evaluate students with disabilities and to develop methods to ensure that those students received necessary special education, where district did not hold admission, review, and dismissal (ARD) meeting until one year after observing student's behavior, during which time student was attending disciplinary program at district's discipline and guidance center, and waited another two months after meeting before making special education services available. D.G. ex rel. B.G. v. Flour Bluff Independent School Dist., S.D.Tex.2011, 832 F.Supp.2d 755, subsequent determination 2011 WL 2446375, vacated 2012 WL 1992302. Schools 148(3)

From 2008 to first day of trial in case, District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education violated IDEA through their failure to comply with their Child Find obligations by identifying and providing timely initial evaluations to all preschool-age children with disabilities in District of Columbia; 44.8% of preschool age children did not receive timely initial evaluations in 2008-09 and 24.91% did not receive timely evaluations in 2009-2010. DL v. District of Columbia, D.D.C.2011, 845 F.Supp.2d 1. Schools 148(2.1)

School district failed to offer student with learning disabilities free and appropriate public education (FAPE), as required by IDEA, even though student was enrolled in private school, where student was domiciled in district, and district denied requests of student's parents for evaluations and individualized education program (IEP) before having to decide whether to continue student's placement at private school for then current and subsequent year or to re-enroll student in public school. Moorestown Tp. Bd. of Educ. v. S.D., D.N.J.2011, 811 F.Supp.2d 1057. Schools 148(3)

School district conducted evaluation of student with diabetes mellitus, adjustment disorder, and social anxiety disorder to determine whether she was qualified for special education and related benefits under Individuals with Disabilities Education Act (IDEA) within 60 days of date on which student's father consented to evaluation, as required by Illinois law pertaining to identification of eligible children for special education, and thus evaluation was timely. Loch v. Board of Educ. of Edwardsville Community School Dist. No. 7, S.D.Ill.2008, 573 F.Supp.2d 1072, motion to amend denied 2008 WL 4899437, affirmed 327 Fed.Appx. 647, 2009 WL 1747897, certiorari denied 130 S.Ct. 1736, 176 L.Ed.2d 212. Schools 148(3)

A functional behavioral assessment (FBA) sought by a student's parent was an "educational evaluation" for purposes of an Individuals with Disabilities Education Act (IDEA) regulation giving parents the right to an independent educational evaluation at public expense, despite claim that the FBA was merely a tool to help students with behavioral, not educational, problems; an FBA was essential to addressing a child's behavioral difficulties, and, as such, it played an integral role in the development of an individualized education plan (IEP). Harris v. District of Columbia, D.D.C.2008, 561 F.Supp.2d 63. Schools 148(3)

Secretary of Education's refusal to approve state's proposed amendment to its plan under the No Child Left Behind (NCLB) Act seeking to assess special education students at instructional rather than grade level, on grounds that amendment violated NCLB mandate that same academic standards apply to all students in the state, was not arbitrary and capricious in violation of the Administrative Procedure Act (APA), despite Secretary's own regulation exempting from testing one percent of special education students; although regulation, which was adopted in the Individuals with Disabilities Act (IDEA), permitted states to provide reasonable accommodations, it did not permit out-of-grade testing. Connecticut v. Spellings, D.Conn.2008, 549 F.Supp.2d 161, affirmed as modified 612 F.3d 107, certiorari denied 131 S.Ct. 1471, 179 L.Ed.2d 360. Schools 148(2.1)

Under the IDEA, hearing officer erred in requiring Massachusetts school district to arrange for and fund twelve-week extended evaluation of disabled student with Wolf-Hirschorn Syndrome at unapproved and unaccredited program in order to inform parties further on issue of whether that program would meet student's needs. Manchester-Essex Regional School Dist. School Committee v. Bureau of Special Educ. Appeals of The Massachusetts Dept. of Educ., D.Mass.2007, 490 F.Supp.2d 49. Schools 148(3)

Assuming that exception existed to school board's right to have student undergo psychological evaluation in determining his eligibility for special education under Individuals with Disabilities Education Act (IDEA), based on parents' alleged fear that student would be harmed by evaluation, exception did not apply to justify parents' refusal to consent to evaluation when there was no evidence that evaluation was likely to harm student, most generous reading of the record supported only the finding that an inappropriate evaluation could harm student

and student's parents were concerned that evaluation might be inappropriate, and hearing officer concluded that parents' true concern was that evaluator would not be impartial. P.S. v. Brookfield Bd. of Educ., D.Conn.2005, 353 F.Supp.2d 306, adhered to on reconsideration 364 F.Supp.2d 237, affirmed 186 Fed.Appx. 79, 2006 WL 1788293. Schools 148(3)

School district failed to provide emotionally disturbed high school student with free appropriate public education (FAPE), as required under IDEA, when it failed to timely refer student to special education committee for evaluation after his mother informed school superintendent that student was experiencing emotional difficulties and school psychologist recommended private school placement. New Paltz Cent. School Dist. v. St. Pierre ex rel. M.S., N.D.N.Y.2004, 307 F.Supp.2d 394. Schools 148(3)

Absent some threat of harm to student, school district, under IDEA, has absolute right to perform its own mandatory three-year reevaluation of student, which is condition precedent to eligibility for special education under Texas law. Andress v. Cleveland ISD, E.D.Tex.1993, 832 F.Supp. 1086. Schools 148(2.1)

Evidence in suit to challenge standard intelligence tests administered by city board of education as culturally biased against black children established that there was practically no possibility that the few arguably racially biased items on the tests could cause a child who would not otherwise be placed in special classes for the educable mentally handicapped to be placed in such classes. Parents in Action on Special Ed. (PASE) v. Hannon, N.D.Ill.1980, 506 F.Supp. 831. Civil Rights 1418

24. Budgetary constraints

Cost considerations when devising appropriate programs for individual handicapped students are only relevant when choosing between several options, all of which offer "appropriate" education. Clevenger v. Oak Ridge School Bd., C.A.6 (Tenn.) 1984, 744 F.2d 514. Schools 154(2.1)

Where school district did not receive funding under this chapter until beginning of its fiscal year in July 1978, it was not subject to either procedural or substantive requirements of this subchapter during the 1977-78 school year. Scokin v. State of Tex., C.A.5 (Tex.) 1984, 723 F.2d 432.

A factor that school district may take into account in placement of disabled student is impact proposed placement would have on limited educational and financial resources. Cheltenham School Dist. v. Joel P. by Suzanne P., E.D.Pa.1996, 949 F.Supp. 346, affirmed 135 F.3d 763. Schools 148(2.1)

State's receipt of federal funds for assistance in educating handicapped children, pursuant to this chapter, required state to comply with its part of bargain, i.e., to provide sufficient funds to cover full cost of their education, and state's budgetary constraints did not excuse it from obligations arising from acceptance of federal funds. Kerr Center Parents Ass'n v. Charles, D.C.Or.1983, 581 F.Supp. 166. Schools 148(2.1)

Inadequacy of funds does not relieve a state of its obligation to assure handicapped child equal access to educa-

tional services. Yaris v. Special School Dist. of St. Louis County, E.D.Mo.1983, 558 F.Supp. 545, affirmed 728 F.2d 1055. Schools 148(2.1)

Having placed handicapped child in a residential treatment facility, various state and local agencies could not refuse to pay for the placement under this chapter because of the facility's alleged failure to be approved for funding. Parks v. Pavkovic, N.D.Ill.1982, 536 F.Supp. 296. Schools 159

State which volunteered to participate in this chapter could not refuse to provide funds necessary to send handicapped child to special schools on theory that, because of budgetary constraints, the state and local school authorities could not afford to spend the sums necessary to send child to such schools and, if sufficient funds were not available to finance all of services and programs needed, available funds must be expended equitably in such manner that no child was entirely excluded from publicly supported education consistent with his needs and ability to benefit therefrom. Hines v. Pitt County Bd. of Ed., E.D.N.C.1980, 497 F.Supp. 403. Schools 154(2.1)

25. Duration of State's duty

Once a student has graduated, he is no longer entitled to a free and appropriate public education (FAPE), and thus any claim that a FAPE was deficient becomes moot upon a valid graduation; rule applies only where a student does not contest his graduation, and where he is seeking only prospective, rather than compensatory, relief. T.S. v. Independent School Dist. No. 54, Stroud, Oklahoma, C.A.10 (Okla.) 2001, 265 F.3d 1090, certiorari denied 122 S.Ct. 1297, 535 U.S. 927, 152 L.Ed.2d 209. Schools 155.5(2.1)

Under provision that IDEA applies to persons "between the ages of 3 and 21, inclusive," the relevant period begins on a child's third birthday and ends on his 22nd birthday, provided that is consistent with State law on the provision of public education, and subject to extension in a proper case. St. Johnsbury Academy v. D.H., C.A.2 (Vt.) 2001, 240 F.3d 163. Schools 148(2.1)

School district was not required, under Individuals with Disabilities Education Act (IDEA), to provide disabled student with hearing on his IDEA claims, since student no longer resided in the school district nor did he go to school there at the time he requested the hearing, and student's mother had received copy of "parents' rights" brochure, which contained notice of parent's right to request due process hearing, and notification that the hearing had to be conducted by "district directly responsible for your child's education." Smith ex rel. Townsend v. Special School Dist. No. 1 (Minneapolis), C.A.8 (Minn.) 1999, 184 F.3d 764. Schools 155.5(1)

School district was not required to continue to provide disabled child with transition services after she graduated from high school under exception to IDEA applicable when state law did not provide for free public education between ages 18 and 21 where South Dakota law only required free public education until student completed secondary program or until age 21 and student was to graduate from high school at age 19. Yankton School Dist. v. Schramm, C.A.8 (S.D.) 1996, 93 F.3d 1369, rehearing and suggestion for rehearing en banc denied. Schools 148(2.1)

Where child was not scheduled to finish high school before her eighteenth birthday, state would still have duty to provide public education until allegedly handicapped child graduated from high school or reached age of 21, whichever was earlier, under Texas Education Code and federal Education of All Handicapped Children Act. Susan R.M. by Charles L.M. v. Northeast Independent School Dist., C.A.5 (Tex.) 1987, 818 F.2d 455. Schools 152

20 U.S.C.A. § 1412, governing requirements for eligibility for assistance as handicapped child, does not create absolute duty of board of education to provide free appropriate public education to handicapped child until age of 21. Wexler v. Westfield Bd. of Educ., C.A.3 (N.J.) 1986, 784 F.2d 176, certiorari denied 107 S.Ct. 99, 479 U.S. 825, 93 L.Ed.2d 49. Schools 148(2.1)

Under this chapter, school district which permitted nonhandicapped students who failed a grade to take that grade over and proceed through normal sequence of grades to graduation, receiving as consequence more than 12 years of free education, was required to provide trainable mentally handicapped student who was in the tenth grade at end of 12 years of schooling with two additional years of free appropriate public education. Helms v. Independent School Dist. No. 3 of Broken Arrow, Tulsa County, Okl., C.A.10 (Okla.) 1984, 750 F.2d 820, certiorari denied 105 S.Ct. 2024, 471 U.S. 1018, 85 L.Ed.2d 305. Schools 148(2.1)

Fact that New Jersey special education student was receiving extended school year (ESY) services in late summer when he turned 21 did not affect end of the school year, and school board had to continue to fund costs of student's residential placement beyond ESY. C.T. ex rel. M.T. v. Verona Bd. of Educ., D.N.J.2006, 464 F.Supp.2d 383. Schools 148(2.1)

State of Indiana had no obligation to provide free appropriate education to handicapped 19-year-old person under either state or federal law where 18 was age limit for free education it provided to nonhandicapped public school children; thus, reimbursement claims for educational expenses for 23-year-old handicapped person were moot. Merrifield v. Lake Cent. School Corp., N.D.Ind.1991, 770 F.Supp. 468. Schools 148(2.1)

This chapter requires North Dakota to give free appropriate education to mentally retarded persons age six to 21 in as normal an education setting as possible. Association for Retarded Citizens of North Dakota v. Olson, D.C.N.D.1982, 561 F.Supp. 473, judgment affirmed, remanded in part on other grounds 713 F.2d 1384, on subsequent appeal 942 F.2d 1235. Schools 148(3)

26. Minimum educational achievement

Individuals with Disabilities Education Act (IDEA) requires states to provide disabled child with meaningful access to education, but it cannot guarantee totally successful results. Walczak v. Florida Union Free School Dist., C.A.2 (N.Y.) 1998, 142 F.3d 119. Schools 148(2.1)

Individuals with Disabilities Education Act (IDEA) contains no substantive requirement regarding level of education to be afforded disabled students or level of achievement they must achieve, nor any requirement that their potential be maximized, but merely requires that states insure that their disabled children receive some form of

specialized education and states that "appropriate education" is afforded if personalized services are provided for child. King v. Board of Educ. of Allegany County, Maryland, D.Md.1998, 999 F.Supp. 750. Schools 148(2.1)

27. Demonstration of benefit

Education of All Handicapped Children Act did not require that a handicapped child demonstrate that he could benefit from special education in order to be eligible for that education. Timothy W. v. Rochester, N.H., School Dist., C.A.1 (N.H.) 1989, 875 F.2d 954, certiorari denied 110 S.Ct. 519, 493 U.S. 983, 107 L.Ed.2d 520. Schools 148(2.1)

28. Monitoring

Lack of guidelines in Individuals with Disabilities Act (IDEA) with respect to monitoring efforts to be made by state agencies responsible for ensuring compliance with IDEA's least restrictive environment (LRE) mandate did not excuse inadequacy of monitoring efforts undertaken by state Board of Education, as state Board was statutorily required to ensure compliance through effective monitoring plan. Corey H. v. Board of Educ. of City of Chicago, N.D.Ill.1998, 995 F.Supp. 900. Schools 148(2.1)

It is responsibility of state educational agency either to make sure that local agencies provide adequate purposes to handicapped children or to provide those services. Yaris v. Special School Dist. of St. Louis County, E.D.Mo.1983, 558 F.Supp. 545, affirmed 728 F.2d 1055. Schools 148(2.1)

29. Termination of funding

State educational agency (SEA) did not violate IDEA or Rehabilitation Act by failing to cut off special education funding to local educational agency (LEA) which had failed to remedy deficiencies in its special education program; SEA reasonably believed that LEA was making good faith effort to move toward compliance, and there was no evidence that LEA's multiple-year delay in attaining compliance was attributable to any failure of SEA to fulfill its supervisory and monitoring responsibilities. A.A. v. Board of Educ., Cent. Islip Union Free School Dist., E.D.N.Y.2003, 255 F.Supp.2d 119, remanded 87 Fed.Appx. 216, 2004 WL 303917, opinion after remand 386 F.3d 455. Schools 148(2.1)

30. Notice

Hearing officer's finding, in denying tuition reimbursement to mother for placement of her child in private reading clinic, that mother's cancer did not excuse her failure to provide notice that she was rejecting placement proposed in Individualized Education Program (IEP) was supported by sufficient evidence; mother's completion of detailed application for the reading clinic indicated that she could take care of her affairs. Rafferty v. Cranston Public School Committee, C.A.1 (R.I.) 2002, 315 F.3d 21. Schools 155.5(4)

School's violation of Education of the Handicapped Act's parental notification requirements in connection with development of individualized educational program did not require relief under Act, where parents fully parti-

cipated in individualized educational program process. Doe v. Alabama State Dept. of Educ., C.A.11 (Ala.) 1990, 915 F.2d 651. Schools 155.5(2.1)

School officials' failure to adequately inform parents of a student with dyslexia of their procedural rights under Education for All Handicapped Children Act when suggesting that the parents hire a tutor and when parents announced their intention to withdraw their son from the public school, in itself, was adequate grounds for holding that school failed to provide student with a free appropriate public education in violation of the Act and North Carolina law. Hall by Hall v. Vance County Bd. of Educ., C.A.4 (N.C.) 1985, 774 F.2d 629.

Impartial Hearing Officer's (HO) finding that school district gave ample notice to student with diabetes mellitus, adjustment disorder, and social anxiety disorder and her parents as to evaluations it was going to conduct of student, its decision that student was not eligible for special education and related services under Individuals with Disabilities Education Act (IDEA), and its decision to remove student from school rolls, even though not required by statute, was well supported by record; student's father was present at collaborative team meeting, and parents received copy of written report that contained ineligibility determinations, as well as other reports. Loch v. Board of Educ. of Edwardsville Community School Dist. No. 7, S.D.Ill.2008, 573 F.Supp.2d 1072, motion to amend denied 2008 WL 4899437, affirmed 327 Fed.Appx. 647, 2009 WL 1747897, certiorari denied 130 S.Ct. 1736, 176 L.Ed.2d 212. Schools 155.5(4)

There was no evidence that school district withheld information from parents of student with diabetes mellitus, adjustment disorder, and social anxiety disorder regarding specific procedures for pursuing referral for case study evaluation of student, as would determine her qualification for special education and related benefits under Individuals with Disabilities Act (IDEA); assistant superintendent explained to student's father how out-of-district placements might be paid for by district if student was eligible, assistant superintendent followed up by sending parents a letter and parents' rights booklet, and parents received copy of school's handbook, which provided information on how to request evaluation. Loch v. Board of Educ. of Edwardsville Community School Dist. No. 7, S.D.Ill.2008, 573 F.Supp.2d 1072, motion to amend denied 2008 WL 4899437, affirmed 327 Fed.Appx. 647, 2009 WL 1747897, certiorari denied 130 S.Ct. 1736, 176 L.Ed.2d 212. Schools 148(3)

Mother of learning disabled student did not violate the notice provision of the Individuals with Disabilities Education Act (IDEA) when placing student in private program; once school officials had turned the placement process over to mother, it was on notice she would act. Lamoine School Committee v. Ms. Z. ex rel. N.S., D.Me.2005, 353 F.Supp.2d 18. Schools 154(4)

School district's notice to parent of placement of student, who had speech and language impairment, did not violate parent's rights under the IDEA, although notice was not completely in accord with IDEA requirements; notice did not compromise any of the parent's rights, including her due process rights, under the IDEA. Shaw v. District of Columbia, D.D.C.2002, 238 F.Supp.2d 127. Schools 154(2.1)

Failure of school district's letters to inform handicapped student's parents of right to due process hearing and letters' failure to comply with notice requirements did not warrant reversal of hearing officer's determination that student was given free and appropriate public education by school district; parent was actively involved with

student's teachers and principal throughout his time in public school system, and they were responsive to parents' concerns and student's needs. Livingston v. DeSoto County School Dist., N.D.Miss.1992, 782 F.Supp. 1173 . Schools 155.5(2.1)

31. Power of court

In case involving student with autism and cerebral palsy, hearing officer exceeded her authority to remedy IDEA violation by expunging statutorily mandated individualized education program (IEP) team and replacing them with service providers from home-based program; potential conflict of interest created by arrangement was evident in that providers had financial interest in prolonging student's home-based program and, more importantly, school district was responsible for orchestrating student's educational needs and developing IEP that would address student's unique circumstances. Anchorage School Dist. v. D.S., D.Alaska 2009, 688 F.Supp.2d 883. Schools 148(3)

Neither a hearing officer nor a court can order Connecticut Department of Mental Health and Addiction Services (DMH) to find a person eligible for its services because this is a discretionary decision left to the superintendent; however, if an otherwise responsible educational or noneducational agency fails to provide disabled children with a free appropriate public education, a district court may issue orders relating to an individual child's entitlement to special education or related services. J.B. v. Killingly Bd. of Educ., D.Conn.1997, 990 F.Supp. 57. Mental Health 20; Schools 155.5(5)

32. Private right of action

Noncustodial parent's allegations that school officials failed to comply with parent's requests for daughter's education records supported parent's IDEA records-access claim. Taylor v. Vermont Dept. of Educ., C.A.2 (Vt.) 2002, 313 F.3d 768. Schools 148(2.1)

There was private right of action for enforcement of complaint resolution procedure (CRP) under the IDEA. Upper Valley Ass'n for Handicapped Citizens v. Mills, D.Vt.1996, 928 F.Supp. 429. Schools 155.5(2.1)

33. Standing

Disabled students had standing to challenge, under Individuals with Disabilities Act (IDEA) and Rehabilitation Act, requirement that they take on same basis as other students California High School Exit Exam (CAHSEE), which must be passed prior to receiving high school diploma, despite prematurity claim that nobody had yet been forced to take test and that state education board had authority to delay date that test passage became graduation requirement. Chapman v. CA Dept. of Educ., N.D.Cal.2002, 229 F.Supp.2d 981, reversed in part 45 Fed.Appx. 780, 2002 WL 31001869, amended and superseded 53 Fed.Appx. 474, 2002 WL 31856343, rehearing and rehearing en banc denied. Schools 155.5(2.1)

34. Jurisdiction

IDEA's incorporation of New York Law in its standards for Free Appropriate Public Education (FAPE) did not

provide district court with jurisdiction over parent's action seeking review of New York State administrative decision holding that school district was obligated by state law to provide student with teacher's aide. Bay Shore Union Free School Dist. v. Kain, C.A.2 (N.Y.) 2007, 485 F.3d 730. Schools 155.5(2.1)

35. Burden of proof

District Court's error was harmless in placing burden of persuasion on parents in school district's challenge under the Individuals with Disabilities Education Act (IDEA) to findings by hearing officer of IDEA violations as to provision of free appropriate public education (FAPE) to elementary school student; hearing officer's errors stemmed largely from mistakes of omissions regarding application of law, which were unaffected by burden of persuasion. Ridley School Dist. v. M.R., C.A.3 (Pa.) 2012, 680 F.3d 260. Schools 155.5(2.1)

Plaintiff bears burden of proof in establishing that state educational agency (SEA) failed to satisfy its IDEA monitoring and supervisory duties. A.A. ex rel. J.A. v. Philips, C.A.2 (N.Y.) 2004, 386 F.3d 455. Schools 155.5(4)

36. Evidence

Purported new evidence offered by disabled student did not establish failure of city education department to provide student with free appropriate public education (FAPE) in violation of Individuals with Disabilities Education Act (IDEA); items were public documents that were available to student's parents at time of administrative hearing, special education service delivery report indicating that school site selected for student did not always deliver full special education services to all of its students requiring them was irrelevant since student's individualized education program (IEP) provided for him to receive therapy at separate location, and stipulation entered in earlier class action also was irrelevant. M.S. ex rel. M.S. v. New York City Dept. of Educ., E.D.N.Y.2010, 734 F.Supp.2d 271. Schools 155.5(4)

School district would not be permitted to benefit from its violation of its obligation under IDEA to evaluate student as potentially in need of special education services by basing its subsequent ineligibility determination, two years later, on her success at private schools in which parents were forced to enroll her after school district defaulted on its obligations, and thus evidence of student's prior dismal performance at district schools was improperly excluded by evaluation team and hearing officer on basis that it did not relate to student's current educational and behavioral status. N.G. v. District of Columbia, D.D.C.2008, 556 F.Supp.2d 11. Schools 155.5(4)

37. Summary judgment

Parties' summary judgment motions were premature on disabled students' class claim that state statute imposing 20-year age limit on admissions to public schools violated IDEA, where record was incomplete as to whether Hawai‘i's education department regularlyencouraged general education students who would otherwise “age out” under state statute to pursue continued education in adult education courses and whether adult education programs and Hawai‘i's secondary education program were similar in nature. R.P.-K. v. Department of Educ., Hawaii, D.Hawai'i 2011, 817 F.Supp.2d 1182. Schools 155.5(5)

Genuine issue of material fact, as to whether charter school's violation of hearing officer's determination (HOD) by refusing to implement it during pendency of appeal resulted in denial of free appropriate public education (FAPE) to adult learning disabled student, precluded summary judgment on that aspect of student's IDEA claim. Shelton v. Maya Angelou Public Charter School, D.D.C.2008, 578 F.Supp.2d 83. Schools 155.5(5)

Genuine issue of material fact as to whether parents' unilateral placement of autistic child in private school was appropriate after they were offered inadequate individualized education program (IEP) that recommended his placement in district program, precluded summary judgment in IDEA suit on parents' claim for tuition reimbursement. A.Y. v. Cumberland Valley School Dist., M.D.Pa.2008, 569 F.Supp.2d 496. Schools 155.5(5)

Genuine issue of material fact existed as to whether individual school administrators abrogated their child find duties, precluding summary judgment in their favor of district defendants on Individuals with Disabilities Education Act (IDEA) claim based on qualified immunity; there were numerous red flags which should have alerted the administrators, including grades which when compared to student's tested ability, demonstrated severe academic underachievement, student's chronic discipline problems from seventh grade onward, and student's test scores. Hicks, ex rel. Hicks v. Purchase Line School Dist., W.D.Pa.2003, 251 F.Supp.2d 1250. Federal Civil Procedure 2491.5

Material issues of fact existed as to whether student was denied free appropriate public education (FAPE) under Individuals with Disabilities Education Act (IDEA) in light of almost 12-month delay between school officials' observation of behavior likely indicating disability and their completion of comprehensive evaluation report (CER), precluding summary judgment for school district on student's claim alleging violation of IDEA. O.F. ex rel. N.S. v. Chester Upland School Dist., E.D.Pa.2002, 246 F.Supp.2d 409. Federal Civil Procedure 2491.5

Material issues of fact existed as to whether student was denied free appropriate public education (FAPE) under Individuals with Disabilities Education Act (IDEA) as a result of length of time that it took to evaluate student and author individualized education plan (IEP) for her, precluding summary judgment for state education department on student's IDEA claim. O.F. ex rel. N.S. v. Chester Upland School Dist., E.D.Pa.2002, 246 F.Supp.2d 409. Federal Civil Procedure 2491.5

38. Injunction

For purposes of request for injunctive relief by class of disabled District of Columbia children, violations by District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education resulted in irreparable injury to all eligible children between ages of three and five years old, inclusive, who lived in, or were wards of, District of Columbia, and whom District did not identify, locate, evaluate, or offer special education and related services, and without access to those special education and related services, preschool-age children in the District of Columbia suffered substantial harm by being denied vital educational opportunities that were essential to their development. DL v. District of Columbia, D.D.C.2011, 845 F.Supp.2d 1. Schools 155.5(5)

Disabled students were not entitled to preliminary injunction to enjoin enforcement of Hawai‘i statute imposing

20-year age limit on admissions to public schools, where students failed to show that Hawai'i's education department regularly transferred general education students who would otherwise "age out" from secondary education to adult education programs or that education offered by adult education programs was functional equivalent of education provided in Hawai'i's secondary schools. R.P.-K. v. Department of Educ., Hawaii, D.Hawai'i 2011, 817 F.Supp.2d 1182. Injunction 1319

Irreparable harm requirement, for issuance of preliminary injunction, was satisfied by disabled students seeking to bar state from requiring them to take on same basis as other students California High School Exit Exam (CAHSEE), which must be passed in order to graduate from high school; denial of appropriate accommodations would deny students right, under Individuals with Disabilities Act (IDEA) and Rehabilitation Act, to participate in statewide assessment available to other students, and would be injurious to their individual dignity. Chapman v. CA Dept. of Educ., N.D.Cal.2002, 229 F.Supp.2d 981, reversed in part 45 Fed.Appx. 780, 2002 WL 31001869, amended and superseded 53 Fed.Appx. 474, 2002 WL 31856343, rehearing and rehearing en banc denied. Schools 155.5(5)

39. Estoppel

Hawai'i's education department was not judicially estopped from asserting that disabled students' special education and related services ended at age 20, per state statute, where prior representation that, pursuant to IDEA, free appropriate public education (FAPE) was available to students between ages of three and 21 was in section of federal form that did not allow department to explain that it had lowered age limit by terms of IDEA, and department explained in another section of form that it did not offer FAPEs to students beyond age 20. R.P.-K. v. Department of Educ., Hawaii, D.Hawai'i 2011, 817 F.Supp.2d 1182. Estoppel 68(2)

Having agreed to comply with IDEA, its federal regulations, and parallel State regulations, and having accepted and spent federal IDEA funding, Virginia county school board was quasi-estopped to bring Spending Clause challenge to IDEA and implementing regulations, including pendent lite payment rule. County School Bd. of Henrico County, Vir. v. RT, E.D.Va.2006, 433 F.Supp.2d 692. Schools 155.5(2.1)

40. Moot issues

IDEA originally entitled disabled student to a free appropriate public education (FAPE) until his 22nd birthday, whereas Vermont law was consistent with an application of IDEA to children through their 21st year, and thus the additional year of IDEA coverage awarded by the district court as compensatory education preserved the case from mootness, even though the student was between his 22nd and 23rd birthdays at time of decision on appeal. St. Johnsbury Academy v. D.H., C.A.2 (Vt.) 2001, 240 F.3d 163. Schools 155.5(2.1)

In IDEA case, hearing officer's order that school board provide student with guidance counseling services was not moot and remained issue of controversy as it was capable of repetition, yet evading review. School Bd. of the City of Norfolk v. Brown, E.D.Va.2010, 769 F.Supp.2d 928. Schools 155.5(2.1)

Claim challenging autistic student's recommended placement in special public school pursuant to Individuals

with Disabilities Education Act (IDEA) was rendered "moot" and was not capable of repetition, warranting dismissal of case, where student received educational placement in private school that he sought, his parents received full compensation for their expenditures for private school for pertinent school year, and new placement determination was made each year based upon student's continuing development, requiring new assessment under IDEA. M.S. ex rel. M.S. v. New York City Dept. of Educ., E.D.N.Y.2010, 734 F.Supp.2d 271. Schools 155.5(2.1)

Parent's claim that failure of individualized education program (IEP) to provide disabled student with individual speech therapy rendered it substantively inadequate was moot, where school district offered parents individual speech therapy during the mediation process. E.G. v. City School Dist. of New Rochelle, S.D.N.Y.2009, 606 F.Supp.2d 384. Schools 155.5(2.1)

41. Remand

Hearing officer's erroneous denial of any compensatory education award based on school district's failure to provide appropriate placement for 4 months of school year for elementary student with learning disabilities, despite multi-disciplinary team's determination that student required full-time special education placement, pursuant to IDEA, warranted remand to determine amount of compensatory education required to provide student benefits that would likely have accrued had he been given free appropriate public education (FAPE), since student was left at school which did not meet his needs, his academic achievement scores had declined, and individually tailored assessment of student and his compensatory education needs had been conducted. Brown v. District of Columbia, D.D.C.2008, 568 F.Supp.2d 44. Schools 155.5(2.1)

42. Declaratory judgment

Class of disabled District of Columbia children between the ages of three and five was entitled to declaration that, from January 1, 2008 to April 6, 2011, District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education were in violation of IDEA and District of Columbia law because they had failed and continued to fail to ensure that (a) free appropriate public education (FAPE) was available to all children with disabilities who resided in or were wards of District of Columbia between ages of three and five, inclusive, (b) all children between ages of three and five, who resided in or were wards of District of Columbia who were in need of special education and related services, were identified, located, and evaluated within 120 days of referral, and (c) all children participating in Part C early intervention and who would participate in Part B preschool education experienced smooth and effective transition to Part B by their third birthdays. DL v. District of Columbia, D.D.C.2011, 845 F.Supp.2d 1. Declaratory Judgment 210

43. Least restrictive environment

Pennsylvania's formula for allocating special-education funding to school districts did not violate IDEA's least-restrictive-environment (LRE) requirement by creating an incentive for districts to educate students in overly restrictive environments; there was no evidence that placement of students in restrictive settings in districts receiving less funding was inappropriate. CG v. Pennsylvania Dept. of Educ., M.D.Pa.2012, 2012 WL 3639063. Schools 19(1); Schools 154(2.1)

II. FREE APPROPRIATE PUBLIC EDUCATION

<Subdivision Index>

Although Individuals with Disabilities Education Act (IDEA) may not require public schools to maximize the potential of disabled students commensurate with opportunities provided to other children, and potential financial burdens imposed on participating states may be relevant to arriving at sensible construction of IDEA, Congress intended to open the door of public education to all qualified children and required participating states to educate handicapped children with nonhandicapped children whenever possible. Cedar Rapids Community School Dist. v. Garret F. ex rel. Charlene F., U.S.Iowa 1999, 119 S.Ct. 992, 526 U.S. 66, 161 A.L.R. Fed. 683, 143 L.Ed.2d 154. Schools 148(2.1); Schools 154(2.1)

Although at times disabled students at public school were treated differently than their non-disabled peers, treatment did not violate Equal Protection Clause, since differential treatment was based upon students' particular needs as determined by their individualized education plans (IEP), pursuant to IDEA. New Britain Bd. of Educ. v. New Britain Federation of Teachers, Local 871, D.Conn.2010, 754 F.Supp.2d 407. Constitutional Law 3159; Schools 148(2.1)

In educational context, plaintiff asserting claims under Title II of the ADA or Rehabilitation Act must show more than an IDEA violation based upon a failure to provide a free appropriate public education (FAPE); plaintiff must also demonstrate intentional discrimination or some bad faith or gross misjudgment by the school. J.D.P. v. Cherokee County, Ga. School Dist., N.D.Ga.2010, 735 F.Supp.2d 1348. Schools 148(2.1)

In assessing whether district's plan afforded child a free appropriate public education (FAPE), two issues are relevant: whether state complied with procedural requirements of IDEA and whether challenged individualized education program (IEP) was reasonably calculated to enable child to receive educational benefits. Gabel ex rel. L.G. v. Board of Educ. of Hyde Park Central School Dist., S.D.N.Y.2005, 368 F.Supp.2d 313. Schools 148(2.1)

Failure to provide an individualized education program (IEP), the failure to hold a due process hearing, or the failure to provide a written determination in a timely manner after requests for an IEP meeting or a hearing have been made constitutes the denial of a free appropriate public education as required by Individuals with Disabilities Education Act (IDEA). Blackman v. District of Columbia, D.D.C.2003, 277 F.Supp.2d 71. Schools 148(2.1)

Disabled child is receiving “free appropriate public education” (FAPE) required under Individuals with Disabilities Education Act (IDEA) if personalized instruction is being provided with sufficient supportive services to permit child to benefit from instruction, and instruction and services are provided at public expense and under public supervision, meet state's educational standards, approximate grade levels used in state's regular education, and comport with child's Individual Education Program (IEP). D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 148(2.1)

Under the Individuals with Disabilities Education Act (IDEA), state receiving federal funds for the education of handicapped children must provide those children with a “free appropriate public education”; in this context, “free appropriate public education” consists of educational instruction designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruc-

tion, and benefit conferred by this special education must be meaningful and not trivial or de minimis. Christen G. by Louise G. v. Lower Merion School Dist., E.D.Pa.1996, 919 F.Supp. 793. Schools 148(2.1)

If state elects to receive federal funds provided for education of disabled children, state must adopt certain procedures and practices in the education of the disabled pursuant to Individuals with Disabilities Education Act (IDEA) which requires that each disabled child in cooperating state be provided with "free appropriate education." Board of Educ. of Downers Grove Grade School Dist. No. 58 v. Steven L., N.D.Ill.1995, 898 F.Supp. 1252, vacated 89 F.3d 464, 153 A.L.R. Fed. 673, motion denied 117 S.Ct. 1242, 520 U.S. 1113, 137 L.Ed.2d 325, certiorari denied 117 S.Ct. 1556, 520 U.S. 1198, 137 L.Ed.2d 704. Schools 148(2.1)

"Appropriate education" under Individuals with Disabilities Education Act (IDEA) is provided when personalized educational services are provided. Straube v. Florida Union Free School Dist., S.D.N.Y.1992, 801 F.Supp. 1164. Schools 148(2.1)

When necessary, appropriate education under the Education of the Handicapped Act must provide training in rudimentary social and personal skills, in light of purposes of Act to secure handicapped student's personal independence and to enhance productivity. Vander Malle v. Ambach, S.D.N.Y.1987, 667 F.Supp. 1015. Schools 148(2.1)

72. Matters considered, free appropriate public education

In determining whether disabled child can be educated satisfactorily in regular classroom with supplementary aids and services, court should consider: steps school has taken to try to include the child in regular classroom; comparison between educational benefits child will receive in regular classroom, with supplementary aids and services, and benefits child will receive in segregated special education classroom; and possible negative effect child's inclusion may have on education of other children in the regular classroom. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., C.A.3 (N.J.) 1993, 995 F.2d 1204. Schools 148(2.1)

Severity of child's handicap and extent to which child could benefit from education are proper subjects of consideration in determining whether child's individualized education program (IEP) would fulfill requirement of appropriate education. Christopher M. by Laveta McA. v. Corpus Christi Independent School Dist., C.A.5 (Tex.) 1991, 933 F.2d 1285. Schools 148(2.1)

Appropriate issue in review of adequacy of individualized education program proposed by school district under the Education of the Handicapped Act was not whether the school district's program was "better" or "worse" than that preferred by the parents in terms of academic results or some other purely scholastic criteria, but whether the school district's program, taking into account the totality of the child's special needs, struck an "adequate and appropriate" balance on the fulcrum of maximum benefit and least restrictive environment. Roland M. v. Concord School Committee, C.A.1 (Mass.) 1990, 910 F.2d 983, rehearing denied, certiorari denied 111 S.Ct. 1122, 499 U.S. 912, 113 L.Ed.2d 230. Schools 148(2.1)

Factors considered in making determination under Individuals with Disabilities Education Act (IDEA) as to

whether to place a handicapped child in a more restrictive environment include: (1) whether the child was experiencing emotional conditions that fundamentally interfered with the child's ability to learn in local placement; (2) whether the child's behavior was so inadequate, or regression was occurring to such a degree, as to fundamentally interfere with the child's ability to learn in a local placement; (3) whether, before the dispute arose between the parents and the local school board, any health or educational professionals actually working with the child concluded that the child needed residential placement; (4) whether the child had significant unrealized potential that could only be developed in residential placement; (4) whether the child had significant unrealized potential that could only be developed in residential placement; and (6) whether the demand for residential placement was primarily to address educational needs. S.C. ex rel. C.C. v. Deptford Tp. Bd. of Educ., D.N.J.2003, 248 F.Supp.2d 368. Schools 154(2.1)

In determining appropriate placement for particular disabled student in accordance with mainstreaming presumption under Individuals with Disabilities Education Act (IDEA), if regular classroom is not feasible placement in light of nature and severity of student's handicapping conditions, same factors considered in coming to that determination should be considered, insofar as applicable, in evaluating any more restrictive points on continuum of possible placements. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 148(2.1)

Evaluations based on grade levels are not determinative of educational progress for purposes of determining whether handicapped student is receiving educational benefit from placement in compliance with IDEA; grades, socialization skills, level of participation, consistency of effort, and commitment to studies are all relevant. Mather v. Hartford School Dist., D.Vt.1996, 928 F.Supp. 437. Schools 148(2.1)

Where factors considered under the IDEA in determining whether mainstreaming requirement has been met, as to whether child will receive educational or nonacademic benefits from regular classroom, point against more extensive mainstreaming, it should not be necessary to go on to deal with possible countervailing factors such as possible negative effects on other children in the regular classroom or cost of proposed program. D.F. v. Western School Corp., S.D.Ind.1996, 921 F.Supp. 559. Schools 148(2.1)

Hearing officers' decisions approving individualized educational programs (IEP) for two hearing-impaired students which would put the students in public schools, rather than in private school for the hearing impaired, were improper to the extent they failed to contain comparative least restrictive environment analysis of the two educational settings in light of children's abilities and needs and contained little discussion of the abilities, needs and maximum potential of each child in contravention of Michigan law and the IDEA. Brimmer v. Traverse City Area Public Schools, W.D.Mich.1994, 872 F.Supp. 447. Schools 155.5(1)

Factors relevant to determining whether a placement is appropriate under the Individuals with Disabilities Education Act (IDEA) include: educational benefits available to child in regular classroom, supplemented with appropriate aids and services, as compared to educational benefits of special education classroom; nonacademic benefits to child of interaction with nonhandicapped children; effect of presence of handicapped child on teacher and other children in regular classroom; and costs of supplementary aids and services necessary to mainstream handicapped child in a regular classroom setting. Board of Educ., Sacramento City Unified School Dist. v. Hol-

land By and Through Holland, E.D.Cal.1992, 786 F.Supp. 874, affirmed 14 F.3d 1398, certiorari denied 114 S.Ct. 2679, 512 U.S. 1207, 129 L.Ed.2d 813. Schools 148(2.1)

In determining whether hearing impaired children were entitled to continue in private school for education of deaf under Education for All Handicapped Children Act, court was not to determine which of competing education methods for hearing impaired children was best; rather, court was to determine whether education program proposed by school district was appropriate means of education for the children. Visco by Visco v. School Dist. of Pittsburgh, W.D.Pa.1988, 684 F.Supp. 1310. Schools 154(4)

In order to meet requirement of a "free appropriate education," under this chapter educators, at the very least, must examine individual needs of child in order to determine whether there are sufficient "services to permit the child to benefit educationally from that instruction." Yaris v. Special School Dist. of St. Louis County, E.D.Mo.1983, 558 F.Supp. 545, affirmed 728 F.2d 1055. Schools 148(2.1)

Competing interests of the personal and unique needs of the individual and handicapped child and realities of limited funding and necessity of assisting in education of all handicapped children must be considered by District Court in analyzing what is a "free appropriate public education" under this chapter. Stacey G. by William and Jane G. v. Pasadena Independent School Dist., S.D.Tex.1982, 547 F.Supp. 61. Schools 148(2.1)

Question whether child's primary handicapped condition was a type of organic psychosis denominated "organic childhood schizophrenia," or whether it was a severe mental retardation, while significant to question of whether placement of child in a six-hour day program met standard of "free appropriate public education," to which child was entitled under this chapter and section 794 of Title 29, was not dispositive, as the question was actually whether the child's educational placement was suited to her unique needs. Gladys J. v. Pearland Independent School Dist., S.D.Tex.1981, 520 F.Supp. 869. Schools 148(3)

73. Local control, free appropriate public education

Primary responsibility for formulating the education to be accorded to a handicapped child, and for choosing the educational method most suitable to the child's needs, is left by the IDEA to the state and local educational agencies. Pardini v. Allegheny Intermediate Unit, W.D.Pa.2003, 280 F.Supp.2d 447, reversed and remanded 420 F.3d 181, certiorari denied 126 S.Ct. 1646, 547 U.S. 1050, 164 L.Ed.2d 353, on remand 2006 WL 3940563. Schools 148(2.1)

74. Deference, free appropriate public education

District court finding that individualized education programs (IEPs) recommended by school district for dyslexic student were inadequate to provide student with free appropriate public education (FAPE), as required by IDEA, impermissibly imposed court's view of preferable education methods, and did not accord appropriate deference to state administrative determinations that IEPs were adequate under IDEA. Grim v. Rhinebeck Central School Dist., C.A.2 (N.Y.) 2003, 346 F.3d 377. Schools 155.5(2.1)

There was insufficient evidence in the record to overturn state review officer's (SRO's) finding that private school's regular education curriculum was not specifically designed to meet student's unique special education needs, and thus parents were not entitled to tuition reimbursement for cost of that placement. R.B. v. New York City Dept. of Educ., S.D.N.Y.2010, 713 F.Supp.2d 235. Schools 154(4)

Question of whether benefit accorded disabled student under Individuals with Disabilities Education Act (IDEA) is de minimis and therefore unacceptable must be gauged in relation to child's potential; although court is not to interfere with educational methodology, this limitation does not permit court to abdicate its obligation to enforce statutory provisions that ensure free and appropriate education to each disabled child. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 155.5(2.1)

75. Age of student, free appropriate public education

Despite the text of the IDEA, which statutorily limits a school district's obligation to provide a free appropriate public education (FAPE) only to students under the age of 21, an individual over that age is still eligible for compensatory education for a school district's failure to provide a FAPE prior to the student turning 21; a court may grant compensatory education in such cases through its equitable power under the IDEA. Ferren C. v. School Dist. of Philadelphia, C.A.3 (Pa.) 2010, 612 F.3d 712. Schools 155.5(5)

Award of "compensatory education" under Individuals with Disabilities Education Act (IDEA) requires school district to provide education past child's twenty-first birthday to make up for any earlier deprivation. M.C. on Behalf of J.C. v. Central Regional School Dist., C.A.3 (N.J.) 1996, 81 F.3d 389, certiorari denied 117 S.Ct. 176, 519 U.S. 866, 136 L.Ed.2d 116. Schools 148(2.1)

Hawaii Department of Education (DOE) could not limit autistic student's special education services solely on the basis that student aged out of special education program pursuant to DOE rule upon reaching age 20, and IDEA thus required DOE to provide special education to student through age 21 if student's individualized education plan (IEP) team determined such education was warranted, where state statute and practice permitted general education students to continue education beyond age 20 under certain circumstances. B.T. ex rel. Mary T. v. Department of Educ., Hawaii, D.Hawai'i 2009, 676 F.Supp.2d 982. Schools 148(3)

Hawai'i lacked state law consistently restricting age for admission of general education students into public school, as would allow deviation from IDEA requirement of providing free appropriate public education (FAPE) to all disabled children from age 3 to 21, unless application of IDEA to children aged 18 through 21 was inconsistent with state law or practice, in support of Hawai'i's duty to continue providing severely disabled student individualized education until his twenty-second birthday, since Hawai'i law prohibited general education students 18 years old or older from entering tenth grade, but had no additional age limits when student reached eleventh or twelfth grade, and allowed overage general education students admittance by permission of school principal. B.T. ex rel. Mary T. v. Department of Educ., State of Hawaii, D.Hawai'i 2009, 637 F.Supp.2d 856. Schools 148(2.1)

Generally, under the IDEA, a disabled student does not have the right to demand a public education beyond the

age of twenty-one; however, compensatory education for student over that age is available as an equitable remedy where there has been a gross violation of the IDEA, which occurs when a student has been deprived of a free appropriate public education (FAPE) for a substantial period of time. Somoza v. New York City Dept. of Educ., S.D.N.Y.2007, 475 F.Supp.2d 373, reversed 538 F.3d 106. Schools 148(2.1)

Award of compensatory special education and related services beyond disabled child's twenty-first birthday was inappropriate under IDEA; although school district failed to provide free appropriate public education, child's parents failed to demonstrate that child's condition regressed as result of school district's failure to provide appropriate education in timely and consistent manner. Wenger v. Canastota Cent. School Dist., N.D.N.Y.1997, 979 F.Supp. 147, affirmed 181 F.3d 84, affirmed 208 F.3d 204, certiorari denied 121 S.Ct. 584, 531 U.S. 1019, 148 L.Ed.2d 499, rehearing denied 121 S.Ct. 900, 531 U.S. 1134, 148 L.Ed.2d 805. Schools 148(2.1)

Woman claiming deprivation of rights in violation of Individuals with Disabilities Education Act (IDEA) was not barred from award of compensatory education by fact that she was presently over 21 years of age; woman alleged that violations occurred when she was between ages 3 and 21. Cocores By and Through Hughes v. Portsmouth, N.H., School Dist., D.N.H.1991, 779 F.Supp. 203. Schools 155.5(1)

Placement of emotionally handicapped ten-year-old in school with children aged 11 through 17 was not appropriate, where evidence indicated that his behavior problems were worsened when he was placed with older children and he was entitled to be placed in school or similar institution in which he would not be youngest child. Hines v. Pitt County Bd. of Ed., E.D.N.C.1980, 497 F.Supp. 403. Schools 154(2.1)

76. Individualized program, free appropriate public education--Generally

In determining whether student's Ehlers-Danlos Syndrome (EDS) adversely affected his educational performance under the IDEA, ALJ clearly erred in rejecting as unreliable adaptive gym teacher's testimony that student did not need special education to participate in gym curriculum; ALJ noted that teacher testified in detail about many adaptations and modifications she made for student to enable him to participate in gym class, but the referred-to behavior was mandated under student's individualized education program (IEP), and teacher was required by law to follow the directives set out in the IEP even though she may have thought they were unnecessary. Marshall Joint School Dist. No. 2 v. C.D. ex rel. Brian D., C.A.7 (Wis.) 2010, 616 F.3d 632, rehearing and rehearing en banc denied. Schools 155.5(4)

Disabled student's individualized education plan (IEP) to address his significant developmental delays and severe language disorder resulting from autism did not substantively violate IDEA by allegedly depriving student of free and appropriate public education (FAPE) and failing to provide functional behavioral assessment (FBA) or behavior intervention plan (BIP) regarding student's biting, hair pulling, and other behavioral problems, since IEP authorized full-time 1:1 crisis management paraprofessional to provide significant benefits to student regarding his problem behaviors, and initial IEP was corrected to provide additional speech and language services as well as parent training. T.Y. v. New York City Dept. of Educ., C.A.2 (N.Y.) 2009, 584 F.3d 412, certiorari denied 130 S.Ct. 3277, 176 L.Ed.2d 1183. Schools 148(3)

Individualized educational program (IEP) is basic mechanism through which IDEA's goal of providing free appropriate public education (FAPE) is achieved for each disabled child. O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School Dist. No. 233, C.A.10 (Kan.) 1998, 144 F.3d 692. Schools 148(2.1)

Substantive requirement of Individuals with Disabilities Education Act (IDEA) is that program be individually designed to provide educational benefit to handicapped child. Union School Dist. v. Smith, C.A.9 (Cal.) 1994, 15 F.3d 1519, certiorari denied 115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 341. Schools 148(2.1)

Under Individuals with Disabilities Education Act (IDEA), both the school district and educational resource agency, which acted as a liaison between the Pennsylvania Department of Education and a number of school districts and also provided education services, could be jointly responsible for students' free and appropriate education. Vicky M. v. Northeastern Educational Intermediate Unit, M.D.Pa.2009, 689 F.Supp.2d 721, reconsideration denied 2009 WL 4044711. Schools 148(2.1)

Because individualized education programs (IEPs) for two academic years in question were adequate, there was no need to address appropriateness of parent's unilateral placement of child in private school or whether equity would support award of reimbursement. D.G. v. Cooperstown Cent. School Dist., N.D.N.Y.2010, 746 F.Supp.2d 435. Schools 154(4)

Broad range of ages and performance abilities of class proposed by city department of education (DOE) did not deprive nine-year-old student with learning disabilities of Free Appropriate Public Education (FAPE) under Individuals with Disabilities Education Act (IDEA), even if placement of student in such class violated state regulations requiring students in special education to be grouped together by “similarity of individual needs” and that age range of students in special education classes who were less than 16 years old not exceed 36 months, since students were appropriately grouped within class for instructional purposes. W.T. and K.T. ex rel. J.T. v. Bd. of Educ. of School Dist. of New York City, S.D.N.Y.2010, 716 F.Supp.2d 270. Schools 148(3)

Failure to mandate counseling would not rise to level of procedural violation of IDEA because student would not have been denied free appropriate public education (FAPE) as a result. M.H. v. New York City Dept. of Educ., S.D.N.Y.2010, 712 F.Supp.2d 125, affirmed 685 F.3d 217. Schools 148(2.1)

Individualized education program (IEP) must be individualized and tailored to the “unique needs” of the child and reasonably calculated to produce benefits (i.e., learning, progress, growth) that are significantly more than de minimis, and gauged in relation to the potential of the child at issue; only by considering an individual child's capabilities and potentialities may a court determine whether an education benefit provided to that child allows for meaningful advancement. Blake C. ex rel. Tina F. v. Department of Educ., State of Hawaii, D.Hawai'i 2009, 593 F.Supp.2d 1199. Schools 148(2.1)

Goals set forth for autistic child in individualized education program (IEP) provided an individualized program for child, and could therefore be used to determine whether child's public school placement was reasonably calculated to provide child with meaningful educational benefit as required by Individuals with Disabilities Educa-

tion Act (IDEA), and the public school placement constituted a free appropriate public education (FAPE). Wagner v. Board of Educ. of Montgomery County, Maryland, D.Md.2004, 340 F.Supp.2d 603. Schools 148(3)

"Individualized Education Program" (IEP) required under Individuals with Disabilities Education Act (IDEA) consists of a detailed written statement arrived at by a multi-disciplinary team summarizing the child's abilities, outlining the goals for the child's education and specifying the services the child will receive. Christen G. by Louise G. v. Lower Merion School Dist., E.D.Pa.1996, 919 F.Supp. 793. Schools 148(2.1)

School district's failure to develop written plan to provide transition services to handicapped student did not violate the Individuals with Disabilities Education Act (IDEA); student was provided with Individualized Education Plan (IEP) from outset of his matriculation to high school, and IEP meetings were also conducted yearly to assess his progress and formulate goals for academic year to follow. Chuhran v. Walled Lake Consol. Schools, E.D.Mich.1993, 839 F.Supp. 465, affirmed 51 F.3d 271. Schools 155.5(1)

Modus operandi of Individuals with Disabilities Education Act (IDEA) is individualized education program (IEP) which is developed jointly by parents and school officials and sets forth an individualized education plan for particular disabled student, and must include statement of services to be provided to child, assessment of child's current education levels, and annual goals set for that child. Delaware County Intermediate Unit No. 25 v. Martin K., E.D.Pa.1993, 831 F.Supp. 1206. Schools 148(2.1)

Placement decisions for handicapped students should be based on individualized educational program, and program objectives should be written before placement. Livingston v. DeSoto County School Dist., N.D.Miss.1992, 782 F.Supp. 1173. Schools 148(2.1)

Under Education of the Handicapped Act, every school must consider individual needs of every handicapped student and design individualized educational program appropriate for that child; task for courts is to ensure that this individual calibration is made. Johnson v. Lancaster-Lebanon Intermediate Unit 13, Lancaster City School Dist., E.D.Pa.1991, 757 F.Supp. 606. Schools 148(2.1); Schools 155.5(2.1)

77. ---- Conference, individualized program, free appropriate public education

There can be no individualized education program (IEP) under IDEA unless an IEP conference is conducted first, and thus where school district never convened an IEP conference, the "draft" IEP that the district presented to behaviorally disabled child's parents could not properly be considered an IEP. Knable ex rel. Knable v. Bexley City School Dist., C.A.6 (Ohio) 2001, 238 F.3d 755, certiorari denied 121 S.Ct. 2593, 533 U.S. 950, 150 L.Ed.2d 752. Schools 148(3)

School district's failure to convene an individualized education program (IEP) conference under IDEA constituted a substantive deprivation of behaviorally disabled child's rights under IDEA, and a denial of a free appropriate public education (FAPE), though school officials met with parents on several occasions to discuss child's behavioral problems and to review possible placement options for him, as lack of IEP conference denied parents

any meaningful opportunity to participate in the IEP process, and the absence of an IEP at any time during child's sixth-grade year caused him to lose educational opportunity, in that he did not have access to specialized instruction and related services that were individually designed to provide educational benefit. Knable ex rel. Knable v. Bexley City School Dist., C.A.6 (Ohio) 2001, 238 F.3d 755, certiorari denied 121 S.Ct. 2593, 533 U.S. 950, 150 L.Ed.2d 752. Schools 148(3)

Learning disabled student's individualized education plan (IEP), prepared by New York school district, was substantively deficient, and denied him free appropriate public education (FAPE) in violation of IDEA, where no goals or objectives were discussed at special education committee meeting held prior to beginning of school year, no eighth-grade teachers were present at meeting who could have discussed programs available to student, placement was not determined at meeting, and another meeting was not held prior to start of school year to alleviate parents' concerns over student's curriculum. Davis ex rel. C.R. v. Wappingers Central School Dist., S.D.N.Y.2010, 772 F.Supp.2d 500, affirmed 431 Fed.Appx. 12, 2011 WL 2164009. Schools 148(3)

Evidence supported finding by special education bureau hearing officer that autistic student's parents were responsible for individualized education program (IEP) team's failure to meet before school year started and develop IEP for student as required by the Individuals with Disabilities Education Act (IDEA); parents canceled a scheduled meeting ten minutes before its start, did not appear for another meeting, and when parents sought a meeting, it was at the end of the school year or during summer when plans had already been made that impacted ability to gather fourteen people for IEP meeting, although school district's delay in responding to meeting requests on several occasions was less than admirable. Doe ex rel. Doe v. Hampden-Wilbraham Regional School Dist., D.Mass.2010, 715 F.Supp.2d 185. Schools 155.5(4)

78. ---- Evaluation of progress, individualized program, free appropriate public education

Goals and assessment proffered by Hawai'i Department of Education in autistic student's individualized education program (IEP) were generally sufficient, and thus IEP constituted a free appropriate public education (FAPE) under IDEA; IEP showed a focus on evaluating student's speech and communication progress, which were areas identified by parent as the areas most crucial to student's development, and offered him services like speech/language therapy and behavior intensive support to address concerns in those areas, and, with respect to goals, the IEP provided for specific goals and areas where student needed to improve. K.D. ex rel. C.L. v. Department of Educ., Hawaii, C.A.9 (Hawai'i) 2011, 665 F.3d 1110. Schools 148(3)

School district's failure to include and consider student's progress report and student profile for school year in drafting student's individualized education program (IEP) violated student's right to free appropriate public education (FAPE) under Individuals with Disabilities Education Act (IDEA), even though student's parents did not provide documentation until conclusion of IEP meeting, and did not object to IEP until beginning of next school year, where documentation was provided weeks in advance of IEP's implementation. Marc M. ex rel. Aidan M. v. Department of Educ., Hawaii, D.Hawai'i 2011, 762 F.Supp.2d 1235. Schools 148(3)

County school board failed to properly evaluate student for a specific learning disability, and, thus, student was not provided free appropriate public education (FAPE) required by the IDEA, although he was promoted a grade

every year, where he consistently showed a lack of measurable progress, he was making only trivial, minimal academic advancement toward goals in his IEP, and goals, services, and placement proposed in the IEP were not reasonably calculated to confer an educational benefit beyond minimal academic advancement. D.B. v. Bedford County School Bd., W.D.Va.2010, 708 F.Supp.2d 564. Schools 148(3)

Administrative law judge's (ALJ) determination, that school district's use of Kaufman Assessment Battery 2 (KABC-2) test for re-evaluation of student diagnosed with Fragile X syndrome was appropriate under Individuals with Disabilities Education Act (IDEA), was supported by administrative record; district's expert noted that although test was designed for children up to 18 years of age, it was an appropriate tool for assessing the intellectual functioning of persons with Fragile X. Rosinsky ex rel. Rosinsky v. Green Bay Area School Dist., E.D.Wis.2009, 667 F.Supp.2d 964. Schools 155.5(4)

School board's failure to include evaluation methods that would be used to evaluate autistic child's progress toward four of five individualized education program (IEP) goals, though error, was mere technical defect which did not deprive child of free and appropriate public education (FAPE); failure was mere clerical oversight, and it was clear that child would receive education benefit from services proposed in IEP. County School Bd. of Henrico County, Vir. v. Palkovics ex rel. Palkovics, E.D.Va.2003, 285 F.Supp.2d 701, reversed and remanded 399 F.3d 298. Schools 148(3)

79. ---- Substantial performance, individualized program, free appropriate public education

School committee's individualized education programs (IEP) for high school student who suffered from Asperger's Syndrome, attention deficit hyperactivity disorder, and anxiety disorder were not reasonably calculated to confer any meaningful benefit in critical area of pragmatic language skills, thus depriving student of free and appropriate education (FAPE) under Individuals with Disabilities Education Act (IDEA) and Massachusetts law; committee pointed to no assessment that addressed this need directly and offered no evidence that it provided meaningful instruction in that area, and student's pragmatic language deficits were central component to his disability, affected his ability to transition from high school to other settings in critical way, and were well known to committee well before IEPs in question. Dracut School Committee v. Bureau of Special Educ. Appeals of the Massachusetts Dept. of Elementary and Secondary Educ., D.Mass.2010, 737 F.Supp.2d 35. Schools 148(3)

Evidence supported special education bureau hearing officer's findings that services provided autistic student under expired individualized education programs (IEPs) allowed student to make progress toward achievement of IEP goals, consistent with the Individuals with Disabilities Education Act (IDEA), despite deficiencies in data collection; school district offered numerous tests into evidence. Doe ex rel. Doe v. Hampden-Wilbraham Regional School Dist., D.Mass.2010, 715 F.Supp.2d 185. Schools 155.5(4)

District's failure to notify parent of progress of student diagnosed with Fragile X syndrome toward new individualized educational program (IEP) goals, only 12 days into the implementation of those goals, did not render the implementation of the IEP violative of Individuals with Disabilities Education Act (IDEA); teacher had completed the student's progress report under the previous IEP's goals, as they had been effective for almost all of the subject semester, and an evaluation under the new standards, applicable for only 12 days, would have yielded results of questionable worth. Rosinsky ex rel. Rosinsky v. Green Bay Area School Dist., E.D.Wis.2009,

667 F.Supp.2d 964. Schools 148(3)

School district did not provide student with free, appropriate, public education (FAPE) between the first and fifth grades, as required under the IDEA, where student had average intellectual abilities, but his standardized test scores in reading remained low over this five-year period, and he was still reading at a first grade level at the end of fifth grade. C.B. v. Special School Dist. No. 1, D.Minn.2009, 641 F.Supp.2d 850, reversed 636 F.3d 981. Schools 148(2.1)

School substantially implemented student's individualized education program (IEP), and thus provided free and appropriate public education (FAPE) required under Individuals with Disabilities Education Act's (IDEA), even though student did not have shared classroom aide, access to word processing device in classroom, or individualized social skills training, and was not tested at beginning of school year, as required by IEP, where failure to have classroom aide was largely due to parents' delays, student resisted using device and instead used classroom computer, student received social skills training in group setting that was individualized for him based on IEP, and school collected objective data in form of grades, standardized tests, and teacher observations. A.P. ex rel. Powers v. Woodstock Bd. of Educ., D.Conn.2008, 572 F.Supp.2d 221, affirmed 370 Fed.Appx. 202, 2010 WL 1049297. Schools 148(3)

District's failure to meet specifications of student's individualized education program (IEP) to the letter with regard to sessions of speech and language therapy was warranted under the circumstances and did not deprive student of free appropriate public education (FAPE). Catalan ex rel. E.C. v. District of Columbia, D.D.C.2007, 478 F.Supp.2d 73. Schools 148(2.1)

80. ---- Special education, individualized program, free appropriate public education

Individualized education program's (IEP) provision of individualized instructional support and 1:1 after-school support for autistic student met student's requirement for a 1:1 skills trainer, and thus IEP constituted a free appropriate public education (FAPE) under IDEA, absent evidence that such services would not be on a 1:1 basis. K.D. ex rel. C.L. v. Department of Educ., Hawaii, C.A.9 (Hawai'i) 2011, 665 F.3d 1110. Schools 148(3)

ALJ's determination in IDEA claim that student with Ehlers-Danlos Syndrome (EDS) needed special education in gym was not supported by doctor's conclusory testimony and reports that student needed special education because he could not safely engage in unrestricted participation in various activities of the regular gym program because his joints could be injured; school had devised a health plan that would allow student to participate in regular gym and avoid harmful activities or reduce threat of injury during certain exercises, school considered doctor's comments in creating health plan, doctor was not a trained educational professional, and doctor was not familiar with the curriculum and what student needed to do in gym. Marshall Joint School Dist. No. 2 v. C.D. ex rel. Brian D., C.A.7 (Wis.) 2010, 616 F.3d 632, rehearing and rehearing en banc denied. Schools 155.5(4)

Hearing officer and the Appeals Panel did not err in concluding that student was denied free appropriate public education (FAPE) after she was exited from special education at the end of sixth grade because district never addressed student's specific learning disability; school district did not come forward with sufficient extrinsic evid-

ence to overcome the prima facie validity of the hearing officer and Appeals Panel's conclusions concerning student's grade level functioning, and assessment tools that the district used were outdated and lacking as compared to those used by the independent evaluator. Breanne C. v. Southern York County School Dist., M.D.Pa.2010, 732 F.Supp.2d 474. Schools 148(3)

Counseling as related service was not required to provide nine-year-old student, who suffered from learning disabilities, with Free Appropriate Public Education (FAPE) under Individuals with Disabilities Education Act (IDEA); student's Individualized Education Plan (IEP) included goals and objectives to address his needs, special education teacher testified very specifically about how he would address student's issues within his class, city department of education (DOE) psychologist testified that IEP team did not believe student required counseling because of progress he had made and fact that placement being recommended was sufficiently small enough to provide therapeutic setting, and student had not been receiving counseling at his private school. W.T. and K.T. ex rel. J.T. v. Bd. of Educ. of School Dist. of New York City, S.D.N.Y.2010, 716 F.Supp.2d 270. Schools 148(3)

Hawaii Department of Education, in concluding that student's behavior needed to be addressed in an intensive environment in order for his educational needs to be met, did not inappropriately ignore student's unique needs, specifically his writing deficits and relationship between student's academic needs and behavior; student showed ample behavioral issues, and based upon observation and test results, evidence at the time the IEPs were created did not indicate student had a learning disability based on a visual processing deficit. Tracy N. v. Department of Educ., Hawaii, D.Hawai'i 2010, 715 F.Supp.2d 1093. Schools 148(3)

Evidence supported special education bureau hearing officer's findings that autistic student's individualized education program (IEP) was appropriate to address special education needs by using numerous teaching methodologies and different teaching systems and so was consistent with Individuals with Disabilities Education Act (IDEA) obligations, although student's parents argued IEP did not contain specific behavioral recommendations, plans for generalization of skills, or statement of services to be provided to the student. Doe ex rel. Doe v. Hampden-Wilbraham Regional School Dist., D.Mass.2010, 715 F.Supp.2d 185. Schools 155.5(4)

Individualized education program (IEP) for a student did not reflect evaluators' recommendations, and thus, did not provide the student with the free appropriate public education (FAPE) required by the IDEA; every evaluation and the testimony of an evaluator made clear that the student had to be instructed differently from other students to access educational information and had to be taught in a small, structured classroom, and the IEP failed to address those concerns. District of Columbia v. Bryant-James, D.D.C.2009, 675 F.Supp.2d 115. Schools 148(2.1)

Purported failure of charter school to deliver additional hours of specialized instruction to learning-disabled student did not constitute material failure to implement individualized education program (IEP), as would violate Individuals with Disabilities Education Improvement Act (IDEIA); special education teacher's delivery of services to student was not compromised by additional group and individualized instruction. S.S. ex rel. Shank v. Howard Road Academy, D.D.C.2008, 585 F.Supp.2d 56. Schools 148(3)

Learning-disabled student's eighth-grade individualized education program (IEP) was not procedurally defective because of school district's alleged failure to make comprehensive language evaluation before its creation; IEP was based on far more than school district's "intuitive sense," and evaluations conducted were sufficiently comprehensive to ensure that student's special education needs were identified. L.R. v. Manheim Tp. School Dist., E.D.Pa.2008, 540 F.Supp.2d 603. Schools 148(3)

School district's Individualized Education Plan (IEP), prepared under Individuals with Disabilities Education Act (IDEA), calling for placement of student with auditory processing and attention problems in special public elementary school setting of nine students, receiving separate schooling in all subjects except science, fine arts, and physical education, did not satisfy IDEA requirement that student receive free appropriate public education (FAPE). North Reading School Committee v. Bureau of Special Educ. Appeals of Mass. Dept. of Educ., D.Mass.2007, 480 F.Supp.2d 479. Schools 148(3)

School district did not deny autistic student a free appropriate public education (FAPE), as required by the IDEA, by not having a member on student's Individualized Education Program (IEP) team with the title of special education teacher; both the assistant direct of special services for the school district and the students's case manager and teacher were responsible for teaching student and working directly with him, which was the role that a special education teacher would fill. Johnson ex rel. Johnson v. Olathe Dist. Schools Unified School Dist. No. 233, Special Services Div., D.Kan.2003, 316 F.Supp.2d 960. Schools 148(3)

Individualized education program (IEP) of disabled student was deficient, under the IDEA, in that it failed to describe in sufficient detail how goals and objectives set forth in IEP were to be accomplished in student's placement, it did not require that student's special education services be delivered by, or under direct supervision of, properly certified providers, and it failed to include behavioral intervention plan. Mr. R. v. Maine School Administrative Dist. No. 35, D.Me.2003, 295 F.Supp.2d 113. Schools 148(2.1)

81. ---- State regulation or control, individualized program, free appropriate public education

Individualized education program (IEP) prepared for student who suffered from learning disabilities satisfied Massachusetts requirement that IEP maximize student's development where plan would have enabled student to spend most of his school day learning along side nonhandicapped children, and provided for "mainstream facilitator" who would have observed student's regular classes, worked with his teachers, and provided him with academic support classes, even though parents alleged that student enjoyed better academic progress in private schools; under Individuals with Disabilities Education Act (IDEA), IEP must prescribe pedagogical format in which handicapped student is educated with children who are not handicapped to maximum extent appropriate. Amann v. Stow School System, C.A.1 (Mass.) 1992, 982 F.2d 644. Schools 154(4)

Hawai'i Department of Education lacked consistent practice of restricting age for admitting general education students into public school, as would allow deviation from IDEA requirement of providing free appropriate public education (FAPE) to all disabled children from age 3 to 21, unless application of IDEA to children aged 18 through 21 was inconsistent with state law or practice, in support of Department's obligation to continue providing severely disabled student individualized education until his twenty-second birthday upon such recommendation by his individualized education plan (IEP), since Department blatantly discriminated in violation of IDEA

and Rehabilitation Act by approving every single overage general education student while barring almost every single overage special education student, unless approved due to settlement of legal action, and failed to provide admitted overage special education students individualized education. B.T. ex rel. Mary T. v. Department of Educ., State of Hawaii, D.Hawai'i 2009, 637 F.Supp.2d 856. Schools 148(2.1)

Alleged deficiencies in superseded individualized educational programs (IEP) concerning student diagnosed with attention deficit hyperactivity disorder (ADHD) could not constitute a denial of free appropriate public education (FAPE) justifying student's removal from district several years later and placement in a private behavioral modification facility, notwithstanding Oregon statute governing special education hearings within two years after date of act or omission; earlier IEPs were in effect for a limited term and were superseded before parents ever disputed child's IEP or placement, and allowing such a claim would amount to an end-run around IDEA requirement that parents give advance notice that they were rejecting placement. Ashland School Dist. v. Parents of Student R.J., D.Or.2008, 585 F.Supp.2d 1208, affirmed 588 F.3d 1004. Schools 154(3)

Provision in disabled third-grade student's individualized educational program (IEP), calling for early dismissal on Friday afternoons, did not violate IDEA's free appropriate public education (FAPE) requirement or Connecticut's minimum school day regulation; early release provided teachers with planning time needed for student's program and, even with early release, student's program exceeded minimum times required under regulation. R.L. ex rel. Mr. L. v. Plainville Bd. of Educ., D.Conn.2005, 363 F.Supp.2d 222. Schools 148(2.1)

To the extent that Texas statute imposed higher burden on Texas school districts than that imposed by Individuals with Disabilities Education Act (IDEA) with respect to hearing-impaired students, statute clearly allowed for use of methods of communication which did meet needs of each individual hearing-impaired student; therefore, program provided by school district which made use of total communication method was appropriate individualized education plan (IEP). Bonnie Ann F. by John R.F. v. Calallen Independent School Dist., S.D.Tex.1993, 835 F.Supp. 340, affirmed 40 F.3d 386, certiorari denied 115 S.Ct. 1796, 514 U.S. 1084, 131 L.Ed.2d 723. Schools 148(2.1)

Placement of disabled students at nonpublic schools with academic years in excess of 180 days mandated for public schools under Maryland law did not satisfy requirements for providing extended school year (ESY) services as part of students' individualized education programs (IEP); nonpublic schools' continuation of their regular programs into summer months did not address individualized needs of students and, even when district counted students placed in both public and nonpublic schools, only about 1% of disabled students received ESY. Reusch v. Fountain, D.Md.1994, 872 F.Supp. 1421, supplemented 1994 WL 794754. Schools 154(4)

82. ---- Miscellaneous actions, individualized program, free appropriate public education

District court's determination that school district's failure to implement autistic student's individual education plan (IEP) constituted denial of free and appropriate public education (FAPE) required by Individuals with Disabilities Education Act (IDEA) was not clear error, despite evidence that student made some gains in certain skill areas, where district conceded that it failed to provide 15 hours of applied behavioral analysis (ABA) therapy required by IEP, gains were not significant, and board-certified ABA therapist who subsequently worked in student's classroom testified that student's problems were caused by failure of lead teacher and classroom aides

to properly understand and implement ABA techniques, and that it took her several months to bring student back to point where he previously should have and would have been if teachers had understood and properly implemented ABA methodology. Sumter County School Dist. 17 v. Heffernan ex rel. TH, C.A.4 (S.C.) 2011, 642 F.3d 478. Schools 148(3)

Disabled student's individualized education plan (IEP) that allegedly deprived parents of right to meaningful participation in development of IEP by failing to specify particular school at which autistic student would receive services was not procedurally deficient, under IDEA and implementing regulations defining IEP as including location and educational placement of student, since "location" referred to general type of environment in which services would be provided, and "educational placement" referred to general type of educational program, not specific school. T.Y. v. New York City Dept. of Educ., C.A.2 (N.Y.) 2009, 584 F.3d 412, certiorari denied 130 S.Ct. 3277, 176 L.Ed.2d 1183. Schools 148(3)

District court's determination that proposed Individualized Education Program (IEP) offered autistic student a free appropriate public education (FAPE) was not clearly erroneous; school district's expert testified in favor of the IEP based on review of the student's prior educational history, the progress reports from private school, the testimony of others, and observations of the school district's class for autistic children. Lt. T.B. ex rel. N.B. v. Warwick School Committee, C.A.1 (R.I.) 2004, 361 F.3d 80. Schools 148(3)

Failure of individualized education program to refer to present educational performance or to include objective criteria for determining whether objectives were being achieved did not invalidate program to instruct student in regular classroom; student's most recent grades were known to parents and school officials; student would be graded according to normal criteria used in class; and parents participated in development of program. Doe By and Through Doe v. Defendant I, C.A.6 (Tenn.) 1990, 898 F.2d 1186, rehearing denied. Schools 148(2.1)

Fifth grade individualized education plan (IEP) was reasonably calculated to provide student, who had auditory memory and visual motor integration disorders and had difficulty with reading, written expression, and verbal expression, with some educational benefit, and thus was sufficient to provide student with free and appropriate public education (FAPE) under Individuals with Disabilities Education Improvement Act (IDEA); IPE, which recommended student's continued placement in public school, was individually tailored to student's needs as they existed at the time and IEP provided for some educational benefit in least restrictive environment. S.H. v. Fairfax County Bd. of Educ., E.D.Va.2012, 2012 WL 2366146. Schools 148(3)

Learning-disabled student's individualized education plan (IEP), prepared by New York school district, was procedurally deficient, and denied him free appropriate public education (FAPE) in violation of IDEA, where attendees of special education committee meetings did not include regular eighth grade teacher or special education teacher who might have worked with student. Davis ex rel. C.R. v. Wappingers Central School Dist., S.D.N.Y.2010, 772 F.Supp.2d 500, affirmed 431 Fed.Appx. 12, 2011 WL 2164009. Schools 148(3)

Disabled student was deprived of free appropriate public education (FAPE) to which he was entitled under IDEA, where District of Columbia Public Schools (DCPS) materially failed to implement individualized education program (IEP) by providing student with prescribed extended school year (ESY) services. Wilson v. District

of Columbia, D.D.C.2011, 770 F.Supp.2d 270. Schools 148(2.1)

School district sufficiently implemented individualized education program (IEP) for disabled student suffering from Down syndrome in compliance with IDEA; student's homeroom teacher implemented each and every page of IEP and monitored student's progress toward each objective, and goals related to occupational therapist's and speech pathologist's specialties were provided as required by IEP. J.D.G. v. Colonial School Dist., D.Del.2010, 748 F.Supp.2d 362. Schools 148(3)

Independent school district (ISD) did not provide student, under Individuals with Disabilities Education Act (IDEA), a free and appropriate public education (FAPE) in connection with student and his individual education plan (IEP); student's later unchanged IEPs were not reasonably calculated to enable him to receive educational benefit, as they ignored student's area of weakness and chose to obscure it by highlighting student's success in areas not impacted by his learning disability, later IEP was not individualized on basis of his assessment and performance to meet his needs, any transition plan in IEPs was not individualized, and parents were not informed and indeed were misled about student's actual level of ability until his senior year, as well as student's positive academic and nonacademic benefits. Klein Independent School Dist. v. Hovem, S.D.Tex.2010, 745 F.Supp.2d 700. Schools 148(3)

Tenth grade class grouping for individualized education plan (IEP) of student who suffered from schizoaffective disorder and borderline intellectual functioning violated New York regulations implementing Individuals with Disabilities Education Act (IDEA) by placing student in class with significantly different needs; school district did not adequately consider what progress student made at private school during previous school year, and while differences between student and other individuals in ninth grade class grouping were not as apparent, differences were far more obvious as tenth grade IEP was developed. E.S. ex rel. B.S. v. Katonah-Lewisboro School Dist., S.D.N.Y.2010, 742 F.Supp.2d 417, affirmed 2012 WL 2615366. Schools 148(3)

Autistic student's transition from private institution that he had been attending to special public school proposed by city education department was sufficiently addressed by student's individualized education program (IEP), for purposes of claim alleging violation of Individuals with Disabilities Education Act (IDEA), by provision of adequately supervised paraprofessional who would have attended to student on 1:1 basis. M.S. ex rel. M.S. v. New York City Dept. of Educ., E.D.N.Y.2010, 734 F.Supp.2d 271. Schools 148(3)

District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education violated Rehabilitation Act in connection with their failure to provide disabled students with free appropriate public education (FAPE) required by IDEA and to comply with their Child Find obligations under IDEA, as they showed bad faith or gross misjudgment; defendants knew they were not in compliance with their legal obligations yet failed to change their actions, their relative provision of services under IDEA was lower than that of every state in the country, in most cases significantly so, and their failures were departure from accepted educational practices throughout the country. DL v. District of Columbia, D.D.C.2010, 730 F.Supp.2d 84 . Schools 148(2.1)

Individual education program (IEP) prepared by school district for child with learning disability was substant-

ively adequate, and thus child's parent was not entitled to reimbursement for private school tuition after she unilaterally withdrew him from public school, even though IEP did not mention developmental reading class recommended by committee on special education (CSE), where recommendation to enroll child in developmental reading class was made at properly convened CSE meeting, class was included on child's class schedule, class was mainstream class open to all students, child was in fact enrolled in developmental reading class taught by certified reading specialist, and child was otherwise progressing adequately. M.F. v. Irvington Union Free School Dist., S.D.N.Y.2010, 719 F.Supp.2d 302. Schools 148(3)

Alleged deficiencies in Individualized Education Plan (IEP), including vague and generic annual goals and blank measurement method box for each goal, did not rise to level of material procedural violation that would deny student with learning disabilities Free Appropriate Public Education (FAPE) under Individuals with Disabilities Education Act (IDEA). W.T. and K.T. ex rel. J.T. v. Bd. of Educ. of School Dist. of New York City, S.D.N.Y.2010, 716 F.Supp.2d 270. Schools 148(3)

Student's individualized educational program (IEP) placements in Hawaii Department of Education's day treatment program for children and subsequently in community-based educational program were appropriate within meaning of Individuals with Disabilities Education Act (IDEA); mother agreed to the placements at the time they were made, school officials balanced student's immaturity, behavioral issues, size, age, and academic levels, student received an educational benefit from the IEPs, having shown tremendous improvement in his actions, behaviors, and attitude, time outs and isolation strategies were designed to help control student's anger, and other children's disabilities at placement center were not shown to have a harmful effect on student. Tracy N. v. Department of Educ., Hawaii, D.Hawai'i 2010, 715 F.Supp.2d 1093. Schools 154(2.1)

Any lack of communication between autistic student's parents and school district did not prevent district from providing free and appropriate public education (FAPE) to student consistent with the Individuals with Disabilities Education Act (IDEA), although the IDEA required that parents be notified of proposed changes in their child's education placement or provision of FAPE; parents made no showing how possible implementation and notification issues prevented student from benefiting from services school district provided, and parents received progress reports. Doe ex rel. Doe v. Hampden-Wilbraham Regional School Dist., D.Mass.2010, 715 F.Supp.2d 185. Schools 148(3)

The failure of the individualized education program (IEP) to recommend a specific school placement location for student diagnosed with autism did not render the IEP procedurally inadequate under the Individuals with Disabilities Education Improvement Act (IDEIA), where the IEP set forth the recommended student to teacher ratio and classroom setting, and it was undisputed that the student was placed at the school of his parents' choice. M.N. v. New York City Dept. of Educ., Region 9 (Dist. 2), S.D.N.Y.2010, 700 F.Supp.2d 356. Schools 148(3)

Requirement in individualized educational program (IEP) that student diagnosed with Fragile X syndrome use adaptive clip-type holder for his identification tag was appropriately implemented under the Individuals with Disabilities Education Act (IDEA); teacher and parent had observed that the lanyard for tag was bothering student and teacher thereafter obtained approval to exempt student from the lanyard requirement and allow for a

clip. Rosinsky ex rel. Rosinsky v. Green Bay Area School Dist., E.D.Wis.2009, 667 F.Supp.2d 964. Schools 148(3)

Private school for students with learning disorders did not offer grade school student, who had a learning disability in the language arts, an education in the least restrictive environment, and thus it was not an appropriate placement, such that school district was not required under IDEA to reimburse student's parent's for tuition at private school; public school program offered by school district, but which parents declined, offered educational services similar to private school but in a less restricted environment, student benefited from the social opportunities available in the general education environment, and student performed well in non-language subjects and had an average intellectual capacity. C.B. v. Special School Dist. No. 1, D.Minn.2009, 641 F.Supp.2d 850, reversed 636 F.3d 981. Schools 154(4)

Individualized education program (IEP) was not substantively deficient, for purposes of parents' request for reimbursement for cost of private school placement of their autistic son, insofar as recommendation of ten hours per week of at-home behavior therapy met standard that IEP be reasonably calculated to enable child to receive educational benefits; parents' own expert witness testified that if student was in school for 25 hours per week, eight or ten hours of at-home behavior therapy was sufficient, IDEA did not require written recommendation prior to meeting indicating that ten hours was appropriate amount of behavioral therapy, and parents' bills showed that student's total behavior therapy hours were in range of 90 per month. E.G. v. City School Dist. of New Rochelle, S.D.N.Y.2009, 606 F.Supp.2d 384. Schools 154(4)

Individualized education program (IEP) proposed by school district for student with an emotional disability and a learning disability in math was reasonably calculated to provide student with a free appropriate public education (FAPE) as required under IDEA, even though IEP did not provide for pull-out services in math, organization, and study skills; student's parents had previously objected to the implementation of pull-out services, and IEP contained many services that were not contained in earlier IEP under which student had made marked academic and social progress, including obtaining grade of “average” in math and grade of “above average” in her other academic subjects. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 148(3)

Evidence supported determination of hearing officer that individualized education program (IEP) placing autistic elementary school student in district's autistic program was not appropriate, as it was not tailored to child; specific sections of IEP and evaluation report employed boilerplate language and recommendations, lacked specificity necessary to implement some of its goals, was incomplete when presented to parents, and contained only promise that district would develop plan for transitioning child from private school to district program, despite importance of transitioning to child's needs. A.Y. v. Cumberland Valley School Dist., M.D.Pa.2008, 569 F.Supp.2d 496. Schools 155.5(4)

Learning-disabled student's eighth-grade individualized education program (IEP) was in substantive compliance with IDEA, despite student's contention it contained double-block schedule employing teacher's aide that was not designed to and did not meet her needs. L.R. v. Manheim Tp. School Dist., E.D.Pa.2008, 540 F.Supp.2d 603. Schools 148(3)

School district placement specialist's notes during placement meeting regarding learning disabled student did not constitute a valid and complete individualized education program (IEP) under Individuals with Disabilities Education Act (IDEA); notes were not in a written form that was capable of distribution, and contained substantive omissions and sarcastic language. Mewborn ex rel. N.V. v. Government of Dist. of Columbia, D.D.C.2005, 360 F.Supp.2d 138. Schools 148(3)

Individualized education program (IEP) developed for disabled student was developed and implemented in manner reasonably calculated to enable student to receive meaningful educational benefit, as required to support finding that student received free appropriate public education (FAPE) to which he was entitled under Individuals with Disabilities Education Act (IDEA), especially where student's parents did not object to substance or implementation of IEP at any time; IEP was individualized on basis of student's assessment and performance, and student was provided with homebound instruction, offered tutorial support, and allowed to make up all work missed during his excused absences. Tracy v. Beaufort County Bd of Ed., D.S.C.2004, 335 F.Supp.2d 675. Schools 148(2.1)

Individualized education program (IEP) for learning disabled student was reasonably calculated to provide free appropriate public education, as required by the IDEA; although the IEP did not include additional programming recommended by two separately hired experts, the IEP included programming concerning class size, as well as services including speech therapy and multi-sensory education sessions to improve student's vocabulary and comprehension skills. Watson ex rel. Watson v. Kingston City School Dist., N.D.N.Y.2004, 325 F.Supp.2d 141, affirmed 142 Fed.Appx. 9, 2005 WL 1791553, certiorari denied 126 S.Ct. 1040, 546 U.S. 1091, 163 L.Ed.2d 857. Schools 148(3)

Individual educational program (IEP) proposed by school district for learning and behaviorally disabled student contained adequate statement of specific educational services to be provided and extent to which student would be able to participate in regular educational programs, as mandated by Individuals with Disabilities Education act (IDEA); IEP indicated that student's academic and non-academic programs required his participation in science, math, art, industrial art, physical education and lunch, and discussed at length extent of student's participation and his projected ability to perform in those areas. Board of Educ. of Avon Lake City School Dist. v. Patrick M. By and Through Lloyd and Faith M., N.D.Ohio 1998, 9 F.Supp.2d 811, remanded 215 F.3d 1325. Schools 148(3)

Proposed Individualized Educational Plan (IEP) which enabled hearing-impaired student to continue in program in which he had made demonstrable educational progress and which would continue to afford student educational benefits met substance requirement of Individuals with Disabilities Education Act (IDEA). Logue By and Through Logue v. Shawnee Mission Public School Unified School Dist. No. 512, D.Kan.1997, 959 F.Supp. 1338, affirmed 153 F.3d 727. Schools 148(2.1)

Individualized Education Program (IEP) proposed by school district offered dyslexic student free appropriate public education as required by Individuals with Disabilities Education Act (IDEA); student's inability to read, write or perform math upon her entry into fourth grade was not fault of her public education, instructional regime in public school was not materially different than that employed in private school for disabled students to

which student's parents unilaterally transferred her, student's objective achievements in private school were not appreciably different than at public school and may in fact have regressed somewhat, and student's exposure to mainstreamed environment in public school was beneficial to her socialization skills. Independent School Dist. No. 283, St. Louis Park, Minn. v. S.D. By and Through J.D., D.Minn.1995, 948 F.Supp. 860, affirmed 88 F.3d 556. Schools 148(3)

School district established by preponderance of the evidence that dyslexic elementary student was adequately grouped with children possessing similar requirements and that his individualized education program (IEP) was reasonably calculated and implemented to produce educational benefits, though student had some altercations with another student in special education class and parent disagreed with reading instructional technique used by special educational teacher. Wall by Wall v. Mattituck-Cutchogue School Dist., E.D.N.Y.1996, 945 F.Supp. 501 . Schools 155.5(4)

Evidence established appropriateness of individualized education plan (IEP) for handicapped student in public school, even though there was abundant evidence of beneficial effect that year in private school had on student's educational process; IEP addressed student's educational needs in written language, organizational skills, math, and reading and provided behavioral management system to help develop positive attitude toward school. Lewis v. School Bd. of Loudoun County, E.D.Va.1992, 808 F.Supp. 523. Schools 155.5(4)

Individualized education program developed by school district was reasonably calculated to enable child to receive educational benefits, despite lack of sufficient detail and failure to fully integrate child's resource room activities with other areas in child's schooling; program recognized child's difficulties, established goal of increased skills in mainstream classes and allowed for monitoring of progress on daily or weekly basis. Hiller by Hiller v. Board of Educ. of Brunswick Cent. School Dist., N.D.N.Y.1990, 743 F.Supp. 958. Schools 148(2.1)

83. Amendment of individualized educational program, free appropriate public education

Consensus among members of individualized education plan (IEP) team did not require a revised IEP to incorporate the recommendations from IEP team; mere fact that all participants were in agreement did not translate into a substantive entitlement to a particular educational service under Individuals with Disabilities Education Act (IDEA), without a revision to the IEP. W.A. v. Pascarella, D.Conn.2001, 153 F.Supp.2d 144.

84. Delay of individualized educational program, free appropriate public education

Delay in school district's development and review of individualized education programs (IEPs) prepared for learning disabled student did not deprive student of right to free appropriate public education (FAPE); any delay was not prejudicial where student was not actually educated under district's proposed IEPs. Grim v. Rhinebeck Central School Dist., C.A.2 (N.Y.) 2003, 346 F.3d 377. Schools 155.5(1)

School district's assertion that individual educational program (IEP) prepared for learning disabled student was merely “first draft” that would have been refined before commencement of school year did not preclude district's

liability for reimbursement of student's expenses at private school for that year based on inadequate IEP, in view of finding that district told student's parents that it had no intention of amending IEP until well after school year began. Cleveland Heights-University Heights City School Dist. v. Boss By and Through Boss, C.A.6 (Ohio) 1998, 144 F.3d 391. Schools 148(3)

Although delay in resolving matters regarding educational program of handicapped child is extremely detrimental to his development, the Education of the Handicapped Act, §§ 602-620, as amended, 20 U.S.C.A. §§ 1401-1420, prefers that individualized education programs and, by extension, interim services be a product of good-faith cooperation and negotiation among parties. David D. v. Dartmouth School Committee, C.A.1 (Mass.) 1985, 775 F.2d 411, certiorari denied 106 S.Ct. 1790, 475 U.S. 1140, 90 L.Ed.2d 336. Schools 148(2.1)

Delay in student's placement in Hawaii Department of Education's intermediate home school, which was to follow a temporary placement in day treatment program, did not deny student a free appropriate public education (FAPE) in the least restrictive environment as required by Individuals with Disabilities Education Act (IDEA); any delay in student's placement was due to re-assessment being conducted at mother's request and also due to mother's cancellation of three scheduled individualized educational program (IEP) meetings, and temporary placement would likely have served to aid student's transition from more restrictive environment of day treatment program to program where student would be receiving services at the home school. Tracy N. v. Department of Educ., Hawaii, D.Hawai'i 2010, 715 F.Supp.2d 1093. Schools 154(3)

Absence of individualized education program (IEP) by first day of classes did not result in denial of a free appropriate public education (FAPE); IEP could have been in place less than one week after classes began, and week's delay was a minor procedural error. C.H. v. Cape Henlopen School Dist., D.Del.2008, 566 F.Supp.2d 352, affirmed 606 F.3d 59. Schools 148(2.1)

Notwithstanding school's delay in developing functional behavior plan for child, administrative record of hearing requested by learning disabled child's parents to determine appropriateness of child's education program supported hearing officer's determination that school district complied with mainstreaming directive under Individuals with Disabilities Education Act (IDEA) through provision of supplementary aids and services; teachers testified that they spent substantial amount of time on curriculum modification to accommodate child, parents were included in every step of development of child's education program and consulted about retention of inclusion consultant, and staff working with child had significant professional experience and experience with child. P. ex rel. Mr. P. v. Newington Bd. of Educ., D.Conn.2007, 512 F.Supp.2d 89, affirmed 546 F.3d 111. Schools 155.5(4)

Four-month delay, in responding to grandmother's request that special education services being provided to learning disabled student be reevaluated, was not denial of free appropriate public education (FAPE) in violation of Individuals with Disabilities Education Act (IDEA), when there was lack of emergency need for reevaluation, current evaluations existed, and school was unable to determine why reevaluation was necessary from grandmother's initial request. Herbin ex rel. Herbin v. District of Columbia, D.D.C.2005, 362 F.Supp.2d 254. Schools 148(3)

School district's delay in formulating individualized education program (IEP) for student, who had speech and language impairment, and determining her placement did not violate student's rights to free and appropriate public education (FAPE) under the IDEA, where IDEA's 120-day period for developing IEP and selecting placement expired during summer months, student's IEP did not require extended school year (ESY) services, and IEP was in place when student began academic school year. Shaw v. District of Columbia, D.D.C.2002, 238 F.Supp.2d 127. Schools 148(3)

School's failure to "accelerate" preparation and implementation of individualized education program (IEP) for eighth grade student was not procedural error, under IDEA, despite student's alleged history of unmet needs; parents had actively concealed previously unaddressed problems. J.S. v. Shoreline School Dist., W.D.Wash.2002, 220 F.Supp.2d 1175. Schools 148(2.1)

85. Expiration of program, free appropriate public education

School district's failure to convene meeting to conduct reevaluation of student's individualized education program (IEP) before his current IEP expired did not violate student's right to free and appropriate public education (FAPE) under Individuals with Disabilities Education Act (IDEA), where district continued to provide services to student pursuant to his expired IEP. Wanham v. Everett Public Schools, D.Mass.2008, 550 F.Supp.2d 152. Schools 148(2.1)

86. Procedure, free appropriate public education

Parents and minor child seeking reimbursement for educational expenses under Individuals with Disabilities Education Act (IDEA) failed to establish that school district did not comply with statutory procedures in developing proposed individualized education program (IEP); parents were not denied meaningful participation at IEP meetings, and autistic child's placements and programs were not finalized before IEP goals and objectives were determined. T.P. ex rel S.P. v. Mamaroneck Union Free School Dist., C.A.2 (N.Y.) 2009, 554 F.3d 247. Schools 148(3)

A procedurally defective individualized education program (IEP) does not automatically entitle a party to relief under the IDEA; in evaluating whether a procedural defect has deprived a student of a free appropriate public education (FAPE), the court must consider the impact of the procedural defect, and not merely the defect per se. School Bd. of Collier County, Fla. v. K.C., C.A.11 (Fla.) 2002, 285 F.3d 977. Schools 148(2.1)

Procedural and technical deficiencies in handicapped child's individualized education plan (IEP) that were identified by hearing officer and review officer in state administrative proceeding under Individuals with Disabilities Education Act (IDEA) did not materially affect resolution of core issue of whether child's parents were entitled to reimbursement for unilaterally placing child in private school, and, thus, did not entitle child to additional relief on judicial review. Independent School Dist. No. 283 v. S.D. by J.D., C.A.8 (Minn.) 1996, 88 F.3d 556. Schools 155.5(5)

School district deprived student of free appropriate public education by failing to comply with procedures for

preparing individualized education program--requirement to obtain input and participation of parents, regular classroom teacher, and representative of parochial school attended by student--even though parents did not file dissenting report, and whether or not the procedural faults caused student to loose benefits. W.G. v. Board of Trustees of Target Range School Dist. No. 23, Missoula, Mont., C.A.9 (Mont.) 1992, 960 F.2d 1479. Schools 155.5(1)

New Jersey school board substantially satisfied IDEA's procedural requirements, and individualized education programs (IEPs) for two school years in question were not procedurally defective despite arguments by disabled student and her parents that they contained only goal for reading which was aligned to outdated core curriculum content standards and did not address all of student's areas of need to progress appropriately in general education curriculum, lacked objective assessment of student's levels of performance, and were not implemented properly because student did not have special education teacher for two-month period even though IEP provided for one. H.M. ex rel. B.M. v. Haddon Heights Bd. of Educ., D.N.J.2011, 822 F.Supp.2d 439. Schools 148(3)

Substantial evidence supported hearing officer's determination that compounding of procedural violations resulted in student's denial of free appropriate public education (FAPE); hearing officer cited five procedural errors which gave rise to her conclusion that second Manifestation Determination Review (MDR) was procedurally flawed and that MDR team failed to comply with Virginia Department of Education's (VDOE's) corrective action plan, (1) MDR team fragmented manifestation determination inquiry by addressing only one question, (2) different individuals were present at second MDR than were present at first, (3) student's parent was denied parental participation, (4) MDR team conducted only record review of the evidence, and (5) MDR team failed to review student's psychiatric report which had not been available during first MDR. School Bd. of the City of Norfolk v. Brown, E.D.Va.2010, 769 F.Supp.2d 928. Schools 155.5(4)

Hearing officer in IDEA case involving student with autism and cerebral palsy did not commit reversible error in finding that individualized education program (IEP) team meetings were not properly attended, adequate testing was not performed by school district, goals and objectives were not sufficiently measurable, and recommendations of qualified experts were ignored, concluding accordingly that IEPs could not be reasonably calculated to provide a meaningful educational benefit to student, and that IEPs for three consecutive years denied student a free appropriate public education (FAPE). Anchorage School Dist. v. D.S., D.Alaska 2009, 688 F.Supp.2d 883. Schools 148(3)

Individualized education program (IEP) was not procedurally defective, for purposes of parents' request for reimbursement for cost of private school placement of their autistic son, insofar as it gave them an adequate opportunity to participate in its development; IDEA did not require parental presence during actual drafting of written education program document, and parents had adequate opportunity to respond to goals in written education program after it was drafted. E.G. v. City School Dist. of New Rochelle, S.D.N.Y.2009, 606 F.Supp.2d 384. Schools 154(4)

Individualized education program (IEP) was not procedurally defective, for purposes of parents' request for reimbursement for cost of private school placement of their autistic son, insofar as they claimed that school district had predetermined student's class assignment and location of his behavior therapy. E.G. v. City School Dist. of

New Rochelle, S.D.N.Y.2009, 606 F.Supp.2d 384. Schools 154(4)

Under the IDEA, only procedural inadequacies that cause substantive harm to the child or his parents, meaning that they individually or cumulatively result in the loss of educational opportunity or seriously infringe on a parent's participation in the creation or formulation of the individualized education plan (IEP), constitute a denial of a Free Appropriate Public Education (FAPE). Matrejek v. Brewster Cent. School Dist., S.D.N.Y.2007, 471 F.Supp.2d 415, affirmed 293 Fed.Appx. 20, 2008 WL 3852180. Schools 148(2.1)

Failure of District of Columbia Public Schools (DCPS) to comply with IDEA's procedures was not dispositive of whether learning disabled student was denied a free appropriate public education (FAPE), and IDEA claim was viable only if those procedural violations affected student's substantive rights. Roark ex rel. Roark v. District of Columbia, D.D.C.2006, 460 F.Supp.2d 32. Schools 148(3)

Student's mother failed to establish that alleged procedural violation, that occurred when State of Hawai‘i Department of Education (DOE) cut hours of student's intensive instructional services consultant (IISC), deprived student with Asperger's Syndrome of a meaningful educational benefit required by the IDEA. B.V. v. Department of Educ., State of Hawaii, D.Hawai'i 2005, 451 F.Supp.2d 1113, affirmed 514 F.3d 1384. Schools 148(3)

School district's committee on special education, in developing elementary school student's individualized education program (IEP), had sufficient current evaluative information with which to adequately identify student's progress and levels of performance, and to make needed adjustments to IEP goals and objectives, and thus, district did not violate procedure required by IDEA; although transcript of committee hearing revealed that professional judgment was used in assessing learning disabled student's progress, committee also reviewed results from numerous tests and evaluations, including tests measuring student's written language, reading, and math abilities, and language and phonological tests conducted by student's language therapist. Viola v. Arlington Central School Dist., S.D.N.Y.2006, 414 F.Supp.2d 366. Schools 148(3)

School district's offer of multiple placement types rather than a specific, firm recommendation constituted a procedural violation of Individuals with Disabilities Education Act (IDEA), and, that procedural violation resulted in a denial of a free appropriate public education (FAPE) for child; district's offer of various types of classrooms, located at a number of different school sites, with varying school-day durations, was not a clear, coherent offer which mother reasonably could evaluate and decide whether to accept or appeal. Glendale Unified School Dist. v. Almasi, C.D.Cal.2000, 122 F.Supp.2d 1093. Schools 154(2.1)

Nature and number of procedural violations of the IDEA established that learning disabled student was not given educational opportunity that procedural requirements of the IDEA were intended to protect; school district did not convene impartial hearing within 45 days of parent's request and did not have individual educational program (IEP) ready to implement at start of school year, did not include in IEP statement of student's present level of educational functioning, specifically in his areas of deficit, did not include in IEP statement of objective strategies to evaluate progress, and did not prepare written report of basis for determination that student was learning disabled. Evans v. Board of Educ. of Rhinebeck Cent. School Dist., S.D.N.Y.1996, 930 F.Supp. 83.

Schools 148(3)

87. Benefit educationally from instruction, free appropriate public education

Requirement under this chapter of "free appropriate public education" is satisfied when state provides personalized instruction with sufficient support services to permit handicapped child to benefit educationally from that instruction; such instruction and services must be provided at public expense, must meet state's educational standards, must approximate grade levels used in state's regular education, and must comport with child's individualized educational plan, as formulated in accordance with requirements under this chapter, and if child is being educated in regular classrooms, the individualized educational plan should be reasonably calculated to enable child to achieve passing marks and advance from grade to grade. Board of Educ. of Hendrick Hudson Central School Dist., Westchester County v. Rowley, U.S.N.Y.1982, 102 S.Ct. 3034, 458 U.S. 176, 73 L.Ed.2d 690. See, also, Adams Cent. School Dist. No. 090 v. Deist, 1983, 338 N.W.2d 591, 215 Neb. 284. Schools 148(2.1)

District Court's failure to enunciate the correct "meaningful benefit" test under IDEA was not fatal to its determination that individualized education program (IEP) offered handicapped child a free appropriate public education (FAPE), where, under the proper standard, the evidence in the record was more than sufficient to support a finding that the school board's program would confer on child a meaningful educational benefit in light of his individual needs and potential. T.R. v. Kingwood Tp. Bd. of Educ., C.A.3 (N.J.) 2000, 205 F.3d 572. Schools 155.5(2.1)

Individualized educational programs (IEP) provided to hearing impaired student were reasonably calculated to provide student with free appropriate public education (FAPE) and student actually received educational benefits during school year; both hearing and reviewing officers at administrative level found that student had made various degrees of progress during school year in which IEPs were in effect, despite fact that her progress was not steady in all areas, student's parents were in constant communication with student's teacher's and were aware of her status at school, and school made changes in IEP to respond to parents' frustration with student's progress, but parents removed student before new IEP could be implemented. O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School Dist. No. 233, C.A.10 (Kan.) 1998, 144 F.3d 692. Schools 148(2.1)

Evidence supported district court's conclusion that any benefit to handicapped student from school district's placement of him in day program was trivial and was not sufficient to satisfy *Rowley* standard under Individuals with Disabilities Education Act (IDEA) requiring that school district provide instruction sufficient to confer some educational benefit upon handicapped child. M.C. on Behalf of J.C. v. Central Regional School Dist., C.A.3 (N.J.) 1996, 81 F.3d 389, certiorari denied 117 S.Ct. 176, 519 U.S. 866, 136 L.Ed.2d 116. Schools 155.5(4)

"Appropriate placement" is that which enables handicapped child to obtain some benefit from public education that child is receiving, not necessarily maximization of potential. Teague Independent School Dist. v. Todd L., C.A.5 (Tex.) 1993, 999 F.2d 127. Schools 154(2.1)

If educational benefits from individualized educational plan (IEP) for handicapped child are adequate, based on surrounding and supporting facts, Education for All Handicapped Children Act (EAHCA) requirements have been satisfied and, while a trifle might not represent adequate benefits, maximum improvement is never required. JSK By and Through JK v. Hendry County School Bd., C.A.11 (Fla.) 1991, 941 F.2d 1563. Schools 148(2.1)

Hearings officer failed to determine whether department of education's placement provided for in individualized educational program (IEP) was reasonably calculated to provide special education student with meaningful educational benefit at time IEP was developed and implemented, as required to determine whether to uphold appropriateness of placement under Individuals with Disabilities Education Act (IDEA). Aaron P. v. Hawaii, Dept. of Educ., D.Hawai'i 2012, 2012 WL 4321715. Schools 155.5(1)

Preponderance of the evidence supported determination of state review officer (SRO) that disabled student's individualized education programs (IEPs) were reasonably calculated to enable student to receive educational benefits and that school district and board of education provided student with a free appropriate public education (FAPE) required by Individuals with Disabilities Education Act (IDEA), despite parents' desire for more reading instruction, and therefore, did not warrant reimbursing parents upon their unilateral withdrawal of student and placement in private school; district evaluated student's test scores, reports from private school from previous year, and teacher reports in creating IEPs, parents only objected to reading instruction provisions, IEPs provided two 40 minute sessions of reading instruction per week in a group of five students based on student's decrease in reading comprehension scores for the year, and district felt additional reading instruction would take too much time away from general education classes. E.W.K. ex rel. B.K. v. Board of Educ. of Chappaqua Cent. School Dist., S.D.N.Y.2012, 2012 WL 3205571. Schools 154(4); Schools 155.5(4)

Learning disabled student's individualized education program (IEP) was not substantively deficient, as would violate Individuals with Disabilities Education Act (IDEA), despite contention by student's parents that student received no educational benefits during his entire time at school district; in twelve measures student was tested for reading and comprehension, student advanced by as much as six months on three measures, declined a few months on two measures, and advanced average of three months on all measures during his time at school district. G.R. ex rel. Russell v. Dallas School Dist. No. 2, D.Or.2011, 823 F.Supp.2d 1120. Schools 148(3)

Proposed individualized education program (IEP) for disabled student suffering from Down syndrome was reasonably calculated to provide him meaningful educational benefits in compliance with IDEA; proposed IEP was focused on training student to function independently in community based on his age and necessity to transition him into independent living, it was formulated based on current, reliable data available to IEP team and was individualized for student's reasonable, defined goals, it addressed parental concerns where appropriate, and it built upon student's existing knowledge and strengths. J.D.G. v. Colonial School Dist., D.Del.2010, 748 F.Supp.2d 362. Schools 148(3)

Individualized education plan (IEP) provided student who suffered from schizoaffective disorder and borderline intellectual functioning free appropriate public education (FAPE) for his ninth grade year under Individuals with Disabilities Education Act (IDEA) and New York regulations; given what committee on special education (CSE)

knew about student at time it was developing IEP, recommended class was reasonably calculated to enable student to receive educational benefits. E.S. ex rel. B.S. v. Katonah-Lewisboro School Dist., S.D.N.Y.2010, 742 F.Supp.2d 417, affirmed 2012 WL 2615366. Schools 148(3)

Student's individual education plan (IEP) was not reasonably calculated to enable him to receive educational benefits, as required by the IDEA, where school board did not use psychological testing to evaluate student for specific learning disability, or to make any eligibility determinations regarding specific learning disability, even though he appeared to have a disorder in one or more of basic psychological processes involved in understanding or in using language, and student's eligibility documentation did not disclose any statements whether he had a specific learning disability, nor any basis for making that determination. D.B. v. Bedford County School Bd., W.D.Va.2010, 708 F.Supp.2d 564. Schools 148(3)

"Meaningful educational benefit" standard is appropriate standard against which to measure an individualized education program's (IEP) adequacy under Individuals with Disabilities Education Act (IDEA). Blake C. ex rel. Tina F. v. Department of Educ., State of Hawaii, D.Hawai'i 2009, 593 F.Supp.2d 1199. Schools 148(2.1)

Emotionally disabled elementary school student received educational benefit, as required in order for district to comply with Individuals with Disabilities Education Act (IDEA) mandate that he receive free appropriate public education (FAPE), when he did good quality academic work, while in regular classes during spring semester and later when home schooled by district teacher. Keith H. v. Janesville School Dist., W.D.Wis.2003, 305 F.Supp.2d 986. Schools 148(3)

Individualized Education Program (IEP) was reasonably calculated to confer educational benefits on dyslexic student, and thus satisfied IDEA, even though it did not incorporate parents' request for private school placement where student could receive on-on-one teaching using Orton-Gillingham approach; there was evidence that student's reading skills had improved in public school setting which plan proposed to continue. Antonaccio v. Board of Educ. of Arlington Cent. School Dist., S.D.N.Y.2003, 281 F.Supp.2d 710. Schools 148(3)

Learning and behaviorally disabled student received meaningful educational benefit under individual educational programs (IEPs) developed and offered by school district pursuant to Individuals with Disabilities Education Act (IDEA); student's parents approved all IEPs at issue, student's academic performance improved under IEPs, neither student nor his parents ever expressed dissatisfaction with school district's efforts or programs, and credible expert testimony before hearing officer had indicated that IEPs were satisfactory. Board of Educ. of Avon Lake City School Dist. v. Patrick M. By and Through Lloyd and Faith M., N.D.Ohio 1998, 9 F.Supp.2d 811, remanded 215 F.3d 1325. Schools 148(3)

Individual educational program (IEP) developed under the IDEA was not reasonably calculated to confer educational benefit on dyslexic high school student where conclusions of hearing officer and state review officer were directly contradicted by testimony of each of the experts on dyslexia, student's academic performance showed no improvement and even deteriorated since he began receiving special education at public high school, district's experts in special education had no specific expertise in area of student's disability, and hearing officers could not have reasonably concluded that student's education was not significantly impeded or adversely affected by

his emotional difficulties, which were directly associated with his learning disability. Evans v. Board of Educ. of Rhinebeck Cent. School Dist., S.D.N.Y.1996, 930 F.Supp. 83. Schools 148(3)

Whether free public education is "appropriate public education" as required by IDEA depends on whether education is sufficient to confer some educational benefit on the handicapped child, and child's grades, test scores, and advancements from one grade level to the next are important evidence for court to consider when assessing whether child has benefitted from her education. Fort Zumwalt School Dist. v. Missouri State Bd. of Educ., E.D.Mo.1996, 923 F.Supp. 1216, affirmed in part , reversed in part 119 F.3d 607, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 1840, 523 U.S. 1137, 140 L.Ed.2d 1090. Schools 148(2.1)

As expressed in Individuals with Disabilities Education Act (IDEA), implicit in congressional purpose of providing "free appropriate education" is requirement that education to which access is provided be sufficient to confer some educational benefit upon handicapped child. Ciresoli v. M.S.A.D. No. 22, D.Me.1995, 901 F.Supp. 378. Schools 148(2.1)

Disabled child's individualized education program (IEP) meets requirements of free appropriate public education if state has complied with procedures set forth in Individuals with Disabilities Education Act (IDEA) and if IEP developed through IDEA's procedures is reasonably calculated to enable child to receive educational benefits. Metropolitan Nashville and Davidson County School System v. Guest, M.D.Tenn.1995, 900 F.Supp. 905. Schools 148(2.1)

School educational agency is required to show that each individualized education program (IEP) for its handicapped students is reasonably calculated to confer educational benefit and to allow student to progress adequately from grade to grade, but school district is not required to show that IEP will in fact confer educational benefits. Board of Educ. of Downers Grove Grade School Dist. No. 58 v. Steven L., N.D.Ill.1995, 898 F.Supp. 1252, vacated 89 F.3d 464, 153 A.L.R. Fed. 673, motion denied 117 S.Ct. 1242, 520 U.S. 1113, 137 L.Ed.2d 325, certiorari denied 117 S.Ct. 1556, 520 U.S. 1198, 137 L.Ed.2d 704. Schools 148(2.1)

Standard for appropriateness of free public education for disabled student is access to specialized instruction and related services that are individually designed to confer some meaningful educational benefit on the child. Swift By and Through Swift v. Rapides Parish Public School System, W.D.La.1993, 812 F.Supp. 666, affirmed 12 F.3d 209. Schools 148(2.1)

Standard to be employed in assessing whether or not individualized education plan (IEP) provides appropriate education is whether IEP provides personalized instruction with sufficient support services to enable handicapped child to benefit educationally from that instruction. Lewis v. School Bd. of Loudoun County, E.D.Va.1992, 808 F.Supp. 523. Schools 148(2.1)

Previous individualized education programs (IEPs) for dyslexic student did not yield educational benefit to student, so that IEP which continued program of previous years was inappropriate; student's grades continually de-

creased, his reading level failed to increase in six years, and he did not necessarily pass each subject each year, even though student was advanced from grade to grade. Straube v. Florida Union Free School Dist., S.D.N.Y.1992, 801 F.Supp. 1164. Schools 148(3)

A "free appropriate public education" under Education for All Handicapped Children Act is educational instruction specially designed to meet unique needs of handicapped child, supported by such services as are necessary to permit child to benefit from instruction. Kattan by Thomas v. District of Columbia, D.D.C.1988, 691 F.Supp. 1539. Schools 148(2.1)

Education of the Handicapped Act [20 U.S.C.A. § 1401 et seq.] requires only that state provide handicapped students with such instruction and support services that will enable students to benefit educationally from instruction. Council For the Hearing Impaired Long Island, Inc. v. Ambach, E.D.N.Y.1985, 610 F.Supp. 1051.

88. Progress, free appropriate public education

Individualized education program (IEP) was reasonably calculated to enable autistic student to make some progress toward goals, and thus satisfied requirement that school district provide student with free appropriate public education (FAPE), even though student was not generalizing skills learned at school and was often unevenly tempered, displaying inappropriate and sometimes violent behavior at home and in public places. Thompson R2-J School Dist. v. Luke P., ex rel. Jeff P., C.A.10 (Colo.) 2008, 540 F.3d 1143, certiorari denied 129 S.Ct. 1356, 555 U.S. 1173, 173 L.Ed.2d 590. Schools 148(3)

Individual education plan provided student with a basic floor of opportunity where it provided that emotionally disturbed student would receive two and one-half hours per day of learning disability instruction, two and one-half hours per day of emotional disability instruction, and regular instruction in gym and music, especially in view of great improvement in his post-IEP performance and his successful completion of the requirements for advancing to second grade. Tice By and Through Tice v. Botetourt County School Bd., C.A.4 (Va.) 1990, 908 F.2d 1200. Schools 148(3)

School district's decision to transfer handicapped student who was not making satisfactory progress to another school which could provide assistance from an instructor especially qualified to train students with that particular disability was reasonably calculated to furnish the student with a free, appropriate education and thus did not violate this chapter. Wilson v. Marana Unified School Dist. No. 6 of Pima County, C.A.9 (Ariz.) 1984, 735 F.2d 1178. Schools 154(2.1)

Positive academic and non-academic progress of student, who had auditory memory and visual motor integration disorders and had difficulty with reading, written expression, and verbal expression, during fourth grade, her final year in public school, was indicative of propriety of her fifth grade individualized education plan (IEP), which recommended her continued placement in public school, under Individuals with Disabilities Education Improvement Act (IDEA). S.H. v. Fairfax County Bd. of Educ., E.D.Va.2012, 2012 WL 2366146. Schools 148(3)

Student was not denied a free, appropriate, public education (FAPE), as required by IDEA, because District of Columbia school district did not provide him with a laptop and educational software to take home; student's increases in his testing scores in math and reading, accompanied by his other development, demonstrated that his academic progress was not de minimis without the laptop and software, student had also received a great deal more than a basic floor opportunity, as he was enrolled at a private school at district expense and received 28.5 hours per week of specialized instruction, he had daily access in the classroom to a computer, a calculator, highlighters, and sticky notes, and he also could use and take home a device to assist in word processing, typing, and proofreading. Smith v. District of Columbia, D.D.C.2012, 2012 WL 746396. Schools 148(3)

Disabled student's lack of developmental progress over 16-year period was insufficient to establish that school district intentionally discriminated against student by failing to provide her education benefits, and, thus, student's parents could not recover compensatory damages in their action against district alleging violations of ADA and RA; district made numerous attempts to provide student with free appropriate public education (FAPE), as required by IDEA, and it repeatedly revised her individualized education programs (IEPs). Chambers v. School Dist. of Philadelphia Bd. of Educ., E.D.Pa.2011, 827 F.Supp.2d 409. Schools 155.5(5)

Impartial Hearing Officer (IHO) and New York Sate Review Officer (SRO), in determining under Individuals with Disabilities Education Act (IDEA) that school district provided student who suffered from schizoaffective disorder and borderline intellectual functioning free appropriate public education (FAPE) in least restrictive environment for his ninth and tenth grade school years, appropriately found that student made progress in middle school; teacher report described student as child who had made gains in word reading and fluency, spelling, reading comprehension, writing, and daily living skills, report card reflected that student received grades of 100% on most spelling tests and commented that student was becoming “more and more independent,” and student did not regress in his individual achievement test scores, but rather, stayed in same percentile or dropped only slightly. E.S. ex rel. B.S. v. Katonah-Lewisboro School Dist., S.D.N.Y.2010, 742 F.Supp.2d 417, affirmed 2012 WL 2615366. Schools 148(3)

A school district fulfills its substantive obligations under the Individuals with Disabilities Education Improvement Act (IDEIA) if it provides an individualized education program (IEP) that is likely to produce progress, not regression, and if the IEP affords the student with an opportunity greater than mere trivial advancement. M.N. v. New York City Dept. of Educ., Region 9 (Dist. 2), S.D.N.Y.2010, 700 F.Supp.2d 356. Schools 148(2.1)

Hearing officer's determination that a student's individualized education plan (IEP) was not deficient, so as to deny him the free appropriate public education (FAPE) required by the Individuals with Disabilities Education Act (IDEA), was not arbitrary or unreasonable, despite evidence of the student's regression; there was no evidence or logical reason why it was more probable than not that the IEP, as opposed to other valid reasons, caused the student's lack of progress, and a multidisciplinary team, in recognition of the student's underachievement, had increased the intensity of services provided. T.H. v. District of Columbia, D.D.C.2009, 620 F.Supp.2d 86. Schools 148(2.1)

School district's offer to place student with autistic behaviors at private school specializing in the education of students with behavioral needs, instead of residential program, was reasonably calculated to provide educational

benefits to student, and court would not defer to hearing officer's finding that, because student already had intensive behavioral support in his home for as much as 30 hours per week, day program would not provide the "repetitive learning across all environments" that student needed in order to "generalize skills across settings" and that transferring student from learning center to private school was essentially a "lateral move"; hearing officer's analysis was premised on erroneous legal conclusion that IDEA required district to address behavior outside the home regardless of educational progress, and student's educational progress at learning center, while not perfect, was substantial notwithstanding his behavioral difficulties. San Rafael Elementary School Dist. v. California Special Educ. Hearing Office, N.D.Cal.2007, 482 F.Supp.2d 1152. Schools 154(3); Schools 154(4)

School district provided the special education student with an appropriate education as required under Individuals with Disabilities Education Act (IDEA); student, who consistently made passing grades and scored on grade level in standardized tests, made academic progress in both his fourth and fifth grade years, and made progress towards his behavioral goals. W.C. ex rel. Sue C. v. Cobb County School Dist., N.D.Ga.2005, 407 F.Supp.2d 1351. Schools 148(3)

Parent of student with learning disability who transferred to new school offered insufficient evidence to demonstrate that school failed to provide student with free appropriate public education (FAPE) during school year, due to allegedly deficient individualized education program (IEP), under Individuals with Disabilities Education Act (IDEA); student improved his performance on state functional reading and math tests, significantly increased grades, won school-wide writing contest, and was selected as most improved student in class. Waller v. Board of Educ. of Prince George's County, D.Md.2002, 234 F.Supp.2d 531. Schools 155.5(4)

School district provided hearing-impaired child with free appropriate education under IDEA; violation was not established by fact that child did not make desired progress toward some of the objectives set out in the individualize education program (IEP) or by use of teaching method different from that desired by parent, or by continuing mainstreaming in nonacademic areas contrary to wishes of parent. O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School Dist. No. 223, D.Kan.1997, 963 F.Supp. 1000, affirmed 144 F.3d 692. Schools 148(2.1)

School district's placement of learning disabled student in mixed category program involving both learning disabled and educable mentally retarded students in same classroom was appropriate under Education of the Handicapped Act; student progressed under plan and his need for cultivation of peer and social relationships was served. Garrick B. by Gary B. v. Curwensville Area School Dist., M.D.Pa.1987, 669 F.Supp. 705. Schools 148(3)

89. Likelihood of educational progress, free appropriate public education

Magistrate judge properly ordered a 20-year-old mentally retarded child transferred from educational school for handicapped children to a community residence; there was evidence that the child could be appropriately served in community, that the child could obtain educational services in school district from which she would be able to obtain educational benefit, and that if the child were to remain at the school for handicapped children for the remaining two years of her eligibility for educational benefits, her progress over course of those two years would

not be significant. Sherri A.D. v. Kirby, C.A.5 (Tex.) 1992, 975 F.2d 193. Schools 155.5(4)

State, in qualifying for assistance from federal government under Education of the Handicapped Act, was required to provide handicapped child with personalized plan of instruction under which educational progress was likely, rather than merely with plan avoiding regression or providing trivial educational advancement; standard was not whether plan would be "of benefit" to child. Board of Educ. of East Windsor Regional School Dist. v. Diamond in Behalf of Diamond, C.A.3 (N.J.) 1986, 808 F.2d 987. Schools 148(2.1)

Individualized Education Program (IEP), which proposed public high school placement of private school student suffering from dyslexia and attention deficit disorder, was appropriate; IEP included special accommodations for student's needs and, given improvements made during private placement, student was likely to progress. Banks ex rel. Banks v. Danbury Bd. of Educ., D.Conn.2002, 238 F.Supp.2d 428. Schools 148(3)

School district carried its burden of showing that student suffering from verbal apraxia would receive meaningful educational benefit from the individualized education program (IEP) developed under the IDEA, despite failing to include a particular methodology of reading instruction preferred by mother and her expert. Moubry v. Independent School Dist. 696, Ely, Minn., D.Minn.1998, 9 F.Supp.2d 1086. Schools 148(3)

90. Achievement of full potential, free appropriate public education

Individuals with Disabilities Education Act (IDEA) does not require states to provide services which maximize each child's potential or to achieve strict equality of opportunity or services; education secured by IDEA is not one that will maximize potential or best possible education but instead is simply one that is appropriate. Straube v. Florida Union Free School Dist., S.D.N.Y.1992, 801 F.Supp. 1164. Schools 148(2.1)

91. Best possible education, free appropriate public education

The free and appropriate public education (FAPE) described in an individual education plan (IEP) under the Individuals with Disabilities Education Act (IDEA) need not be the best possible one, but rather, need only be an education that is specifically designed to meet the disabled child's unique needs, supported by services that will permit him to benefit from the instruction. Loren F. ex rel. Fisher v. Atlanta Independent School System, C.A.11 (Ga.) 2003, 349 F.3d 1309. Schools 148(2.1)

Although school board should not make placement decisions under the EHA on basis of financial considerations alone, an "appropriate public education" does not mean the best possible education that a school could provide if given access to unlimited funds; Congress intended states to balance competing interests of economic necessity on the one hand, and the special needs of the handicapped child, on the other when making education placement decisions. Barnett by Barnett v. Fairfax County School Bd., C.A.4 (Va.) 1991, 927 F.2d 146, certiorari denied 112 S.Ct. 175, 502 U.S. 859, 116 L.Ed.2d 138. Schools 148(2.1)

Then-existing New Jersey administrative regulation construing term "suitable," in statute governing education of handicapped children, as authorizing a program that best helps a pupil to achieve success in learning was not

overbroad and regulation requiring that a local district provide each handicapped person a special education program and services according to how the pupil could best achieve educational success was not inconsistent with statute. Geis v. Board of Educ. of Parsippany-Troy Hills, Morris County, C.A.3 (N.J.) 1985, 774 F.2d 575. Schools 148(2.1)

This chapter does not require states to make available the best possible option. Springdale School Dist. No. 50 of Washington County v. Grace, C.A.8 (Ark.) 1982, 693 F.2d 41, certiorari denied 103 S.Ct. 2086, 461 U.S. 927, 77 L.Ed.2d 298. Schools 148(2.1)

"Appropriate education" required under the IDEA does not mean the best possible or optimal one nor require that school district maximize the potential of handicapped students; rather, it means providing personalized instruction with sufficient support services to permit child to benefit educationally from that instruction at public expense, under public supervision, and approximating state's educational standards in its regular education. Cypress-Fairbanks Independent School Dist. v. Michael F. by Barry F., S.D.Tex.1995, 931 F.Supp. 474, affirmed as modified 118 F.3d 245, 152 A.L.R. Fed. 771, certiorari denied 118 S.Ct. 690, 522 U.S. 1047, 139 L.Ed.2d 636. Schools 148(2.1)

Individualized education program (IEP) developed for learning disabled student, involving mainstreaming with special education services in resource room one period a day, was reasonably calculated to provide educational benefits and complied with IDEA, so that parent was not entitled to reimbursement for tuition and expenses at residential school, in light of evidence that disability was mild and subject to accommodation without major disruption of staff and programs, that student was progressing at public school, that district made major efforts in employing experts who could advise them about appropriate IEP and employed tutors during summer months, and that teachers took conscientious and active role in implementation of program. Mather v. Hartford School Dist., D.Vt.1996, 928 F.Supp. 437. Schools 148(3); Schools 154(3)

Federal law does not impose obligation to provide handicapped student with best education, public or nonpublic, that money can buy. Lewis v. School Bd. of Loudoun County, E.D.Va.1992, 808 F.Supp. 523. Schools 148(2.1)

Education for All Handicapped Children Act did not give parents per se right to compel placement of their child in special school that offered the best educational opportunity. Eva N. v. Brock, E.D.Ky.1990, 741 F.Supp. 626, affirmed 943 F.2d 51. Schools 154(2.1)

Under this chapter, which requires school officials to provide handicapped child with a free appropriate public education, an "appropriate education" is not synonymous with best possible education, nor is it an education which enables child to achieve his full potential, as even the best public schools lack resources to enable every child to achieve his full potential. Bales v. Clarke, E.D.Va.1981, 523 F.Supp. 1366. Schools 164

92. Maximization of potential, free appropriate public education

Statement of present levels of performance in hearing impaired student's individualized educational program

(IEP) did not violate procedural requirements of IDEA and Kansas law, despite fact that it did not clearly convey student's present levels of educational performance in way that related those levels to her disability or explain import of student's raw test scores, where IEP referred to specialists' reports which presumably contained more detail about scores and student's parents and teachers were fully aware of student's level and performance and had discussed them in detail in formulating IEP. O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School Dist. No. 233, C.A.10 (Kan.) 1998, 144 F.3d 692. Schools 148(2.1)

Provision of Tennessee's special education statute, requiring that schools provide "special education services sufficient to meet the needs and maximize the capabilities of handicapped children" did not increase the standard against which school district's performance of obligations to provide education for handicapped would be judged, over the "floor" level of providing education plan "reasonably calculated to enable a child to receive educational benefits," mandated by federal Individuals with Disabilities Education Act. Doe By and Through Doe v. Board of Educ. of Tullahoma City Schools, C.A.6 (Tenn.) 1993, 9 F.3d 455, certiorari denied 114 S.Ct. 2104, 511 U.S. 1108, 128 L.Ed.2d 665. Schools 148(2.1)

"Appropriate education" required by Education of the Handicapped Act is not one which is guaranteed to maximize child's potential. Johnson By and Through Johnson v. Independent School Dist. No. 4 of Bixby, Tulsa County, Okl., C.A.10 (Okla.) 1990, 921 F.2d 1022, certiorari denied 111 S.Ct. 1685, 500 U.S. 905, 114 L.Ed.2d 79. Schools 148(2.1)

The Education for All Handicapped Children Act requires states to provide handicapped children a basic floor of educational opportunity but does not require an educational program to maximize the potential of handicapped children. Leonard by Leonard v. McKenzie, C.A.D.C.1989, 869 F.2d 1558, 276 U.S.App.D.C. 239. Schools 148(2.1)

Requirement under this chapter of a "free appropriate public education" did not require state to maximize potential of handicapped child commensurate with opportunity provided nonhandicapped child. Hall by Hall v. Vance County Bd. of Educ., C.A.4 (N.C.) 1985, 774 F.2d 629.

This chapter did not require that the state of Ohio maximize potential of handicapped child commensurate with opportunity provided to other children. Rettig v. Kent City School Dist., C.A.6 (Ohio) 1983, 720 F.2d 463, appeal dismissed, certiorari denied 104 S.Ct. 2379, 467 U.S. 1201, 81 L.Ed.2d 339, rehearing denied 104 S.Ct. 3549, 467 U.S. 1257, 82 L.Ed.2d 852. Schools 148(2.1)

Individuals with Disabilities Education Improvement Act (IDEIA) does not require the school district to maximize the potential of handicapped children. M.N. v. New York City Dept. of Educ., Region 9 (Dist. 2), S.D.N.Y.2010, 700 F.Supp.2d 356. Schools 148(2.1)

IDEA's definition of free appropriate public education (FAPE) does not require school district to maximize potential of handicapped children; rather, FAPE requires that education to which access is provided be sufficient to confer some educational benefit upon handicapped child. Mr. C. v. Maine School Administrative Dist. No. 6,

D.Me.2008, 538 F.Supp.2d 298. Schools 148(2.1)

IDEA's guarantee of a free appropriate public education (FAPE) is that of a basic floor of opportunity that consists of access to specialized instruction and related services which are individually designed to provide education benefit to the handicapped child; there is no requirement for a state to provide services to maximize each child's potential, nor must the FAPE be designed according to the parent's desires. Roark ex rel. Roark v. District of Columbia, D.D.C.2006, 460 F.Supp.2d 32. Schools 148(2.1)

Education for All Handicapped Children Act does not require a state to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children; Act sought primarily to identify and evaluate handicapped children, and to provide them with access to a free public education. Garcia ex rel. Garcia v. Board of Educ. of Albuquerque Public Schools, D.N.M.2006, 436 F.Supp.2d 1181. Schools 148(2.1)

Requirement of Individuals with Disabilities Education Act (IDEA) that participating states and their public education agencies provide all students with disabilities with free appropriate public education (FAPE) is satisfied when state provides personalized instruction with sufficient support services to allow disabled child to benefit educationally from that instruction; requirement of FAPE does not require state to maximize each child's potential commensurate with opportunity provided to nondisabled children. Foley v. Special School Dist. of St. Louis County, E.D.Mo.1996, 927 F.Supp. 1214, rehearing denied 968 F.Supp. 481, affirmed 153 F.3d 863. Schools 148(2.1)

Free, appropriate education under IDEA does not require states to maximize potential of handicapped children commensurate with opportunity provided to other children. Hall v. Shawnee Mission School Dist. (USD No. 512), D.Kan.1994, 856 F.Supp. 1521. Schools 148(2.1)

While educational benefit provided to handicapped child under Individuals with Disabilities Education Act (IDEA) must be meaningful, IDEA does not require state to attempt to maximize each child's potential. Bonnie Ann F. by John R.F. v. Calallen Independent School Dist., S.D.Tex.1993, 835 F.Supp. 340, affirmed 40 F.3d 386, certiorari denied 115 S.Ct. 1796, 514 U.S. 1084, 131 L.Ed.2d 723. Schools 148(2.1)

In reviewing agency determinations under Individuals With Disabilities Education Act (IDEA), courts must be mindful of fact that "appropriate" education for handicapped child does not mean "potential-maximizing." P.J. By and Through W.J. v. State of Conn. Bd. of Educ., D.Conn.1992, 788 F.Supp. 673. Schools 148(2.1)

Advancement of handicapped student is not necessarily "potential maximizing" that is not required by Education of the Handicapped Act. Angevine v. Jenkins, D.D.C.1990, 752 F.Supp. 24, reversed on other grounds 959 F.2d 292, 294 U.S.App.D.C. 346. Schools 148(2.1)

93. Maximum program attainable, free appropriate public education

Individuals with Disabilities Education Act (IDEA) does not require states to develop individualized education programs (IEPs) that maximize potential of handicapped children, but, instead, guarantees appropriate education, not one that provides everything that might be thought desirable by loving parents. Walczak v. Florida Union Free School Dist., C.A.2 (N.Y.) 1998, 142 F.3d 119. Schools 148(2.1)

Handicapped child's allegation that programming longer than four-hour school day envisioned in his individualized education plan (IEP) might increase benefit he received failed to meet burden of demonstrating that child's IEP would not provide child any meaningful benefit; Education of Handicapped Act does not require school to supply handicapped child with maximum benefit possible. Christopher M. by Laveta McA. v. Corpus Christi Independent School Dist., C.A.5 (Tex.) 1991, 933 F.2d 1285. Schools 155.5(4)

School district was not required to place handicapped child in a private program serving both handicapped and nonhandicapped children and, though private program may have offered the best educational opportunities, could properly decide to place a child in a public educational program serving only handicapped children without violating the requirement in the Education of the Handicapped Act that handicapped children be educated "to the maximum extent appropriate" as long as requirements for placement in public program were met. Mark A. v. Grant Wood Area Educ. Agency, C.A.8 (Iowa) 1986, 795 F.2d 52, certiorari denied 107 S.Ct. 1579, 480 U.S. 936, 94 L.Ed.2d 769. Schools 154(4)

94. Most appropriate education, free appropriate public education

Evidence was sufficient to establish that private school provided appropriate educational setting for high school student who suffered from attention deficit disorder, as required by IDEA, entitling parents to cost of placing student in private school after public school failed to provide student with appropriate placement; at private school, student had small class with high teacher-student ratio, immediate consequences when he misbehaved or did not do his work, and performed better academically after transferring to private school. Capistrano Unified School Dist. v. Wartenberg By and Through Wartenberg, C.A.9 (Cal.) 1995, 59 F.3d 884. Schools 154(4)

School district mainstreamed handicapped child to maximum extent appropriate, as required by IDEA; child had cerebral palsy, hydrocephalus, seizure disorder, perceptual vision deficits and communication disorder, and I.Q. of less than 32, witnesses who knew him well and worked with him closely testified that his individualized education program (IEP) goals and objectives could not be met in general education class, though opposing expert believed that he would benefit from such placement, evidence was overwhelming that the child would be engaged in entirely different academic activities than would his nondisabled peers, and member of child's multidisciplinary team testified that child did not model or imitate other students so as to receive nonacademic benefits from mainstreaming, and witness testified that one-to-one support required for the child would isolate him and make him a visitor in the classroom. D.F. v. Western School Corp., S.D.Ind.1996, 921 F.Supp. 559. Schools 148(2.1); Schools 148(3)

95. Perfect education, free appropriate public education

Under this chapter and Va. Code 1950, § 22.1-214(A), state was not required to pay all of the expenses incurred by parents in educating child, whether child was handicapped or nonhandicapped, nor was state required to provide perfect education to any child. Bales v. Clarke, E.D.Va.1981, 523 F.Supp. 1366. Schools 148(2.1)

96. Self-sufficiency of child, free appropriate public education

Under this chapter, calling for free appropriate public education, unique needs which must be met by educational program include those which, if satisfied, allow the child, within the limits of his or her handicap, to become self-sufficient. Armstrong v. Kline, D.C.Pa.1979, 476 F.Supp. 583, remanded on other grounds 629 F.2d 269, on remand 513 F.Supp. 425, certiorari denied 101 S.Ct. 3123, 452 U.S. 968, 69 L.Ed.2d 981. Schools 164

97. Passing and promotion, free appropriate public education

Given statutory bias in Individuals with Disabilities Education Act (IDEA) for mainstreaming handicapped children, individualized education program (IEP) which places pupil in public school program will ordinarily pass academic muster so long as it is reasonably calculated to enable child to achieve passing marks and advance from grade to grade. Lenn v. Portland School Committee, C.A.1 (Me.) 1993, 998 F.2d 1083. Schools 148(2.1)

While passing marks and annual grade promotion are important to consideration of whether school is meeting requirement of Education of the Handicapped Act (EHA), child's ability or inability to achieve marks and progress does not automatically resolve inquiry as to whether child is receiving free appropriate public education. In re Conklin, C.A.4 (Md.) 1991, 946 F.2d 306. Schools 148(2.1)

98. Grade level, free appropriate public education

Although residential placement might increase benefit to student with behavior disorder and emotional disturbance, he was receiving a meaningful educational benefit where he was in self-contained classroom for behavior disordered-emotionally disturbed students with a teacher's aide, computers, and teacher certified in special education and, as a sixth grader, he was performing math, reading, and spelling on the fourth grade level and English on the 3rd grade level. Swift By and Through Swift v. Rapides Parish Public School System, W.D.La.1993, 812 F.Supp. 666, affirmed 12 F.3d 209. Schools 154(3)

Evidence supported school's determination that student with Down's Syndrome should be placed in school's class for moderately retarded, which emphasized survival skills, as opposed to its program for mildly retarded, which emphasized some academics; there was evidence that child, while being retained in mildly retarded class during pendency of court proceedings, was functioning only at first grade level and had to receive individualized instruction from teacher, while remainder of class was operating at fifth or sixth grade level. Chris C. by Barbara C. v. Gwinnett County School Dist., N.D.Ga.1991, 780 F.Supp. 804, affirmed 968 F.2d 25. Schools 155.5(4)

99. Class size, free appropriate public education

Class size provisions for special education students contained in collective bargaining agreement (CBA) between board of education and teachers' union, which placed restrictions on student-teacher ratios, were not illegal, invalid, or unenforceable, under federal or Connecticut state laws concerning students with disabilities, since provisions could be implemented without denying special education services required by students' individualized education plans (IEP); provisions did not require that disabled students be removed from regular classroom for any period of time if doing so would be inconsistent with their IEPs, nor did it mandate that any particular number of classes be created for special education students, and board could comply with class size provisions if it created additional sections for special education inclusion classes and hired additional teachers, so issue was one of allocation of resources rather than an educational or legal issue. New Britain Bd. of Educ. v. New Britain Federation of Teachers, Local 871, D.Conn.2010, 754 F.Supp.2d 407. Labor And Employment 1255; Schools 148(2.1)

School district's special education school was appropriate educational placement for student with Attention Deficit Hyperactivity Disorder (ADHD) and Fetal Alcohol Syndrome, where school was equipped to implement his IEP as written and school's student-teacher ratio of 12 or 13-to-one satisfied IEP's requirement that student be educated in environment with low student-teacher ratio; fact that student could not continue at school for more than one year due to its grade limitations did not make placement presumptively inappropriate. O.O. ex rel. Pabo v. District of Columbia, D.D.C.2008, 573 F.Supp.2d 41. Schools 148(3)

School district failed to provide emotionally disturbed student with free appropriate public education (FAPE), as required by Individuals with Disabilities Education Act (IDEA), when district proposed individualized education plan (IEP) that did not provide small, class setting declared by experts to be necessary for child to learn. Gellert v. District of Columbia Public Schools, D.D.C.2006, 435 F.Supp.2d 18. Schools 148(3)

100. Gender composition of class, free appropriate public education

Neither Va. Code 1950, § 22.1-214(A) nor this chapter mandated sexual composition of a class. Bales v. Clarke, E.D.Va.1981, 523 F.Supp. 1366. Schools 148(2.1)

100a. Harassment and bullying, free appropriate public education

A free appropriate public education (FAPE), under IDEA, for high school student with autism transitioning from private to public school placement did not require school district to prove that student would not face future bullying at public school; although student had experienced bullying at a school he had previously attended, and although student's mother had heard students at public school discuss bullying, fact that new placement could appropriately deal with any bullying that might occur was sufficient to meet IDEA. J.E. v. Boyertown Area School Dist., E.D.Pa.2011, 834 F.Supp.2d 240, affirmed 452 Fed.Appx. 172, 2011 WL 5838479. Schools 148(3)

Parents of disabled child who sued city department of education, alleging that school's failure to prevent bullying deprived child of free appropriate public education (FAPE), established that school personnel were deliberately indifferent to or failed to take reasonable steps to prevent bullying, as required to maintain claim under Individuals with Disabilities Education Act (IDEA); child was isolated and victim of harassment from her peers, parents sent letters and tried to speak to principal about issue, school failed to take reasonable steps to address

harassment, and child suffered emotional and social scars as result of bullying. T.K. v. New York City Dept. of Educ., E.D.N.Y.2011, 779 F.Supp.2d 289. Schools 148(2.1)

101. Diploma, free appropriate public education

Denial of diplomas to handicapped children who have been receiving special education and related services required under this chapter, but are unable to achieve educational level necessary to pass minimal competency test, is not denial of "free appropriate public education." Brookhart v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1983, 697 F.2d 179. Schools 178

Graduation goal in learning disabled student's individualized education program (IEP), which projected that student would graduate with regular diploma within three years from date of IEP, did not create substantively deficient IEP, as would violate Individuals with Disabilities Education Act (IDEA), even though, at time IEP was written, student has received little credit for his entire freshmen year and remained at elementary level for reading and math; tutoring program in which student was enrolled had several characteristics, including shorter grading period, which could allow student to meet goal of on-time graduation with regular diploma. G.R. ex rel. Russell v. Dallas School Dist. No. 2, D.Or.2011, 823 F.Supp.2d 1120. Schools 148(3)

Individuals with Disabilities Education Act's (IDEA) standard of free appropriate public education (FAPE) did not require local educational agency to ensure that sufficient education and supports be provided for student with borderline cognitive skills "to permit her to graduate with a diploma no later than the semester ending following her 21st birthday." District of Columbia v. Nelson, D.D.C.2011, 811 F.Supp.2d 508. Schools 148(3)

102. Equality of services, free appropriate public education

State-funded preschool program was not shown to be a free appropriate public education (FAPE) as required under IDEA on theory it was similar to Head Start, where there was no evidence that the school district ever evaluated this program with reference to child's individualized education program (IEP), and the district introduced no evidence of substantial equivalence of the programs. Board of Educ. of LaGrange School Dist. No. 105 v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1999, 184 F.3d 912. Schools 154(2.1)

Disabled student voluntarily enrolled in private parochial school by his parents was entitled, under preamendment version of Individuals with Disabilities Education Act (IDEA), to receive special education services comparable in quality, scope, and opportunity for participation to those services provided to public school students, in absence of any individualized determination by school district of how best to meet student's needs; due to nature of his disability, student required one-on-one assistance throughout school day, which could not be provided off-site, and cost of providing services was identical on- and off-site. Peter v. Wedl, C.A.8 (Minn.) 1998, 155 F.3d 992, rehearing and suggestion for rehearing en banc denied , on remand 35 F.Supp.2d 1134. Schools 154(4)

As long as individualized education program (IEP) proposed by school district meets minimum federal standards of appropriateness, Individuals with Disabilities Education Act (IDEA) does not require school districts to reim-

burse parents who choose a superior placement for the child. Hampton School Dist. v. Dobrowolski, C.A.1 (N.H.) 1992, 976 F.2d 48. Schools 148(2.1)

School district's refusal to provide sign-language instructor for hearing-impaired student in private sectarian school setting was not abuse of district's discretion under 1997 amendments to Individuals with Disabilities Education Act (IDEA); school's provision of sign-language instructor while student attended classes in public school satisfied IDEA's genuine opportunity for equitable participation standard as clarified by amendment, school district offered student free appropriate public education (FAPE), and parents voluntarily placed student in private school. Nieuwenhuis by Nieuwenhuis v. Delavan-Darien School Dist. Bd. of Educ., E.D.Wis.1998, 996 F.Supp. 855. Schools 8; Schools 148(2.1)

Individual with Disabilities Education Act (IDEA) requires local school districts to make equitable distribution of IDEA resources made available to it among eligible students regardless of whether they attend district school or private school; although local school district is given some discretion in allocating resources, in exercising its discretion, local school district may not do so by totally excluding students who do not attend district schools. Natchez-Adams School Dist. v. Searing by Searing, S.D.Miss.1996, 918 F.Supp. 1028. Schools 148(2.1)

Under this chapter and section 794 of Title 29, an "appropriate education," to which handicapped children are entitled, is one which provides each handicapped child educational opportunities commensurate with that provided other children in the public schools. Gladys J. v. Pearland Independent School Dist., S.D.Tex.1981, 520 F.Supp. 869. Schools 148(2.1)

Equality of services and programs for handicapped and nonhandicapped children was not test for determining whether appropriate education was being provided by state under this chapter which called for free appropriate public education for handicapped children. Armstrong v. Kline, D.C.Pa.1979, 476 F.Supp. 583, remanded on other grounds 629 F.2d 269, on remand 513 F.Supp. 425, certiorari denied 101 S.Ct. 3123, 452 U.S. 968, 69 L.Ed.2d 981. Schools 164

103. Least restrictive environment, free appropriate public education

Provision of disabled student's individualized education plan (IEP) resolving that he would be in regular classroom 74% of time complied with Individuals with Disabilities Education Act's (IDEA) requirement that he be placed in least restrictive environment, despite parents' contention that he should have been placed in regular classroom 80% of time, where evidence produced during administrative proceeding demonstrated that education in regular classroom, with use of supplemental aids and services, could not be achieved satisfactorily. P. ex rel. Mr. and Mrs. P. v. Newington Bd. of Ed., C.A.2 (Conn.) 2008, 546 F.3d 111. Schools 154(2.1)

School district did not violate Individuals with Disabilities Education Act (IDEA) provision requiring it to educate child in least restrictive environment, when it discontinued mainstreaming of student with Rett syndrome, given that while student was in mainstream school she spent most of her time in private room with instruction from special education teacher, rather than in mainstream classroom, due to her disruptive behavior. Board of Educ. of Tp. High School Dist. No. 211 v. Ross, C.A.7 (Ill.) 2007, 486 F.3d 267. Schools 154(2.1)

The IDEA requires that students with disabilities be educated in the least restrictive environment, reflecting a strong preference that disabled children attend regular classes with non-disabled children and a presumption in favor of placement in the public schools. T.F. v. Special School Dist. of St. Louis County, C.A.8 (Mo.) 2006, 449 F.3d 816. Schools 154(2.1)

Public special education preschool placement was not the "least restrictive environment" for student with autism spectrum disorder, and thus proposed Individualized Education Program (IEP) placing student in special education preschool failed to provide student with a free appropriate public education (FAPE) as required under the IDEA; student was succeeding in private mainstream preschool with the assistance of an aide and an intensive applied behavioral analysis program, child was the most academically advanced child in her mainstream classroom, students at the special education pre-school functioned at a considerably lower level than student, and mainstream classroom provided student with appropriate role models and had a more balanced gender ratio. L.B. ex rel. K.B. v. Nebo School Dist., C.A.10 (Utah) 2004, 379 F.3d 966. Schools 154(2.1)

Hybrid preschool program, involving a half-day preschool class composed of half disabled children and half non-disabled children, with afternoon placement in the school's resource room, would ordinarily provide the least restrictive environment (LRE) required by the IDEA only under two circumstances: first, where education in a regular classroom, with the use of supplementary aids and services, could not be achieved satisfactorily or, second, where a regular classroom is not available within a reasonable commuting distance of the child. T.R. v. Kingwood Tp. Bd. of Educ., C.A.3 (N.J.) 2000, 205 F.3d 572. Schools 154(2.1)

Full-time residential facility was least restrictive educationally appropriate setting under Individuals with Disabilities Education Act (IDEA) for severely mentally retarded student; residential program was required for student to make meaningful educational progress to reduce his severe self-stimulatory behavior or to improve his toileting, eating, and communication skills, which would succeed only in intense atmosphere of round-the-clock residential setting in which consistent educational program could be enforced throughout all of his waking hours. M.C. on Behalf of J.C. v. Central Regional School Dist., C.A.3 (N.J.) 1996, 81 F.3d 389, certiorari denied 117 S.Ct. 176, 519 U.S. 866, 136 L.Ed.2d 116. Schools 154(3)

Where district court found that school district had failed to present an independent educational program (IEP) which met the minimum requirements of IDEA and had failed to suggest any alternative to its program which did meet those minimums, district court had no choice but to order that the mentally retarded child be educated at out-of-state residential school as urged by the parents, as the only viable option, and since that was the only option, the court was not required to locate another school that would satisfy the least restrictive alternative requirement based on the entire pool of schools available, but rather was required simply to determine whether the one available choice would provide an appropriate education. Board of Educ. of Murphysboro Community Unit School Dist. No. 186 v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1994, 41 F.3d 1162. Schools 154(4)

Local extended-day program offered to severely retarded student by school district could confer some educational benefit on student in least restrictive educational environment and, thus, program satisfied requirements of Education of the Handicapped Act, even if student could have made more progress in residential placement. Kerkam by Kerkam v. Superintendent, D.C. Public Schools, C.A.D.C.1991, 931 F.2d 84, 289 U.S.App.D.C. 239

. Schools 148(3); Schools 154(3)

Provision of hearing officer's order, requiring individualized education plan (IEP) team to change location of student with borderline cognitive skills to comparable full-time special education day school if he was not making sufficient progress at private institution, unduly restricted local educational agency from complying with Individuals with Disabilities Education Act's (IDEA) requirement of "least restrictive environment" by prohibiting consideration of regular educational environment or part-time placement in special education school. District of Columbia v. Nelson, D.D.C.2011, 811 F.Supp.2d 508. Schools 154(4)

There was sufficient evidence to support impartial hearing officer's (IHO) determination that applied behavioral services (ABS) was least restrictive environment for disabled student, and thus was appropriate placement under IDEA, even though ABS was more restrictive than public school, where expert's report established need for structured program offering applied behavior analysis, there was no evidence that school district could offer that type of learning environment, and student's individualized education program (IEP) failed to provide services that she required. B.H. v. West Clermont Bd. of Educ., S.D.Ohio 2011, 788 F.Supp.2d 682. Schools 155.5(4)

School district, in rejecting request of parents of elementary school student with multiple disabilities for integrated approach to combining special and regular education, and instead recommending in student's individualized education plan (IEP) self-contained special education for student, did not offer student educational placement in least restrictive environment, in violation of Individuals with Disabilities Education Act (IDEA); district did not take steps toward mainstreaming student, there was lack of evidence as to whether district considered supplementary supports that could have allowed student to spend some of his school day in regular classroom, and district did not provide student any social inclusion with children without disabilities in IEP. J.G. ex rel. N.G. v. Kiryas Joel Union Free School Dist., S.D.N.Y.2011, 777 F.Supp.2d 606. Schools 154(2.1)

"Chrysalis Program" in which disabled student was placed as result of disciplinary incident was not the least restrictive environment in which student could receive free appropriate public education (FAPE), and thus substantive violation resulted from change in placement. School Bd. of the City of Norfolk v. Brown, E.D.Va.2010, 769 F.Supp.2d 928. Schools 154(2.1)

Analysis of whether individualized education program (IEP) provided autistic student with the least restrictive environment (LRE) was irrelevant; both parties agreed that student would attend full instructional program of regular education kindergarten, and by definition student had been mainstreamed to maximum extent possible because there was no additional regular class time into which he could be incorporated. Lebron v. North Penn School Dist., E.D.Pa.2011, 769 F.Supp.2d 788. Schools 148(3)

Second Circuit has adopted two-pronged approach to determine whether school district has offered to educate child in "least restrictive environment"; court should consider, first, whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for given child, and, if not, then whether school has mainstreamed child to maximum extent appropriate. E.G. v. City School Dist. of New Rochelle, S.D.N.Y.2009, 606 F.Supp.2d 384. Schools 154(2.1)

The goal under IDEA is to find the least restrictive educational environment that will accommodate the child's legitimate needs. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 154(2.1)

School district's proposed placement of autistic student in its extended school year (ESY) program did not violate IDEA's requirement that student be placed in least restrictive environment (LRE), and thus district was not required to pay for student's attendance at private art camp, even though district's ESY program did not have any non-exceptional peers, where district did not have any summer programs for non-disabled students, district provided evidence as to types of classes and instructional therapies student would receive, and there was no testimony as to what camp proposed to offer or how camp activities were expected to assist in implementation of goals set forth in student's individualized education program (IEP). Travis G. v. New Hope-Solebury School Dist., E.D.Pa.2008, 544 F.Supp.2d 435. Schools 154(4)

Therapeutic day school serving severely emotionally disturbed students, which school was the placement that Florida county school board developed in individualized education plan (IEP) for eight-year-old student who was severely emotionally disturbed, provided free and appropriate education (FAPE) to student, and thus, student's adoptive parents were not entitled to reimbursement from school board, under Individuals with Disabilities Education Act (IDEA), of costs incurred when parents decided to enroll child at residential behavioral health facility with classrooms; while IEP which had been developed in New York, shortly before student moved to Florida, had recommended placement in residential program, such placement was not least restrictive environment in Florida, number and variety of services at Florida therapeutic day school were greater than those offered in New York, educational professionals reported that student was manageable at school and able to learn, and it was student's allegedly dangerous behavior at home that parents sought to address through residential placement. L.G. v. School Bd. of Palm Beach County, Fla., S.D.Fla.2007, 512 F.Supp.2d 1240, affirmed 255 Fed.Appx. 360, 2007 WL 3002331. Schools 154(4)

School board's proposed placement of a hearing impaired child in its Head Start collaborative program would have provided a free appropriate public education (FAPE) in the least restrictive environment notwithstanding the fact that the Head Start program was not made up of 100% typically developing children. A.U., ex rel. N.U. v. Roane County Bd. of Educ., E.D.Tenn.2007, 501 F.Supp.2d 1134. Schools 154(2.1)

Hearing officer for Massachusetts Department of Education (DOE), Bureau of Special Education Appeals (BSEA) properly determined that individualized education program (IEP) developed by district for student with language-based learning disability for particular school year was reasonably calculated to provide a free appropriate public education (FAPE) in the least restrictive setting; even if his determination were not afforded due deference, court would have found sensitivity and care in his memorandum compelling, and affording it due deference, there was not a shred of error or caprice therein. David T. v. City of Chicopee, D.Mass.2006, 431 F.Supp.2d 180. Schools 148(3)

While students with disabilities should be educated in the least restrictive environment, parents are not held to the same strict standard of placement as school districts are under IDEA. Gabel ex rel. L.G. v. Board of Educ. of Hyde Park Central School Dist., S.D.N.Y.2005, 368 F.Supp.2d 313. Schools 154(2.1)

Individualized education program (IEP) developed for disabled student called for student's placement in least restrictive environment necessary to achieve free appropriate public education (FAPE) to which student was entitled under Individuals with Disabilities Education Act (IDEA); student's respiratory disability precluded him from being educated in non-air-conditioned setting, IEP provided for itinerant placement with substantial mainstreaming and homebound instruction as needed, and student received substantial homebound instruction while school air conditioning system was malfunctioning. Tracy v. Beaufort County Bd of Ed., D.S.C.2004, 335 F.Supp.2d 675. Schools 148(2.1)

School district did not provide hearing impaired preschool child with least restrictive environment (LRE), as required by Individuals with Disabilities in Education Act (IDEA), when district offered placement in two school settings involving handicapped children, when special auditory verbal therapy (AVT) child had been receiving, as adjunct to cochlear implant, required that he be exposed to normally developing children to optimize his surgically enhanced listening capability and achieve oral communication without signing. Board of Educ. of Paxton-Buckley-Loda Unit School District No. 10 v. Jeff S. ex rel. Alec S., C.D.Ill.2002, 184 F.Supp.2d 790. Schools 154(2.1)

Individualized education plan (IEP) which placed educable mentally impaired child in distant school with categorical classroom facility rather than in local school violated IDEA's least restrictive environment preference, notwithstanding Michigan law requirement that child's maximum potential be developed; although there was evidence that services necessary to enable child to achieve her IEP goals could more effectively and successfully be provided in categorical classroom, it was undisputed that services could feasibly be provided at local school. McLaughlin v. Board of Educ. of Holt Public Schools, W.D.Mich.2001, 133 F.Supp.2d 994, reversed 320 F.3d 663, rehearing denied. Schools 148(3)

Placement of emotionally handicapped and learning disabled student, who slashed another student with box cutter, in alternative school did not violate requirement that disabled student be educated in least restrictive environment, for purpose of determining whether student received free appropriate public education (FAPE) as guaranteed by IDEA, where both student's former high school and alternative school offered comparable educational benefits to student but student's inability to control his behavior made it impossible for student to obtain those benefits at high school without posing threat of injury to others. Jane Parent ex rel. John Student v. Osceola County School Bd., M.D.Fla.1999, 59 F.Supp.2d 1243, affirmed 220 F.3d 591. Schools 154(2.1)

For purpose of determining extent of liability of state board of education for failure of city school board to comply with statutory mandates concerning education of disabled students, city school board's failure to comply was systemic and pervasive, where disabled students were placed by category of disability rather than with intention of educating them in least restrictive environment (LRE) for at least 17 years following enactment of LRE mandate. Corey H. v. Board of Educ. of City of Chicago, N.D.Ill.1998, 995 F.Supp. 900. Schools 148(2.1)

Private day program in alternative middle school was “least restrictive environment” which provided educational benefit to neurologically impaired student, within meaning of Individuals with Disabilities Education Act (IDEA); student's behavior and education improved following her enrollment in private day program, recommendation of one doctor that student be placed in residential facility was based upon representation of student's

mother that student had already been labeled autistic, and another of student's doctors stated that while residential program would be most intense for student, other nonresidential settings might be appropriate. Schreiber v. Ridgewood Bd. of Educ., D.N.J.1997, 952 F.Supp. 205. Schools 154(2.1)

Dyslexic student's placement in private school for disabled students was not proper under Individuals with Disabilities Education Act (IDEA); Individualized Education Program (IEP) proposed by school district offered student free appropriate public education, student required no remedial help in a number of subjects and was happy and participative student in public school, student's attendance at Girl Scouts and YMCA activities was not comparable to mainstreaming offered in IEP, student was able to progress in science and social studies in public school through means other than reading and writing, school district's instructors utilized multisensory approaches to promote student's cognitive capabilities, student's parents did not fully express implications of student's emotional state until conduct of due process hearing on proposed IEP, and proposed IEP placed student in least restrictive environment. Independent School Dist. No. 283, St. Louis Park, Minn. v. S.D. By and Through J.D., D.Minn.1995, 948 F.Supp. 860, affirmed 88 F.3d 556. Schools 154(4)

Student with Attention Deficit Hyperactivity Disorder (ADHD) could receive appropriate education at public high school, and therefore private school for disabled students was not the least restrictive environment for the student under the Individuals with Disabilities Education Act (IDEA), where student was on nonsevere side of spectrum between mildly and moderately handicapped. Monticello School Dist. No. 25 v. Illinois State Bd. of Educ., C.D.Ill.1995, 910 F.Supp. 446, affirmed 102 F.3d 895. Schools 154(4)

Failure of state education officials to require expressly that local school districts consider least restrictive environment requirement of IDEA in meeting with parents on child's Individualized Education Program (IEP), before referring or re-referring child to state schools, violated IDEA's requirement that handicapped children be removed from regular education only if supplementary aids and services would not allow satisfactory education in regular classes. Hunt on Behalf of Hunt v. Bartman, W.D.Mo.1994, 873 F.Supp. 229. Schools 154(2.1)

School district violated Individuals With Disabilities Education Act by failing to consider less restrictive placements before accommodating kindergarten child suffering from Down's Syndrome partially in developmental class for children not yet ready for kindergarten, and partially in special class for disabled children. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 801 F.Supp. 1392, affirmed and remanded 995 F.2d 1204. Schools 148(3)

Public residential facility, rather than private facility offering substantially similar program, was least restrictive environment under Education for All Handicapped Children Act for education of adolescent who suffered from behavioral disorder. Mark Z. v. Mountain Brook Bd. of Educ., N.D.Ala.1992, 792 F.Supp. 1228. Schools 154(3)

Individuals with Disabilities Education Act (IDEA) imposes affirmative obligations on school districts to consider placing disabled children in regular classroom settings, with use of supplementary aids and services, before exploring other alternative placements; IDEA incorporates “least restrictive environment” requirement. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 789 F.Supp. 1322. Schools

148(2.1)

Centralizing cued speech program at high school that was approximately five miles farther from hearing impaired student's home than his base school provided free, appropriate public education in least restrictive environment and did not discriminate on basis of handicap, even if student wanted to attend his base school; student was involved in classes made up of nonhandicapped students; and nothing indicated that student would receive better education at his base school. Barnett v. Fairfax County School Bd., E.D.Va.1989, 721 F.Supp. 757, affirmed 927 F.2d 146, certiorari denied 112 S.Ct. 175, 502 U.S. 859, 116 L.Ed.2d 138. Schools 154(2.1)

Specialized school for deaf was not presumptively excluded from consideration as a "least restrictive environment" within meaning of the Education for All Handicapped Children Act, though school was not, strictly speaking, a mainstreaming program. Barwacz v. Michigan Dept. of Educ., W.D.Mich.1988, 681 F.Supp. 427. Schools 148(2.1)

Handicapped children are entitled to learn in least restrictive environment possible; generally choice of least restrictive environment will involve attempt to mainstream handicapped child, but determination involves careful consideration of child's own needs and in some instances, special facility will constitute least restrictive environment for particular handicapped child. Taylor by Holbrook v. Board of Educ. of Copake-Taconic Hills Cent. School Dist., N.D.N.Y.1986, 649 F.Supp. 1253. Schools 148(2.1)

School district's placement of disabled students in fixed-length programs for extended school year (ESY) services violated IDEA by not taking into account least restrictive environment (LRE) requirement; little or no consideration was given to appropriate duration of any ESY programs. Reusch v. Fountain, D.Md.1994, 872 F.Supp. 1421, supplemented 1994 WL 794754. Schools 148(2.1)

Proposed placement of a student with Down syndrome in a self-contained classroom did not violate the Individuals with Disabilities Education Act's (IDEA) least restrictive environment (LRE) provisions; school district had taken multiple steps in an attempt to accommodate the student, including providing a one-on-one paraeducator, physical, occupational, and speech therapy, and adapted physical education, and had developed an adequate behavioral intervention plan (BIP); moreover, there was evidence that the student was receiving no benefit from being in a regular classroom and that his presence was often disruptive. T.W. v. Unified School Dist. No. 259, Wichita, Kan., C.A.10 (Kan.) 2005, 136 Fed.Appx. 122, 2005 WL 1324969, Unreported. Schools 154(2.1)

104. Special education, free appropriate public education

School district's failure to identify elementary school student as child in need of special education services at beginning of first grade did not deny student free appropriate public education (FAPE) as would violate the Individuals with Disabilities Education Act (IDEA), despite later determination of reading and learning disabilities, where student was evaluated several months prior in kindergarten and found to not qualify as student in need, first grade was first time students ever had a chance to be in a test taking situation, and other children also had difficulty taking a test. Ridley School Dist. v. M.R., C.A.3 (Pa.) 2012, 680 F.3d 260. Schools 148(3)

Under IDEA, appropriate placement for moderately mentally retarded nine-year-old student was in regular second grade classroom, with some supplemental services, as full-time member of that class; although school district claimed that it would lose up to $190,764 in state special education funding if student were not enrolled in special education class at least 51% of day, district did not seek statutory waiver, and district's proposal that child be taught by special education teacher ran directly counter to congressional preference that children with disabilities be educated in regular classes with children who are not disabled. Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H. By and Through Holland, C.A.9 (Cal.) 1994, 14 F.3d 1398, certiorari denied 114 S.Ct. 2679, 512 U.S. 1207, 129 L.Ed.2d 813. Schools 148(3)

School district's placement of mildly mentally retarded student in small special education classes was "appropriate" public education under Education for All Handicapped Children Act, despite parents' contention that individualized tutoring was necessary. Gregory K. v. Longview School Dist., C.A.9 (Wash.) 1987, 811 F.2d 1307. Schools 148(3)

Individualized education program (IEP) providing for placement of student diagnosed with autism as charter school specifically for children with autism, without providing for additional special education itinerant teacher (SEIT) services, occupational therapy, and physical therapy, was reasonably calculated to enable student to receive educational benefits, as required by the Individuals with Disabilities Education Improvement Act (IDEIA); the charter school provided intensive academic and behavioral programs for children with autism, the school developed an individualized program for student based on his needs, and the school provided the parents with a comprehensive training program and monthly home visits. M.N. v. New York City Dept. of Educ., Region 9 (Dist. 2), S.D.N.Y.2010, 700 F.Supp.2d 356. Schools 148(3)

Individualized education program (IEP) providing for full-time special education for student with Attention Deficit Hyperactivity Disorder (ADHD) and Fetal Alcohol Syndrome was reasonably calculated to provide educational benefit, where IEP contained clear goals that were written in measurable way; IEP contained annual goals in various areas, as well as short-term objectives towards achieving each annual goal. O.O. ex rel. Pabo v. District of Columbia, D.D.C.2008, 573 F.Supp.2d 41. Schools 148(3)

Preponderance of evidence supported individual education plan committee's placement of 14-year-old developmentally disabled student at a middle school, rather than her home school, to be educated in basic special education classroom part-time and mainstreamed at middle school in unified arts classes the rest of the day; extensive record of administrative proceedings and great weight of evidence presented in those proceedings established that student was not developing any needed independent living skills or otherwise benefitting academically from her placement in regular education academic classes at her home school as subject matter was far beyond her intellectual ability and all of her teachers and paraprofessionals testified that student needed to be in special education basic classroom. Hudson By and Through Hudson v. Bloomfield Hills Public Schools, E.D.Mich.1995, 910 F.Supp. 1291, affirmed 108 F.3d 112, certiorari denied 118 S.Ct. 78, 522 U.S. 822, 139 L.Ed.2d 37. Schools 155.5(4)

Handicapped student who followed regular education curriculum leading to high school diploma and who met goals of Individualized Education Plan (IEP) of passing mainstream classes received adequate free, appropriate

public education (FAPE) and was no longer eligible for special education services under the Individuals with Disabilities Education Act (IDEA). Chuhran v. Walled Lake Consol. Schools, E.D.Mich.1993, 839 F.Supp. 465, affirmed 51 F.3d 271. Schools 148(2.1)

Under the Individuals with Disabilities Education Act (IDEA), appropriate placement for moderately mentally retarded nine-year-old student was in a regular second grade classroom, with some supplemental services, as a full-time member of that class; factors of educational and nonacademic benefits to student and effect of her presence on teacher and other children in regular classroom weighed in favor of regular educational placement, and school district did not prove that educating student in regular education classroom with appropriate services would be significantly more expensive than educating her in a proposed special education setting. Board of Educ., Sacramento City Unified School Dist. v. Holland By and Through Holland, E.D.Cal.1992, 786 F.Supp. 874, affirmed 14 F.3d 1398, certiorari denied 114 S.Ct. 2679, 512 U.S. 1207, 129 L.Ed.2d 813. Schools 148(3)

Public school system provided adequate education opportunities for child under Education for All Handicapped Children Act by providing him one hour a day special education in school's resource specialist program, and private school education at public expense was not warranted; student RSP class had four to six students with one teacher and one aide, concentrated on spelling and writing skills, and was coordinated with general education and after exposure to RSP student scored above average in reading skills. Bertolucci v. San Carlos Elementary School Dist., N.D.Cal.1989, 721 F.Supp. 1150. Schools 154(4)

With respect to those handicapped students who were capable of being educated in special classes located in regular schools, practice of educating handicapped students who were found to be in need of special education programs in separate schools or centers, separate wings or sections of regular schools or mobile classes or trailers constituted a violation of Pennsylvania Department of Education's duty to assure that handicapped children who are educated in "regular educational environment" to maximum extent appropriate to needs of handicapped children. Hendricks v. Gilhool, E.D.Pa.1989, 709 F.Supp. 1362. Schools 148(2.1); Schools 154(2.1)

In providing special education, as required by Education for All Handicapped Children Act, public school district may utilize appropriate public school programs or may place and fund handicapped child in private school. Work v. McKenzie, D.D.C.1987, 661 F.Supp. 225. Schools 154(4)

105. Mainstreaming, free appropriate public education

States seeking to qualify for federal funds under Education of the Handicapped Act must develop policies assuring all disabled children the right to free appropriate public education, and must file with Secretary of Education formal plans mapping out in detail programs, procedures, and timetables under which they will effectuate such policies, and such plans must assure that to maximum extent appropriate, states will mainstream disabled children, that is, they will educate them with children who are not disabled, and will segregate or otherwise remove such children from regular classroom setting only when nature or severity of handicapped is such that education or regular classrooms cannot be achieved satisfactorily. Honig v. Doe, U.S.Cal.1988, 108 S.Ct. 592, 484 U.S. 305, 98 L.Ed.2d 686. Schools 17

Placement of disabled student in school with class specifically structured for autistic children as to academic subjects, but in which child would be placed in regular classes for other subjects, was appropriate under mainstreaming provision of Individuals With Disabilities Education Act (IDEA), as placement was carefully tailored to ensure that student was mainstreamed to maximum extent appropriate. Hartmann by Hartmann v. Loudoun County Bd. of Educ., C.A.4 (Va.) 1997, 118 F.3d 996, certiorari denied 118 S.Ct. 688, 522 U.S. 1046, 139 L.Ed.2d 634. Schools 148(3)

District court's finding that disabled student could receive educational benefit in regular classroom, and that individualized education program (IEP) which would involve only partial mainstreaming was thus inappropriate for student under Individuals With Disabilities Education Act (IDEA), was not supported by evidence; notwithstanding student's allegedly more successful experiences in regular classrooms before and after student's placement by defendant county, evidence indicated that student failed to make academic progress in regular classrooms, and interaction with non-handicapped students did not outweigh student's need for educational benefits. Hartmann by Hartmann v. Loudoun County Bd. of Educ., C.A.4 (Va.) 1997, 118 F.3d 996, certiorari denied 118 S.Ct. 688, 522 U.S. 1046, 139 L.Ed.2d 634. Schools 155.5(4)

Evidence in IDEA action was sufficient to establish that mainstreaming was not appropriate placement for high school student who suffered from attention deficit disorder; prior attempts at mainstreaming had resulted in total failure, while separate teaching produced superior results. Capistrano Unified School Dist. v. Wartenberg By and Through Wartenberg, C.A.9 (Cal.) 1995, 59 F.3d 884. Schools 155.5(4)

Off-campus, self-contained program was “least restrictive environment” in which student with Tourette's Syndrome and Attention Deficit Hyperactivity Disorder could be educated satisfactorily, for purposes of IDEA, despite claim that student could have been educated in mainstream setting if school provided personal classroom aide; it was not likely that aide would have made meaningful difference, student was socially isolated at mainstream placement, and he had violently attacked two students and school staff member and directed sexually explicit remarks at female students. Clyde K. v. Puyallup School Dist., No. 3, C.A.9 (Wash.) 1994, 35 F.3d 1396. Schools 154(2.1)

IDEA sets forth Congress' preference for educating children with disabilities in regular classrooms with their peers. Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H. By and Through Holland, C.A.9 (Cal.) 1994, 14 F.3d 1398, certiorari denied 114 S.Ct. 2679, 512 U.S. 1207, 129 L.Ed.2d 813. Schools 148(2.1)

Trial court did not err by finding that school's plan to educate student suffering from neurological impairment that hindered his ability to process auditory information and engage in normal language and thinking skills in classroom with a supplemental tutorial, which included access to word processor and substitution of oral examinations for written tests and longer papers satisfied “mainstreaming” requirement that handicapped children be educated along with other children to maximum extent possible; alternative proposed by parents was payment of tuition to attend private school, which consisted only of handicapped children. Doe By and Through Doe v. Board of Educ. of Tullahoma City Schools, C.A.6 (Tenn.) 1993, 9 F.3d 455, certiorari denied 114 S.Ct. 2104, 511 U.S. 1108, 128 L.Ed.2d 665. Schools 148(3)

Mainstreaming requirement of the Individuals with Disabilities Education Act (IDEA) prohibits school from placing child with disabilities outside regular classroom if educating child in regular classroom, with supplementary aids and support services, can be achieved satisfactorily and, if placement outside regular classroom is necessary for child to receive educational benefit, school may still be violating IDEA if it has not made sufficient efforts to include child in school programs with nondisabled children whenever possible. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., C.A.3 (N.J.) 1993, 995 F.2d 1204. Schools 148(2.1)

Determination that child with disabilities might make greater academic progress in segregated, special education class may not warrant excluding child from regular classroom environment; court must pay special attention to those unique benefits child may obtain from integration in regular classroom, such as development of social and communications skills from interaction with nondisabled peers. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., C.A.3 (N.J.) 1993, 995 F.2d 1204. Schools 148(2.1)

Preference of Individuals with Disabilities Education Act for mainstreaming handicapped students did not justify individualized educational program for learning disabled tenth grade student which stated goal of only four months' progress over period of more than one year so as to make public school placement superior to private school, which educated only children with disabilities; where necessary for educational reasons, mainstreaming assumed subordinate role in formulating educational program. Carter By and Through Carter v. Florence County School Dist. Four, C.A.4 (S.C.) 1991, 950 F.2d 156, certiorari granted in part 113 S.Ct. 1249, 507 U.S. 907, 122 L.Ed.2d 649, affirmed 114 S.Ct. 361, 510 U.S. 7, 126 L.Ed.2d 284. Schools 148(3)

School district mainstreamed handicapped child to maximum extent appropriate, as required by Education of the Handicapped Act, when it removed him from regular education and mainstreamed him only during lunch and recess; child was unable to participate in regular prekindergarten program without forcing instructor to devote most of her time and attention away from other students and did not receive any benefit from prekindergarten other than opportunity to associate with nonhandicapped students. Daniel R.R. v. State Bd. of Educ., C.A.5 (Tex.) 1989, 874 F.2d 1036. Schools 148(2.1)

In determining whether mainstreaming requirements of Education for All Handicapped Children Act were satisfied, court could consider both whether severely handicapped child would benefit from placement in regular public elementary school and costs to school district of such placement, which would require special, self-contained classroom with teacher trained to meet handicapped child's exceptional educational needs. A.W. By and Through N.W. v. Northwest R-1 School Dist., C.A.8 (Mo.) 1987, 813 F.2d 158, certiorari denied 108 S.Ct. 144, 484 U.S. 847, 98 L.Ed.2d 100.

Mainstreaming provisions of the Education of the Handicapped Act requiring a state receiving federal financial assistance, "to the maximum extent appropriate," to educate handicapped children with children who are not handicapped does not mean that a handicapped child must be educated in the same classroom with nonhandicapped children. Mark A. v. Grant Wood Area Educ. Agency, C.A.8 (Iowa) 1986, 795 F.2d 52, certiorari denied 107 S.Ct. 1579, 480 U.S. 936, 94 L.Ed.2d 769. Schools 148(2.1)

Although handicapped child's progress, or lack thereof, at regular public school is relevant factor in determining

maximum appropriate extent to which he can be mainstreamed, it is not dispositive of that question, since court must determine whether child could have been provided with additional services, such as those provided at schools for handicapped, which would have improved his performance at public school. Roncker On Behalf of Roncker v. Walter, C.A.6 (Ohio) 1983, 700 F.2d 1058, certiorari denied 104 S.Ct. 196, 464 U.S. 864, 78 L.Ed.2d 171. Schools 154(2.1)

Before ordering residential placement for handicapped child, court should weigh the mainstreaming policy embodied in this chapter which encourages the placement of the children in the least restrictive environment. Kruelle v. New Castle County School Dist., C.A.3 (Del.) 1981, 642 F.2d 687. Schools 154(3)

School district's individualized education program (IEP) for autistic student failed to comport with Individuals with Disabilities Education Act's (IDEA) "mainstreaming" requirement; evidence strongly supported conclusions that an integrated class would be far more beneficial for student than a self-contained class, that student was capable of attending an integrated class if provided with sufficient accommodations, and that student did not negatively impact other students. G.B. ex rel. N.B. v. Tuxedo Union Free School Dist., S.D.N.Y.2010, 751 F.Supp.2d 552. Schools 154(2.1)

Individualized education program (IEP) for 2006-2007 school year was appropriate even though it did not place student with Down Syndrome in regular education classroom for more than 80% of her time and, according to parents, behavior management plan was not properly implemented; determinations of percentage of time student spent in regular education setting had to be made on basis of student's individualized needs, and any deficiency in plan's implementation could not be attributed to school board because parents refused to accept time-out room that was major component of behavior plan. L. ex rel. Mr. F. v. North Haven Bd. of Educ., D.Conn.2009, 624 F.Supp.2d 163. Schools 148(3)

The IDEA manifests a preference for mainstreaming disabled children. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 154(2.1)

Analyzing the effect of disabled student's presence on other students in regular classroom, in determining whether to mainstream the disabled student, pursuant to IDEA, focuses on the school district's obligation to educate all of its students, recognizing that, even if disabled student might benefit from inclusion, she may be so disruptive in regular classroom that other students' education is significantly impaired, and modifying the curriculum to include disabled student may demand so much of the teacher's attention that the teacher will be required to ignore the other students. Greenwood v. Wissahickon School Dist., E.D.Pa.2008, 571 F.Supp.2d 654, affirmed 374 Fed.Appx. 330, 2010 WL 1173017. Schools 154(2.1)

Student with severe mental retardation, static non-progressive encephalopathy, and sensory disorder was not able to be satisfactorily educated full-time in regular classroom with supplementary aids and services, but rather, was being educated in least restrictive environment, as required by IDEA, so that additional inclusion would hinder her own progress in acquiring essential life skills, since school district expended substantial time and effort to provide student with meaningful benefit from inclusion in regular classroom, student received little, if any, educational benefit from inclusion in regular classroom, and student's conduct adversely affected her class-

mates in regular classroom. Greenwood v. Wissahickon School Dist., E.D.Pa.2008, 571 F.Supp.2d 654, affirmed 374 Fed.Appx. 330, 2010 WL 1173017. Schools 154(2.1)

Individualized education program (IEP) which placed student in special education program with 12:1:1 staffing ratio was inappropriate because it failed to mainstream high school student with attention deficit hyperactivity disorder (ADHD) to maximum extent appropriate, and therefore failed to meet IDEA's requirement that disabled student's free appropriate public education (FAPE) be provided in the least restrictive environment. Jennifer D. ex rel. Travis D. v. New York City Dept. of Educ., S.D.N.Y.2008, 550 F.Supp.2d 420. Schools 154(2.1)

Record of administrative hearing requested by parents of learning disabled child supported hearing officer's decision that school district included child in regular education environment to maximum extent appropriate and removed him from that setting only when it was necessary for his individual needs, in compliance with Individuals with Disabilities Education Act (IDEA) mainstreaming directive; despite fact that child required pull-out services, he was included in regular education environment for 74% of school day, and therapist agreed that transition to regular class placement of 80% of the day should be gradual. P. ex rel. Mr. P. v. Newington Bd. of Educ., D.Conn.2007, 512 F.Supp.2d 89, affirmed 546 F.3d 111. Schools 155.5(4)

Evidence supported finding that disabled third-grade student was being mainstreamed to maximum extent appropriate, as required under IDEA; non-verbal student, functioning at approximately level of one-year-old, was being mainstreamed more than half of her school day and had reverse mainstreaming with non-disabled peers for 45 minutes daily at lunch and recess time. R.L. ex rel. Mr. L. v. Plainville Bd. of Educ., D.Conn.2005, 363 F.Supp.2d 222. Schools 155.5(4)

Mainstreaming requirement of Individuals with Disabilities Education Act (IDEA), requiring that disabled student be placed in least restrictive educational environment appropriate to student's needs, did not mandate use of video teleconferencing equipment (VTC) to allow second grade student to have virtual experience of classroom during 25% of time he was absent due to complications of his leukemia treatment; it was restrictions imposed by his illness, which required him to stay out of school during periods when infection risk was high, rather than any action of school, that prevented mainstreaming. Eric H. ex rel. John H. v. Methacton School Dist., E.D.Pa.2003, 265 F.Supp.2d 513. Schools 154(2.1)

Evidence supported finding that full inclusion placement would not result in learning disabled student's being provided a free appropriate public education (FAPE) for school year; student would not have received any educational benefits from a full inclusion placement but would likely have received some non-educational benefits, student's presence in a regular classroom would likely have had minimal effect on the teacher and other students, and cost of mainstreaming student would not be a factor. Katherine G. ex rel. Cynthia G. v. Kentfield School Dist., N.D.Cal.2003, 261 F.Supp.2d 1159, affirmed 112 Fed.Appx. 586, 2004 WL 2370562. Schools 154(2.1)

Placement of learning-disabled middle school student in multicategorical special education room, for classes other than music, art, and health, was inappropriate under Individuals with Disabilities Education Act (IDEA) when compared with mainstream placement coupled with appropriate support; district had not adequately evalu-

ated its ability to accommodate student in regular classroom, record reflected that student did not flourish in special education setting and did better when given opportunity to mainstream, and there was no showing that student would act disruptively in mainstream if provided with adequate support. Warton v. New Fairfield Bd. of Educ., D.Conn.2002, 217 F.Supp.2d 261. Schools 154(2.1)

In determining whether school is in compliance with mainstreaming requirement of Individuals with Disabilities Education Act (IDEA) with respect to particular disabled student, court first ascertains whether education in regular classroom can be achieved satisfactorily with use of supplementary aids and services; if placement outside of regular classroom is found to be necessary to permit child to benefit educationally, court then decides whether school has mainstreamed child to maximum extent appropriate by making efforts to include child in school programs with nondisabled children whenever possible. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 148(2.1)

Factors to be considered in determining whether disabled child can be educated satisfactorily in regular classroom with supplementary aids and services, in accordance with mainstreaming preference established by Individuals with Disabilities Education Act (IDEA), are: steps that school has taken to try to include child in regular classroom; comparison between educational benefits child would receive in regular classroom and benefits child would receive in segregated setting; and possible negative effect child's inclusion might have on education of other children in regular classroom. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 148(2.1)

Inclusive placement of learning disabled child, in regular classroom, was appropriate under IDEA, despite parent's opposition and failure of district to diagnose child's dyslexia, where recommendations made by parents' experts could be implemented in inclusive placement, and mirrored many of the recommendations in district's proposed individualized education program (IEP), and where the district did perform testing on the child and did not base its proposed IEP solely on anecdotal information. Jonathan G. v. Lower Merion School Dist., E.D.Pa.1997, 955 F.Supp. 413. Schools 148(3)

At its core, Individuals with Disabilities Education Act (IDEA) has indisputable preference for "mainstreaming" special education students; such students are to be educated, to maximum extent appropriate, in regular class setting. Independent School Dist. No. 283, St. Louis Park, Minn. v. S.D. By and Through J.D., D.Minn.1995, 948 F.Supp. 860, affirmed 88 F.3d 556. Schools 148(2.1)

Within the statutory preference under the IDEA for "mainstreaming" handicapped student in least restrictive environment consistent with needs, to the maximum extent possible, "least restrictive environment" connotes not merely freedom from restraint but freedom to associate with family and with able-bodied peers. Cypress-Fairbanks Independent School Dist. v. Michael F. by Barry F., S.D.Tex.1995, 931 F.Supp. 474, affirmed as modified 118 F.3d 245, 152 A.L.R. Fed. 771, certiorari denied 118 S.Ct. 690, 522 U.S. 1047, 139 L.Ed.2d 636. Schools 148(2.1)

Mainstreaming is inappropriate under IDEA only where nature or severity of handicap is such that education in regular classes cannot be achieved satisfactorily. Mather v. Hartford School Dist., D.Vt.1996, 928 F.Supp. 437.

Schools 148(2.1)

Whether mainstreaming requirement of the IDEA has been met may be determined under two-part test, asking first whether education in regular classroom with use of supplemental aids and services can be achieved satisfactorily for the child and, if not, whether the school has mainstreamed child to maximum extent appropriate, and discussion of such test may be organized under the following factors: educational benefits available to child in regular classroom, supplemented with appropriate aids and services, compared with educational benefits of special education classroom; nonacademic benefits to handicapped child from interaction with nonhandicapped children; effect of presence of handicapped child on the teacher and other children in the regular classroom; and costs of supplementary aids and services necessary to mainstream the handicapped child in regular classroom setting. D.F. v. Western School Corp., S.D.Ind.1996, 921 F.Supp. 559. Schools 148(2.1)

Mainstreaming criteria of Individuals with Disabilities Education Act (IDEA) require schools, to maximum extent appropriate, to educate disabled children in least restrictive environment with children who are not disabled. Ciresoli v. M.S.A.D. No. 22, D.Me.1995, 901 F.Supp. 378. Schools 148(2.1)

Parents of handicapped student failed to establish that placement of student in therapeutic day school was not appropriate under IDEA, despite their preference for "mainstreaming" student, particularly in light of evaluations by psychologists and social workers supporting conclusion that student was not benefitting from interaction with other students and would benefit from being placed in more structured program with additional support services; effort at mainstreaming had proven unsuccessful, particularly as student's behavior represented regression on his own part, in addition to disruption of others. MR by RR v. Lincolnwood Bd. of Educ., Dist. 74, N.D.Ill.1994, 843 F.Supp. 1236, reconsideration denied 1994 WL 30968, affirmed 56 F.3d 67, rehearing and suggestion for rehearing en banc denied. Schools 154(2.1)

Individualized education program (IEP) for mainstreaming mentally disabled student only for art, music, and gym did not comply with IDEA's mainstreaming requirement; school district did not take meaningful steps to include student in regular classroom with adequate supplemental aids and services and did not consider less restrictive alternative placements, and nothing indicated that student would present behavior problems if provided with adequate level of supplementary aids and services. Mavis v. Sobol, N.D.N.Y.1993, 839 F.Supp. 968. Schools 148(3)

Individuals with Disabilities Education Act (IDEA) requires states to mainstream disabled children with able-bodied children whenever possible. Swift By and Through Swift v. Rapides Parish Public School System, W.D.La.1993, 812 F.Supp. 666, affirmed 12 F.3d 209. Schools 148(2.1)

In determining how to comply with Individuals With Disabilities Education Act school districts must carefully examine educational benefits, both academic and nonacademic, available to disabled child in a regular classroom, particularly advantages arrived from modeling on behavior and language of children without disabilities, effects of such inclusion upon other children in class, both positive and negative, and cost of necessary supplementary services. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 801 F.Supp. 1392, affirmed and remanded 995 F.2d 1204. Schools 148(2.1)

Provision of Individuals with Disabilities Education Act (IDEA) requiring state to assure that children with disabilities are educated with children who are not disabled to maximum extent appropriate denotes clear preference by Congress for inclusion of handicapped children in classes with other children. Cordero by Bates v. Pennsylvania Dept. of Educ., M.D.Pa.1992, 795 F.Supp. 1352. Schools 148(2.1)

Individuals with Disabilities Education Act's (IDEA's) preference or presumption in favor of including disabled student in regular classrooms will not be rebutted unless school district shows that child's disabilities are so severe that he or she will receive little or no benefit from inclusion, that he or she is so disruptive as to significantly impair education of other children in the class, or that cost of providing inclusive education will significantly affect other children in district. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 789 F.Supp. 1322. Schools 148(2.1)

Local board of education's decision to place child, who had been diagnosed as having mental retardation secondary to Downs Syndrome, in its preschool program, which was not fully integrated, was based on fact that child was handicapped, rather than on professional review of available alternatives and recommendations of experts familiar with particular special education needs that were incidental to child's handicap, and thus placement decision was clearly inconsistent with procedural requirements of Individuals With Disabilities Education Act (IDEA) and regulations promulgated thereunder. P.J. By and Through W.J. v. State of Conn. Bd. of Educ., D.Conn.1992, 788 F.Supp. 673. Schools 148(3)

The Individuals with Disabilities Education Act (IDEA) has a strong preference for "mainstreaming" which rises to level of a rebuttable presumption; "mainstreaming" is the placement of handicapped children in regular classrooms. Board of Educ., Sacramento City Unified School Dist. v. Holland By and Through Holland, E.D.Cal.1992, 786 F.Supp. 874, affirmed 14 F.3d 1398, certiorari denied 114 S.Ct. 2679, 512 U.S. 1207, 129 L.Ed.2d 813. Schools 148(2.1); Schools 155.5(4)

Placement of a hearing-impaired student with multiple physical handicaps at a school for the deaf was appropriate and consistent with the "mainstreaming" requirements of the Education of the Handicapped Act; the student would receive no benefit from mainstreaming and even if there was a marginal benefit from "mainstreaming" which would result from interacting with hearing children and adults while passing in the halls or eating in the lunchroom, it was outweighed by the benefits gained from an all-signing environment provided by school for the deaf. French v. Omaha Public Schools, D.Neb.1991, 766 F.Supp. 765. Schools 154(2.1)

Handicapped student's individualized education program could be implemented reasonably satisfactorily in integrated program at neighborhood high school that student would have attended were she not handicapped and, thus, placement there was in accordance with Education for All Handicapped Children Act, despite parents' desire to have student placed in totally segregated program for handicapped; student's socialization needs would be met at neighborhood school, where she would interact with age-appropriate nonhandicapped peers, no credible evidence supported concern that neighborhood school had excessively hostile educational environment, and student's recreational and physical education needs could be met there. School Dist. of Kettle Moraine v. Grover, E.D.Wis.1990, 755 F.Supp. 243. Schools 154(2.1)

Under Education of All Handicapped Children Act, removal of child from "mainstream" educational environment is permitted only when education in regular classes cannot be achieved satisfactorily. Carey on Behalf of Carey v. Maine School Administrative Dist. No. 17, D.Me.1990, 754 F.Supp. 906. Schools 148(2.1)

School district was required to explore feasibility of mainstreaming mentally handicapped child into classes for nonacademic subjects, even though child would have to take academic subjects in classes for students socially and emotionally disturbed/mentally retarded. Liscio by Hippensteel v. Woodland Hills School Dist., W.D.Pa.1989, 734 F.Supp. 689, affirmed 902 F.2d 1561, affirmed 902 F.2d 1563. Schools 148(3)

Mainstreaming of eight-year-old student with severe hearing loss, rather than placement in a facility for the hearing impaired, met the free appropriate public education requirement of Education of the Handicapped Act where child had superior intellectual potential and was learning in a ordinary classroom setting and, in some areas, was on a par with her peers, and her social adjustment was improving and her classmates had learned to communicate with her; however, board could continue to transport child to another facility for one-to-one supplementary academic work, especially given child's rapport with resource room teachers at the other facility. Bonadonna v. Cooperman, D.C.N.J.1985, 619 F.Supp. 401. Schools 154(2.1)

It is possible to provide an appropriate public education, within meaning of this chapter, in a separate educational setting. St. Louis Developmental Disabilities Treatment Center Parents Ass'n v. Mallory, W.D.Mo.1984, 591 F.Supp. 1416, affirmed 767 F.2d 518. Schools 148(2.1)

School system and school officials did not violate this chapter by transferring student with cerebral palsy from school where she was being taught in traditional classes in which majority of students were not handicapped to a school where separate classrooms were maintained for children who were physically or otherwise health impaired. Johnston by Johnston v. Ann Arbor Public Schools, E.D.Mich.1983, 569 F.Supp. 1502. Schools 154(2.1)

Inasmuch as public school's individual education program for an 18-year-old handicapped student, who was mentally retarded, mentally ill and epileptic, relied on legitimate educational philosophy akin to the mainstreaming approach preferred by this chapter and would provide the student an education that benefited her within meaning of this chapter, the plan would be deemed satisfactory under this section's requirement of a "free appropriate public education," despite the objections of student's parents and their desire that daughter remain in private school she attended for last eight years. Lang v. Braintree School Committee, D.C.Mass.1982, 545 F.Supp. 1221. Schools 164

Individualized education program that school offered to severely retarded 18-year-old boy did not place him in contact with nonhandicapped students to the maximum extent consistent with appropriate education program as required by this chapter, where under the program he had virtually no contact with nonhandicapped students outside of his lunch period and even than his contacts were few. Campbell v. Talladega County Bd. of Ed., N.D.Ala.1981, 518 F.Supp. 47. Schools 148(3)

106. Disruption, free appropriate public education

Disruptive impact that disabled student had on other students was a relevant consideration in deciding whether he received an appropriate education under the IDEA. Alex R., ex rel. Beth R. v. Forrestville Valley Community Unit School Dist. No. 221, C.A.7 (Ill.) 2004, 375 F.3d 603, certiorari denied 125 S.Ct. 628, 543 U.S. 1009, 160 L.Ed.2d 474. Schools 148(2.1)

107. Parental participation, free appropriate public education--Generally

Any procedural failure by school district in scheduling disabled student's individualized education program (IEP) meetings at times his parents could not attend during pendency of their challenge to district's proposed triennial reevaluation of student's special education services did not deny student a free appropriate public education (FAPE) under IDEA; student remained in his placement in district, and parents failed to describe any portions of IEPs for which they withdrew their consent. G.J. v. Muscogee County School Dist., C.A.11 (Ga.) 2012, 668 F.3d 1258. Schools 148(2.1)

School district's creation of individualized education plan (IEP) for disabled student was not rendered procedurally inadequate due to lack of participation by student's parents; even if district should have held a second IEP meeting to review goals and objectives that were ultimately included in IEP but were not discussed at earlier meeting, parents did not fully avail themselves of opportunity to actively and meaningfully participate in development of IEP, since they refused to talk about any issue other than whether district would pay for student's placement at private school. Hjortness ex rel. Hjortness v. Neenah Joint School Dist., C.A.7 (Wis.) 2007, 507 F.3d 1060, certiorari denied 128 S.Ct. 2962, 554 U.S. 930. Schools 148(2.1)

District court did not clearly err in determining that parents had meaningful opportunity to participate in development and review of individualized education plan (IEP) for student with Rett syndrome, as required by Individuals with Disabilities Education Act (IDEA), in that addendum drafted by district officials at IEP meeting could be viewed as expression of concern rather than evidence that district had predetermined student's placement, fact that district had attorney poised to file suit did not indicate that meeting was sham, and parties conducted comprehensive review of student's situation at IEP meeting. Board of Educ. of Tp. High School Dist. No. 211 v. Ross, C.A.7 (Ill.) 2007, 486 F.3d 267. Schools 148(3)

Parental right to provide input into location of services under IDEA does not grant parents veto power over individualized education program (IEP) team site selection decisions. White ex rel. White v. Ascension Parish School Bd., C.A.5 (La.) 2003, 343 F.3d 373. Schools 148(2.1)

Substantive harm, resulting in a denial of a free appropriate public education (FAPE) under IDEA, occurs when the procedural violations of IDEA seriously infringe upon the parents' opportunity to participate in the individualized education program (IEP) process, and procedural violations that deprive an eligible student of an individualized education program or result in the loss of educational opportunity also will constitute a denial of a FAPE. Knable ex rel. Knable v. Bexley City School Dist., C.A.6 (Ohio) 2001, 238 F.3d 755, certiorari denied 121 S.Ct. 2593, 533 U.S. 950, 150 L.Ed.2d 752. Schools 148(2.1)

Court's determination that individual education plan (IEP) for handicapped student was appropriate was supported by evidence that it was calculated to confer some educational benefit on the student, even though parents felt that residential setting where he would be with other blind students would be more advantageous, and where the plan had a number of points which were not included in prior individual education plan which parents claimed had been inadequate. Carlisle Area School v. Scott P. By and Through Bess P., C.A.3 (Pa.) 1995, 62 F.3d 520, amended , certiorari denied 116 S.Ct. 1419, 517 U.S. 1135, 134 L.Ed.2d 544. Schools 155.5(4)

It is permissible to consider parental hostility to individualized educational program (IEP) as part of prospective evaluation required by Education of the Handicapped Act (EHA) of the placement's expected educational benefits; if facts show that parents are so opposed to placement as to undermine its value to child, there is no obligation under EHA to order the placement. Board of Educ. of Community Consol. School Dist. No. 21, Cook County, Ill. v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1991, 938 F.2d 712, rehearing denied, certiorari denied 112 S.Ct. 957, 502 U.S. 1066, 117 L.Ed.2d 124. Schools 154(2.1)

Parents of handicapped child waived right to properly constituted individualized educational program meeting when they rejected school district's offer to schedule one, though parents had been seeking extended school year services for their child for three years, they had specifically agreed with school district to hold individualized educational program meeting to discuss study by clinical psychologist, meeting convened by school district was not proper individualized educational program meeting, and at meeting school district refused to place extended school year program on child's individualized educational program unless parents agreed to exclude program from "stay put" provision of Education of the Handicapped Act. Cordrey v. Euckert, C.A.6 (Ohio) 1990, 917 F.2d 1460, certiorari denied 111 S.Ct. 1391, 499 U.S. 938, 113 L.Ed.2d 447. Schools 155.5(1)

Local education authority which failed to meet guidelines for consulting parents in the development of student's individual education plan, with the resulting six-month delay in adoption of an IEP, did not comply with the Education of the Handicapped Act. Tice By and Through Tice v. Botetourt County School Bd., C.A.4 (Va.) 1990, 908 F.2d 1200. Schools 148(2.1)

School district's failure following parental requests for documentation personally identifiable to disabled student to either provide parents with complete set of copies or to allow them to review all requested documents did not deprive student of free appropriate public education (FAPE); hearing officer found that while district's document maintenance was "less than organized," irregularities cited by parents were nothing more than district's attempts to correct mistakes, that any trouble parents may have had in recovering documents from district could not have impeded parent's decisionmaking regarding district's provision of FAPE to student because parents did not request any documents until end of school year and just a few months before student was withdrawn from district, and parents offered no evidence that documents provided to them at earlier dates were somehow inadequate, relying instead on speculation as to what might have occurred. C.H. ex rel. C.H. v. Northwest Independent School Dist., E.D.Tex.2011, 815 F.Supp.2d 977. Schools 148(2.1)

Substantial evidence supported hearing officer's conclusion that decision to place student in "Chrysalis Program" as result of disciplinary violation was made by school board and not individualized education program (IEP) team, and resulting procedural violation constituted denial of free appropriate public education (FAPE) as

it significantly impeded parent's opportunity to participate in decisionmaking process. School Bd. of the City of Norfolk v. Brown, E.D.Va.2010, 769 F.Supp.2d 928. Schools 155.5(4)

Learning disabled student's parents acted unreasonably during the individualized education program (IEP) process, and thus any delay in the development of an IEP did not violate IDEA, where parents objected to all evaluations of student proposed by the school district, they breached a clearly-worded settlement agreement permitting the district to have student evaluated by up to three of its own evaluators, and they insisted upon conditions that the district could not agree to, such as requiring that the district waive its right to see the independent evaluators' records. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 148(3)

Student's individualized education plan (IEP) was appropriate, as required by the Individuals with Disabilities Education Act (IDEA), despite claim by the student's mother that the IEP was not appropriately tailored to address the student's "deficits in expressive and receptive language" which impacted his "ability to access the general curriculum"; the mother fully participated in the IEP development process, fully agreed with the substance of the IEP as drafted at a meeting and signed the IEP indicating her agreement. Hinson ex rel. N.H. v. Merritt Educational Center, D.D.C.2008, 579 F.Supp.2d 89. Schools 148(3)

Individualized education program (IEP) could have been instituted for student and none was developed because of conduct of student's mother; she initially returned permission request form without properly checking off box that authorized that evaluation, initial team meeting adjourned before IEP could be developed and mother could not meet until after start of school year due to various scheduling conflicts, and continued IEP meeting did not occur because student's mother had filed request for due process hearing and refused to participate in any further IEP meetings. C.H. v. Cape Henlopen School Dist., D.Del.2008, 566 F.Supp.2d 352, affirmed 606 F.3d 59. Schools 148(2.1)

Charter middle school did not deny student, with Attention Deficit Hyperactivity Disorder (ADHD) and atypical learning disorder, free appropriate public education (FAPE) required by Individuals with Disabilities Education Act (IDEA), through adoption of competency-based system, where teacher had flexibility in determining whether student mastered subject matter, through use of tests, discussions or other methods, and simply passed or failed student without awarding letter or numerical grades, despite claim that parents did not receive sufficient input regarding student's progress to determine whether they should request additional assistance for him. Claudia C-B v. Board of Trustees of Pioneer Valley Performing Arts Charter School, D.Mass.2008, 539 F.Supp.2d 474. Schools 148(3)

Preponderance of the evidence in IDEA case supported ALJ's finding that disabled student's parent refused to cooperate with Child Study Team (CST) to such an extent that CST was unreasonably prevented from creating an individualized education program (IEP) for school year in question; student's mother had refused to sign consent to have her son evaluated, a necessary prerequisite to creating his IEP, and withheld her consent to evaluate for two months until day she notified school board her son had been offered enrollment at private school and, through her attorney, gave school district's attorneys enrollment contract and outline of services provided at that school. M.S. v. Mullica Tp. Bd. of Educ., D.N.J.2007, 485 F.Supp.2d 555, affirmed 263 Fed.Appx. 264, 2008

WL 324200. Schools 155.5(4)

State of Hawai‘i Department of Education (DOE) did not violate IDEA's procedural requirements by failing to consider parental input; although student's mother disagreed with DOE's decisions regarding her request for a different skills teacher, DOE officials at individualized education plan (IEP) meetings discussed mother's concerns and considered her views. B.V. v. Department of Educ., State of Hawaii, D.Hawai'i 2005, 451 F.Supp.2d 1113, affirmed 514 F.3d 1384. Schools 148(3)

School system did not deny parents meaningful opportunity to participate in autistic student's education in violation of individual education plan (IEP), for purposes of determining whether subsequent IEP was appropriate under IDEA, even though system denied mother permission to videotape student in speech therapy sessions, where school's policy of inviting participation was discretionary, and system held 11 meetings and had many other communications with parents during school year. J.P. ex rel. Peterson v. County School Bd. of Hanover County, Va., E.D.Va.2006, 447 F.Supp.2d 553, vacated 516 F.3d 254. Schools 148(3)

Evidence that teacher prepared draft individualized education program (IEP) for student after informal meeting with student's parents, for discussion at next meeting of student's IEP team, was insufficient to support finding, in administrative proceedings on parents' request for reimbursement for private placement under Individuals with Disabilities Education Act (IDEA), that parents were denied adequate participation in process of preparation of student's IEP, as basis for finding that student was denied free appropriate public education (FAPE), absent any evidence that parents were forced to accept proposed IEP or were unaware of their rights in IEP process. Tracy v. Beaufort County Bd of Ed., D.S.C.2004, 335 F.Supp.2d 675. Schools 155.5(4)

Individualized education program (IEP) developed for eighth grade student with attention deficit disorder was appropriate, even though it failed to address behavioral problems at home; parents had concealed or minimized extent of home problems, leaving school to reasonably conclude that student's academic difficulties stemmed only from his attention deficit disorder. J.S. v. Shoreline School Dist., W.D.Wash.2002, 220 F.Supp.2d 1175. Schools 148(3)

Autistic child's individualized education plans (IEPs) for the first and third grades were reasonably calculated to confer meaningful educational benefit, and did not deprive child of a “free appropriate public education” (FAPE); however, school district's failure to include a district representative as part of the IEP team was a procedural violation that deprived child's parents an opportunity to meaningfully participate in the IEP process and deprived child of educational opportunity. Pitchford ex rel. M. v. Salem-Keizer School District No. 24J, D.Or.2001, 155 F.Supp.2d 1213. Schools 148(3)

Requirements that free appropriate public education (FAPE) must be provided at public expense to meet standards of state education agency, that FAPE must include appropriate education, and that FAPE unfold in conformity with individual education plan (IEP), do not apply to parental placements that are otherwise proper under Individuals with Disabilities Education Act (IDEA). Matthew J. v. Massachusetts Dept. of Educ., D.Mass.1998, 989 F.Supp. 380. Schools 154(4)

Parents of disabled child did not show such hostility to individualized education program (IEP) as to establish that it lacked value for the child; though parents offered testimony at hearing that they opposed placement that school officials were proposing for the child at the time of the hearing, two years after the development of IEP, mother participated in all five case conferences, signed documents showing unqualified agreement with plans developed at each conference, and did not provide school with notice that she later came to disagree with the plans. Roy and Anne A. v. Valparaiso Community Schools, N.D.Ind.1997, 951 F.Supp. 1370. Schools 148(2.1)

Parents of handicapped child were not denied opportunity to participate in formulation of an individual educational plan for child, although school came to meeting with a document entitled "Independent Education Program" dated to take effect immediately, since school did not come to meeting with an unchangeable, completed plan subject only to parental approval, in light of opportunities for parental involvement. Scituate School Committee v. Robert B., D.C.R.I.1985, 620 F.Supp. 1224, affirmed 795 F.2d 77. Schools 148(2.1)

School committee or the state does not comply with the procedural requirements of this chapter by including parents only in the initial and penultimate steps of the planning process for an educational program for their children; unless the parents are invited to participate in all significant decisions made by the school, the statutory deference to state and local decision making in the educational field would not be justified. Lang v. Braintree School Committee, D.C.Mass.1982, 545 F.Supp. 1221. Schools 164

Parents had meaningful opportunity to participate with respect to special education determination made by school district for their son, as required by Individuals with Disabilities Education Act (IDEA), and placement suggested by school district was not predetermined, given that, in addition to being involved in development of son's individualized education program (IEP), parents and their special education representative informed school district of their specific requests, to which school district responded to explain its different conclusions; that parents disagreed with placement decision did not establish lack of meaningful participation. Paolella ex rel. Paolella v. District of Columbia, C.A.D.C.2006, 210 Fed.Appx. 1, 2006 WL 3697318, Unreported. Schools 148(2.1)

108. ---- Consent of parents, parental participation, free appropriate public education

School district's refusal to offer an individualized education program (IEP) to student without an evaluation of the student by an expert of the district's choice did not deny learning disabled student a free appropriate public education (FAPE) under IDEA, even though student had been evaluated by doctor selected by her parents, where parents had entered settlement agreement expressly permitting district to reevaluate student with its own specialists. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 148(3)

Student was provided an appropriate placement based on his individualized education plan (IEP), as required by the Individuals with Disabilities Education Act (IDEA); the student's mother fully participated in the IEP and placement decision-making process, fully agreed with the placement at the time it was issued and signed a placement notice indicating her approval, and there was no evidence that the school where the student was placed could not implement his IEP. Hinson ex rel. N.H. v. Merritt Educational Center, D.D.C.2008, 579 F.Supp.2d 89. Schools 154(2.1)

Evidence that parents of learning and behaviorally disabled student approved individual educational programs (IEPs) developed and offered by school district pursuant to Individuals with Disabilities Education Act (IDEA) and that student's academic performance improved under IEPs, together with credible expert testimony before local hearing officer indicating that IEPs were satisfactory, was sufficient to support conclusion that IEPs were reasonably developed and calculated to enable student to receive some educational benefit as mandated by IDEA. Board of Educ. of Avon Lake City School Dist. v. Patrick M. By and Through Lloyd and Faith M., N.D.Ohio 1998, 9 F.Supp.2d 811, remanded 215 F.3d 1325. Schools 155.5(4)

Child's exit from special education program did not violate IDEA, where child's mother had consented to child's exit. Perreault-Osborne v. New Milford Bd. of Educ., C.A.2 (Conn.) 2003, 74 Fed.Appx. 148, 2003 WL 22100797, Unreported. Schools 148(2.1)

109. Preschool programs, free appropriate public education

Providing a student with an appropriate preschool education free of charge, as mandated by the Individuals with Disabilities Education Act (IDEA), required a school district to pay for both the itinerant special education services provided to the student and the tuition required for his part-time enrollment at a private preschool; while the district claimed that the student could have received his special education services in other community-based settings, the individualized education program team never considered any other community-based options or specific locations. Madison Metropolitan School Dist. v. P.R. ex rel. Teresa R., W.D.Wis.2009, 598 F.Supp.2d 938. Schools 154(4)

Preschool program and resource center at which preschool handicapped child would be in segregated environment of handicapped children only for half of day was least restrictive environment under Individuals with Disabilities Education Act (IDEA); proposed placement was in child's home school and children in class had interaction with nondisabled older children through assemblies and a program where first-graders visited the class. T.R. ex rel. N.R. v. Kingwood Tp. Bd. of Educ., D.N.J.1998, 32 F.Supp.2d 720, affirmed in part , vacated in part 205 F.3d 572. Schools 154(2.1)

110. Deaf students, free appropriate public education

South Dakota Board of Regents did not violate IDEA when it closed the South Dakota School for the Deaf and out-sourced its services to home school districts; although deaf and hearing impaired students preferred to attend programs at the school's campus and their parents preferred to enroll their children in a separate, language-rich school, the IDEA's integrated-classroom preference made no exception for deaf students, and did not require states to make available the best possible option. Barron ex rel. D.B. v. South Dakota Bd. of Regents, C.A.8 (S.D.) 2011, 655 F.3d 787. Schools 14; Schools 148(2.1)

Order requiring school to furnish profoundly and prelingually deaf child with a certified teacher of the deaf comported with the "appropriate education" requirement of this section, notwithstanding that child might learn more quickly at state school for the deaf as attendance at public school would be consistent with this chapter's, mainstreaming goals and state educational agency determined that child be placed in public school and provided personalized instruction in reading, arithmetic, spelling, telling of time, health, social services, and art along with

manual communication, lip reading, writing and speaking, and cost to the school did not justify judicial intervention. Springdale School Dist. No. 50 of Washington County v. Grace, C.A.8 (Ark.) 1982, 693 F.2d 41, certiorari denied 103 S.Ct. 2086, 461 U.S. 927, 77 L.Ed.2d 298. Schools 154(2.1)

Deaf student would not be denied a free appropriate public education (FAPE) under IDEA even if school provided her with a meaning-for-meaning transcription of classroom discussions, rather than a verbatim word-for-word transcription, which was preferred by her parents, since meaning-for-meaning transcriptions were reasonably calculated to provide student with educational benefits, enable her to achieve passing marks, and allow her to advance from grade to grade, especially considering that individual education plan (IEP) also provided student with preferential seating in classrooms, a second set of textbooks at home, copies of teachers' notes when necessary, closed captioning, a peer note-taker in one of her classes, an auditory FM system to presumably amplify sounds, a special laptop for videos with closed captioning, and a closed-captioning decoder. Poway Unified School Dist. v. Cheng ex rel. Cheng, S.D.Cal.2011, 821 F.Supp.2d 1197. Schools 148(2.1)

111. Sign language, free appropriate public education

In light of finding that deaf child, who performed better than average child in her class and was advancing easily from grade to grade, was receiving an adequate education and fact that deaf child was receiving personalized instruction and related services calculated by school administrators to meet her educational needs, this chapter did not require provision of a sign-language interpreter for deaf child. Board of Educ. of Hendrick Hudson Central School Dist., Westchester County v. Rowley, U.S.N.Y.1982, 102 S.Ct. 3034, 458 U.S. 176, 73 L.Ed.2d 690. Schools 148(2.1)

Student did not receive free appropriate public education to which she was entitled under the IDEA, where due process panel concluded that the education student received at state school with respect to sign language instruction was "wholly deficient," given that all evaluations of student over the years showed an intensive need for a language-based program that adequately considered her profound deafness. Strawn v. Missouri State Bd. of Educ., C.A.8 (Mo.) 2000, 210 F.3d 954. Schools 148(2.1)

Findings that profoundly deaf Native American Child required immediate intensive instruction in American Sign Language (ASL) in order to comprehend instruction offered in regular classroom, that he could not presently receive any educational benefit from continued mainstreaming, and that he should therefore be placed in residential school 280 miles from home were not clearly erroneous notwithstanding value of social interaction with family and friends and of influence of his tribe and fact that child was of above average intelligence and would not detrimentally affect mainstream classroom environment. Poolaw v. Bishop, C.A.9 (Ariz.) 1995, 67 F.3d 830. Schools 154(3)

Signing system used by school district provided hearing-impaired students with adequate education under IDEA, despite parents' claim that district was required to use particular sign language system used in their homes; while evaluations for all three students demonstrated that each had weakness in particular subjects, overall each had improved academically. Petersen v. Hastings Public Schools, C.A.8 (Neb.) 1994, 31 F.3d 705. Schools 148(2.1)

Individualized Education Program proposed by school officials for deaf student, utilizing total communication concept, relying primarily upon sign language as means of communication, provided student with free appropriate public education as required by Education for All Handicapped Children Act, despite parents' preference for cued speech technique. Lachman v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1988, 852 F.2d 290, certiorari denied 109 S.Ct. 308, 488 U.S. 925, 102 L.Ed.2d 327. Schools 148(2.1)

In action challenging decision of Kentucky Department of Education that 12-year-old boy suffering from severe to profound hearing loss be placed in his resident county's program in which another child would be taught by "total" method employing sign language and finger spelling, rather than continuing to have boy commute to another county's school in which "oral/aural" method was used exclusively, trial judge's conclusion that resident county's proposed program was appropriate was supported by evidence, especially evidence that children learning under oral method in the program had not begun to pick up sign language from child on "total" method. Age v. Bullitt County Public Schools, C.A.6 (Ky.) 1982, 673 F.2d 141. Schools 155.5(4)

School district was not required under Individuals with Disabilities Education Act (IDEA) to provide deaf student with full-time sign language interpreter at public expense after his parents elected to place him in private school, where district provided student with free appropriate public education (FAPE), and cost for student's full time interpreter was more than ten times amount available under IDEA for all parentally-placed private school students in district. Board of Educ. of Appoquinimink School Dist. v. Johnson, D.Del.2008, 543 F.Supp.2d 351, stay denied 2008 WL 5043472. Schools 148(2.1)

Any burden placed upon hearing-impaired student's free exercise of religion by school district's refusal to provide student with sign-language instructor in private sectarian school setting was not so substantial as to call decision into constitutional question; any burden was on act of sending child to private school rather than on religious practice, and student attended school for part of each day at public school for disabled students at which he received services of interpreter. Nieuwenhuis by Nieuwenhuis v. Delavan-Darien School Dist. Bd. of Educ., E.D.Wis.1998, 996 F.Supp. 855. Constitutional Law 1368(1); Schools 8; Schools 148(2.1)

School district's refusal to provide sign-language instructor for hearing-impaired student in private sectarian school setting, prior to 1997 amendments to Individuals with Disabilities Education Act (IDEA), was not abuse of discretion afforded district by IDEA; student was provided with sign language instructor while he attended public school, but not while he attended private sectarian school, student's parents effectively opted for lesser entitlement under IDEA by choosing to place student in private school, and student was given genuine opportunity to participate in all services called for in his Individualized Education Program (IEP). Nieuwenhuis by Nieuwenhuis v. Delavan-Darien School Dist. Bd. of Educ., E.D.Wis.1998, 996 F.Supp. 855. Schools 8; Schools 148(2.1)

School district's use of modified Signing Exact English sign language system in education of hearing impaired students, rather than strict Signing Exact English system, did not violate Individuals with Disabilities Education Act (IDEA) as modified system proved adequate in conferring educational benefits on students; each student showed continued academic and lingual improvement through his or her educational experience, modifications

were completed after consultations with educators knowledgeable in filed of signing systems, and modifications were designed to utilize strengths of unmodified system, while alleviating some difficulties recognized to exist with strict system. Petersen By and Through Petersen v. Hastings Public Schools, D.Neb.1993, 831 F.Supp. 742, affirmed 31 F.3d 705. Schools 148(2.1)

112. Tutoring, free appropriate public education

Assuming that mentally retarded student voluntarily enrolled by her parents in private school was individually entitled, under the Individuals with Disabilities Education Act (IDEA), to proportionate share of federal funds received by state under the IDEA, in form of publicly subsidized services of consultant teacher and teacher's aide, state did not have to provide such services on-site at private school, but had discretion under the IDEA as to whether services would be provided on-site. Russman v. Board of Educ. of City of Watervliet, C.A.2 1998, 150 F.3d 219, on remand 92 F.Supp.2d 95. Schools 148(3)

School district's refusal to provide disabled student with one-to-one tutoring using particular instructional method did not violate Individuals with Disabilities Education Act (IDEA); student was still making progress and receiving free appropriate public education, even if she was behind in grade-level achievement. E.S. v. Independent School Dist., No. 196 Rosemount-Apple Valley, C.A.8 (Minn.) 1998, 135 F.3d 566. Schools 148(2.1)

Individualized educational programs developed by board of education for students suffering from dyslexia, although not in compliance with requirement of Education of the Handicapped Act (EHA), only had to be supplemented by weekly private tutoring in order to satisfy Act's requirement of free appropriate public education. In re Conklin, C.A.4 (Md.) 1991, 946 F.2d 306. Schools 148(3)

Public school is not required to provide tutorial service that is equal to that of private institutions. Doe By and Through Doe v. Defendant I, C.A.6 (Tenn.) 1990, 898 F.2d 1186, rehearing denied. Schools 148(2.1)

Parents of mildly mentally retarded student were not entitled to reimbursement for tutoring expenses under Education for All Handicapped Children Act, where school's proposed placement of student in special education classes was appropriate. Gregory K. v. Longview School Dist., C.A.9 (Wash.) 1987, 811 F.2d 1307. Schools 154(3)

School district did not deny learning disabled student free appropriate public education (FAPE) in manner by which it offered student tutoring during his expulsion, as would violate Individuals with Disabilities Education Act (IDEA), where district offered tutoring that met student's individualized education program (IEP), and then changed from computer-based tutoring to one-on-one tutoring to improve student's progress once it became clear that student was not making adequate progress with computer-based tutoring and his mother provided more insight into his learning difficulties. G.R. ex rel. Russell v. Dallas School Dist. No. 2, D.Or.2011, 823 F.Supp.2d 1120. Schools 148(3)

Hearing officer's formula-based compensatory education award of tutoring for exact number of service hours that public charter school denied elementary student with disabilities was not arbitrary award, but rather, was

constructed to put student in position he would have been but for denial of free and appropriate public education (FAPE) in violation of IDEA, since award was individually tailored to meet student's unique prospective needs after review of test results indicating that student was reading at two years behind grade level, review of report card and progress report showing student's failing grades, and consideration of recommendations by psychologist and tutoring center. Mary McLeod Bethune Day Academy Public Charter School v. Bland, D.D.C.2008, 555 F.Supp.2d 130. Schools 155.5(5)

113. Assistive aids, free appropriate public education

The IDEA does not require school districts to pass a student claiming a disability when the student is able, with less than the assistive aids requested, to succeed but nonetheless fails; if a school district simply provided the assistive devices requested, even if unneeded, and awarded passing grades, it would in fact deny the appropriate educational benefits the IDEA requires. Sherman v. Mamaroneck Union Free School Dist., C.A.2 (N.Y.) 2003, 340 F.3d 87. Schools 148(3)

School district did not violate Individuals with Disabilities Education Act (IDEA) by not offering or providing Books on Tape to learning disabled student, since alternative forms of assistive technology for dyslexia existed in lieu of Books on Tape. Miller ex rel S.M. v. Board of Educ. of Albuquerque Public Schools, D.N.M.2006, 455 F.Supp.2d 1286, affirmed 565 F.3d 1232. Schools 148(3)

114. Medication, free appropriate public education

School district could not properly include, as condition of individualized education program, that educationally handicapped student be medicated without his parents' consent. Valerie J. v. Derry Co-op. School Dist., D.N.H.1991, 771 F.Supp. 483, clarified 771 F.Supp. 492. Schools 148(4)

115. Year-round programming, free appropriate public education

District court did not apply incorrect regression/recoupment standard in affirming hearing officer's determination that autistic child did not require extended school year (ESY) services to obtain a free appropriate public education (FAPE) under the IDEA; although district court did not articulate each of Montana's factors, those factors were used by hearing officer in determining whether regression/recoupment of skills required ESY services. N.B. v. Hellgate Elementary School Dist., ex rel. Bd. of Directors, Missoula County, Mont., C.A.9 (Mont.) 2008, 541 F.3d 1202. Schools 148(3)

Policy of refusing, in formulation of individual education programs for children within school system, to consider possible necessity for programs extending beyond 180 days per year violated mandates of this chapter that individual educational program be designed to meet personal needs of each handicapped child, that each child receive some benefit, and that lack of funds not bear more heavily on handicapped than on nonhandicapped children. Crawford v. Pittman, C.A.5 (Miss.) 1983, 708 F.2d 1028, rehearing denied 715 F.2d 577. Schools 162.5

Inflexible application of Commonwealth of Pennsylvania's administrative policy which set a limit of 180 days of

instruction per year for all children, handicapped or not, was incompatible with emphasis on individual of this section which required that every state which elects to receive federal assistance under this chapter must provide all handicapped children with a right to a "free appropriate education" and, thus, policy could not be upheld against challenge by handicapped children and their parents. Battle v. Com. of Pa., C.A.3 (Pa.) 1980, 629 F.2d 269, on remand 513 F.Supp. 425, certiorari denied 101 S.Ct. 3123, 452 U.S. 968, 69 L.Ed.2d 981. Schools 162.5

Wisconsin school district's extended school year (ESY) offer as part of free appropriate public education (FAPE) was reasonably calculated to provide student with educational benefit, despite parents' claim he would experience regression as result of ESY services offered. A.S. v. Madison Metropolitan School Dist., W.D.Wis.2007, 477 F.Supp.2d 969. Schools 148(2.1)

State of Missouri's policy of refusing to consider or provide more than 180 days of education per school year for the severely handicapped denied those children a "free appropriate education" as required by this chapter; however, special school district would not be adjudged to have breached a duty imposed by this chapter. Yaris v. Special School Dist. of St. Louis County, E.D.Mo.1983, 558 F.Supp. 545, affirmed 728 F.2d 1055. Schools 162.5

Under this chapter and its regulations, board of education must provide services year-round to a handicapped child if child will substantially regress during the summer recess. Phipps v. New Hanover County Bd. of Educ., E.D.N.C.1982, 551 F.Supp. 732. Schools 162.5

A free appropriate public education may, in some cases, include year-round educational programming; whether it does in a particular case will vary with the needs of the particular child, but where it is required, federal law imposes on the local educational unit wherein the child resides the obligation to provide such an education. Anderson v. Thompson, E.D.Wis.1980, 495 F.Supp. 1256, affirmed 658 F.2d 1205. Schools 162.5

116. Presumption in favor of public schools, free appropriate public education

School district did not deny disabled student a free appropriate public education, although parents claimed that district predetermined student's placement; IDEA required district to assume public placement for student, through provision mandating that district educate student with his nondisabled peers to the greatest extent appropriate, and district thus did not need to consider private placement once it determined that public placement was appropriate. Hjortness ex rel. Hjortness v. Neenah Joint School Dist., C.A.7 (Wis.) 2007, 507 F.3d 1060, certiorari denied 128 S.Ct. 2962, 554 U.S. 930. Schools 154(4)

Despite handicapped child's arguments that district court improperly imposed its own views of education methodology in Individuals With Disabilities Education Act (IDEA) action, in reversing review officer's decision granting child's parents reimbursement for private school tuition, district court properly enforced IDEA's educational policies including presumption in favor of child's placement in public schools by finding that review officer's decision was inconsistent with core IDEA principles. Independent School Dist. No. 283 v. S.D. by J.D., C.A.8 (Minn.) 1996, 88 F.3d 556. Schools 155.5(2.1)

School district must evaluate child's needs and determine what is necessary to afford the child a free appropriate public education (FAPE), and if it appears that district is not in a position to provide those services in the public school setting, then and only then must it place the child at public expense in a private school that can provide those services; if school district can supply the needed services, then public school is the preferred venue for educating the child. W.S. ex rel. C.S. v. Rye City School Dist., S.D.N.Y.2006, 454 F.Supp.2d 134. Schools 154(4)

117. Neighborhood school, free appropriate public education

Placement of deaf student at regional day school which was specially designed for disabled students, rather than at regular school closer to deaf student's home, satisfied least restrictive environment provisions of IDEA; school district's decision to send deaf student to regional day school was based on scarcity of interpreters and speech pathologists in area, and regional day school was only an additional eight miles from deaf student's home. Flour Bluff Independent School District v. Katherine M. by Lesa T., C.A.5 (Tex.) 1996, 91 F.3d 689, certiorari denied 117 S.Ct. 948, 519 U.S. 1111, 136 L.Ed.2d 836. Schools 154(2.1)

School district satisfied its obligation under Education of the Handicapped Act to provide handicapped child with fully integrated public education by busing handicapped child to a nearby school, and therefore did not violate Act by refusing to modify neighborhood elementary school nearest to child's home to make it accessible to child. Schuldt v. Mankato Independent School, Dist. No. 77, C.A.8 (Minn.) 1991, 937 F.2d 1357, rehearing denied, certiorari denied 112 S.Ct. 937, 502 U.S. 1059, 117 L.Ed.2d 108. Schools 154(2.1)

Autistic student's individualized education program (IEP) did not violate federal regulations that favored sending children to neighborhood schools; geographical proximity was factor that districts had to consider, but they had significant authority to select school site, as long as it was educationally appropriate, and district fulfilled its legal obligations by considering placing student at his neighborhood school before deciding to implement his IEP elsewhere. Lebron v. North Penn School Dist., E.D.Pa.2011, 769 F.Supp.2d 788. Schools 148(3)

Education of the Handicapped Act does not require school system to duplicate small, resource-intensive program in each neighborhood school. Barnett v. Fairfax County School Bd., E.D.Va.1989, 721 F.Supp. 757, affirmed 927 F.2d 146, certiorari denied 112 S.Ct. 175, 502 U.S. 859, 116 L.Ed.2d 138. Schools 148(2.1)

118. District school, free appropriate public education

School district did not have to provide disabled student with free appropriate public education (FAPE) while he was enrolled at cyber charter school; burden of providing appropriate education, consistent with mandates of IDEA, rested on student's new Local Education Agency (LEA). I.H. ex rel. D.S. v. Cumberland Valley School Dist., M.D.Pa.2012, 842 F.Supp.2d 762. Schools 148(2.1)

In IDEA case, hearing officer did not lack jurisdiction to order Planning and Placement Team (PPT) to consider out-of-district placement for student; hearing officer did not order a “remedy” in absence of IDEA violation, but rather directed PPT to proceed as it otherwise would have in absence of parents' challenge to IEP modification,

and order did not bind parents from taking their own course of action or from challenging student's IEP in the future. L. ex rel. Mr. F. v. North Haven Bd. of Educ., D.Conn.2009, 624 F.Supp.2d 163. Schools 155.5(1)

Although individualized education plan (IEP) for disabled student, who was severely autistic, called for out-of-district placement of student, such placement was least restrictive environment (LRE) in which student could receive free and appropriate public education (FAPE), as required by IDEA; student, despite specialized, individual instruction provided, was not likely to receive meaningful educational benefit at in-district school, student had minimal interactions with non-disabled students, and had been disruptive to other students learning, while achieving little or no detectable benefit. M.A. ex rel. G.A. v. Voorhees Tp. Bd. of Educ., D.N.J.2002, 202 F.Supp.2d 345, affirmed 65 Fed.Appx. 404, 2003 WL 21356406. Schools 154(4)

The IDEA and accompanying regulations did not require school district to create life skills support program within its district for student with Down's Syndrome, and instead placement in existing program in nearby school district, ten miles away, was appropriate placement, where creating program within the district would require district to construct a new classroom and hire a new teacher, as well as possibly a new teacher's aide, district would have difficulty duplicating quality of existing program and its related services, and it was possible that student would be the only student, or at best one of two, in a program within his district, while he would be one of 12 students if placed in the other district. Cheltenham School Dist. v. Joel P. by Suzanne P., E.D.Pa.1996, 949 F.Supp. 346, affirmed 135 F.3d 763. Schools 148(3); Schools 154(2.1)

119. State school, free appropriate public education

Placement of disabled child in out-of-state facility was appropriate under Individuals with Disabilities Education Act, even though such facility was not closest available facility; out-of-state facility was closest known appropriate residential placement for child, and school district failed to satisfy its burden of proposing specific alternative placement and establishing that it was appropriate for child. Seattle School Dist., No. 1 v. B.S., C.A.9 (Wash.) 1996, 82 F.3d 1493. Schools 154(4)

Independent educational program developed for severely handicapped seven-year-old child for implementation at state school met both federal standard of "appropriate" education and state standard of special educational services sufficient to "meet the needs and maximize the capabilities" of the child and, indeed, exceeded quality of out-of-state residential program, in which parents sought to place child at state expense, given factors of adequate speech and language training, sufficient behavior management training and integration with nonhandicapped children, and nonresidential setting, permitting regular contact with community and family members. Cothern v. Mallory, W.D.Mo.1983, 565 F.Supp. 701. Schools 154(4)

120. Private school, free appropriate public education

While Individuals with Disabilities Education Act (IDEA) requires states to provide some measure of special education and related services to disabled children in private schools, IDEA does not require school district to provide those services on site of private school. KDM ex rel. WJM v. Reedsport School Dist., C.A.9 (Or.) 1999, 196 F.3d 1046, rehearing and rehearing en banc denied 210 F.3d 1098, certiorari denied 121 S.Ct. 564, 531 U.S. 1010, 148 L.Ed.2d 483. Schools 8

School district was not required to provide disabled child with special education and related services at private religious school where child was voluntarily placed by her parents, as particular disabled child voluntarily placed in private school had no individual right to services; rather, state was only required to spend proportionate amounts on special education services for that class of students as a whole. Foley v. Special School Dist. of St. Louis County, C.A.8 (Mo.) 1998, 153 F.3d 863. Schools 148(2.1)

Individuals with Disabilities Education Act (IDEA) does not require school district to provide on-site special-education services to disabled child voluntarily enrolled in private school. Russman v. Board of Educ. of City of Watervliet, C.A.2 1998, 150 F.3d 219, on remand 92 F.Supp.2d 95. Schools 148(2.1)

States and localities have no obligation, under Individuals with Disabilities Education Act (IDEA), to spend their money to ensure that disabled children who have chosen to enroll in private schools will receive publicly funded special-education services generally comparable to those provided to public-school children. K.R. by M.R. v. Anderson Community School Corp., C.A.7 (Ind.) 1997, 125 F.3d 1017, certiorari denied 118 S.Ct. 1360, 523 U.S. 1046, 140 L.Ed.2d 510. Schools 8; Schools 148(2.1)

Disabled students voluntarily attending private school have lesser entitlement to benefits under Individuals with Disabilities Education Act (IDEA) than do students attending public school or those placed in private school by local school district; Congress did not intend public schools to provide disabled students who are voluntarily placed in private schools with benefits comparable to those of disabled public school students in all instances. K.R. by M.R. v. Anderson Community School Corp., C.A.7 (Ind.) 1996, 81 F.3d 673, rehearing and suggestion for rehearing en banc denied, vacated 117 S.Ct. 2502, 521 U.S. 1114, 138 L.Ed.2d 1007, on remand 125 F.3d 1017. Schools 148(2.1)

Evidence supported hearing officer's decision that appropriate educational placement for deaf, blind and developmentally disabled student under Individuals with Disabilities Education Act (IDEA) was not a public school but a private school; after seven years in public school system, student had made little, if any, progress toward learning even the most basic skills. Ojai Unified School Dist. v. Jackson, C.A.9 (Cal.) 1993, 4 F.3d 1467, certiorari denied 115 S.Ct. 90, 513 U.S. 825, 130 L.Ed.2d 41. Schools 155.5(4)

Autistic student's private placement provided educational instruction specially designed to meet student's unique needs, supported by services that were necessary to permit student to benefit from instruction, as required to support claim by student's parents against state's department of education for reimbursement of tuition at private placement under Individuals with Disabilities Education Act (IDEA), despite department's contention that private placement did not have certified special education teacher nor occupational therapist employed by placement; student made both behavioral and communication gains at private placement. Aaron P. v. Hawaii, Dept. of Educ., D.Hawai'i 2012, 2012 WL 4321715. Schools 154(4)

ALJ's decision to require school district to pay for student's tuition at private school did not violate IDEA's requirement that school districts offer placements in least restrictive environment available to meet student's needs, where there was no indication that private school was exclusively for disabled students. Ravenswood City School Dist. v. J.S., N.D.Cal.2012, 2012 WL 2510844. Schools 154(4)

Disabled student's unilateral placement at private school was appropriate under the IDEA, where student improved markedly after enrolling at the school; her gender identity disorder had been overcome, her language usage was appropriate, and her anxiety issues were under control. Department of Educ., State of Haw. v. M.F. ex rel. R.F., D.Hawai'i 2011, 840 F.Supp.2d 1214, clarified on denial of reconsideration 2012 WL 639141. Schools 154(4)

Even if private school was a superior placement for high school student with autism, it did not mean that individualized education plan (IEP) offered at public school for the student was not sufficient, nor inappropriate, under IDEA, and thus, once it was determined that the public school IEP was reasonably calculated to provide student with a free appropriate public education (FAPE), parents had no right to compel school district to provide education for student in private school setting. J.E. v. Boyertown Area School Dist., E.D.Pa.2011, 834 F.Supp.2d 240, affirmed 452 Fed.Appx. 172, 2011 WL 5838479. Schools 154(4)

Learning disabled student's placement at public high school did not deny student a free appropriate public education (FAPE); school district was not required to consider private placements, public school fully implemented services required by student's individualized education program (IEP) and shorter length of student's classes at public high school was not a material failure in that regard, and student's behavioral issues did not show that public school failed to implement his IEP. Savoy v. District of Columbia, D.D.C.2012, 844 F.Supp.2d 23. Schools 154(2.1)

Parents' placement of student with learning disabilities at private school was appropriate under IDEA, as required to support parents' entitlement to tuition reimbursement from public school district, despite district's contention that New Jersey Department of Education did not approve placement; parents searched all available options for student and chose private school, and no less than four experts, who all knew student for more than three years, testified that they believed student's placement was appropriate and that he received educational benefit from his time at private school. Moorestown Tp. Bd. of Educ. v. S.D., D.N.J.2011, 811 F.Supp.2d 1057. Schools 154(4)

Reviewing court would defer to findings of impartial hearing officer (IHO) and state review officer (SRO) that private school placement was appropriate for autistic student, despite New York City Department of Education's (DOE's) contention he "had shown little progress during his previous year (there)" and that school was not "specially designed to meet (student's) unique needs"; school provided student with essentially all the services that committee on special education (CSE) had recommended in its individualized education program (IEP), except it offered one session per week of occupational therapy rather than two and did not place student in classroom with consistent student-teacher-paraprofessional ratio, and it also offered him certain services not required by IEP such as art therapy and academic units specifically tailored to his interest in filmmaking. Mr. and Mrs. A. ex rel. D.A. v. New York City Department of Educ., S.D.N.Y.2011, 769 F.Supp.2d 403. Schools 154(4)

Impartial hearing officer (IHO) correctly found that equities weighed in favor of reimbursement of parents' tuition costs associated with unilateral placement of their autistic child in private school. M.H. v. New York City Dept. of Educ., S.D.N.Y.2010, 712 F.Supp.2d 125, affirmed 685 F.3d 217. Schools 154(4)

District of Columbia Public Schools (DCPS) could not satisfy its obligation under IDEA to provide disabled student with free appropriate public education (FAPE) by offering services comparable to those described in student's individualized education program (IEP) from private school; student's IEP could not be transferred to DCPS because private school was not "public agency" within meaning of education regulation governing IEP transfers and student transferred schools during summer, not within same school year. Maynard v. District of Columbia, D.D.C.2010, 701 F.Supp.2d 116. Schools 148(2.1)

Preponderance of evidence supported state review officer's determination that placement of learning disabled student in transitional program at private school was not reasonably calculated to enable her to receive educational benefit, in denying parents' request for tuition reimbursement under IDEA; although student was placed in mainstream science classroom, she was not mainstreamed for other subjects despite positive reports about her abilities, but was instead placed in self-contained classrooms away from her nondisabled peers. Schreiber v. East Ramapo Central School Dist., S.D.N.Y.2010, 700 F.Supp.2d 529. Schools 155.5(4)

The placement of a disabled child in a private school setting is proper, for purposes of obtaining reimbursement under IDEA, if it (1) is appropriate, i.e., it provides significant learning and confers meaningful benefit, and (2) is provided in the least restrictive educational environment. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 154(4)

Placement of student diagnosed with attention deficit hyperactivity disorder (ADHD) in a private behavioral modification program was not necessary to meet student's educational needs, so as to require that district cover parents' cost of such program under Individuals with Disabilities Education Act (IDEA), since student's placement stemmed from issues apart from the learning process which manifested themselves away from school grounds; main reasons mother withdrew student from school had little to do with quality of education student was receiving, but rather was due to student's sneaking out of the house to carry on a relationship of some sort with a 28-year old man who was formerly a custodian at the school and perhaps with one or more teenage boys, student's alleged defiance, and mother's disapproval of student's friends. Ashland School Dist. v. Parents of Student R.J., D.Or.2008, 585 F.Supp.2d 1208, affirmed 588 F.3d 1004. Schools 154(3)

Private educational placement for disabled student is proper, as required for parents to obtain reimbursement therefor in cause of action under the Individuals with Disabilities Education Act (IDEA), if it: (1) is appropriate, i.e., it provides significant learning and confers meaningful benefit; and (2) is provided in least restrictive educational environment. N.M. ex rel. M.M. v. School Dist. of Philadelphia, E.D.Pa.2008, 585 F.Supp.2d 657, affirmed 394 Fed.Appx. 920, 2010 WL 3622658. Schools 154(4)

Vacatur of hearing officer's compensatory award under the IDEA, which found that school district had denied student a free and appropriate public education (FAPE), and ordered district to place and fund student at a nonpublic special education school, was warranted, where there was no explanation or factual support for the formula-based award. Friendship Edison Public Charter School Collegiate Campus v. Nesbitt, D.D.C.2008, 532 F.Supp.2d 121. Schools 155.5(2.1)

Disabled student's placement at private school that was one of three he originally selected and could address his

individualized needs and provide him with services he needed to go forward to become independent, capable, and successful adult was appropriate remedy for denial of free appropriate public education (FAPE), but ALJ's $15,000 spending cap was arbitrary and impractical and student was entitled to full services at particular school, including supplemental services as outlined by school director in her affidavit. Draper v. Atlanta Indep. School System, N.D.Ga.2007, 480 F.Supp.2d 1331, affirmed 518 F.3d 1275. Schools 154(4)

Private school was appropriate placement for student with auditory processing and attention problems, despite claims of public school, required to reimburse tuition under Individuals with Disabilities Education Act (IDEA), that teachers at private school were not properly accredited, and that public school's witnesses asserting that private school's program was ineffective should have been credited. North Reading School Committee v. Bureau of Special Educ. Appeals of Mass. Dept. of Educ., D.Mass.2007, 480 F.Supp.2d 479. Schools 154(4)

Even if parents of learning disabled student who were seeking tuition reimbursement under IDEA from District of Columbia Public Schools (DCPS) for particular school year after placing their child at private school in Maryland had exhausted least restrictive environment (LRE) claim at the administrative level, there was no evidence in record that private school could implement student's individualized education program (IEP), and since DCPS placement afforded student educational benefit and IEP for that school year was appropriate, DCPS had satisfied its obligation to offer free appropriate public education (FAPE). Roark ex rel. Roark v. District of Columbia, D.D.C.2006, 460 F.Supp.2d 32. Schools 148(3)

Private school for autistic children had provided autistic student with educational benefit during prior year, and thus was appropriate placement under IDEA, as indicated by test results and experts' testimony that student demonstrated progress during three-week period as to reducing negative behaviors, and that he was increasingly expressing himself spontaneously. J.P. ex rel. Peterson v. County School Bd. of Hanover County, Va., E.D.Va.2006, 447 F.Supp.2d 553, vacated 516 F.3d 254. Schools 154(4)

Private school specializing in education of autistic children and utilizing applied behavioral analysis (ABA) theory was an appropriate educational placement for autistic student, and school board would have to reimburse student's parents for relevant costs associated with school year in which it failed to meet its obligations under IDEA. County School Bd. of Henrico County, Va. v. R.T., E.D.Va.2006, 433 F.Supp.2d 657. Schools 154(4)

School district responded substantively to Individuals with Disabilities Education Act (IDEA) requirement, that it provide free appropriate public education (FAPE) to middle school student with behavior problems, when it prepared Individualized Education Program (IEP) calling for placement in private school in area, featuring small class size and technically diversified staff. A.K. ex rel. J.K. v. Alexandria City School Bd., E.D.Va.2005, 409 F.Supp.2d 689, reversed and remanded 484 F.3d 672, rehearing and rehearing en banc denied 497 F.3d 409, certiorari denied 128 S.Ct. 1123, 552 U.S. 1170, 169 L.Ed.2d 957, on remand 544 F.Supp.2d 487. Schools 154(4)

Private school was not an appropriate placement for special education student, and he was therefore not entitled to reimbursement for his tuition under Individuals with Disabilities Education Act (IDEA); private school was a

more restrictive placement than the placements provided to student by the school district, there was no indication that private placement would eventually transition student into a less restrictive placement, and school's methodology and certification were inadequate to meet the student's educational needs. W.C. ex rel. Sue C. v. Cobb County School Dist., N.D.Ga.2005, 407 F.Supp.2d 1351. Schools 154(4)

The IDEA does not forbid states to offer special education services on-site at private school, and school districts have discretion in this regard. Bay Shore Union Free School Dist. v. T. ex rel R., E.D.N.Y.2005, 405 F.Supp.2d 230, vacated , appeal dismissed 485 F.3d 730. Schools 8

Since school district's proposed public school placement could not meet all of student's unique needs, as required under the Individuals with Disabilities in Education Act (IDEA) to qualify as a free appropriate public education, district court would order that student be placed at district's expense for a transitional period of one year in a private school that had on-site psychological services which had proven to be of great importance in student's integration to school; student had been out of school for almost four years, was diagnosed with major depression disorder after having been enrolled at the public school, and had communicated thoughts of hurting herself after attending the public school. Zayas v. Commonwealth of Puerto Rico, D.Puerto Rico 2005, 378 F.Supp.2d 13, affirmed 163 Fed.Appx. 4, 2005 WL 3484654. Schools 154(4)

In IDEA case, parents had met their burden of showing that private school out of district was appropriate placement for their daughter; in concluding otherwise, State Review Officer (SRO) mistakenly relied on student's performance on single standardized test in determining whether her performance had improved, student made substantial progress in her speech and language skills during relevant school year despite private school's nonprovision of related services contemplated by district, and placement of student with classmates who were between three and four years younger had also been deemed appropriate in last acceptable individualized education plan (IEP). Gabel ex rel. L.G. v. Board of Educ. of Hyde Park Central School Dist., S.D.N.Y.2005, 368 F.Supp.2d 313. Schools 154(4)

Individualized education program (IEP) for grade school student who had Asperger's Syndrome, calling for education using district's facilities and teachers, was inappropriate in view of report of experts preparing IEP for following school year, rejecting public school option and endorsing placement of student in private school. Schoenbach v. District of Columbia, D.D.C.2004, 309 F.Supp.2d 71. Schools 148(3)

Emotionally disabled elementary school grade student received free appropriate public education (FAPE), as mandated by Individuals with Disabilities Education Act (IDEA), when he was assigned to attend school within district, where he would receive special education instruction, despite parents' claim that student's diagnosis of social phobia or posttraumatic stress disorder precluded attendance at that school; parents failed to explain why diagnosis precluded public school attendance, or how any problems would not carry over into any alternate private school placement. Keith H. v. Janesville School Dist., W.D.Wis.2003, 305 F.Supp.2d 986. Schools 154(2.1)

Student who needed special education services under IDEA was entitled to immediate placement in private facility, funded by school district, to implement hearing officer's determination (HOD) that student required full-time

special education placement and that neither student's current school nor public elementary school was appropriate placement, instead of placement in another school in district as recommended by special master based on it's assurances that appropriate placements were available; district failed to immediately find appropriate placement within time frame ordered by special master and did not implement individualized education program (IEP) for student over course of four years, and district's inexcusable disregard of student's rights under IDEA threatened student's physical and emotional health and safety. Blackman v. District of Columbia, D.D.C.2003, 278 F.Supp.2d 1. Schools 154(2.1)

Disabled child who has been placed by his parents in private school does not have individually enforceable right to receive special education and related services; rather, local school district need only spend proportional amount of its total Individuals with Disabilities Education Act (IDEA) funding on provision of services to disabled students in private school. Gary S. v. Manchester School Dist., D.N.H.2003, 241 F.Supp.2d 111, affirmed 374 F.3d 15, certiorari denied 125 S.Ct. 505, 543 U.S. 988, 160 L.Ed.2d 373. Schools 148(2.1)

School district failed to provide hearing impaired preschool child with free appropriate public education (FAPE) mandated by Individuals with Disabilities in Education Act (IDEA), by failing to comply with deadlines for preparation of Individualized Education Program (IEP) and Individualized Family Service Plan (IFSP), and holding of multidisciplinary conference (MDC), which required parents to enroll child in private school at own expense, as new school year commenced without district action. Board of Educ. of Paxton-Buckley-Loda Unit School District No. 10 v. Jeff S. ex rel. Alec S., C.D.Ill.2002, 184 F.Supp.2d 790. Schools 148(3)

In Individuals with Disabilities Education Act (IDEA) case in which parties agreed that school system could no longer educate student because it could not meet his disability-related needs and in which local school board did not offer an appropriate placement at the outset, thereby causing the parent to unilaterally place their child in a program that was otherwise proper, but did not meet the requirements of IDEA, hearing officer erred when she concluded that private school was an inappropriate placement for school year, particularly when she had found it an appropriate placement for the previous year; there was no legal basis for board to insist that private school contractually agree to comply with the IDEA's requirements relating to individualized education programs (IEPs). M.C., ex rel. Mrs. C. v. Voluntown Bd. of Educ., D.Conn.1999, 56 F.Supp.2d 243, reversed in part , vacated in part 226 F.3d 60, on remand 122 F.Supp.2d 289. Schools 154(4)

Parents of disabled student assumed financial risk of unilaterally withdrawing student from public school, for purposes of tuition reimbursement provisions of Individuals with Disabilities Education Act (IDEA), where parents unilaterally placed student in private facility without consulting with school district, expressing any dissatisfaction with district's programs, or discussing available local alternatives with district. Board of Educ. of Avon Lake City School Dist. v. Patrick M. By and Through Lloyd and Faith M., N.D.Ohio 1998, 9 F.Supp.2d 811, remanded 215 F.3d 1325. Schools 154(4)

Individuals with Disabilities Education Act (IDEA) is an equal access statute, which requires states to accept children with disabilities into their public schools; that access must be meaningful and must be reasonably calculated to confer some educational benefits on the child and, where possible, the education must be provided in regular public school with the child participating as much as possible in the same activities as other children;

when that is not possible, Act provides for placement in private schools at public expense. Swift By and Through Swift v. Rapides Parish Public School System, W.D.La.1993, 812 F.Supp. 666, affirmed 12 F.3d 209. Schools 148(2.1); Schools 154(4)

School district was obliged under the Education of the Handicapped Act to pay learning disabled child's tuition at private day school even though school was "decertified" during the course of the school year, where issue arose only because of district's failure to place child in an appropriate school on a timely basis, parents acted reasonably when they could not get a decision from the district, district funded education of other students at the same school, and the school was later recertified and appeared to be an "appropriate" placement. Shirk v. District of Columbia, D.D.C.1991, 756 F.Supp. 31. Schools 154(4)

Five-year-old multiply handicapped child was not appropriately placed in District of Columbia public school program for handicapped children, but rather, was appropriately placed in private school; evidence showed that student would not have been provided with necessary speech and occupational therapy in public school and despite expectations and efforts to establish that program, none had been offered. Kattan by Thomas v. District of Columbia, D.D.C.1988, 691 F.Supp. 1539. Schools 154(4)

Individualized education program for fifth grade student who had dyslexia, calling for integration with regular students during recess, lunch, and sports programs, could be implemented at private school approved for nonpublic placement of youngsters with dyslexia, where all students at such school were of average or higher intelligence, many would be considered regular students in public setting, and fifth grade student would have contact with such students in class, as well as during lunch, recess, and sports programs. Adams by Adams v. Hansen, N.D.Cal.1985, 632 F.Supp. 858. Schools 154(4)

Department of Education was responsible for all costs associated with disabled student's provisional placement at private school, given its present inability to provide the free appropriate public education that student required. Zayas v. Puerto Rico, C.A.1 (Puerto Rico) 2005, 163 Fed.Appx. 4, 2005 WL 3484654, Unreported. Schools 154(4)

121. Parochial school, free appropriate public education

Disabled student was not entitled, under amendments to Individuals with Disabilities Education Act (IDEA), to receive publicly-funded special education services in private parochial school setting, where local school district made free appropriate public education (FAPE) mandated by IDEA available to student, and parents elected to enroll student in private parochial school. Peter v. Wedl, C.A.8 (Minn.) 1998, 155 F.3d 992, rehearing and suggestion for rehearing en banc denied , on remand 35 F.Supp.2d 1134. Schools 154(4)

Individuals with Disabilities Education Act (IDEA) required school district to provide disabled student with consultant teacher and teacher's aide at parochial school; district's only justification for its failure to provide such benefits was its view that establishment clause prohibited on-site provision of such services in parochial school, statute and its regulations were more consistent with mandatory entitlements than with discretionary authority, and giving school district discretion to offer services required by IDEA only in public schools would

have required student to either forgo IDEA benefits, bear cost of such benefits herself, or transfer to public school. Russman by Russman v. Sobol, C.A.2 (N.Y.) 1996, 85 F.3d 1050, amended , motion granted 117 S.Ct. 940, 519 U.S. 1106, 136 L.Ed.2d 830, vacated 117 S.Ct. 2502, 521 U.S. 1114, 138 L.Ed.2d 1008, on remand 150 F.3d 219. Schools 148(2.1)

Parents' unilateral placement of elementary school student with multiple disabilities in private yeshiva was not appropriate under Individuals with Disabilities Education Act (IDEA); yeshiva had no experience with or capacity to educate students with disabilities, few of its teachers, if any, attained education beyond yeshiva, or equivalent of high-school degree, none of student's various classroom aides had training in or experience with educating children with disabilities, and aides' individualized sessions with student were not designed to augment or complement his various therapies, but rather, they appeared to be extension of yeshiva's religious education, although there was no formal coordination of lesson plan with yeshiva. J.G. ex rel. N.G. v. Kiryas Joel Union Free School Dist., S.D.N.Y.2011, 777 F.Supp.2d 606. Schools 154(4)

Establishment Clause did not preclude reimbursement of parents who placed disabled child in otherwise appropriate sectarian school while challenging appropriateness of individualized education plan (IEP) proposed by local educational agency (LEA); IDEA reimbursement scheme was neutral with respect to religion, with funds reaching sectarian institution only as result of parents' wholly independent choice. L.M. ex rel. H.M. v. Evesham Tp. Bd. of Educ., D.N.J.2003, 256 F.Supp.2d 290. Constitutional Law 1363; Schools 154(4)

Local educational agency (LEA) may not rely on state law that bans payment to sectarian institutions as basis for denying parental reimbursement when LEA has failed to provide free and appropriate public education (FAPE) and unilateral parental placement in such institution is otherwise deemed appropriate under IDEA. L.M. ex rel. H.M. v. Evesham Tp. Bd. of Educ., D.N.J.2003, 256 F.Supp.2d 290. Schools 154(4)

School district's refusal to provide certain services to disabled student in private sectarian school setting did not come within Free Exercise Plus exception to general rule that facially neutral government act does not violate Free Exercise Clause merely because it has incidental effect on religious practice; parents' decision to place student in private sectarian school was voluntary, and district's refusal to provide services under those circumstances was within its discretion. Nieuwenhuis by Nieuwenhuis v. Delavan-Darien School Dist. Bd. of Educ., E.D.Wis.1998, 996 F.Supp. 855. Constitutional Law 1363; Schools 8; Schools 148(2.1)

Placement of mentally ill high school student at private school outside state was appropriate under Individuals with Disabilities Education Act (IDEA); school providing Christian sectarian education was suitable for student's condition, involving excessive social anxiety, magical thinking, poor internal controls and inappropriate affect, as it would not subject him to aggressive behavior that could prove damaging, and school district ultimately approved school as appropriate education source in later individual educational plans (IEPs) prepared for student. Matthew J. v. Massachusetts Dept. of Educ., D.Mass.1998, 989 F.Supp. 380. Schools 154(4)

122. Home schooling, free appropriate public education

Parents' home-based program for their child with autism was not “proper,” within meaning of IDEA, precluding

parents' eligibility for reimbursement of costs of home-based program, on grounds that program was not reasonably calculated to enable child to receive educational benefits, where program provided only some educational services, including math, reading, and listening comprehension, but these services were often secondary to teaching of social and behavior skills and were in no way intended to supplant educational services available to child through school district. T.B. ex rel. W.B. v. St. Joseph School Dist., C.A.8 (Mo.) 2012, 677 F.3d 844. Schools 154(3)

States have discretion to determine whether home education that is exempted from state's compulsory attendance requirement qualifies as a "private school," for purpose of IDEA requirements. Hooks v. Clark County School Dist., C.A.9 (Nev.) 2000, 228 F.3d 1036, certiorari denied 121 S.Ct. 1602, 532 U.S. 971, 149 L.Ed.2d 468. Schools 154(4)

School district's policy of denying special education and related services to home-educated children did not violate equal protection clause, as state and its school districts had legitimate interest in promoting educational environments that fulfilled the qualifications that state deemed important, and maximizing the utility of scarce funds, and limiting IDEA services to qualified private schools reasonably advanced those interests by steering scarce educational resources toward those qualified educational environments. Hooks v. Clark County School Dist., C.A.9 (Nev.) 2000, 228 F.3d 1036, certiorari denied 121 S.Ct. 1602, 532 U.S. 971, 149 L.Ed.2d 468. Constitutional Law 3620; Schools 160.7

School district's alleged threats to file truancy charges unless learning disabled student's parents either enrolled student in public school or registered her with the state as a home-schooled student pursuant to state statute did not deny student access to a free appropriate public education (FAPE) under IDEA, even though hearing officer had ordered student to be homeschooled. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 148(3)

Hearing officer's final determination that disabled student was not eligible for home-bound services, under IDEA requirement that school district provide free appropriate public education (FAPE), was not inconsistent with officer's prior unofficial finding that student had been denied FAPE, since finding was based on argument by student's parent that all 17.5 hours of instruction required by student's individualized education program (IEP) should have been provided instead of only 4 hours supplied, but parent failed to establish by medical documentation that student's condition required home-bound services. Wilkins v. District of Columbia, D.D.C.2008, 571 F.Supp.2d 163. Schools 155.5(1)

Autistic student's placement at junior high school, rather than home schooling, was reasonably calculated to provide student with a free appropriate public education (FAPE), in accord with Individuals with Disabilities Education Act (IDEA). Johnson ex rel. Johnson v. Olathe Dist. Schools Unified School Dist. No. 233, Special Services Div., D.Kan.2003, 316 F.Supp.2d 960. Schools 154(3)

Parents' placement of autistic child in 38-hour home-based program was reasonably calculated to enable child to receive educational benefits, as required for parents to receive reimbursement for program under Individuals with Disabilities Education Act (IDEA); program was designed by child's parents and autism experts and had

carefully targeted child's specific challenges and capacities. T.H. v. Board of Educ. of Palatine Community Consol. School Dist. 15, N.D.Ill.1999, 55 F.Supp.2d 830, appeal dismissed 202 F.3d 275, affirmed 207 F.3d 931, certiorari denied 121 S.Ct. 70, 531 U.S. 824, 148 L.Ed.2d 34. Schools 154(4)

Handicapped student's home schooling after he had been determined to be eligible for services under Individuals with Disabilities Education Act (IDEA) was not "free appropriate public education." Stockton by Stockton v. Barbour County Bd. of Educ., N.D.W.Va.1995, 884 F.Supp. 201, affirmed 112 F.3d 510. Schools 148(2.1)

123. Residential placement, free appropriate public education

Disabled child is not entitled under IDEA to placement in residential school merely because latter would more nearly enable child to reach his or her full potential. O'Toole By and Through O'Toole v. Olathe Dist. Schools Unified School Dist. No. 233, C.A.10 (Kan.) 1998, 144 F.3d 692. Schools 154(3)

Placement of child who suffered from emotional and educational disabilities in private residential treatment facility was necessary for child to make meaningful educational progress, for purpose of Individuals with Disabilities Education Act (IDEA), in view of child's stalled academic performance while in public school system, and failure of board of education to sufficiently deal with child's problems, despite clinical evaluation concluding that child's problems could only be properly addressed in highly structured residential setting. Mrs. B. v. Milford Bd. of Educ., C.A.2 (Conn.) 1997, 103 F.3d 1114. Schools 154(3)

Under Individuals with Disabilities Education Act (IDEA) and California law, county could not show by preponderance of evidence that residential placement of seriously emotionally disturbed (SED) minor was unnecessary for minor to accomplish her individualized education program (IEP) goals; despite argument that day treatment was least restrictive environment available, evidence showed that day program failed to meet IEP goals. County of San Diego v. California Special Educ. Hearing Office, C.A.9 (Cal.) 1996, 93 F.3d 1458. Schools 155.5(4)

Residential placement, rather than mainstreaming, was appropriate under Individuals with Disabilities Education Act (IDEA) for disabled child, despite school district's contention that requiring residential placement was equivalent to requiring district to provide "best" or "potential-maximizing" education; child did not receive academic or nonacademic benefits in a regular classroom, child was severely disrupting regular classroom, school district failed to support its contention that cost-benefit analysis might support conclusion that community-based program was appropriate for child, district conceded at trial that cost was not issue in case, child's educational progress was deteriorating under district's program, parent's experts testified that child required residential placement, that out-of-state program was appropriate for child's disabilities, and that they were unaware of any closer appropriate program, no medical expert testified that district's proposal was reasonably calculated to provide child appropriate education, and district's expert had had no personal contact with child, was less knowledgeable about child's condition than were parent's experts, and testified in terms of broad generalities. Seattle School Dist., No. 1 v. B.S., C.A.9 (Wash.) 1996, 82 F.3d 1493. Schools 154(3)

Individualized education program (IEP) developed for profoundly deaf child, which would place child in resid-

ential school providing intensive instruction in American Sign Language (ASL), was reasonably calculated to result in educational benefit to child as required by IDEA. Poolaw v. Bishop, C.A.9 (Ariz.) 1995, 67 F.3d 830. Schools 154(3)

Individualized education program (IEP) proposed by school district for child with learning disabilities and emotional difficulties, which provided for individualized instruction in problem areas, oral, untimed testing, academic subjects one subject at a time at pace set by child, individualized counseling, and enrollment in some regular classes with nonexceptional children, satisfied requirements of IDEA, notwithstanding parents' request for residential placement of child; evidence did not support claim that residential placement was best possible education for child and IDEA required IEP to seek least restrictive environment. Salley v. St. Tammany Parish School Bd., C.A.5 (La.) 1995, 57 F.3d 458. Schools 154(3)

Education of the Handicapped Act required residential placement of child who was suffering from several congenital physical abnormalities and from neurological impairment inhibiting his ability to walk or to communicate, rather than placement in day program, in view of severity of child's disability; only residential placement would provide child with requisite free appropriate public education. Board of Educ. of East Windsor Regional School Dist. v. Diamond in Behalf of Diamond, C.A.3 (N.J.) 1986, 808 F.2d 987. Schools 154(3)

To determine whether residential placement is appropriate under provisions of Education for All Handicapped Children Act [20 U.S.C.A. §§ 1401(16), 1413(a)(4)(B)], court must analyze whether full-time placement may be considered necessary for educational purposes or whether residential placement is response to medical, social or emotional problems that are segregable from learning process. McKenzie v. Smith, C.A.D.C.1985, 771 F.2d 1527, 248 U.S.App.D.C. 387. Schools 154(3)

Where unique condition of severely retarded child demanded that he receive round-the-clock training and reinforcement in order to make any educational progress at all, order that child be placed in residential program was proper under this chapter. Abrahamson v. Hershman, C.A.1 (Mass.) 1983, 701 F.2d 223. Schools 154(3)

Findings that child might regress if moved to an entirely new home and school environment pursuant to education plan proposed by school officials and that it would be detrimental for student to return to his parents' home was a finding that student could not benefit from the proposed program of instruction and sustained district court's determination that residential program was required. Doe v. Anrig, C.A.1 (Mass.) 1982, 692 F.2d 800, on remand 561 F.Supp. 121. Schools 155.5(4)

Private day school placement provided disabled student with free appropriate public education (FAPE), and student did not require residential placement under IDEA; student's emotional problems were segregable from his ability to learn. Y.B. v. Board of Educ. of Prince George's County, D.Md.2012, 2012 WL 3962511. Schools 154(3)

Residential placement was not required to afford student a free appropriate public education (FAPE); weight of the evidence demonstrated that student had progressed significantly in his months away from public high school

and could return to high school with benefit of increased support services and more structure to his school day, and while student indisputably had frequent problems out of school involving criminal activity, drug use, and violence, his academic performance at public high school was at least average. C.T. v. Croton-Harmon Union Free School Dist., S.D.N.Y.2011, 812 F.Supp.2d 420. Schools 154(3)

School district's individualized education plan (IEP) for autistic student recommending his placement in non-residential high school was not reasonably calculated to enable student to receive educational benefits, as required to provide student with free appropriate public education (FAPE) under IDEA; student's needs were extensive, requiring great deal of structure and consistency, and best met through 24-hour residential program. Cone v. Randolph County Schools Bd. of Educ., M.D.N.C.2009, 657 F.Supp.2d 667. Schools 148(3); Schools 154(3)

Placement of disabled student in 24-hour a day residential facility was not proper under the IDEA, for purposes of parents' request for reimbursement of costs thereof, as it did not provide him an education in the least restrictive environment (LRE); there was no credible evidence that student would regress and lose skills from time he left school until time he returned in the morning, and doctor opined that student could receive educational benefit without additional services beyond school day. A.S. v. Madison Metropolitan School Dist., W.D.Wis.2007, 477 F.Supp.2d 969. Schools 154(3)

Residential placement was required in order for autistic child to receive a free appropriate public education (FAPE) under Individuals with Disabilities Education Act (IDEA); child was not showing any academic progress at day school, and all but one witness concurred that could academically improve in the more restrictive environment of a residential program. S.C. ex rel. C.C. v. Deptford Tp. Bd. of Educ., D.N.J.2003, 248 F.Supp.2d 368. Schools 154(3)

Residential placement of disabled child under Individuals with Disabilities Education Act (IDEA) is inappropriate where such placement is requested or needed to address needs other than child's educational needs, as where placement is sought in response to medical, social, emotional, or caretaking or custodial problems segregable from learning process. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 154(3)

Relevant factors in determining whether residential placement of disabled student is least restrictive educational environment and therefore required for educational purposes under Individuals with Disabilities Education Act (IDEA) include: steps that school has taken to try to include child in regular or local community-based school setting; comparison between educational benefits child would receive in local placement and benefits child would receive in residential placement; and possible negative effect child's inclusion might have on education of other children in local placement class and school. D.B. v. Ocean Tp. Bd. of Educ., D.N.J.1997, 985 F.Supp. 457, affirmed 159 F.3d 1350. Schools 154(3)

Individuals with Disabilities Education Act (IDEA) does not authorize residential care merely to enhance otherwise sufficient day program; handicapped child who would make educational progress in day program would not be entitled to placement in residential school merely because latter would more nearly enable the child to

reach his or her full potential, but rather, district is required merely to ensure that child be placed in program that provides opportunity for some educational progress. Ciresoli v. M.S.A.D. No. 22, D.Me.1995, 901 F.Supp. 378. Schools 154(3)

Given clearly inappropriate individualized education program (IEP) proposed for school year by school district, student's residential placement at private school by parent was appropriate placement under Education of the Handicapped Act (EHA), notwithstanding fact that residential placement at private school was more restrictive than was optimally necessary for student, as it did not provide mainstreaming; parent was thus entitled to tuition reimbursement for that school year, where school district failed to show availability of more appropriate, less restrictive placements. Norton School Committee v. Massachusetts Dept. of Educ., D.Mass.1991, 768 F.Supp. 900 . Schools 154(4)

Upon determination that twenty-four hour residential placement for 16-year-old student suffering from severe infantile autism and severe mental retardation was necessary for student to achieve educational progress, Education of the Handicapped Act mandated that school district provide student with residential placement until age 21, or, in the alternative, to pay for placement in residential facility mutually agreed upon by student's parents and school officials. Drew P. v. Clarke County School Dist., M.D.Ga.1987, 676 F.Supp. 1559, affirmed 877 F.2d 927, certiorari denied 110 S.Ct. 1510, 494 U.S. 1046, 108 L.Ed.2d 646.

Psychologically handicapped child's residential placement, whereby State paid only tuition component of facility's charges, deprived child of free and appropriate public education, in violation of the Education for the Handicapped Act. Vander Malle v. Ambach, S.D.N.Y.1987, 667 F.Supp. 1015. Schools 154(3)

Although during her term in private boarding school, now 16-year-old mentally handicapped child's emotional condition and social orientation had improved and although those problems were exhibited primarily in response to stressful home environment, a residential program was not necessary to provide child with the appropriate education to which she was entitled under this chapter and public funding of that placement was not required as school district offered a free appropriate program which conferred educational benefits, notwithstanding unrebutted evidence that child's gains might be lost if private placement was changed. Ahern v. Keene, D.C.Del.1984, 593 F.Supp. 902. Schools 154(3)

Under New Jersey's regulations implementing this subchapter and requiring local public school districts to provide each handicapped pupil with special education program and services according to how pupil can best achieve educational success, continued attendance by 15-year-old trainable, mentally retarded child with neurological impairment in residential school was more appropriate placement than placing child in his home and in local schools since child's continued attendance at the residential school would enable him to best achieve success in learning and where placing him in his home and in local schools would have adverse effect on his ability to learn and develop to maximum possible extent. Geis v. Board of Educ. of Parsippany-Troy Hills, Morris County, D.C.N.J.1984, 589 F.Supp. 269, affirmed 774 F.2d 575. Schools 154(3)

Under this chapter, school district was required to provide residential program for profoundly retarded child, in view of evidence that child would realize his learning potential only if he received more professional help than a

day program could offer him. Kruelle v. Biggs, D.C.Del.1980, 489 F.Supp. 169, affirmed 642 F.2d 687. Schools 154(3)

Under this subchapter as well the Rehabilitation Act of 1973, section 701 et seq. of Title 29, and implementing regulations, the District of Columbia Board of Education had responsibility for providing residential educational services to multiply handicapped 16-year-old boy who was diagnosed as being epileptic with grand mal, petit mal, and drop seizures, emotionally disturbed, and learning disabled and whose condition required that he be placed in resident treatment facility to provide medical supervision, special education and psychological support. North v. District of Columbia Bd. of Ed., D.C.D.C.1979, 471 F.Supp. 136. Schools 154(3)

124. Personal injury awards, free appropriate public education

Placement of Medicaid lien by county's social services department on settlement or personal injury award received by disabled student to pay for services that are mandated, under state law, to be provided free of charge to such students violates Individuals with Disabilities Education Act (IDEA). Andree ex rel. Andree v. County of Nassau, E.D.N.Y.2004, 311 F.Supp.2d 325. Schools 148(2.1)

125. Compensatory education, free appropriate public education

Absence of specially designed instruction in Individualized Education Program (IEP) for elementary school student who suffered reading and learning disabilities did not affect substantive rights of student or parents, and therefore, did not warrant award of compensatory education under the Individuals with Disabilities Education Act (IDEA); subsequent Notices of Recommended Educational Placement (NOREP) contained required information, including specialized educational placement, and parents signed and approved NOREPs. Ridley School Dist. v. M.R., C.A.3 (Pa.) 2012, 680 F.3d 260. Schools 155.5(5)

Student was not denied free and appropriate public education (FAPE) in violation of Individuals with Disabilities Education Act (IDEA) for time period during which she was in acute care ward of long-term psychiatric residential treatment center, as would warrant award of compensatory education; school district responded promptly after being informed of learning disabled student's admission to facility and sought to reevaluate her educational needs and develop a new individualized education plan (IEP), and failure to develop new IEP was attributable to acute nature of student's medical condition. Mary T. v. School Dist. of Philadelphia, C.A.3 (Pa.) 2009, 575 F.3d 235. Schools 155.5(5)

Denial of compensatory education under IDEA to disabled student, on basis that private school program had provided her with social and psychological services and that she continued making gains in those areas during enrollment, was supported by evidence, including conclusions of school and private psychologists regarding student's social and emotional well-being and program's provision of constant feedback and monitoring and group counseling. Lauren W. ex rel. Jean W. v. DeFlaminis, C.A.3 (Pa.) 2007, 480 F.3d 259. Schools 155.5(4)

Arkansas Department of Education (ADE) did not violate IDEA or § 1983 with regard to its training and monitoring of school district personnel throughout the state; ADE's receipt of five-year state improvement grant was

de facto compliance with requirement of comprehensive system of personnel development (CSPD) and thus defense to claim for injunctive relief by parents of autistic student, while student was not in school when first grant was approved his personal rights under IDEA were not violated so he could not receive compensatory education at state's expense for alleged statewide failure of ADE's special education training program, and in any event district court's finding that Arkansas's state plans including provisions for training of personnel had all been approved as in compliance with IDEA was not clearly erroneous. Bradley ex rel. Bradley v. Arkansas Dept. of Educ., C.A.8 (Ark.) 2006, 443 F.3d 965. Schools 148(3)

Student was entitled to compensatory education under Individuals with Disabilities Education Act (IDEA) upon finding that his Individualized Education Program (IEP) was inappropriate and that school district knew or should have known of deficiency; majority of skills that student possessed at time of expert's evaluation were gained before he was placed in day program pursuant to IEP, same rate of progress did not continue after he was placed at day program, and he reached plateau in his development. M.C. on Behalf of J.C. v. Central Regional School Dist., C.A.3 (N.J.) 1996, 81 F.3d 389, certiorari denied 117 S.Ct. 176, 519 U.S. 866, 136 L.Ed.2d 116. Schools 148(2.1)

Student was entitled to one year of compensatory educational services in his action, by his next friend and mother, against school district for violation of its obligation under Individuals with Disabilities Education Act's (IDEA's) Child Find provision to identify, locate, and timely evaluate students with disabilities and to develop methods to ensure that those students received necessary special education, where student was placed in disciplinary program at district's discipline and guidance center for one year while awaiting evaluation for, and provision of, special education services. D.G. ex rel. B.G. v. Flour Bluff Independent School Dist., S.D.Tex.2011, 832 F.Supp.2d 755, subsequent determination 2011 WL 2446375, vacated 2012 WL 1992302. Schools 155.5(5)

Evidence was insufficient to support compensatory education damages award of 150 hours upon determination that student suffering from mental retardation and emotional disturbance was denied free appropriate public education (FAPE) under the Individuals with Disabilities Education Improvement Act (IDEIA); although educational advocate opined that student needed 150 hours in life-skills training, the advocate failed to provide any explanation as to why that amount was appropriate. Gill v. District of Columbia, D.D.C.2010, 751 F.Supp.2d 104, affirmed 2011 WL 3903367. Schools 155.5(5)

Student with severe mental retardation, static non-progressive encephalopathy, and sensory disorder was not entitled to award of compensatory education, since she had received free appropriate public education comporting with IDEA requirements. Greenwood v. Wissahickon School Dist., E.D.Pa.2008, 571 F.Supp.2d 654, affirmed 374 Fed.Appx. 330, 2010 WL 1173017. Schools 155.5(5)

Appropriate education that student with learning disability had been receiving for previous two years did not abate or mitigate school district's duty, as mandated by hearing officer determination under IDEA, to provide him with compensatory education. D.W. v. District of Columbia, D.D.C.2008, 561 F.Supp.2d 56. Schools 148(3)

Disabled student received all compensatory education to which he would otherwise have been entitled for period after he started elementary school and before his interim individualized education program (IEP) was implemented, and thus student was not entitled under Individuals with Disabilities Education Act (IDEA) to compensatory education for that period, where school district provided student with many more hours of applied behavior analysis (ABA), verbal behavior (VB), and occupational therapy (OT) services than were called for in interim IEP. Travis G. v. New Hope-Solebury School Dist., E.D.Pa.2008, 544 F.Supp.2d 435. Schools 155.5(5)

Appropriate amount of compensatory education under IDEA, as remedy for school district's denial of free appropriate public education (FAPE) to student who was diagnosed with hemophilia, autism, borderline mental retardation, bipolar disorder, and other conditions, was 460 hours for grade seven, and 108 hours for grade eight, in light of Hearing Officers' and Appeals Panel's agreement on such conclusion, weight due to administrative proceedings, and absence of evidence to contradict their findings. Heather D. v. Northampton Area School Dist., E.D.Pa.2007, 511 F.Supp.2d 549, subsequent determination 2007 WL 2332480. Schools 155.5(5)

One-year equitable limitation period did not apply to IDEA compensatory education claim, initiated at state administrative level, requesting additional hours of education to replace years adult student did not receive under IDEA as minor. A.A. ex rel. E.A. v. Exeter Tp. School Dist., E.D.Pa.2007, 485 F.Supp.2d 587. Schools 155.5(2.1)

Award of compensatory education to disabled student who was not provided appropriate individual education plan (IEP) was not subject to equitable limitations period applicable to tuition reimbursement claims of parents. Keystone Cent. School Dist. v. E.E. ex rel. H.E., M.D.Pa.2006, 438 F.Supp.2d 519. Schools 155.5(2.1)

Disabled student was not provided free appropriate public education (FAPE) during period in which school district complied with administrative hearing officer's stay-put order under the IDEA, which required it to make no significant change to student's existing individualized education program (IEP) while new IEP was being challenged, and thus student was entitled to compensatory education; stay-put status did not provide student with more than de minimis educational benefit, given that student's existing IEP had failed the previous year. Mr. R. v. Maine School Administrative Dist. No. 35, D.Me.2003, 295 F.Supp.2d 113. Schools 148(2.1)

Equitable order that school district provide paraprofessional for disabled student for six academic years, regardless of whether student attended public or private religious school, was warranted by district's past refusal, in violation of preamendment version of IDEA, to provide such services to student for three years that he attended private sectarian school, where during three other years student attended public school only because of refusal. Westendorp v. Independent School Dist. No. 273, D.Minn.1998, 35 F.Supp.2d 1134. Schools 8; Schools 155.5(5)

126. Reimbursement, free appropriate public education--Generally

Under IDEA, parents are entitled to reimbursement of private-education tuition for their child only if a federal court concludes both that the public placement violated IDEA and the private school placement was proper under the Act, and even then courts retain discretion to reduce the amount of a reimbursement award if the equities

so warrant. Forest Grove School Dist. v. T.A., U.S.2009, 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168. Schools 154(4)

District Court, in considering, pursuant to IDEA, whether reimbursement of some or all of cost of child's private education was warranted by school district's alleged failure to provide child with free appropriate public education (FAPE), and on basis that private-school placement was suitable, was required to consider all relevant factors, including notice provided by parents and school district's opportunities for evaluating the child. Forest Grove School Dist. v. T.A., U.S.2009, 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168. Schools 154(4)

Even if public school denied learning-disabled student a free appropriate public education (FAPE) by failing to have an individualized educational program (IEP) in effect for student on first day of classes, as required by IDEA, equitable considerations weighed against reimbursing student's parents for cost of student's private school education for one school year, since parents' conduct in delaying continuation of individualized educational program (IEP) meeting and canceling speech and language evaluation substantially precluded any possibility that school could timely develop an appropriate IEP for student. C.H. v. Cape Henlopen School Dist., C.A.3 (Del.) 2010, 606 F.3d 59. Schools 154(4)

Parents and minor child seeking reimbursement for educational expenses under Individuals with Disabilities Education Act (IDEA) failed to establish that school district's proposed individualized education program (IEP) was substantively inappropriate; IEP included numerous supports and services to assist autistic child with his transition from primarily home-based educational program to school-based program. T.P. ex rel S.P. v. Mamaroneck Union Free School Dist., C.A.2 (N.Y.) 2009, 554 F.3d 247. Schools 148(3)

Reimbursement for parents' unilateral placement of disabled child in private school upon their rejection of school district's individual education plan (IEP) as inappropriate was not barred by private school's failure to provide an IEP, to structure individualized program for student, or by private school teachers' lack of special education certification, where placement was appropriate in that child continued to make in reaching her academic, social, and behavioral goals. Lauren W. ex rel. Jean W. v. DeFlaminis, C.A.3 (Pa.) 2007, 480 F.3d 259. Schools 154(4)

Reading center was not an appropriate placement for learning disabled child under IDEA, supporting hearing officer's denial of private school reimbursement, where child only worked on her reading ability at the center and did not study any other subjects such as social studies, math, English, or science. Rafferty v. Cranston Public School Committee, C.A.1 (R.I.) 2002, 315 F.3d 21. Schools 154(4)

District court inappropriately substituted its own subjective judgment about appropriate measures of educational progress under IDEA, when, in finding that school board owed reimbursement to parent of learning-disabled child for private school tuition, it discredited state review officer's interpretation of objective evidence regarding student's lack of progress at and consequent inappropriateness of private school, and instead relied on non-objective evidence including parent's testimony concerning child's happiness. M.S. ex rel. S.S. v. Board of Educ. of the City School Dist. of the City of Yonkers, C.A.2 (N.Y.) 2000, 231 F.3d 96, certiorari denied 121 S.Ct. 1403, 532 U.S. 942, 149 L.Ed.2d 346. Schools 154(4)

Removing child from partially mainstreamed program at public school, which otherwise provided appropriate academic instruction and to which the only objection was the failure to fully mainstream, and placing the child in a nonmainstreamed program in a private school did not satisfy the goals of the Individuals with Disabilities Education Act, and did not entitle parents to reimbursement of the private school tuition. Gillette By and Through Gillette v. Fairland Bd. of Educ., C.A.6 (Ohio) 1991, 932 F.2d 551. Schools 154(4)

Educational officials who did not conduct required multi-disciplinary review for learning-disabled child, and who failed to involve child's parents in preparation of proposed individual educational program, did not provide child with "free and appropriate public education" and were liable under the Education of the Handicapped Act for cost of placing child in private school. Board of Educ. of Cabell County v. Dienelt, C.A.4 (W.Va.) 1988, 843 F.2d 813. Schools 148(3)

Administrative hearing officer erred in awarding disabled student and her parents reimbursement and compensatory education for violations of the IDEA by the Department of Education (DOE) of Hawai'i, without considering their failure to challenge DOE's offer of a free appropriate public education (FAPE) and to provide written notice prior to student's unilateral withdrawal from public education. Department of Educ., State of Haw. v. M.F. ex rel. R.F., D.Hawai'i 2011, 840 F.Supp.2d 1214, clarified on denial of reconsideration 2012 WL 639141. Schools 154(4); Schools 155.5(5)

Parents were not entitled to reimbursement under IDEA for unilateral placement of learning-disabled student in private school, where it was not appropriate to rely on school's prospective potential to decide whether reimbursement was appropriate, and placement in school had not been successful, given that student's writing skills, reading skills, and decoding skills had all declined relative to his peer levels, and that school had failed to tailor its program to student's specific needs. Davis ex rel. C.R. v. Wappingers Central School Dist., S.D.N.Y.2010, 772 F.Supp.2d 500, affirmed 431 Fed.Appx. 12, 2011 WL 2164009. Schools 154(4)

Because District of Columbia could craft an appropriate Individualized Education Plan (IEP) to provide a free, appropriate, public education (FAPE) to student with attention-deficit/hyperactivity disorder (ADHD), it was not required under IDEA to pay for student's placement at private school; administrative hearing officer ordered that student's IEP be modified to provide for small group instruction to remedy any inadequacy, private school would not provide the least restrictive environment for student's education, and student had previously received educational benefit at an inclusion-based school for five years. N.T. v. District of Columbia, D.D.C.2012, 839 F.Supp.2d 29. Schools 154(4)

District court would not reduce or deny parents reimbursement from public school district, pursuant to Individuals with Disabilities Education Act (IDEA), based on parents' alleged unreasonableness; although parents failed to provide district with notice prior to child's non-emergent hospitalization, district informed parents that district believed it had no further obligations towards child, and district never changed its incorrect position that it had no obligation to child as long as she was not physically present in state. Jefferson County School Dist. R-1 v. Elizabeth E. ex rel. Roxanne B., D.Colo.2011, 798 F.Supp.2d 1177. Schools 154(4)

Three-part *Burlington* test for reimbursement under IDEA of cost of private special education services applied to

claims for retroactive direct tuition payment. Mr. and Mrs. A. ex rel. D.A. v. New York City Department of Educ., S.D.N.Y.2011, 769 F.Supp.2d 403. Schools 154(4)

Parents of student who suffered from schizoaffective disorder and borderline intellectual functioning were entitled to reimbursement under Individuals with Disabilities Education Act (IDEA) for private school expenditures for student's tenth grade year; school district's individualized education plan (IEP) for student's tenth grade year was inappropriate, private school was appropriate to meet student's needs for that year, as student made social, emotional, and academic progress at private school, and parents did not act in bad faith in paying tuition to private school. E.S. ex rel. B.S. v. Katonah-Lewisboro School Dist., S.D.N.Y.2010, 742 F.Supp.2d 417, affirmed 2012 WL 2615366. Schools 154(4)

Parent's unilateral private placement is appropriate, for tuition reimbursement purposes, if it is reasonably calculated to enable child to receive educational benefits; private placement need not meet IDEA definition of free appropriate public education (FAPE) or provide certified special education teachers or individualized education program (IEP) for disabled student, but rather appropriate private placement is one that is likely to produce progress, not regression. R.B. v. New York City Dept. of Educ., S.D.N.Y.2010, 713 F.Supp.2d 235. Schools 154(4)

A court has the discretion to grant, reduce, or deny reimbursement under the IDEA to parents who have placed their child in a private school after public school failed to provide appropriate individual education plan (IEP), regardless of the degree or quality of notice the parent provided. D.B. v. Bedford County School Bd., W.D.Va.2010, 708 F.Supp.2d 564. Schools 154(4)

Parent's unilateral placement of disabled student in private school was unreasonable, and thus parent was not entitled to tuition reimbursement under IDEA, notwithstanding contention that District of Columbia Public Schools (DCPS) failed to timely provide student with free appropriate public education (FAPE); parent allowed DCPS less than one month to convene individualized education program (IEP) meeting before enrolling student in private school, and parent informed DCPS that she would be enrolling student in private school but then showed up at public school on first day of school year expecting DCPS to have schedule prepared for student. Maynard v. District of Columbia, D.D.C.2010, 701 F.Supp.2d 116. Schools 154(4)

Preponderance of evidence supported state review officer's determination that placement of learning disabled student in private school setting consisting of self-contained classrooms of no more than seven students for all academic subjects was not reasonably calculated to enable her to receive educational benefit, in denying parents' request for tuition reimbursement under IDEA; private school's rigorous mainstream curriculum made it difficult for student to participate in mainstream classes, and school psychologist testified that student's disability was not so severe that she should have been segregated from her nondisabled peers. Schreiber v. East Ramapo Central School Dist., S.D.N.Y.2010, 700 F.Supp.2d 529. Schools 155.5(4)

Pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA), parents dissatisfied with a proposed individualized education program (IEP) may unilaterally remove their child from a public school, place the child in a private school they believe to be appropriate to the child's needs, and then file a complaint

with the state educational agency seeking reimbursement for the private school tuition. M.N. v. New York City Dept. of Educ., Region 9 (Dist. 2), S.D.N.Y.2010, 700 F.Supp.2d 356. Schools 154(4)

Parents' unilateral decision to place autistic student at private school for children with neurodevelopmental disorders was appropriate to student's needs, as required for parents to be entitled to tuition reimbursement under IDEA; private school provided education that was attuned to student's particular strengths, deficits, and abilities with respect to both her academic and therapeutic needs, school regularly conducted individualized assessments that showed clear awareness of student's day-to-day and long-term educational needs, with curricular goals adjusted in light of her performance, and student made progress during year at school. A.D. v. Bd. of Educ. of City School Dist. of City of New York, S.D.N.Y.2010, 690 F.Supp.2d 193. Schools 154(4)

In IDEA case, hearing officer did not err in ordering reimbursement for expenses and tuition associated with private placement of student with autism and cerebral palsy, or in selecting educational home-based program despite school district's contention that selected program lacked qualified direct service providers and was not the least restrictive environment (LRE). Anchorage School Dist. v. D.S., D.Alaska 2009, 688 F.Supp.2d 883. Schools 154(3); Schools 154(4)

Under the IDEA, parents of autistic child that was not provided with a free appropriate public education (FAPE) were entitled to be reimbursed from the county school board for the full, year-round cost of tuition for, and travel to and from, private school in which they enrolled their child. JP ex rel. Peterson v. County School Bd. of Hanover County, Va., E.D.Va.2009, 641 F.Supp.2d 499. Schools 154(4)

Student's need for special education services was not so obvious that general exercise of equity would override statutory requirement for tuition reimbursement under Individuals with Disabilities Education Act (IDEA); parents were aware of procedures under IDEA and obligation to provide notice prior to removal, it was not obvious to school that student needed special education services, and parents withdrew student from public school and enrolled him in private residential school in order to address his drug use. Forest Grove School Dist. v. T.A., D.Or.2005, 640 F.Supp.2d 1320, reversed and remanded 523 F.3d 1078, certiorari granted 129 S.Ct. 987, 555 U.S. 1130, 173 L.Ed.2d 171, affirmed 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168, on remand 675 F.Supp.2d 1063. Schools 154(4)

Nothing in a student's individualized education program even suggested that for him to receive an appropriate preschool education he needed to attend private preschool full-time, and thus, under the Individuals with Disabilities Education Act (IDEA), the school district was responsible to pay for only part-time enrollment; the decision of the student's parents to enroll him at the preschool full-time was a personal one, above and beyond the requirements of his individualized education program, and thus, they were entitled to only partial tuition reimbursement. Madison Metropolitan School Dist. v. P.R. ex rel. Teresa R., W.D.Wis.2009, 598 F.Supp.2d 938. Schools 154(4)

Parents were not entitled to reimbursement under IDEA for their unilateral placement of their child with emotional and learning disabilities at a private, out-of-state school specializing in treating disabled children, even if individualized education program (IEP) proposed by school district was inadequate and even if the private

school was well-suited to educate student; selected private school was not the least restrictive environment for child to receive a free appropriate public education (FAPE) under IDEA, as student had previously made educational progress in several placements less restrictive, including an in-state private school not certified for special education and a public school. Kasenia R. ex rel. M.R. v. Brookline School Dist., D.N.H.2008, 588 F.Supp.2d 175. Schools 154(4)

Even assuming the inadequacy of individualized educational program (IEP) developed by school district for parents' learning disabled child, parents were not entitled to reimbursement under the Individuals with Disabilities Education Act (IDEA) for their unilateral private placement of child, not only based on complete lack of evidence that private school where child was placed was least restrictive environment for child, but based on evidence that this private school placement, with other disabled children, would not appropriately address child's social skills needs. N.M. ex rel. M.M. v. School Dist. of Philadelphia, E.D.Pa.2008, 585 F.Supp.2d 657, affirmed 394 Fed.Appx. 920, 2010 WL 3622658. Schools 154(4)

Parents of learning disabled Pennsylvania student who had unilaterally placed him at private school for children with disabilities were not entitled to tuition reimbursement under the IDEA, as school district had conducted appropriate evaluation of, and offered appropriate individualized education program (IEP) for, that student. P.P. ex rel. Michael P. v. West Chester Area School Dist., E.D.Pa.2008, 557 F.Supp.2d 648, affirmed in part , reversed in part 585 F.3d 727. Schools 154(4)

Tuition reimbursement for two years' of special private education was appropriate where school district defaulted on its obligation under IDEA to evaluate severely depressed student as potentially eligible for special services and then improperly determined her ineligible two years later by failing to gather and consider relevant information. N.G. v. District of Columbia, D.D.C.2008, 556 F.Supp.2d 11. Schools 154(4)

Parent of high school student with attention deficit hyperactivity disorder (ADHD) who was seeking reimbursement of costs associated with unilateral placement of her child in alternative special education program with 15:1 staffing ratio satisfied her burden of showing that placement was appropriate; in addition to evidence of student's academic success and improved behavior and emotional progress in that program, objective supporting evidence included testimony of school's Director of Admissions for Special Education, special education teacher, and school psychologist. Jennifer D. ex rel. Travis D. v. New York City Dept. of Educ., S.D.N.Y.2008, 550 F.Supp.2d 420. Schools 155.5(4)

Parents who place their children in private schools without the consent of local school officials are entitled to reimbursement only if the public agency violated the Individuals with Disabilities Education Act (IDEA), that the private school placement was an appropriate placement, and that cost of the private education was reasonable. District of Columbia v. Abramson, D.D.C.2007, 493 F.Supp.2d 80. Schools 154(4)

Administrative Appeal Officer (AAO) did not err in ordering prospective relief for learning disabled student under Individuals with Disabilities Education Act (IDEA), consisting of, inter alia, reimbursement for private Alternative Language Therapy (ALT) tutoring, psycho-educational and speech-language evaluations; relief struck appropriate and equitable balance between needs to account for placement factors and to set boundaries on

school district's discretion to avoid problems that led to past IDEA violations. Miller ex rel S.M. v. Board of Educ. of Albuquerque Public Schools, D.N.M.2006, 455 F.Supp.2d 1286, affirmed 565 F.3d 1232. Schools 154(4)

Public school system would be required to reimburse parents of autistic student for reasonable costs of educating student at private school for autistic children, in which parents had unilaterally placed child, and for any related services and accommodations that would have been covered under IDEA had school system provided student with appropriate education during school year. J.P. ex rel. Peterson v. County School Bd. of Hanover County, Va., E.D.Va.2006, 447 F.Supp.2d 553, vacated 516 F.3d 254. Schools 154(4)

Under IDEA, while court may consider least restrictive environment issue, parent's inability to place child in least restrictive environment does not bar parental reimbursement. Gabel ex rel. L.G. v. Board of Educ. of Hyde Park Central School Dist., S.D.N.Y.2005, 368 F.Supp.2d 313. Schools 154(4)

Parents of profoundly deaf, mobility-impaired minor enrolled in private nursery school would not be prevented from seeking tuition reimbursement by fact that minor had never been enrolled in public school, under the Individuals with Disabilities Education Act (IDEA), if parents established that proposed individual educational plans (IEPs) denied minor free appropriate public education (FAPE), where school board did not become responsible for providing minor with FAPE until he was already enrolled in private school. E.W. v. School Bd. of Miami-Dade County Florida, S.D.Fla.2004, 307 F.Supp.2d 1363. Schools 154(4)

School timely and appropriately followed procedures required under Individuals with Disabilities Education Act (IDEA) when student with learning disability first enrolled as out-of-state transfer student, and thus student's parent was not entitled to reimbursement of private school tuition fees, stemming from alleged inadequacy of individualized education program (IEP) proffered to student; school was not required to adopt most recent evaluation of student, school properly implemented most recent IEP developed for student by predecessor district, student did not suffer loss of educational opportunity, and school made timely request for student's records from predecessor district. Waller v. Board of Educ. of Prince George's County, D.Md.2002, 234 F.Supp.2d 531. Schools 154(4)

Student who suffered disabling speech impairment but was denied speech therapy by school district was entitled to reimbursement under Individuals with Disabilities Education Act (IDEA) for all private speech therapy which parents provided for him beginning on date that school wrongfully determined that student was ineligible for speech therapy and calculation of this time did not include reasonable time period of two months for school to make its final decision as to whether student was entitled to speech therapy. Mary P. v. Illinois State Bd. of Educ., N.D.Ill.1996, 934 F.Supp. 989. Schools 154(4)

Evidence did not support overturning the determination of an ALJ that a proposed placement of a student at a school did not violate the Individuals with Disabilities Education Act (IDEA), such that the actions of the student's parents in unilaterally placing the student at a private school for the disabled deprived the first school of the opportunity to provide a free appropriate public education (FAPE) to the student, thus precluding reimbursement for costs of the private school; a comparison between the programs at the two schools was irrelevant to the

adequacy of the proposed placement under IDEA. H.W. ex rel. A.W. v. Highland Park Bd. of Educ., C.A.3 (N.J.) 2004, 108 Fed.Appx. 731, 2004 WL 1946511, Unreported. Schools 155.5(4)

127. ---- Cooperation of parents, reimbursement, free appropriate public education

In public school district's action under the Individuals with Disabilities Education Act (IDEA) challenging state hearing officer's order requiring it to reimburse parents for half the cost of placing their child in private residential facility located out of state, District Court was within its discretion in reversing the hearing officer's order, where school district displayed continued cooperation with parents' demands, and, prior to seeking reimbursement, parents had never complained about any of the individual education plans (IEP). Ashland School Dist. v. Parents of Student E.H., C.A.9 (Or.) 2009, 587 F.3d 1175. Schools 154(4)

Courts should be reluctant to award reimbursement of private school costs to a disabled student's parents who refuse or hinder the development of a free and appropriate public education (FAPE) or individual education plan (IEP) under the Individuals with Disabilities Education Act (IDEA). Loren F. ex rel. Fisher v. Atlanta Independent School System, C.A.11 (Ga.) 2003, 349 F.3d 1309. Schools 154(4)

Parents of disabled child did not fail to make child available for evaluation by school district, as would, under Individuals with Disabilities Education Act (IDEA), support denial of parents' reimbursement from public school district for parents' enrollment of child in private school; parents' duty to make child available for evaluation was extinguished when district disavowed any responsibility to child. Jefferson County School Dist. R-1 v. Elizabeth E. ex rel. Roxanne B., D.Colo.2011, 798 F.Supp.2d 1177. Schools 154(4)

Equities favored reimbursing parents of emotionally disabled student for their tuition expenses during period of time following committee on special education (CSE) meeting to end of school year, even though parents had provided imperfect notice, where student had previously attended public school in district, student and her parents were residing within district at time she was removed from public school, and parents acted in good faith and for the most part were very cooperative; by time of meeting, school district clearly had notice of student's disability and of their obligation to provide her with free appropriate public education (FAPE). W.M. v. Lakeland Cent. School Dist., S.D.N.Y.2011, 783 F.Supp.2d 497. Schools 154(4)

Impartial hearing officer (IHO) and state review officer (SRO) did not err in determining that equities favored funding autistic student's private school tuition; record was clear that parents cooperated in good faith at all times with New York City Department of Education (DOE) and they cooperated with district, participated at committee on special education (CSE) meeting, visited proposed placements, and notified district in writing that they were reenrolling student at private school when no placement was offered by district. Mr. and Mrs. A. ex rel. D.A. v. New York City Department of Educ., S.D.N.Y.2011, 769 F.Supp.2d 403. Schools 154(4)

While lack of parental consent to additional testing and evaluation requested by school psychologist present at individualized education program (IEP) meeting was factor to be weighed in finding parental unreasonableness allowing for reduction in reimbursement for cost of unilateral private placement under the IDEA, loss of free ap-

propriate public education (FAPE) was caused almost wholly by school district's negligence in scheduling timely IEP meeting and fact learning-disabled student fell through bureaucratic cracks, and one-sixth, rather than one-third, reduction in reimbursement better reflected parent's contribution to student's non-attendance at school during school year in question. Hogan v. Fairfax County School Bd., E.D.Va.2009, 645 F.Supp.2d 554. Schools 154(4)

Parents of disabled New Jersey student would not be reimbursed for private special education and related services provided during particular school year for which student's mother failed to cooperate with township Child Study Team (CST) in developing an appropriate individualized education program (IEP). M.S. v. Mullica Tp. Bd. of Educ., D.N.J.2007, 485 F.Supp.2d 555, affirmed 263 Fed.Appx. 264, 2008 WL 324200. Schools 154(4)

Parents forfeited any right they had to reimbursement for cost of student's unilateral placement in private school under Individuals with Disabilities Education Act (IDEA) when they unjustifiably failed to make student available for psychological evaluation requested by board for purposes of determining whether student should be identified as special education student and, if so, what placement was appropriate. P.S. v. Brookfield Bd. of Educ., D.Conn.2005, 353 F.Supp.2d 306, adhered to on reconsideration 364 F.Supp.2d 237, affirmed 186 Fed.Appx. 79, 2006 WL 1788293. Schools 154(4)

128. ---- Notice, reimbursement, free appropriate public education

In public school district's action under the Individuals with Disabilities Education Act (IDEA) challenging state hearing officer's order requiring it to reimburse parents for half the cost of placing their child in private residential facility located out of state, District Court was within its discretion in considering parents' failure to give school district notice of their objections to child's individual education plan (IEP) as a factor favoring denial of reimbursement, even though school district was aware of possibility that parents might withdraw child from public school in favor of a private residential facility. Ashland School Dist. v. Parents of Student E.H., C.A.9 (Or.) 2009, 587 F.3d 1175. Schools 154(4)

Conduct of special education student's parents did not provide for reduction or denial of tuition reimbursement from state's department of education for private educational placement under Individuals with Disabilities Education Act (IDEA), despite department's contention that parents did not provide adequate notice of intent to put student in private placement, where parents sent letter to department stating they were rejecting IEP and enrolling student in private placement at public expense, and although student's mother did not tell department that private placement had done intake assessment or that student was receiving speech-language services, mother attended and participated in IEP meetings, provided department with all documents she had received from private placement, and agreed to evaluations of student that IEP team felt necessary. Aaron P. v. Hawaii, Dept. of Educ., D.Hawai'i 2012, 2012 WL 4321715. Schools 154(4)

Pursuant to Individuals with Disabilities Education Act's (IDEA) notice requirements for parents removing a child from public school, parents of disabled child had no duty to provide written notice to school district prior to child's removal from public school and hospitalization; when parents hospitalized child they were not rejecting any placement proposed by district, and there was no indication in record that parents had intent to enroll

child at different school at time of removal and hospitalization. Jefferson County School Dist. R-1 v. Elizabeth E. ex rel. Roxanne B., D.Colo.2011, 798 F.Supp.2d 1177. Schools 154(4)

Equities favored providing partial reimbursement to parents of emotionally disabled student for costs of private school placement even though they failed to provide school with proper notice of their intent to remove student from public school, absent evidence that parents were informed of IDEA's notice requirement. W.M. v. Lakeland Cent. School Dist., S.D.N.Y.2011, 783 F.Supp.2d 497. Schools 154(4)

Even if private, residential, out-of-state school was an appropriate placement for student with special educational needs, parents were not entitled to reimbursement for educational expenses attributed to that placement, under the IDEA; parents failed to provide requisite timely notice to the public school district before enrolling student in the private school, failure to provide notice could not be excused, and parents did not act reasonably, inasmuch as the failed to adequately consider other placements and failed to give district time to explore other placement options before removing student. Covington v. Yuba City Unified School Dist., E.D.Cal.2011, 780 F.Supp.2d 1014. Schools 154(4)

In IDEA case, equities weighed in favor or reimbursement for costs of "Jump Start" program at private school, despite parents' failure to provide public school district with notice and opportunity to provide student with free appropriate public education (FAPE) prior to unilateral placement of their child at that school; parents' obligations under IDEA'S notice requirement were not triggered because New York City Department of Education (DOE) never provided them with Final Notice of Recommendation, and indeed they could not have informed DOE that they were "rejecting the placement proposed by the public agency" because DOE never made placement recommendation for them to reject. R.B. v. New York City Dept. of Educ., S.D.N.Y.2010, 713 F.Supp.2d 235. Schools 154(4)

Student's mother gave county school board sufficient notice of her intent to enroll student at private school at public expense, based on school board's failure to provide a free appropriate public education (FAPE), and, thus, mother was entitled to reimbursement under the IDEA, where mother attended individual education plan (IEP) meeting and informed the team that she rejected its proposed placement, head of the private school also attended the meeting to describe and explain the school's program, and, since mother could have placed student in private school herself at her own expense, common sense indicated that she raised the issue before the school board to obtain placement at public expense. D.B. v. Bedford County School Bd., W.D.Va.2010, 708 F.Supp.2d 564. Schools 154(4)

Even if student was eligible for tuition reimbursement for placement in private school, school district did not have notice prior to student's removal that parents felt student was in need to special education, and thus school district had no opportunity to address special education issues within public school setting, as required for reimbursement of private school tuition under Individuals with Disabilities Education Act (IDEA). Forest Grove School Dist. v. T.A., D.Or.2005, 640 F.Supp.2d 1320, reversed and remanded 523 F.3d 1078, certiorari granted 129 S.Ct. 987, 555 U.S. 1130, 173 L.Ed.2d 171, affirmed 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168, on remand 675 F.Supp.2d 1063. Schools 154(4)

Parents who did not give school district notice that they were removing their disabled child from current educational placement, and who, despite fact that they had previously approved child's individualized education program (IEP), unilaterally transferred child to private residential facility located out of state, failed to demonstrate that the equities warranted waiving "notice" requirement of the Individuals with Disabilities Education Act (IDEA) by awarding them full or even partial reimbursement for costs of this private placement. Ashland School Dist. v. Parents of Student E.H., D.Or.2008, 583 F.Supp.2d 1220, affirmed 587 F.3d 1175. Schools 154(4)

Parents of student with a disability were not required to first accept individual education plan (IEP) developed for student to remain eligible for reimbursement of private school tuition under the IDEA; parents notified board of education of need for special education services and provided written notice of their rejection of the IEP as inadequate for student's needs and their intent to seek additional special education services for student. D.L. ex rel. J.L. v. Springfield Bd. of Educ., D.N.J.2008, 536 F.Supp.2d 534. Schools 154(4)

A court may reduce or deny tuition reimbursement, under Individuals with Disabilities in Education Act (IDEA), if a disabled child's parents, prior to or during the most recent individualized education program (IEP) meeting before removing their child from school, failed to inform the IEP team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education (FAPE) to their child, including stating their concerns and their intent to enroll their child in a private school at public expense, or when parents acted unreasonably. Schoenbach v. District of Columbia, D.D.C.2004, 309 F.Supp.2d 71. Schools 154(4)

129. ---- Residential placement, reimbursement, free appropriate public education

District court's determination that parental placement of autistic student was appropriate, and thus that school district was required under Individuals with Disabilities Education Act (IDEA) to reimburse student's parents for expenses associated with home placement, was not clear error, despite district's contentions that home placement was too restrictive and that home placement was not reasonably calculated to provide educational benefit, where student received approximately 30 hours per week of applied behavioral analysis (ABA) services provided by experienced ABA line therapist, parents and ABA therapist made sure that student had sufficient opportunities to interact with other children, and student was progressing both educationally and behaviorally under home program. Sumter County School Dist. 17 v. Heffernan ex rel. TH, C.A.4 (S.C.) 2011, 642 F.3d 478. Schools 154(3)

In public school district's action under the Individuals with Disabilities Education Act (IDEA) challenging state hearing officer's order requiring it to reimburse parents for half the cost of placing their child in private residential facility located out of state, District Court was within its discretion in concluding that child's residential placement was necessitated by medical, rather than educational, concerns when it denied reimbursement, where record contained evidence that parents placed child in residential care to treat medical, not educational, problems. Ashland School Dist. v. Parents of Student E.H., C.A.9 (Or.) 2009, 587 F.3d 1175. Schools 154(4)

Long-term psychiatric residential treatment center employed tools to enable learning disabled student to manage her medical condition, rather than her educational needs, and thus parents were not entitled to reimbursement for services under Individuals with Disabilities Education Act (IDEA), although some services may have provided educational benefit; purpose of groups was to teach coping skills to work with depression and anxiety, program

at facility was designed to address medical conditions and had no state educational accreditation or on-site educators, and student's admission to facility was necessitated by need to address acute medical condition. Mary T. v. School Dist. of Philadelphia, C.A.3 (Pa.) 2009, 575 F.3d 235. Schools 154(3)

Parents' placement of disabled child in private residential treatment center was appropriate and reimbursable placement under Individuals with Disabilities Education Act (IDEA); placement was necessary for educational purposes, child's medical, social, and emotional problems were not segregable from learning process, treatment of child's psychiatric condition at center was not "quite apart from" her educational needs, and services provided at center were primarily oriented toward providing child an education, and were essential in order for child to receive meaningful educational benefit. Jefferson County School Dist. R-1 v. Elizabeth E. ex rel. Roxanne B., D.Colo.2011, 798 F.Supp.2d 1177. Schools 154(3)

Private, residential, out-of-state school was not an appropriate placement for student with special educational needs, and thus, parents were not entitled to reimbursement for educational expenses attributed to that placement, under the IDEA; the private school had no credentialed special education teachers on staff, there was no showing that an individualized educational plan (IEP) was developed at the private school to address student's specific educational needs and behavioral issues, and the private school had a religious based curriculum, which had nothing to do with student's special needs. Covington v. Yuba City Unified School Dist., E.D.Cal.2011, 780 F.Supp.2d 1014. Schools 154(4)

Individualized education plans (IEPs) for a student who suffered from both an emotional disturbance and a substance-abuse problem were substantively adequate, even though they did not provide for residential placement, thus precluding parents' recovery of reimbursement under the IDEA for the costs of private residential placements; the student succeeded in the program called for by the IEPs during the times that his substance-abuse problem was under control, and while a residential placement may have been the most effective way to treat his substance-abuse problem, that treatment was not the district's responsibility. P.K. ex rel. P.K. v. Bedford Cent. School Dist., S.D.N.Y.2008, 569 F.Supp.2d 371. Schools 154(3)

Board of education was not required to pay for disabled student's foster placement, which his educational needs did not dictate and which was not a "related service" within meaning of IDEA; although student's emotional and educational needs were intertwined, there was no evidence those needs could only be addressed through a residential placement, and student was initially placed in foster home at his mother's request because of his behavior at home despite fact he was making satisfactory academic progress. M.K. ex rel. Mrs. K. v. Sergi, D.Conn.2008, 554 F.Supp.2d 201. Schools 154(3)

School board's proposed individualized education plan (IEP) for 16-year-old diagnosed with attention deficit hyperactive disorder (ADHD), learning disability (LD), and serious emotional disturbance (ED), consisting of transition from private residential school he had been attending into public high school, was least restrictive alternative and appropriate under IDEA, precluding reimbursement of parents for cost of private boarding school into which parents had unilaterally placed child instead; several experts with experience with child testified at due process hearing that proposed transition was appropriate, while parents' experts who questioned IEP and favored more structured environment had less familiarity with child. A.S. ex rel. P.B.S. v. Board of Educ. of

Town of West Hartford, D.Conn.2001, 245 F.Supp.2d 417, affirmed 47 Fed.Appx. 615, 2002 WL 31309248. Schools 154(4)

Disabled student's post-graduation residential placement was not "necessary" for educational purposes, as required to entitle him to reimbursement for costs thereof pursuant to Individuals with Disabilities Education Act (IDEA); student did not contest adequacy of services provided to him prior to graduation or school's determination that he had satisfied academic requirements for graduation, and his need for continued residential placement after graduation rested on medical considerations outside scope of IDEA. Daugherty By and Through Daugherty v. Hamilton County Schools, E.D.Tenn.1998, 21 F.Supp.2d 765, affirmed. Schools 154(3)

Private residential school in which parent placed severely learning disabled high school student was appropriate in that it provided student with a structured, individualized supportive environment in which to learn, adopted individualized education programs (IEPs) which were detailed and addressed student's individualized education needs, and student benefitted from residential nature of the school in that staff were able to help her with social interactions and personal hygiene, and the annual cost, averaging $26,900 when the average cost of all publicly funded residential placements was $40,200, was reasonable, so that parent was entitled to reimbursement from school district which failed to adopt an IEP reasonably calculated to meet the student's educational needs. Briere By and Through Brown v. Fair Haven Grade School Dist., D.Vt.1996, 948 F.Supp. 1242. Schools 154(4)

Given clearly inappropriate individualized education program (IEP) proposed for school year by school district, student's residential placement at private school by parent was appropriate placement under Education of the Handicapped Act (EHA), notwithstanding fact that residential placement at private school was more restrictive than was optimally necessary for student, as it did not provide mainstreaming; parent was thus entitled to tuition reimbursement for that school year, where school district failed to show availability of more appropriate, less restrictive placements. Norton School Committee v. Massachusetts Dept. of Educ., D.Mass.1991, 768 F.Supp. 900 . Schools 154(4)

130. ---- Special education, reimbursement, free appropriate public education

IDEA authorized reimbursement of the costs of private special-education services to child with learning disabilities where school district failed to provide child with a free appropriate public education (FAPE) and private-school placement was appropriate, even though child had not previously received special education or related services through the public school; by finding child ineligible for special-education services and declining to offer him an individualized education program (IEP), school district failed to provide him with the required FAPE. Forest Grove School Dist. v. T.A., U.S.2009, 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168. Schools 154(4)

District court's determination that school district was incapable of providing autistic student with free and appropriate public education (FAPE) required by Individuals with Disabilities Education Act (IDEA), and thus that student's parents were entitled to compensation for services they provided at home, was not clear error, even though district had entered into contract with private company to provide applied behavioral analysis (ABA) consultation services, technical assistance, and training, where there had been no ABA training or supervision, and company and district had not settled on schedule for visits by consultant. Sumter County School Dist. 17 v.

Heffernan ex rel. TH, C.A.4 (S.C.) 2011, 642 F.3d 478. Schools 154(3)

In deciding whether student who had not previously received special education services was eligible for tuition reimbursement under Individuals with Disabilities Education Act (IDEA) provision authorizing "appropriate" relief, district court could not consider requirements of IDEA provision authorizing tuition reimbursement for students who had previously received such services. Forest Grove School Dist. v. T.A., C.A.9 (Or.) 2008, 523 F.3d 1078, certiorari granted 129 S.Ct. 987, 555 U.S. 1130, 173 L.Ed.2d 171, affirmed 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168, on remand 675 F.Supp.2d 1063. Schools 154(4)

Students who have not "previously received special education and related services," within the meaning of the Individuals with Disabilities Education Act (IDEA) provision allowing students who have received such services reimbursement for private school tuition, are nonetheless eligible for reimbursement under the IDEA provision authorizing "appropriate" relief. Forest Grove School Dist. v. T.A., C.A.9 (Or.) 2008, 523 F.3d 1078, certiorari granted 129 S.Ct. 987, 555 U.S. 1130, 173 L.Ed.2d 171, affirmed 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168, on remand 675 F.Supp.2d 1063. Schools 154(4)

IDEA provision providing for reimbursement of private school tuition when a public agency failed to provide a free appropriate public education (FAPE) did not preclude reimbursement when child had not previously received special education and related services; express purpose of IDEA was to ensure that a FAPE was available to all children with disabilities and IDEA conferred broad discretion on district court to grant relief it deemed appropriate to parents of disabled children who opt for unilateral private placement where placement was proper and proposed individualized education program (IEP) was inadequate. Frank G. v. Board of Educ. of Hyde Park, C.A.2 (N.Y.) 2006, 459 F.3d 356, certiorari denied 128 S.Ct. 436, 552 U.S. 985, 169 L.Ed.2d 325. Schools 154(4)

Significant disputed factual issues existed as to conduct and intent of both school district and parents of ninth-grade student with alleged nonverbal learning disability, precluding judgment on the record as to whether parents acted reasonably, as required for reimbursement for costs of attending private school after school district allegedly failed to provide appropriate special education services as required under the Individuals with Disabilities Education Act (IDEA) and the Rehabilitation Act. Loren F. ex rel. Fisher v. Atlanta Independent School System, C.A.11 (Ga.) 2003, 349 F.3d 1309. Schools 155.5(5)

Autism center was appropriate private placement for disabled student under Individuals with Disabilities Education Act (IDEA), as required to support reimbursement claim against state's department of education for private placement; center provided intensive autism-specific education and training that student needed and addressed student's unique needs. Aaron P. v. Hawaii, Dept. of Educ., D.Hawai'i 2012, 2012 WL 4321715. Schools 154(4)

Individualized education program (IEP) generated for learning disabled student's sixth grade year was reasonably calculated to enable student to receive educational benefits and provided student with a free appropriate public education (FAPE) required by Individuals with Disabilities Education Act (IDEA), even if it did not include particular reading programs or goals, and therefore, reimbursement was not warranted for parents' unilat-

eral withdrawal of student and placement in private school; tests showed student was in the average range, including in reading, fifth grade report card showed student scoring either "consistent" or "exemplary" in all fields with only two "inconsistent" scores in separate subjects, student's literary extension teacher found that student was "performing in an acceptable range" and able to manage the curriculum, student was progressing under prior IEPs, which did not include separate reading instruction, student's special education case manager, who consulted with his teachers daily, believed student had no difficulty in reading fifth grade materials, and co-chairperson of reading department believed separate reading services were not necessary as reading goals would be addressed in services already provided by IEP. E.W.K. ex rel. B.K. v. Board of Educ. of Chappaqua Cent. School Dist., S.D.N.Y.2012, 2012 WL 3205571. Schools 148(3)

Student did not previously receive special education and related services prior to unilateral removal from public high school and private placement, and thus was not eligible for tuition reimbursement for placement in private school under Individuals with Disabilities Education Act (IDEA); student's parents agreed with evaluation two years earlier that student was not eligible for services, parents did not request further evaluation or special services prior to removal from school, and student was removed from school for drug treatment, rather than reasons related to special education services. Forest Grove School Dist. v. T.A., D.Or.2005, 640 F.Supp.2d 1320, reversed and remanded 523 F.3d 1078, certiorari granted 129 S.Ct. 987, 555 U.S. 1130, 173 L.Ed.2d 171, affirmed 129 S.Ct. 2484, 557 U.S. 230, 174 L.Ed.2d 168, on remand 675 F.Supp.2d 1063. Schools 154(4)

130a. ---- Time period, reimbursement, free appropriate public education

Even if county board of education failed to provide student, who had auditory memory and visual motor integration disorders and had difficulty with reading, written expression, and verbal expression, free and appropriate public education (FAPE) for her fifth grade year, equity would prevent district court from awarding reimbursement for cost of placement of student in private school; board had no notice of parents' intent to seek private placement or reimbursement for that private placement until more than a year after final individualized education plan (IEP) meeting, prior to student's removal from public school. S.H. v. Fairfax County Bd. of Educ., E.D.Va.2012, 2012 WL 2366146. Schools 154(4)

Parents of emotionally disabled student were precluded from obtaining private school tuition reimbursement from school district prior to date when completed social history and psychoeducational report were sent to district, but it should not have taken district more than one month thereafter to convene committee on special education (CSE) meeting and parents were entitled to reimbursement for additional four weeks, representing period between date when completed social history and psychoeducational report were sent to district and date of actual CSE meeting. W.M. v. Lakeland Cent. School Dist., S.D.N.Y.2011, 783 F.Supp.2d 497. Schools 154(4)

131. Miscellaneous programs appropriate, free appropriate public education

School district met the free appropriate public education (FAPE) requirements of the IDEA when it created individualized education program (IEP) and Evaluation Report (ER) for student, even though ER did not identify student as having a learning disability in math computation and did not assess his social and emotional functioning; areas in question were not identified as suspected disabilities and so were properly excluded from ER. P.P. ex rel. Michael P. v. West Chester Area School Dist., C.A.3 (Pa.) 2009, 585 F.3d 727. Schools 148(3)

Public school district's proposed individualized education program (IEP) for student diagnosed with autism and other disabilities was not substantively deficient in violation of the Individuals with Disabilities in Education Act (IDEA); although the parents claimed that the IEP promoted learned helplessness by providing student with a personal aide, the IEP provided for decreasing the level of prompting from the aide where it was no longer needed, team meetings with the parents every four to six weeks to discuss student's progress, including the level of prompting required, and stressed independence in the following of daily routines and the application of reading and math skills. A.C. ex rel. M.C. v. Board of Educ. of The Chappaqua Central School Dist., C.A.2 (N.Y.) 2009, 553 F.3d 165. Schools 148(3)

Individualized education program (IEP) for autistic student did not deny student a free appropriate public education (FAPE) under the IDEA; IEP incorporated several teaching techniques and provided adequate generalization services for student to receive some educational benefit. Sytsema ex rel. Sytsema v. Academy School Dist. No. 20, C.A.10 (Colo.) 2008, 538 F.3d 1306, on remand 2009 WL 3682221. Schools 148(3)

Board of education introduced sufficient evidence to prove that the public school preschool placement, involving a half-day preschool class composed of half disabled children and half non-disabled children, with afternoon placement in the school's resource room, provided a meaningful educational benefit to handicapped child, considering child's specific needs, and thus satisfied IDEA's requirement of a free appropriate public education (FAPE) for child. T.R. v. Kingwood Tp. Bd. of Educ., C.A.3 (N.J.) 2000, 205 F.3d 572. Schools 155.5(4)

Autistic student's placement in private facility, which was only certified to provide designated instruction and service (DIS) of counseling and not special education itself, was appropriate under California law providing that handicapped three to five-year-old students may be placed in program that only provides DIS without simultaneous special education and therefore, placement was appropriate under Individuals with Disabilities Education Act (IDEA). Union School Dist. v. Smith, C.A.9 (Cal.) 1994, 15 F.3d 1519, certiorari denied 115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 341. Schools 154(4)

District court's determination that individualized education program (IEP) was adequate and appropriate to ensure requisite degree of educational benefit to handicapped child under Individuals with Disabilities Education Act (IDEA) was supported by evidence; although IEP did not contain precise programs that parents preferred for enhancing child's social skills, it embodied substantial suitably diverse socialization component, and academic programs assured child basic floor of educational opportunity. Lenn v. Portland School Committee, C.A.1 (Me.) 1993, 998 F.2d 1083. Schools 155.5(4)

School board's recommended placement of handicapped child in new public school program for school year 1990-91 did not violate the Individuals with Disabilities Education Act (IDEA), notwithstanding complaint of parents that because program was new and could not be observed in operation prior to its recommendation it was not reasonably calculated to meet child's needs; new program offered one-on-one programming and longer school day than alternative programs, a full-time behavioral consultant, occupational therapy, speech therapy, and transitional programming; moreover, program was in a school closer to child's home than alternative placement options. Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ., C.A.3 (N.J.) 1993, 993 F.2d 1031, rehearing denied. Schools 148(2.1); Schools 154(2.1)

Individualized educational program (IEP) directing placement of junior high school student handicapped by behavioral disorder and learning disability in private day school, rather than in alternative public school for student suffering mainly from severe behavioral disorders as recommended by school district, was the least restrictive placement that would be of educational benefit to the student, particularly considering parents' hostility to district's proposed placement. Board of Educ. of Community Consol. School Dist. No. 21, Cook County, Ill. v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1991, 938 F.2d 712, rehearing denied, certiorari denied 112 S.Ct. 957, 502 U.S. 1066, 117 L.Ed.2d 124. Schools 154(4)

District court properly balanced handicapped child's minimal ability to benefit from more than four-hour school day against physical distress resulting from prolonged sensory stimulation in determining that four-hour school day in child's individualized education program (IEP) fulfilled requirements of appropriate education. Christopher M. by Laveta McA. v. Corpus Christi Independent School Dist., C.A.5 (Tex.) 1991, 933 F.2d 1285. Schools 155.5(2.1)

"Cued speech" program at high school provided profoundly hearing-impaired student with "appropriate education" as required by the EHA, notwithstanding that high school was five miles farther from student's home than his base school; school board had no duty under the EHA to duplicate interpretative services at student's community school, so as to place him as close as possible to his home. Barnett by Barnett v. Fairfax County School Bd., C.A.4 (Va.) 1991, 927 F.2d 146, certiorari denied 112 S.Ct. 175, 502 U.S. 859, 116 L.Ed.2d 138. Schools 154(2.1)

Individualized education program which provided one hour of home instruction per day to handicapped child was reasonably calculated to enable child to receive educational benefits, thereby satisfying Education for All Handicapped Children Act. Thomas v. Cincinnati Bd. of Educ., C.A.6 (Ohio) 1990, 918 F.2d 618. Schools 154(3)

Educational programs school offered to handicapped student for two school years were reasonably calculated to provide student with educational benefits and met requirements of Education of the Handicapped Act, despite school's failure to place student in residential educational environment; expert testimony indicated that plan was appropriately designed to increase student's time in school to full school day by end of academic year and that residential facility was not appropriate placement for student because it did not have facilities to deal with student's psychological and emotional needs. Doe v. Alabama State Dept. of Educ., C.A.11 (Ala.) 1990, 915 F.2d 651. Schools 154(3)

Psychiatric testimony established that only "free appropriate public education" for seriously emotionally disturbed 19-year-old was one which offered long-term treatment and had locked wards, and which, in addition, unlike program chosen by school board, was willing to accept student, despite cost of $88,000 per year as compared to $55,000 cost per year at school chosen by board. Clevenger v. Oak Ridge School Bd., C.A.6 (Tenn.) 1984, 744 F.2d 514. Schools 154(2.1)

Parents of student with dyslexia, attention deficit hyperactivity disorder (ADHD), and speech impairment had not shown that Texas school district denied student free appropriate public education (FAPE) during relevant

time period; education program provided during relevant period was sufficiently individualized on basis of student's assessment and performance and was administered in least restrictive environment (LRE), services were provided in coordinated and collaborative manner by key stakeholders, and positive academic and nonacademic benefits were demonstrated. C.H. ex rel. C.H. v. Northwest Independent School Dist., E.D.Tex.2011, 815 F.Supp.2d 977. Schools 148(3)

In IDEA case in which parents of disabled student were seeking tuition reimbursement for cost of unilateral private school placement, record supported State Review Officer's (SRO's) finding that proposed placement of autistic student at public school with 6:1 student/teacher ratio and teacher with 30 years of experience with New York City Department of Education (DOE), ten of them working with students with autism, was appropriate given student's needs; parents' speculation that student might not have received occupational therapy did not constitute denial of a free appropriate public education (FAPE). A.L. v. New York City Dept. of Educ., S.D.N.Y.2011, 812 F.Supp.2d 492. Schools 155.5(4)

Granting appropriate deference to decisions of Impartial Hearing Officer (IHO) and State Review Officer (SRO) below, disabled student's individualized education program (IEP) was substantively sufficient and provided student with free appropriate public education (FAPE); parents raised specific objections to certain aspects of those decisions relating to recordings of telephone calls between student's mother and then-director of special education at student's public school and student's sixth grade homeroom and language arts teachers, letters that chairman of sub-committee on special education (CSE) sent to other schools to investigate out-of-district placements for student, and IHO's decision to credit testimony of school district's witnesses. B.O. v. Cold Spring Harbor Central School Dist., E.D.N.Y.2011, 807 F.Supp.2d 130. Schools 148(2.1)

Individualized education program (IEP) for eighth grade student with attention deficit hyperactivity disorder (ADHD) was reasonably calculated to enable child to receive educational benefits, and thus did not amount to denial of free appropriate public education (FAPE) under IDEA; child's eighth grade IEP was similar to his sixth grade IEP under which child achieved reading goals, achieved all goals for writing skills except spelling, received passing grades and was advanced to next grade, and it was reasonable to conclude that child would have continued to progress under his more intensive eighth grade IEP. Adrianne D. v. Lakeland Central School Dist., S.D.N.Y.2010, 686 F.Supp.2d 361. Schools 148(3)

Evidence supported determination that failure of the District of Columbia Public Schools (DCPS) to timely comply with a hearing officer's determination requiring certain examinations and evaluations of a learning disabled student did not result in educational harm to the student so as to deny him a free, appropriate public education (FAPE) for purposes of the Individuals with Disabilities Education Act (IDEA); the student received in the interim the services and instruction that a prior individualized education program (IEP) required, a subsequent IEP called for the same amount of specialized instruction and services, and student's teacher and counselors testified that he had made progress under the IEP. J.N. v. District of Columbia, D.D.C.2010, 677 F.Supp.2d 314. Schools 155.5(4)

High school student's subsequent placement by parents in boarding school recommended by staff at her previous boarding school was an appropriate placement under Individuals with Disabilities Education Act (IDEA), as re-

quired to entitle parents to reimbursement for the private school tuition from city department of education; school was a highly structured, non-voluntary program wherein students participated in a daytime work program which emphasized work ethic and was designed to motivate students through promotions, and in this program, student had been promoted from a worker to a service crew member, where her responsibilities included supervision of other children. Eschenasy v. New York City Dept. of Educ., S.D.N.Y.2009, 604 F.Supp.2d 639. Schools 154(4)

School district provided free appropriate public education (FAPE) to student with severe mental retardation, static non-progressive encephalopathy, and sensory disorder, comporting with IDEA, and thus, district did not violate Rehabilitation Act's FAPE requirement. Greenwood v. Wissahickon School Dist., E.D.Pa.2008, 571 F.Supp.2d 654, affirmed 374 Fed.Appx. 330, 2010 WL 1173017. Schools 148(3)

Pennsylvania school district provided a free appropriate public education (FAPE) to learning disabled student; evaluation district undertook and Evaluation Report (ER) it provided were substantively appropriate, and individualized education program (IEP) district offered to student for that school year was reasonably calculated to provide meaningful educational benefit. P.P. ex rel. Michael P. v. West Chester Area School Dist., E.D.Pa.2008, 557 F.Supp.2d 648, affirmed in part , reversed in part 585 F.3d 727. Schools 148(3)

Public school district provided learning disabled student free appropriate public education (FAPE) to which student was entitled, under Individuals with Disabilities Education Act (IDEA), when she was placed in special learning center maintained by district which could implement programs described in student's Individualized Education Program (IEP), despite claim by parent that student was entitled to other special educational services not mentioned in IEP and not available at learning center. Lopez v. District of Columbia, D.D.C.2005, 355 F.Supp.2d 392. Schools 148(3)

Nine-year-old student suffering from verbal apraxia received free appropriate public education (FAPE) required by IDEA through the Title One reading program, rather than special education, over a period of several months; report card's author, who recommended that the student continue to work on his reading skills, did not provide any clear indication that the student's reading difficulties were of dominant concern, such as would counsel special educational services, apraxia expert opined that there was no correlation between apraxia and reading difficulties, and during the period of Title One instruction, the student made progress in reading. Moubry v. Independent School Dist. 696, Ely, Minn., D.Minn.1998, 9 F.Supp.2d 1086. Schools 148(3)

School system's proposal of self-contained class in regular community school for learning disabled student provided student with free appropriate public education required by Education of the Handicapped Act (EHA); school system's program used innovative, nontraditional, and hands-on approach which could only be described as far superior to private school program favored by parents. Doyle v. Arlington County School Bd., E.D.Va.1992, 806 F.Supp. 1253, affirmed 39 F.3d 1176. Schools 148(3); Schools 154(4)

Assuming student who was left homebound by illness had a disability and was entitled to a free appropriate public education (FAPE) under the IDEA, substantial evidence supported the finding that school district provided student with meaningful educational benefit despite some failures; although the hours provided by district broke

down substantially at the end of student's eighth grade year, student's parents were partly to blame for many missed hours, district offered to make up the hours, student's late receipt of assignments did not necessarily indicate that he did not receive benefit of those assignments, and student's grades and test scores indicated that he maintained his high academic abilities. Falzett v. Pocono Mountain School Dist., C.A.3 (Pa.) 2005, 152 Fed.Appx. 117, 2005 WL 2500122, Unreported. Schools 155.5(4)

Student with Down syndrome was not denied a free appropriate public education (FAPE) during a nine-week trial placement, despite claim that school district failed to adequately train teachers, to adapt the curriculum for the student, or to adequately communicate with the student's parents; there was significant evidence of teacher training and qualifications during the period at issue, as well as evidence of curriculum modifications, and there was no showing that the amount of parental contact was less than the communication with parents of nondisabled children. T.W. v. Unified School Dist. No. 259, Wichita, Kan., C.A.10 (Kan.) 2005, 136 Fed.Appx. 122, 2005 WL 1324969, Unreported. Schools 148(3)

School district adequately accommodated disabled child's limited ability to write with a pen or pencil, as required under IDEA, where goals related to written work and notetaking were removed from child's individualized education program (IEP) when he struggled to achieve them, child was trained in computer dictation program, and child was provided with instruction in using a computer keyboard. L.C. v. Utah State Bd. of Educ., C.A.10 (Utah) 2005, 125 Fed.Appx. 252, 2005 WL 639713, Unreported. Schools 148(2.1)

132. Miscellaneous programs inappropriate, free appropriate public education

Allegations that student was unable to attend classes because of chronic fatigue syndrome and fibromyalgia, that student was only able to complete her seventh-grade education through home schooling, and that school refused to provide such instruction, as well as allegations that upon her return to school student was placed at an inappropriate level of education, supported claim that student was denied an appropriate educational placement for purposes of claim under IDEA. Weixel v. Board of Educ. of City of New York, C.A.2 (N.Y.) 2002, 287 F.3d 138. Schools 154(2.1)

Placement in program limited to disabled students was not the least restrictive environment (LRE) for child with Down Syndrome, as required under IDEA, where the evidence presented at the hearing indicated that his disability and individualized education program (IEP) did not prevent him from benefitting from a more inclusive setting and, specifically, that the private preschool in which child was able to interact with nondisabled children provided the least restrictive environment. Board of Educ. of LaGrange School Dist. No. 105 v. Illinois State Bd. of Educ., C.A.7 (Ill.) 1999, 184 F.3d 912. Schools 154(2.1)

Autistic student's placement in communicatively handicapped class at school, which would be supplemented by some one-to-one behavior modification counseling, was inappropriate under Individuals with Disabilities Education Act (IDEA) because it was insufficiently individually designed to meet student's special needs; there were no other autistic children at school, there was no evidence that teacher had been trained to work with autistic children and student required more restrictive and less stimulating environment than that offered at school. Union School Dist. v. Smith, C.A.9 (Cal.) 1994, 15 F.3d 1519, certiorari denied 115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 341. Schools 148(3)

Evidence including handicapped student's prior recoupment patterns and opinions of school psychologists familiar with student supported district court's determination that student was not entitled to extended school year program as part of his individualized educational program under the Education of the Handicapped Act; testimony regarding to what degree student would regress without summer program was directly conflicting. Cordrey v. Euckert, C.A.6 (Ohio) 1990, 917 F.2d 1460, certiorari denied 111 S.Ct. 1391, 499 U.S. 938, 113 L.Ed.2d 447. Schools 155.5(4)

Court did not err in holding that six-hour day provided by one program for mentally retarded child who also suffered from cerebral palsy was an inappropriate education and that the child required continuous supervision. Kruelle v. New Castle County School Dist., C.A.3 (Del.) 1981, 642 F.2d 687. Schools 148(3)

State residential facility for developmentally disabled failed to provide children residents with free appropriate public education and to invite agencies that provided transition services to meetings at which post-secondary goals and transition services were discussed, in violation of Individuals with Disabilities Education Act (IDEA); facility did not adequately plan special education for each child, did not provide children with adequate time in special education classes, did not provide adequate number of teachers, and did not provide for continuing education adequate to enable teachers to do their job well. U.S. v. Arkansas, E.D.Ark.2011, 794 F.Supp.2d 935. Schools 148(2.1)

Disabled student was denied free appropriate public education (FAPE), in violation of IDEA, because of school district's improper behavior program, even if there was no adverse impact on student's academic performance, where district employed point system to reward student for positive behavior and utilized physical restraints, there was no evidence in record that there was any scientific basis for point system, student, who had cognitive deficit, did not understand point system and her behavior regressed, and teacher was unduly punitive with student and was punishing her for behavior related to her disability. B.H. v. West Clermont Bd. of Educ., S.D.Ohio 2011, 788 F.Supp.2d 682. Schools 148(3)

Impartial hearing officer (IHO) and state review officer (SRO) did not err in determining that autistic student was never offered permanent placement for school year in question and thus was denied free appropriate public education (FAPE) by New York City Department of Education (D0E); committee on special education (CSE) did not offer placement to student at meeting to develop his individualized education program (IEP) or afterward. Mr. and Mrs. A. ex rel. D.A. v. New York City Department of Educ., S.D.N.Y.2011, 769 F.Supp.2d 403. Schools 148(3)

District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education failed to provide disabled students with a free appropriate public education (FAPE) as required by IDEA; they only provided FAPE to approximately half of the three-to-five year old children in the District who qualified. DL v. District of Columbia, D.D.C.2010, 730 F.Supp.2d 84. Schools 148(2.1)

New York State Department of Education (DOE) failed to provide autistic student a free appropriate public education (FAPE) by determining student's goals on an arbitrary basis such that they failed to reflect the results of his evaluations; court adopted findings of impartial hearing officer (IHO) that DOE's determination of academic

goals and objectives that would be set forth in individualized education program (IEP) on basis of student's grade level rather than evaluations parents provided to Committee on Special Education (CSE) resulted in generic goals that did not reflect consideration of student's unique characteristics, that some of student's goals and objectives were not measurable, and that nonacademic goals that were too advanced. M.H. v. New York City Dept. of Educ., S.D.N.Y.2010, 712 F.Supp.2d 125, affirmed 685 F.3d 217. Schools 148(3)

Defects in disabled student's individualized education program (IEP) were so significant that he was not offered a free appropriate public education (FAPE) under the IDEA; IEP was completely missing statement of student's present levels of performance, failed to describe any supplementary aids and services to be provided despite fact defendants conceded those services were necessary, failed to address student's need for occupational therapy, was internally inconsistent regarding nature of services that would be provided to student, and failed to adequately describe services that would be provided in inclusive education setting. N.S. ex rel. Stein v. District of Columbia, D.D.C.2010, 709 F.Supp.2d 57. Schools 148(3)

High school student's initial placement by parents at a therapeutic boarding school was not appropriate placement under Individuals with Disabilities Education Act (IDEA), as required to entitle parents to reimbursement for the private school tuition from city department of education; student's grade performance at private school was similar to disparate grades at her prior high schools, student was asked to leave private school after her first semester there because of her poor behavior, including lack of cooperation with staff, violations of school rules, and attempts to run away, and student's doctors recommended a more restrictive and structured program than the "loosely structured" private school provided. Eschenasy v. New York City Dept. of Educ., S.D.N.Y.2009, 604 F.Supp.2d 639. Schools 154(4)

School district denied student, who had been diagnosed with hemophilia, autism, borderline mental retardation, bipolar disorder and other conditions, a free appropriate public education (FAPE), beginning in first grade, where district was aware of student's special academic and behavioral needs prior to her entry into first grade, district failed to evaluate her for special education services in first grade, and district failed to provide her with individualized education plan (IEP) during majority of her elementary years. Heather D. v. Northampton Area School Dist., E.D.Pa.2007, 511 F.Supp.2d 549, subsequent determination 2007 WL 2332480. Schools 148(3)

School district did not provide low-IQ high school student with free appropriate public education (FAPE) for three consecutive school years; district did not provide student with basic floor of opportunity in reading where it continued to use the same reading program despite fact that his reading skills decreased, failed to provide student with FAPE in other areas such as math, and although student had not mastered his written expression and his auditory processing skills as part of his receptive and expression in language functioning, goals and objectives of individualized education programs (IEPs) in those areas were exactly the same from one school year to the next. Draper v. Atlanta Indep. School System, N.D.Ga.2007, 480 F.Supp.2d 1331, affirmed 518 F.3d 1275. Schools 148(3)

Parents proved by preponderance of evidence that autistic student did not make progress under individual education plan (IEP) during certain school year, and that subsequent IEP, which was substantially the same, thus

would not provide student with free appropriate public education (FAPE) within meaning of IDEA, where testing data and experts' opinions showed that student at best made no progress and at worst regressed several months, and discrete trial data which school system relied upon was not accurate reflection of student's progress. J.P. ex rel. Peterson v. County School Bd. of Hanover County, Va., E.D.Va.2006, 447 F.Supp.2d 553, vacated 516 F.3d 254. Schools 155.5(4)

Day treatment program, which was not yet in existence, was not an appropriate placement for learning disabled student, whose mental health providers agreed it would not be an appropriate placement for him, and therefore because school committee, which proposed day treatment program, failed to identify an appropriate and available placement for student, his individualized education program (IEP) was not reasonably calculated to provide him educational benefit in the least restrictive setting. Lamoine School Committee v. Ms. Z. ex rel. N.S., D.Me.2005, 353 F.Supp.2d 18. Schools 154(2.1)

School district failed to provide learning disabled student with free appropriate public education (FAPE) for two school years since district's placement of student was not designed to address her unique needs in the areas of pragmatics and social skills. Katherine G. ex rel. Cynthia G. v. Kentfield School Dist., N.D.Cal.2003, 261 F.Supp.2d 1159, affirmed 112 Fed.Appx. 586, 2004 WL 2370562. Schools 148(3)

Parents proved school had violated IDEA in connection with child's first year at school where, because of administrative confusion and budgetary constraints, school failed to respond to mother's inquiries, informed mother that child could not be tested until months after school began, failed to develop Individual Education Plan (IEP) within required time limits, and did not tailor IEP to child's individual needs. Gerstmyer v. Howard County Public Schools, D.Md.1994, 850 F.Supp. 361. Schools 148(2.1)

Pennsylvania's system of special education violated dictates of Individuals with Disabilities Education Act (IDEA), due to state's failure to ensure that special education systems were running properly, and if not, to correct them; as result of lack of centralized state supervision, significant numbers of handicapped children waited inordinate amounts of time to obtain placements in private schools when such placement may not have been appropriate and may have unnecessarily caused separation of families. Cordero by Bates v. Pennsylvania Dept. of Educ., M.D.Pa.1992, 795 F.Supp. 1352. Schools 154(4)

Child's behavior problems during his developmental kindergarten year were not proper basis for deciding that it would be appropriate to place child in segregated special education class outside district where kindergarten teacher had no prior experience in working with children with special needs, where she received only occasional assistance from another teacher who was experienced with Downs Syndrome children, where no teacher's aide was placed in classroom until March of school years and where teacher had only informal contact with student's speech therapist; it was unfair and improper to base Individualized Education Program (IEP) on problems that developed during that year. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 789 F.Supp. 1322. Schools 148(3)

Individualized education plan providing for 5.25 hours per week of special needs services was inappropriate for middle school student where it failed to implement recommendations of special hospital evaluation of student,

which middle school had allegedly relied upon and endorsed; student was performing between two and one-half and five years below his grade level in reading and language-based skills. Norton School Committee v. Massachusetts Dept. of Educ., D.Mass.1991, 768 F.Supp. 900. Schools 148(2.1)

School board did not satisfy requirements of Education of the Handicapped Act in its efforts to develop and implement educational program for emotionally handicapped student; student's current individualized education program did not include sufficiently specific behavioral or academic goals or methods for evaluating student's progress, board officials did not provide counseling or training to student's parents or adequately involve them in efforts to teach student or control his behavior, and student's current educational program offered him no realistic prospect of returning to regular class setting. Chris D. v. Montgomery County Bd. of Educ., M.D.Ala.1990, 753 F.Supp. 922. Schools 148(3)

Evidence established that mentally handicapped child obtained no benefit in academic subjects in educably mentally retarded class while showing academic progress in socially and emotionally disturbed/mentally retarded class, and, thus, placement in educably mentally retarded class for academic subjects was inappropriate. Liscio by Hippensteel v. Woodland Hills School Dist., W.D.Pa.1989, 734 F.Supp. 689, affirmed 902 F.2d 1561, affirmed 902 F.2d 1563. Schools 155.5(4)

Officials operating state school for mentally handicapped violated provisions of Education for All Handicapped Children Act by failing to provide clients with free, appropriate public education and to provide individualized education plan. Lelsz v. Kavanagh, N.D.Tex.1987, 673 F.Supp. 828. Schools 148(3)

Evidence that public school teacher in special-day-class program had been exposed to intensive multisensory approach required by individualized education program for fifth grade student who had dyslexia was insufficient to show that public school placement was appropriate for such student, where there was testimony that teacher's exposure was insufficient to allow her to make effective use of such approach, teacher did not consistently use such approach and teacher's responses indicated that she did not feel such approach was necessary. Adams by Adams v. Hansen, N.D.Cal.1985, 632 F.Supp. 858. Schools 155.5(4)

Individualized education program formulated by school district for handicapped child pursuant to the Education of the Handicapped Act [28 U.S.C.A. § 1401(19)] was insufficient to satisfy requirements under the Act, in that it failed to address all three areas of child's handicaps, namely, cognitive, physical and language, and furthermore did not contain adequate statement of specific educational services to be provided to the child. Russell By and Through Russell v. Jefferson School Dist., N.D.Cal.1985, 609 F.Supp. 605. Schools 148(2.1)

In action challenging proposed placement by school committee of two children afflicted by learning disabilities and associated emotional problems, evidence was sufficient to establish that both children had severe learning disabilities and significant accompanying emotional problems, and that school committee's proposals calling for placement within public classrooms with pupil-teacher ratios possibly as high as ten-to-one and providing for some mainstreaming violated children's right to a free appropriate education under this chapter. Colin K. v. Schmidt, D.C.R.I.1982, 536 F.Supp. 1375, affirmed 715 F.2d 1. Schools 155.5(4)

Preponderance of evidence supported finding that placement of multiply-handicapped child in six-hour day program, augmented by home support, did not constitute "free appropriate public education" to which handicapped children are entitled under this chapter and section 794 of Title 29, as all objective indications demonstrated that child made no meaningful progress in her current placement within the six-hour day program; therefore, child was entitled to be placed, at no cost to her parents, in an educational residential facility capable of meeting the unique needs of severely intellectually impaired schizophrenic children. Gladys J. v. Pearland Independent School Dist., S.D.Tex.1981, 520 F.Supp. 869. Schools 155.5(4)

Individualized education program that school offered to severely retarded 18-year-old boy failed to teach him functional and communicative skills, which might, to whatever degree, increase his independence, and lacked detailed evaluation and recordkeeping and, therefore, the program was not appropriate under this chapter. Campbell v. Talladega County Bd. of Ed., N.D.Ala.1981, 518 F.Supp. 47. Schools 148(3)

III. RELATED SERVICES

<Subdivision Index>

161. Related services generally

School district was not required to provide related services at public school under Rehabilitation Act to student who was provided with free and appropriate education (FAPE) through her enrollment at private school. Lauren W. ex rel. Jean W. v. DeFlaminis, C.A.3 (Pa.) 2007, 480 F.3d 259. Schools 148(2.1)

Even if disabled child voluntarily placed in private school had individual right to some level of special education services, school district did not have to provide such services on private school premises, when such action would violate state law. Foley v. Special School Dist. of St. Louis County, C.A.8 (Mo.) 1998, 153 F.3d 863. Schools 148(2.1)

States are not obligated under the Individuals with Disabilities Education Act (IDEA) to expend their own funds on disabled children who have voluntarily enrolled in private school; rather, states are required to provide to such children, voluntarily enrolled in private schools, only with those services that can be purchased with proportionate amount of federal funds received by state under the IDEA. Russman v. Board of Educ. of City of Watervliet, C.A.2 1998, 150 F.3d 219, on remand 92 F.Supp.2d 95. Schools 148(2.1)

Under Individuals with Disability Education Act (IDEA), "free appropriate public education" includes not only special education, but also related services, such as transportation and other supportive services required to assist child with disability to benefit from special education. Union School Dist. v. Smith, C.A.9 (Cal.) 1994, 15 F.3d 1519, certiorari denied 115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 341. Schools 148(2.1)

When handicapped child is voluntarily placed in private school, public school district need not provide related service to that child under Education of Handicapped Act if that particular service is not designed to meet the unique needs of the child. McNair v. Oak Hills Local School Dist., C.A.6 (Ohio) 1989, 872 F.2d 153. Schools 154(4)

School district's occasional failure to follow plan for accommodating student's diabetes mellitus did not cause student to become emotionally disturbed, as would support her entitlement to special education and related services under Individuals with Disabilities Education Act (IDEA); over two-year period, instances in which district failed to follow plan were infrequent, school staff made every effort to follow plan, student was very able to speak up for herself and take appropriate action when any problems arose, and student's medical records did not reflect that any of her emotional difficulties were caused by failure to follow plan. Loch v. Board of Educ. of Edwardsville Community School Dist. No. 7, S.D.Ill.2008, 573 F.Supp.2d 1072, motion to amend denied 2008 WL 4899437, affirmed 327 Fed.Appx. 647, 2009 WL 1747897, certiorari denied 130 S.Ct. 1736, 176 L.Ed.2d 212. Schools 148(3)

Under federal law, right of private school student to receive related services is extremely limited, and IDEA and its corresponding regulations clearly and explicitly do not confer on disabled student's parents the right to any due process hearing if related services are not provided or paid for. Gabel ex rel. L.G. v. Board of Educ. of Hyde Park Central School Dist., S.D.N.Y.2005, 368 F.Supp.2d 313. Schools 148(2.1)

IDEA mandates that states cannot avoid their responsibilities thereunder by asserting that they lack the resources

to provide special education and related services to disabled children, and school district cannot avoid responsibility for related services on ground that they are beyond the competence of public school system, as agency responsible for providing services may do so indirectly. J.B. v. Killingly Bd. of Educ., D.Conn.1997, 990 F.Supp. 57. Schools 148(2.1)

Handicapped child is generally entitled to health services under Individuals with Disabilities Education Act (IDEA) as long as services are provided by individual other than physician. Morton Community Unit School Dist. No. 709 v. J.M., C.D.Ill.1997, 986 F.Supp. 1112, affirmed 152 F.3d 583, certiorari denied 119 S.Ct. 1140, 526 U.S. 1004, 143 L.Ed.2d 208. Schools 148(4)

Related services such as development of social skills, study skills, and self-esteem need not be provided unless they are necessary in order for handicapped child to benefit educationally. Livingston v. DeSoto County School Dist., N.D.Miss.1992, 782 F.Supp. 1173. Schools 148(2.1)

Fact that particular program may benefit classified child's special education program does not ipso facto compel conclusion that that program is a "related service" and that school district has responsibility for cost of that service under Education for All Handicapped Children Act. Field v. Haddonfield Bd. of Educ., D.N.J.1991, 769 F.Supp. 1313. Schools 148(2.1)

162. Extracurricular activities, related services

Under the Education for All Handicapped Children Act, school district was not obligated to provide extracurricular activities to handicapped student, where student, because of lack of interest and sporadic and recurring behavior, would receive no significant educational benefit from extracurricular activities. Rettig v. Kent City School Dist., C.A.6 (Ohio) 1986, 788 F.2d 328, certiorari denied 106 S.Ct. 3297, 478 U.S. 1005, 92 L.Ed.2d 711 . Schools 148(2.1)

Preliminary injunction would be issued barring school districts from potentially violating Individuals with Disabilities Education Act (IDEA), by prohibiting student who reached age 19 while still in high school, due to disabilities, from membership on track and cross country teams, and barring state high school athletic association from sanctioning districts for allowing student to compete; claimants were likely to succeed on merits of claim that IDEA was violated, denial of chance to compete would result in irreparable injury, and balance of hardship favored inclusion of student, as he almost always finished last in races and would not compromise competitive balance among teams. Kling v. Mentor Public School Dist., N.D.Ohio 2001, 136 F.Supp.2d 744. Schools 155.5(5)

Placement of emotionally handicapped and learning disabled student, who slashed another student with box cutter, in alternative school was reasonably calculated to enable him to receive adequate educational benefits, for purpose of determining whether student received free appropriate public education (FAPE) as guaranteed by IDEA; although alternative school offered limited extracurricular activities and did not offer reading instructor certified to teach special education students, student's behavior improved during tenure at alternative school and he earned passing grades in all courses. Jane Parent ex rel. John Student v. Osceola County School Bd.,

M.D.Fla.1999, 59 F.Supp.2d 1243, affirmed 220 F.3d 591. Schools 154(2.1)

163. In-service training for parents, related services

This chapter did not oblige school district to provide in-service training to parents of handicapped student, and in-service training provided by the school district to its employed staff was adequate. Rettig v. Kent City School Dist., C.A.6 (Ohio) 1983, 720 F.2d 463, appeal dismissed, certiorari denied 104 S.Ct. 2379, 467 U.S. 1201, 81 L.Ed.2d 339, rehearing denied 104 S.Ct. 3549, 467 U.S. 1257, 82 L.Ed.2d 852. Schools 148(2.1)

City department of education's failure to include parent training and counseling in nine-year-old autistic student's individualized education program (IEP) did not result in denial of Free Appropriate Public Education (FAPE), as would render IEP substantively inadequate; department's recommended placement offered parent training opportunities consistent with New York regulations. E. Z.-L. ex rel. R.L. v. New York City Dept. of Educ., S.D.N.Y.2011, 763 F.Supp.2d 584. Schools 148(3)

In action brought by parents of handicapped child seeking to redress alleged violations of rights guaranteed by this chapter, evidence was sufficient to establish that an appropriate educational placement for child, who parents contended was autistic and school district asserted was severely mentally retarded, was a highly structured educational program on a 12-month, year-round basis designed specifically to meet child's particular and unique needs; accordingly, school district was required to prepare individual education program for child, to provide child's parents with the training in behavioral techniques for the management of child's abnormal behavior, and to provide counseling to child's parents. Stacey G. by William and Jane G. v. Pasadena Independent School Dist., S.D.Tex.1982, 547 F.Supp. 61. Schools 155.5(4)

164. Medical services, related services

Provision of clean intermittent catheterization to eight-year-old girl born with spina bifida so that she could attend special education classes was not "medical service" which school was not required to provide except for purposes of diagnosis or evaluation where services of physician were not required to perform the procedure but could be provided by nurse or trained layperson. Irving Independent School Dist. v. Tatro, U.S.Tex.1984, 104 S.Ct. 3371, 468 U.S. 883, 82 L.Ed.2d 664, on remand 741 F.2d 82. Schools 148(4)

Services required by handicapped student, including constant monitoring, frequent adjustments to tracheostomy system, and ointment applications were "related services" which school district had to provide at its own expense under IDEA, rather than "medical services" outside scope of district's obligations; financial burden of hiring nurse to attend student would not cause undue burden to district, and services were time-consuming but did not require high degree of expertise or any medical treatment expense. Morton Community Unit School Dist. No. 709 v. J.M., C.A.7 (Ill.) 1998, 152 F.3d 583, certiorari denied 119 S.Ct. 1140, 526 U.S. 1004, 143 L.Ed.2d 208. Schools 148(4)

In the absence of any evidence that the student's educational and emotional disabilities were so severe that hospitalization was necessary to provide him with the free appropriate public education, parents were not entitled to

recover for medical services provided to him after a nervous breakdown. Tice By and Through Tice v. Botetourt County School Bd., C.A.4 (Va.) 1990, 908 F.2d 1200. Schools 148(4)

Although some staff members appeared, in the opinion of student's physician, to be reluctant to administer medical services to student and although three unions representing teachers and principals filed grievances petition for determination of whether their contracts required them to perform such services, individualized educational plan for handicapped child which called for her to be placed in a regular public school and to have the staff trained to administer medical services which she might need was an appropriate free public education. Department of Educ., State of Hawaii v. Katherine D. By and Through Kevin and Roberta D., C.A.9 (Hawai'i) 1983, 727 F.2d 809, certiorari denied 105 S.Ct. 2360, 471 U.S. 1117, 86 L.Ed.2d 260. Schools 148(4)

Providing handicapped child with clean intermittent catheterization was "related service," within meaning of par. (17) of this section, where absence of such service would prevent the child from participating in regular public school program. Tokarcik v. Forest Hills School Dist., C.A.3 (Pa.) 1981, 665 F.2d 443, certiorari denied 102 S.Ct. 3508, 458 U.S. 1121, 73 L.Ed.2d 1383. Schools 148(4)

Under the IDEA, parents of learning disabled student were not entitled to reimbursement from school district for vision therapy services they obtained privately; services were obtained before school district was made aware of student's potential eligibility for special education services, and district had satisfied its child find obligations during period when parents obtained vision therapy for student. P.P. ex rel. Michael P. v. West Chester Area School Dist., E.D.Pa.2008, 557 F.Supp.2d 648, affirmed in part , reversed in part 585 F.3d 727. Schools 148(4)

Handicapped child is not generally entitled to health services under Individuals with Disabilities Education Act (IDEA) if allocation of services required places undue burden on particular school district. Morton Community Unit School Dist. No. 709 v. J.M., C.D.Ill.1997, 986 F.Supp. 1112, affirmed 152 F.3d 583, certiorari denied 119 S.Ct. 1140, 526 U.S. 1004, 143 L.Ed.2d 208. Schools 148(4)

Parents were entitled to reimbursement for payments made by health insurer for independent educational evaluation of disabled child since health insurance policy had lifetime cap and payment by insurer would reduce lifetime benefits; even though parents voluntarily submitted insurance claim without being pressured by state, they suffered "financial loss" within meaning of Secretary of Education's Notice of Interpretation on Use of Parent's Insurance Proceeds which interpreted "free appropriate public education" to mean that agency may not compel parents to file insurance claim when filing claim would pose realistic threat that parents of handicapped children would suffer financial loss not incurred by similarly situated parents. Raymond S. v. Ramirez, N.D.Iowa 1996, 918 F.Supp. 1280. Schools 148(2.1)

Absent evidence that nursing care for child having Congenital Central Hypoventilation Syndrome would be unduly burdensome for school district, nursing care, a related, supportive service, fell outside medical services exclusion of Individuals with Disabilities Education Act (IDEA); properly qualified individual could be retained at hourly rate of nine dollars, 40-hour work week for 9.5 months at this hourly rate translated into base salary of $13,680, district currently employed personnel who performed tasks similar to that which child's nurse would

perform and costs of that care and of requested nursing care were comparable, alternative schooling arrangement, presumably home schooling, would not be cost free to district, and gains to child, relative to burden imposed on district, were weightier. Neely By and Through Neely v. Rutherford County Schools, M.D.Tenn.1994, 851 F.Supp. 888, reversed 68 F.3d 965, certiorari denied 116 S.Ct. 1418, 517 U.S. 1134, 134 L.Ed.2d 543. Schools 148(4)

Emotionally disturbed student's placement in substance abuse program after he was expelled by school in which he was placed after being found in possession of Valium and admitting to drinking and smoking marijuana, was not a "related service" under Education for All Handicapped Children Act but, rather, was a "medical service" the payment of which was responsibility of parents, although school "required" student to attend substance abuse program as condition for continued enrollment of school; testimony and records revealed that program provided intensive therapy for student's underlying psychiatric disorders and provided medical treatment which school could not, as an educational institution, provide. Field v. Haddonfield Bd. of Educ., D.N.J.1991, 769 F.Supp. 1313. Schools 148(4)

"Medical services" exclusion to school district's obligation to provide supportive services to facilitate handicap student's access to school, was limited to services provided by a licensed physician, and did not include services of a trained medical professional other than a physician. Macomb County Intermediate School Dist. v. Joshua S., E.D.Mich.1989, 715 F.Supp. 824. Schools 148(4)

Public school was not required to fund emotionally handicapped child's hospitalization at private psychiatric hospital as related service to special education at the hospital where placement in hospital was for medical and not educational reasons, hospitalization was not made in support of special educational program, and hospitalization was for treatment of student's condition and not for diagnostic and evaluation purposes. McKenzie v. Jefferson, D.C.D.C.1983, 566 F.Supp. 404. Schools 148(3)

165. Nursing services, related services

Full-time care of nursing care due to constant possibility of mucous plug in student's tracheotomy tube fell within "medical service" exclusion of Individuals with Disabilities Education Act, and thus, was not related or "supportive service" that school district had to provide as matter of federal law; court rejected physician-nonphysician test for medical services. Granite School Dist. v. Shannon M. by Myrna M., D.Utah 1992, 787 F.Supp. 1020. Schools 148(4)

Basic floor of opportunity as required by Individuals with Disabilities Education Act (Act) was being provided to handicapped child pursuant to her individualized education program (IEP) which recommended home instruction, and thus, school's refusal to provide child with full-time nursing tracheostomy care during school hours so as to allow her to attend regular classes did not violate Act. Granite School Dist. v. Shannon M. by Myrna M., D.Utah 1992, 787 F.Supp. 1020. Schools 148(4)

Full time, individualized nursing service for multiply-handicapped child, which was necessary to allow child to attend school, was not a "related service" which school district was required to provide to child without charge

under Education for All Handicapped Children Act, since the nursing services, including constant attention to possibility of life-threatening plug in child's tracheotomy tube, were so varied and intensive that nursing personnel with responsibility for other children could not safely care for the child and since services were more in nature of "medical services" than "related services." Bevin H. by Michael H. v. Wright, W.D.Pa.1987, 666 F.Supp. 71.

Education of All Handicapped Children Act did not require school district and board of education to provide severely physically disabled child with constant in-school nursing care, where constant monitoring was required to protect child's life, and medical attention required by child was beyond competence of school nurse. Detsel by Detsel v. Board of Educ. of Auburn Enlarged City School Dist., N.D.N.Y.1986, 637 F.Supp. 1022, affirmed 820 F.2d 587, certiorari denied 108 S.Ct. 495, 484 U.S. 981, 98 L.Ed.2d 494. Schools 148(4)

166. Personal care attendant, related services

Provision in disabled high school student's individualized education program (IEP) purportedly authorizing her parents to select her personal care attendant (PCA), was not substantial or significant, and thus district's replacement of parent-selected PCA with district employee was at most de minimis violation which did not deprived student of free appropriate public education (FAPE). Slama ex rel. Slama v. Independent School Dist. No. 2580, D.Minn.2003, 259 F.Supp.2d 880. Schools 148(2.1)

167. Psychiatric services, related services

Emotionally disturbed child's placement in acute care psychiatric hospital was primarily for medical, psychiatric reasons, and child's hospitalization thus did not constitute educationally related service for the costs of which a school district was responsible under the Education for All Handicapped Children Act (EHA), even though psychotherapeutic services which child received at hospital might be qualitatively similar to those she would receive at residential placement. Clovis Unified School Dist. v. California Office of Administrative Hearings, C.A.9 (Cal.) 1990, 903 F.2d 635. Schools 148(4)

Under this chapter, psychiatrists, in contradistinction to psychologists, counselors and other providers of psychological services, are licensed physicians whose services are appropriately designated as medical treatment, and thus excluded from "related services" which states must provide as part of free appropriate education. Darlene L. v. Illinois State Bd. of Educ., N.D.Ill.1983, 568 F.Supp. 1340. Schools 148(4)

168. Psychological services, related services

Learning-disabled child was barred from reimbursement under the IDEA for the costs of his psychological treatment, even prior to 1997 amendments and even assuming that psychological counseling was required to assist the child to benefit from special education during the period he was treated and that child's individualized education programs (IEPs) for that period failed adequately to address this need for counseling, where child's parents failed to raise any issue with respect to the extent or nature of the psychological counseling services provided for child in his IEPs until after the treatment had ended. M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ., C.A.2 (Conn.) 2000, 226 F.3d 60, on remand 122 F.Supp.2d 289. Schools 148(4)

Severely emotionally disturbed child was "handicapped" under Education of the Handicapped Act, and thus entitled to free appropriate public education, including psychological care and related services. Babb v. Knox County School System, C.A.6 (Tenn.) 1992, 965 F.2d 104, certiorari denied 113 S.Ct. 380, 506 U.S. 941, 121 L.Ed.2d 290. Schools 148(3); Schools 148(4)

Preponderance of the evidence in IDEA case showed that parents of emotionally disturbed student were entitled to reimbursement for costs of appropriate related services in form of counseling, social work, psychological services, and parent counseling services, i.e., "wrap-around services," and hearing officer did not properly deny reimbursement on grounds that parents failed to present evidence of their costs during case-in-chief; hearing officer twice acknowledged parents' offer to provide the cost information but refused to admit it into evidence, and that refusal ran afoul of statutory mandate that his decision be made on substantive grounds. A.G. v. District of Columbia, D.D.C.2011, 794 F.Supp.2d 133. Schools 155.5(4)

Original classification of student as "other health impairment" rather than autistic did not amount to substantive flaw in student's education program, entitling parents to reimbursement for additional hours of 1:1 behavior therapy. J.A. v. East Ramapo Cent. School Dist., S.D.N.Y.2009, 603 F.Supp.2d 684. Schools 154(4)

District court could not conclude that 20-year-old language and learning disabled student who was also suffering from pedophilia was capable of making academic progress without psychological and counseling services where he had not made academic progress or received significant psychological or counseling services in current placement; thus, at a minimum, IDEA required that student should receive a psychiatric evaluation for diagnostic and evaluation purposes to determine the extent of the psychological and counseling services that he needed to benefit from special education. J.B. v. Killingly Bd. of Educ., D.Conn.1997, 990 F.Supp. 57. Schools 148(3)

Parent was entitled to reimbursement from school district under Education of the Handicapped Act for costs of individual psychotherapy and group therapy provided his mentally ill son at hospital, where such therapy was required for son to benefit from special education. Doe v. Anrig, D.Mass.1987, 651 F.Supp. 424. Schools 148(3)

Neurological evaluation performed by doctor and psychological evaluation performed by psychologist needed to help pediatrician ascertain source of handicapped child's difficulties were requested and required by county department of education to assist child to benefit from special education and, as such, had to be furnished to child by department pursuant to Education of the Handicapped Act, § 602(16-18), as amended, 20 U.S.C.A. § 1401(16-18). Seals v. Loftis, E.D.Tenn.1985, 614 F.Supp. 302. Schools 148(4)

Psychotherapy provided for an 11-year-old emotionally disturbed boy as part of his individualized education plan developed by school board constituted a covered "related service" within meaning of par. (17) of this section, and thus costs of such services would be borne by school board. T.G. v. Board of Educ. of Piscataway, N.J., D.C.N.J.1983, 576 F.Supp. 420, affirmed 738 F.2d 420, affirmed 738 F.2d 421, affirmed 738 F.2d 425, certiorari denied 105 S.Ct. 592, 469 U.S. 1086, 83 L.Ed.2d 701. Schools 148(3)

Psychological services that were required to assist emotionally disturbed student to benefit from special education were "related services" under this chapter and, as such, were to be provided by State without cost to student. Papacoda v. State of Conn., D.C.Conn.1981, 528 F.Supp. 68. Schools 148(3)

169. Residential placement, related services--Generally

School district was not entitled under Individuals with Disabilities Education Act (IDEA) to attempt day-schooling of disabled child before agreeing to child's placement in residential program; district had recognized child's serious problems for several years and had been attempting various forms of intervention in nonresidential setting; child was at crucial age and any further delay in getting her appropriate placement would significantly worsen her chances of improvement, and IDEA did not require child to spend years in educational environment likely to be inadequate and to impede her progress simply to permit district to try every option short of residential placement. Seattle School Dist., No. 1 v. B.S., C.A.9 (Wash.) 1996, 82 F.3d 1493. Schools 154(3)

Residential programs are appropriate under IDEA if they are necessary to allow a disabled child to benefit from special education and related services, and fact that residential placement may be required due primarily to emotional problems does not relieve the state of its obligation to pay for the program so long as it is necessary to insure that the child can be properly educated. J.B. v. Killingly Bd. of Educ., D.Conn.1997, 990 F.Supp. 57. Schools 154(3)

Settlement agreement reached in Individuals with Disabilities Education Act (IDEA) action, concerning costs of special education student's placement in residential facility, requiring board of education to contribute 90% of any increase in the costs for the array of services provided in the previous school year was unambiguous and since aide was outside the array of services covered in the previous school year, board, pursuant to settlement agreement, was not required to pay for costs of aide. D.R. by M.R. v. East Brunswick Bd. of Educ., D.N.J.1993, 838 F.Supp. 184, on remand 94 N.J.A.R.2d (EDS) 145, 1994 WL 514779. Compromise And Settlement 12

A residential rehabilitation facility for brain injury victims represented the appropriate educational placement for a brain damaged student; placement qualified as "special education and related services" under Education for All Handicapped Children Act and was not simply medical in nature and the placement was the only appropriate educational program in view of the student's disability. Brown By and Through Brown v. Wilson County School Bd., M.D.Tenn.1990, 747 F.Supp. 436. Schools 154(3)

Under Education of the Handicapped Act, school board was required to place 12-year-old emotionally disabled student in full-time residential school, as residential placement would provide for needed behavior modification and thus, potentially, for student to return to regular classroom; school board's two suggested alternatives, individual instruction at home or in isolated room in administrative building, would be inadequate, as student's behavior problems could not be redressed in isolated environment, and interaction with student's peers was necessary for any behavior modification program for student. Chris D. v. Montgomery County Bd. of Educ., M.D.Ala.1990, 743 F.Supp. 1524. Schools 154(3)

Under appropriate circumstances, local school districts must provide residential placement to a handicapped

child. Stacey G. by William and Jane G. v. Pasadena Independent School Dist., S.D.Tex.1982, 547 F.Supp. 61. Schools 154(3)

170. ---- Adult group homes, residential placement, related services

Placement of severely retarded 18-year-old woman in group home for adults was an "educational placement" under Education for All Handicapped Children Act, even if arguably mistake because group home was not educational institution, since placement in community setting was part of individualized plan and multidisciplinary team determined that placement was part of appropriate educational plan. McClain v. Smith, E.D.Tenn.1989, 793 F.Supp. 756. Schools 154(3)

171. ---- Location of facility, residential placement, related services

New Jersey Division of Development Disabilities (DDD) was obligated to place autistic 20-year-old student in approved facility located in her home town rather than in conditionally provided facility located elsewhere, under the IDEA, despite alleged difficulties DDD had with approved facility in home town regarding methods of reimbursement for specific clients; facility in hometown remained approved educational placement. Remis by Trude v. New Jersey Dept. of Human Services, D.N.J.1993, 815 F.Supp. 141. Schools 154(2.1)

There is no requirement under Individuals with Disabilities Education Act (IDEA) that child receive residential placement located in his immediate geographic area, although it is preferable. Straube v. Florida Union Free School Dist., S.D.N.Y.1992, 801 F.Supp. 1164. Schools 154(3)

172. ---- Non-educational problems, residential placement, related services

School district's obligation to provide free appropriate education did not extend to reimbursement of costs incurred by parent who placed her criminally inclined and truant son in private residential school for difficult students; son did not suffer from any learning impairment, and school was essentially providing incarceration services not contemplated by Individuals with Disabilities Education Act. Dale M. ex rel. Alice M. v. Board of Educ. of Bradley-Bourbonnais High School Dist. No. 307, C.A.7 (Ill.) 2001, 237 F.3d 813, rehearing and rehearing en banc denied , certiorari denied 122 S.Ct. 546, 534 U.S. 1020, 151 L.Ed.2d 423, rehearing denied 122 S.Ct. 1134, 534 U.S. 1157, 151 L.Ed.2d 1024. Schools 154(4)

Evidence that severely handicapped child had reached a point of diminishing marginal returns and would not be able to learn much more, and that child's living in rented apartment had become primarily custodial, established that proposed program of day school at elementary school for severely and profoundly retarded children and living at home constituted the free appropriate public education child was entitled to under this chapter, notwithstanding testimony by child's caretaker and neurologist that it might be possible to teach child self-initiation of toilet use, which would have required continuation of 24-hour residential care and education. Matthews by Matthews v. Davis, C.A.4 (Va.) 1984, 742 F.2d 825. Schools 155.5(4)

Under the IDEA, school district was not responsible for ensuring that disabled student translated behavior skills learned in classroom to home or community settings; district was not required to address behavior problems that

occurred outside of school when student demonstrated educational progress in the classroom, even though student contended that generalization of behavioral skills into settings outside the classroom was educational need that district could appropriately address only through a residential placement. San Rafael Elementary School Dist. v. California Special Educ. Hearing Office, N.D.Cal.2007, 482 F.Supp.2d 1152. Schools 148(3)

Individualized educational plan (IEP) proposed by school district failed to adequately address behavior of disabled student diagnosed with, inter alia, pedophilia and paraphilia, and thus, district was responsible for student's placement at a special education residential facility, despite claims that student was not entitled to educational and related services to address behavior which manifested itself outside the school setting, and that the placement amounted to treatment of an underlying medical (psychiatric) condition; student's out-of-school behavior was inextricably intertwined with his educational performance. Mohawk Trail Regional School Dist. v. Shaun D. ex rel. Linda D., D.Mass.1999, 35 F.Supp.2d 34. Schools 148(3)

When residential placement of disabled student is response to medical, social or emotional problems segregable from learning process,school district is not obligated to bear total cost of placement; instead, school district must cover cost of special education and related services but need not fund medical treatment or other noneducational expenses. King v. Pine Plains Cent. School Dist., S.D.N.Y.1996, 918 F.Supp. 772. Schools 154(3)

Multihandicapped student with severe emotional disturbance, neurological impairment, and lack of socialization skills was entitled to year-round residential placement, under New Jersey law, even though student had received passing grades in public school while he was in youth behavior program, out-of-home living arrangement, and even though student was not mentally retarded; student's emotional problems and lack of socialization skills could not be severed from learning process; and student showed strong signs of regression despite two years with youth behavior program. B.G. by F.G. v. Cranford Bd. of Educ., D.N.J.1988, 702 F.Supp. 1140, supplemented 702 F.Supp. 1158, affirmed 882 F.2d 510. Schools 154(3)

Where residential placement was required in order for emotionally disturbed children to benefit from special education, school district would not be relieved of its responsibility to provide residential placement by asserting claim that placement was means of addressing social and emotional, rather than educational problems. Christopher T. by Brogna v. San Francisco Unified School Dist., N.D.Cal.1982, 553 F.Supp. 1107. Schools 154(3)

Residential placement is required under this chapter when necessary for educational purposes, but there is no obligation to provide residential placement where the placement is a response to medical, social, or emotional problems that are segregable from the learning process; the concept of education under this chapter is necessarily broad, however, and residential placement is within contemplation of this chapter where the child's social, emotional, medical, and educational problems are so intertwined that it is impossible for court to separate them. Gladys J. v. Pearland Independent School Dist., S.D.Tex.1981, 520 F.Supp. 869. Schools 154(3)

173. ---- Room and board, residential placement, related services

Under Individuals with Disabilities Education Act (IDEA), school officials were required to pay for deaf, blind

and developmentally disabled student to reside with his grandparents while he attended private school day program pending availability of place in residential program which had been determined to be appropriate placement for him but that reimbursement could not exceed cost that state would have incurred had student been placed in private school's residential program. Ojai Unified School Dist. v. Jackson, C.A.9 (Cal.) 1993, 4 F.3d 1467, certiorari denied 115 S.Ct. 90, 513 U.S. 825, 130 L.Ed.2d 41. Schools 154(4)

Education of the Handicapped Act provides for residential placement when such placement may be necessary to meet individual needs of handicapped child; if residential placement is required, room, board, and related services must be provided at no cost to child's parents. Vander Malle v. Ambach, S.D.N.Y.1987, 667 F.Supp. 1015. Schools 154(3)

"Related service," for purpose of Education of the Handicapped Act provision defining educational expenses for which public school district must make reimbursement, did not include costs of room and board for placement of student who had dyslexia in private residence, where school in which student was placed was day school. Adams by Adams v. Hansen, N.D.Cal.1985, 632 F.Supp. 858. Schools 154(4)

State would be required to pay all costs of residential placement of emotionally disturbed student in a special education school, including room and board, through student's graduation where student could not be educated without residential placement because a therapy program had to be coordinated with teaching program. Papacoda v. State of Conn., D.C.Conn.1981, 528 F.Supp. 68. Schools 154(3)

This chapter contemplates residential placement under some circumstances, and when residential placement is necessary for educational purposes, program, including nonmedical care and room and board, must be at no cost to the child's parents. Kruelle v. Biggs, D.C.Del.1980, 489 F.Supp. 169, affirmed 642 F.2d 687. Schools 154(3)

174. ---- Out of state placement, residential placement, related services

If a state does not have the facilities to educate a child with a specific disability, an out-of-state residential placement will be appropriate under IDEA if it is first approved by the commissioner or the local or regional board of education. J.B. v. Killingly Bd. of Educ., D.Conn.1997, 990 F.Supp. 57. Schools 154(4)

175. Summer enrichment activities, related services

Determination of whether handicapped child's level of achievement would be jeopardized by summer break in structured educational programming, for purposes of determining whether Education of Handicapped Act requires summer program, requires consideration not only of retrospective data, such as past regression and rate of recoupment, but also predictive data, based on opinion of professionals in consultation with child's parents as well as circumstantial considerations of child's individual situation at home and in neighborhood and community. Johnson By and Through Johnson v. Independent School Dist. No. 4 of Bixby, Tulsa County, Okl., C.A.10 (Okla.) 1990, 921 F.2d 1022, certiorari denied 111 S.Ct. 1685, 500 U.S. 905, 114 L.Ed.2d 79. Schools

148(2.1)

School district was not required by Individuals with Disabilities Education Act (IDEA) to provide student with summer placement, even if his regression was documented, absent expert testimony that summer placement was needed. Wanham v. Everett Public Schools, D.Mass.2008, 550 F.Supp.2d 152. Schools 162.5

175a. Transition services, related services

From 2008 to first day of trial in case, District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education violated IDEA through their failure to provide students with smooth and effective transition from Part C to Part B. DL v. District of Columbia, D.D.C.2011, 845 F.Supp.2d 1 . Schools 148(2.1)

176. Transportation, related services

A school district may, under the Individuals with Disabilities Education Act (IDEA), apply a facially neutral transportation policy to a disabled child without violating the law when the request for a deviation from the policy is not based on the child's educational needs, but on the parents' convenience or preference. Fick ex rel. Fick v. Sioux Falls School Dist. 49-5, C.A.8 (S.D.) 2003, 337 F.3d 968, rehearing and rehearing en banc denied. Schools 159.5(4)

Language and spirit of Individuals with Disabilities Education Act (IDEA) encompassed reimbursement for transportation costs of commuting between San Jose where parents of autistic child lived and Los Angeles where autistic child attended private counseling facility at beginning and end of child's participation in program and when facility was officially closed to students such as at winter and spring breaks, reimbursement for transportation costs to and from facility each day and reimbursement for costs of lodging for child and mother in Los Angeles. Union School Dist. v. Smith, C.A.9 (Cal.) 1994, 15 F.3d 1519, certiorari denied 115 S.Ct. 428, 513 U.S. 965, 130 L.Ed.2d 341. Schools 154(4)

Parents of hearing-impaired child, seeking to have public school district provide transportation to private school, needed to demonstrate that child was handicapped, transportation was related service, that transportation was required to meet needs of child caused by the handicap, and that school district was responsible under Education of Handicapped Act and its regulations for providing the related services under the particular circumstances at hand. McNair v. Oak Hills Local School Dist., C.A.6 (Ohio) 1989, 872 F.2d 153. Schools 159.5(4)

School district's transportation policy, even if facially neutral, was not exempt from review under IDEA, as applied to wheelchair-using student who was not regularly attending school and whose individualized education program (IEP) was not being implemented effectively; student's educational needs were not being met by services provided, and student's nonattendance at school was due to his inability to travel from door of his family's apartment to school bus, so student and parents were not requesting transportation because of convenience or preference, but out of necessity. District of Columbia v. Ramirez, D.D.C.2005, 377 F.Supp.2d 63. Schools 148(4)

Door-to-door transportation was not "necessary" for disabled student to benefit from her special education program, as required for such transportation to be considered "related service" school district was required to provide under Individuals with Disabilities Education Act (IDEA), despite fact that student's one-way trip to school was 13.5 miles, absent any evidence of average one-way distance traveled by other students; student was eight years old and capable of following directions not to walk out into traffic, and parent was able to provide transportation. Malehorn on Behalf of Malehorn v. Hill City School Dist., D.S.D.1997, 987 F.Supp. 772. Schools 159.5(4)

State defendants, along with local school district, were properly enjoined to provide transportation to parochial school student to special education classes in public school where funding necessary for local district to provide such transportation would be provided by state Department of Elementary and Secondary Education. Felter v. Cape Girardeau Public School Dist., E.D.Mo.1993, 830 F.Supp. 1279. Injunction 1319

Transportation of a handicapped student to and from school represented "supportive services," rather than medical services, which a school district was required to provide to the student under the Education for All Handicapped Children Act in order to provide the student with meaningful access to education, absent showing of need for attention of licensed physician during transport. Macomb County Intermediate School Dist. v. Joshua S., E.D.Mich.1989, 715 F.Supp. 824. Schools 159.5(4)

Upon parents' decision to place handicapped child, who required total special education program, in private school of their own choosing, thereby rejecting public school district's designation of appropriate placement for child, public school district was not required to provide transportation for student between her home and private school, even though school district placed and funded other children at such private school and public school bus passed within few blocks of child's home. Work v. McKenzie, D.D.C.1987, 661 F.Supp. 225. Schools 159.5(4)

Neither Va. Code 1950, § 22.1-214(A), Virginia regulations, nor this chapter required reimbursement of transportation expenses incurred by parents of handicapped child. Bales v. Clarke, E.D.Va.1981, 523 F.Supp. 1366.

Although county school officials were not required to establish a self-contained program at school attended by learning disabled child, it was appropriate to require county to pay for related service of alternative transportation to a school having such program and located six miles farther from child's home as it would take child 30 minutes or more by bus to reach the other school because of transfers and state law permitted reimbursement for reasonable transportation costs. Pinkerton v. Moye, W.D.Va.1981, 509 F.Supp. 107. Schools 159.5(4)

Since half-time attendance by the minor plaintiff at specified private educational institution was essential to the success of the special education program being offered to her by public school, the public school board, if the child's parents accepted the offered program and placement, would have to pay the cost of the child's transportation to and from and her tuition at the private school during the transition period. Anderson v. Thompson, E.D.Wis.1980, 495 F.Supp. 1256, affirmed 658 F.2d 1205. Schools 8; Schools 159.5(4)

177. Miscellaneous related services

Requiring school district to provide compensatory services in amount of 60 minutes per week of direct occupational therapy (OT) services was appropriate remedy for school district's failure to follow state's requirement for licensing its occupational therapist. Evanston Community Consolidated School Dist. Number 65 v. Michael M., C.A.7 (Ill.) 2004, 356 F.3d 798. Schools 155.5(5)

School district's denial of the use of an advanced calculator in learning disabled student's math course, confirmed by administrative rulings of an impartial hearing officer (IHO) and state review officer (SRO), did not deprive student of a free appropriate public education within the meaning of the IDEA, notwithstanding student's failing grade in the math class; evidence demonstrated that student was capable of passing the class with the assistance of a less advanced calculator in a manner consistent with the education goals of the class's curriculum, and that student's lack of effort contributed to the failing grade. Sherman v. Mamaroneck Union Free School Dist., C.A.2 (N.Y.) 2003, 340 F.3d 87. Schools 148(3)

Parents' procurement of otherwise appropriate Applied Behavioral Analysis (ABA) services for child less than three years of age was reimbursable notwithstanding providers' lack of proper qualifications under Individuals with Disabilities Education Act (IDEA) section governing services to infants and toddlers, where state's denial of appropriate services was due to shortage of qualified providers. Still v. DeBuono, C.A.2 (N.Y.) 1996, 101 F.3d 888. Schools 154(4)

Neither the Education of the Handicapped Act nor North Carolina's special education law required school board to fund habilitative services in the home for 19-year-old student who was autistic and moderately mentally handicapped, in order to provide free appropriate public education, where, after student had returned home from residential facility and enrolled in local school, he had continued to make educational progress despite failure of home care aides to follow rigorously the successful behavior management program that had been used at the residential facility. Burke County Bd. of Educ. v. Denton By and Through Denton, C.A.4 (N.C.) 1990, 895 F.2d 973.

Hearing officer's finding, that school district's speech paraprofessional was qualified to provide speech and language services to disabled student pursuant to student's individualized education program (IEP), was reasonable in hearing regarding due process complaint by student's parents under Individuals with Disabilities Education Act (IDEA), where principal and district's speech language pathologist testified that paraprofessional was qualified, and parents failed to provide any evidence questioning paraprofessional's qualifications. T.G. ex rel. T.G. v. Midland School Dist. 7, C.D.Ill.2012, 2012 WL 264186. Schools 148(3)

Provision of equine therapy adequately addressed student's physical therapy needs, and thus school district fulfilled its duty to provide free and appropriate public education (FAPE); parents' neuropsychologist testified that equine therapy improved student's physical status and mobility which lead to improvements in balance and gross motor skills, and father testified that equine therapy was beneficial, and equine therapy instructor indicated that equine therapy resulted in significant improvement in student's balance, coordination, self-esteem, and ability to take direct instruction in a positive matter. K.C. ex rel. Her Parents v. Nazareth Area School Dist., E.D.Pa.2011, 806 F.Supp.2d 806. Schools 148(4)

Regulations interpreting the Individuals with Disabilities Education Act (IDEA) to exclude cochlear implant mapping from the definition of "related services" required as part of a free appropriate education (FAPE) were reasonable and entitled to deference; the statutory provision at issue, including a subpart establishing that the term "related services" included audiology services and a subpart excepting from the definition of "related services" a "medical device that is surgically implanted, or the replacement of such device," was ambiguous, and the Department of Education adequately articulated the basis for its choice to exclude mapping services from coverage. Petit v. U.S. Dept. of Educ., D.D.C.2008, 578 F.Supp.2d 145. Schools 148(4)

School district's provision of "free appropriate public education" (FAPE), pursuant to IDEA, did not require furnishing facilitated communication to student with severe mental retardation, static non-progressive encephalopathy, and sensory disorder, since facilitated communication was not scientifically valid methodology for mentally retarded children, was not appropriate component of individualized education program (IEP) for student who was highly distractible, and could cause student to lose ground in other communication skills. Greenwood v. Wissahickon School Dist., E.D.Pa.2008, 571 F.Supp.2d 654, affirmed 374 Fed.Appx. 330, 2010 WL 1173017. Schools 148(3)

Individuals with Disabilities Act (IDEA) did not require that school district supply second grade student, forced to miss approximately 25% of school days due to complications of leukemia treatment, with video teleconferencing equipment (VTC) in order that student might improve interpersonal skills by having virtual access to classroom and its interactive possibilities; improvements in those areas could be achieved by emphasizing them during 75% of time student was in school. Eric H. ex rel. John H. v. Methacton School Dist., E.D.Pa.2003, 265 F.Supp.2d 513. Schools 148(2.1)

School committee was not required, under IDEA, to provide on-site services to disabled student who was voluntarily enrolled in parochial school, even though it provided such services to students enrolled in other parochial schools within district; decision whether to provide on-site services was within committee's discretion. Bristol Warren Regional School Committee v. Rhode Island Dept. of Educ. and Secondary Educations, D.R.I.2003, 253 F.Supp.2d 236. Schools 148(2.1)

City officials failed to provide disabled city prison inmates, who were between ages of 16 and 21, with education-related services such as counseling, speech therapy, and vision services, as required under IDEA, and thus city would be ordered to provide all required related services, in order modifying education plan, in inmates' class action against city officials seeking educational services, although district court would defer to officials regarding security issues relating to counseling. Handberry v. Thompson, S.D.N.Y.2002, 219 F.Supp.2d 525, vacated and remanded , reinstated 2003 WL 194205, affirmed in part, vacated in part and remanded 436 F.3d 52, opinion amended on rehearing 446 F.3d 335, stay granted in part 2003 WL 1797850. Infants 3135; Infants 3139

Individuals with Disabilities Education Act (IDEA) did not require school district to provide special education services at private parochial school in which disabled student had been unilaterally placed by her parents, where such services were made available to student by district at public school; under plain language of regulations, state and local agency's obligation to make services available and to provide services did not equate to obliga-

tion to pay for related services where school had appropriate alternative, and school's provision at public school of services consistent with student's individualized education plan (IEP) constituted genuine opportunity for equitable participation. Foley v. Special School Dist. of St. Louis County, E.D.Mo.1996, 927 F.Supp. 1214, rehearing denied 968 F.Supp. 481, affirmed 153 F.3d 863. Schools 148(2.1)

After it was determined that school district did not provide hearing-impaired student with free appropriate public education under Education of the Handicapped Act, district would be required to provide student with extra speech and language therapy and reimburse student's parents for past lessons provided by private therapist, but would not be required to provide deaf adult role model during student's classes. Johnson v. Lancaster-Lebanon Intermediate Unit 13, Lancaster City School Dist., E.D.Pa.1991, 757 F.Supp. 606. Schools 155.5(5)

While plaintiff, a child with exceptional educational needs, might benefit from being accompanied to public school by a staff member of the private school plaintiff had been attending, and while her period of adjustment as a result might be significantly shorter, the district court had no authority to order a staff member from a private educational institution to undertake that obligation. Anderson v. Thompson, E.D.Wis.1980, 495 F.Supp. 1256, affirmed 658 F.2d 1205. Schools 8

School district adequately accommodated disabled child's limited ability to write with a pen or pencil, as required under IDEA, where goals related to written work and notetaking were removed from child's individualized education program (IEP) when he struggled to achieve them, child was trained in computer dictation program, and child was provided with instruction in using a computer keyboard. L.C. v. Utah State Bd. of Educ., C.A.10 (Utah) 2005, 125 Fed.Appx. 252, 2005 WL 639713, Unreported. Schools 148(2.1)

20 U.S.C.A. § 1412, 20 USCA § 1412

Current through P.L. 112-207 (excluding P.L. 112-199 and 112-206) approved 12-7-12

END OF DOCUMENT

Effective: January 1, 2012

West's Annotated California Codes Currentness
Code of Civil Procedure (Refs & Annos)
Part 3. Of Special Proceedings of a Civil Nature (Refs & Annos)
Title 1. Of Writs of Review, Mandate, and Prohibition (Refs & Annos)
Chapter 2. Writ of Mandate (Refs & Annos)

➞➞ § 1094.5. Review of administrative orders or decisions; filing record; extent of injury; abuse of discretion; relevant evidence; judgment; stay; disposal of administrative records; application to state employees

(a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. Where the petitioner has proceeded pursuant to Article 6 (commencing withSection 68630) of Chapter 2 of Title 8 of the Government Code and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Notwithstanding subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to the Local Health Care District Law (Chapter 1 (commencing with Section 32000) of Division 23 of the Health and Safety Code) or governing bodies of municipal hospitals formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4 of the Government Code, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by Section 1316 of the Health and Safety Code, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence

and abuse of discretion shall be established if the court determines that the findings are not supported by the weight of the evidence.

(e) Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 4.5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h)(1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or any state agency made after a hearing required by statute to be conducted under the Administrative Procedure Act, as set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 4.5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(2) The standard set forth in this subdivision for obtaining a stay shall apply to any administrative order or decision of an agency that issues licenses pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision of the administrative law judge in its entirety or has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (c) of Section 11517 of the Government Code; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed

except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(i) Any administrative record received for filing by the clerk of the court may be disposed of as provided in Sections 1952, 1952.2, and 1952.3.

(j) Effective January 1, 1996, this subdivision shall apply to state employees in State Bargaining Unit 5. For purposes of this section, the court is not authorized to review any disciplinary decisions reached pursuant to Section 19576.1 of the Government Code.

CREDIT(S)

(Added by Stats.1945, c. 868, p. 1636, § 1. Amended by Stats.1949, c. 358, p. 638, § 1; Stats.1974, c. 688, p. 1532, § 1; Stats.1975, 2nd Ex.Sess., c. 1, p. 3973, § 26.5; Stats.1978, c. 1348, § 1; Stats.1979, c. 199, § 1; Stats.1982, c. 193, p. 593, § 4, eff. May 5, 1982; Stats.1982, c. 812, p. 3102, § 3; Stats.1985, c. 324, § 1; Stats.1991, c. 1090 (A.B.1484), § 5.5; Stats.1992, c. 72 (A.B.1525), § 1, eff. May 28, 1992; Stats.1995, c. 768 (S.B.544), § 1, eff. Oct. 12, 1995; Stats.1998, c. 88 (A.B.528), § 5, eff. June 30, 1998; Stats.1998, c. 1024 (A.B.1291), § 5, eff. Sept. 30, 1998; Stats.1999, c. 446 (A.B.1013), § 1, eff. Sept. 21, 1999; Stats.2000, c. 402 (A.B.649), § 1, eff. Sept. 11, 2000; Stats.2008, c. 150 (A.B.3042), § 1; Stats.2011, c. 296 (A.B.1023), § 41.)

VALIDITY

A prior version of this section was held unconstitutional in the case of State Personnel Bd. v. Department of Personnel Admin. (2005) 36 Cal.Rptr.3d 142, 37 Cal.4th 512, 123 P.3d 169.

Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

END OF DOCUMENT

C

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Code of Civil Procedure (Refs & Annos)
Part 4. Miscellaneous Provisions (Refs & Annos)
Title 3. Of the Production of Evidence (Refs & Annos)
Chapter 3. Manner of Production
Article 2. Affidavits
➞➞ § 2012. Officers before whom taken

An affidavit to be used before any court, judge, or officer of this state may be taken before any officer authorized to administer oaths.

CREDIT(S)

(Enacted in 1872. Amended by Stats.1907, c. 393, p. 734, § 1.)

Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

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C

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Code of Civil Procedure (Refs & Annos)
Part 4. Miscellaneous Provisions (Refs & Annos)
Title 3. Of the Production of Evidence (Refs & Annos)
Chapter 3. Manner of Production
Article 2. Affidavits

➞➞ § 2015.5. Certification or declaration under penalty of perjury

Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may with like force and effect be supported, evidenced, established or proved by the unsworn statement, declaration, verification, or certificate, in writing of such person which recites that it is certified or declared by him or her to be true under penalty of perjury, is subscribed by him or her, and (1), if executed within this state, states the date and place of execution, or (2), if executed at any place, within or without this state, states the date of execution and that it is so certified or declared under the laws of the State of California. The certification or declaration may be in substantially the following form:

(a) If executed within this state:

"I certify (or declare) under penalty of perjury that the foregoing is true and correct":

_____ _____

(Date and Place) (Signature)

(b) If executed at any place, within or without this state:

"I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct":

_____ _____

(Date) (Signature)

CREDIT(S)

(Added by Stats.1957, c. 1612, p. 2959, § 1. Amended by Stats.1961, c. 495, p. 1589, § 1; Stats.1963, c. 2080, p. 4346, § 1; Stats.1975, c. 666, p. 1456, § 1, operative Jan. 1, 1977; Stats.1980, c. 889, p. 2789, § 1, operative July 1, 1981.)

Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

END OF DOCUMENT

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Evidence Code (Refs & Annos)
Division 5. Burden of Proof; Burden of Producing Evidence; Presumptions and Inferences (Refs & Annos)
Chapter 1. Burden of Proof
Article 1. General (Refs & Annos)
➞➞ § 500. Party who has the burden of proof

Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.

CREDIT(S)

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

END OF DOCUMENT

C

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Evidence Code (Refs & Annos)
Division 6. Witnesses (Refs & Annos)
Chapter 3. Expert Witnesses
Article 1. Expert Witnesses Generally (Refs & Annos)
➞➞ § 720. Qualification as an expert witness

(a) A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.

(b) A witness' special knowledge, skill, experience, training, or education may be shown by any otherwise admissible evidence, including his own testimony.

CREDIT(S)

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

END OF DOCUMENT

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Evidence Code (Refs & Annos)
Division 7. Opinion Testimony and Scientific Evidence (Refs & Annos)
Chapter 1. Expert and Other Opinion Testimony (Refs & Annos)
Article 1. Expert and Other Opinion Testimony Generally (Refs & Annos)
➞➞ § 800. Lay witnesses; opinion testimony

If a witness is not testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is permitted by law, including but not limited to an opinion that is:

(a) Rationally based on the perception of the witness; and

(b) Helpful to a clear understanding of his testimony.

CREDIT(S)

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

END OF DOCUMENT

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
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Division 7. Opinion Testimony and Scientific Evidence (Refs & Annos)
Chapter 1. Expert and Other Opinion Testimony (Refs & Annos)
Article 1. Expert and Other Opinion Testimony Generally (Refs & Annos)

➞➞ § 801. Expert witnesses; opinion testimony

If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:

(a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and

(b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.

CREDIT(S)

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

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C

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Evidence Code (Refs & Annos)
Division 7. Opinion Testimony and Scientific Evidence (Refs & Annos)
Chapter 1. Expert and Other Opinion Testimony (Refs & Annos)
Article 1. Expert and Other Opinion Testimony Generally (Refs & Annos)
➞➞ § 805. Opinion on ultimate issue

Testimony in the form of an opinion that is otherwise admissible is not objectionable because it embraces the ultimate issue to be decided by the trier of fact.

CREDIT(S)

(Stats.1965, c. 299, § 2, operative Jan. 1, 1967.)

Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

END OF DOCUMENT

C

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 3. Executive Department (Refs & Annos)
Part 1. State Departments and Agencies (Refs & Annos)
Chapter 5. Administrative Adjudication: Formal Hearing (Refs & Annos)

➞➞ § 11513. Evidence; examination of witnesses

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses, [FN1] to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

(e) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(f) The presiding officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

CREDIT(S)

(Added by Stats.1992, c. 1302 (A.B.3107), § 9, eff. Sept. 30, 1992, operative July 1, 1995. Amended by Stats.1995, c. 938 (S.B.523), § 40, operative July 1, 1997.)

[FN1] Punctuation so in chaptered copy.

LAW REVISION COMMISSION COMMENTS

1995 Amendment

Subdivision (d) of Section 11513 is intended to avoid or eliminate routine objections to administrative hearsay. If a proposed finding is supported only by hearsay evidence, a single objection at the conclusion of testimony, or on petition for reconsideration by the agency, is sufficient and timely.

The "irrelevant and unduly repetitious" standard formerly found in Section 11513 is replaced in subdivision (f) by the general standard of Evidence Code Section 352. The basic standard of admissibility of relevant evidence is stated in subdivision (c); nothing in subdivision (f) authorizes admission of irrelevant evidence.

The unnumbered paragraph formerly located between subdivisions (c) and (d) is restated in Section 11440.40(a).

Former subdivisions (d)-(n) are restated in Sections 11435.20-11435.65.

Former subdivision (o) is restated in Section 11440.40(b).

Former subdivision (p) is restated in Section 11440.40(c).

Former subdivision (q) is deleted as obsolete. [25 Cal.L.Rev.Comm. Reports 711 (1995)]

HISTORICAL AND STATUTORY NOTES

2005 Main Volume

Section 2 of Stats.1993, c. 701 (S.B.358), provides:

"The Employment Development Department shall, not later than October 1, 1994, adopt regulations to clarify the factors by which the employment status of language interpreters will be determined."

The 1995 amendment rewrote the section, which read:

"(a) Oral evidence shall be taken only on oath or affirmation.

"(b) Each party shall have these rights: to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

"(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

"In any proceeding under subdivision (i) or (j) of Section 12940, or Section 19572 or 19702, alleging conduct which

constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is not admissible at hearing unless offered to attack the credibility of the complainant, as provided for under subdivision (o). Reputation or opinion evidence regarding the sexual behavior of the complainant is not admissible for any purpose.

"(d) The hearing, or any medical examination conducted for the purpose of determining compensation or monetary award, shall be conducted in the English language, except that a party who does not proficiently speak or understand the English language and who requests language assistance shall be provided an interpreter. Except as provided in subdivision (k), interpreters utilized in hearings shall be certified pursuant to subdivision (e). Except as provided in subdivision (k), interpreters utilized in medical examinations shall be certified pursuant to subdivision (f). The cost of providing the interpreter shall be paid by the agency having jurisdiction over the matter if the administrative law judge or hearing officer so directs, otherwise the party for whom the interpreter is provided.

"The administrative law judge's or hearing officer's decision to direct payment shall be based upon an equitable consideration of all the circumstances in each case, such as the ability of the party in need of the interpreter to pay, except with respect to hearings before the Workers' Compensation Appeals Board or the Division of Workers' Compensation relating to workers' compensation claims. With respect to these hearings, the payment of the costs of providing an interpreter shall be governed by the rules and regulations promulgated by the Workers' Compensation Appeals Board or the Administrative Director of the Division of Workers' Compensation, as appropriate.

"(e) The State Personnel Board shall establish, maintain, administer, and publish annually, an updated list of certified administrative hearing interpreters it has determined meet the minimum standards in interpreting skills and linguistic abilities in languages designated pursuant to subdivision (g). Any interpreter so listed may be examined by each employing agency to determine the interpreter's knowledge of the employing agency's technical program terminology and procedures. Court interpreters certified pursuant to Section 68562, and interpreters listed on the State Personnel Board's recommended lists of court and administrative hearing interpreters prior to July 1, 1993, shall be deemed certified for purposes of this subdivision.

"(f) The State Personnel Board shall establish, maintain, administer, and publish annually, an updated list of certified medical examination interpreters it has determined meet the minimum standards in interpreting skills and linguistic abilities in languages designated pursuant to subdivision (g). Court interpreters certified pursuant to Section 68562 and administrative hearing interpreters certified pursuant to subdivision (e) shall be deemed certified for purposes of this subdivision.

"(g) The State Personnel Board shall designate the languages for which certification shall be established under subdivisions (e) and (f). The languages designated shall include, but not be limited to, Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese until the State Personnel Board finds that there is an insufficient need for interpreting assistance in these languages. The language designations shall be based on the following:

"(1) The language needs of non-English-speaking persons appearing before the administrative agencies, as determined by consultation with the agencies.

"(2) The cost of developing a language examination.

"(3) The availability of experts needed to develop a language examination.

"(4) Other information the board deems relevant.

"(h) Each certified administrative hearing interpreter and each certified medical examination interpreter shall pay a fee, due on July 1 of each year, for the renewal of his or her certification. Court interpreters certified under Section

68562 shall not pay any fees required by this section.

"(i) The State Personnel Board shall establish and charge fees for applications to take interpreter examinations and for renewal of certifications. The purpose of these fees is to cover the annual projected costs of carrying out this section. The fees may be adjusted each fiscal year by a percent that is equal to or less than the percent change in the California Necessities Index prepared by the Commission on State Finance. If the amount of money collected in fees is not sufficient to cover the costs of carrying out this section, the board shall charge and be reimbursed a pro rata share of the additional costs by the state agencies that conduct administrative hearings.

"(j) The State Personnel Board may remove the names of people from the list of certified interpreters if the following conditions occur:

"(1) A person on the list is deceased.

"(2) A person on the list notifies the board that he or she is unavailable for work.

"(3) A person on the list does not submit a renewal fee as required by subdivision (h).

"(k) In the event that interpreters certified pursuant to subdivision (e) cannot be present at the hearing, the hearing agency shall have discretionary authority to provisionally qualify and utilize other interpreters. In the event that interpreters certified pursuant to subdivision (f) cannot be present at the medical examination, the physician provisionally may utilize another interpreter if that fact is noted in the record of the medical evaluation.

"(l) Every state agency affected by this section shall advise each party of their right to an interpreter at the same time that each party is advised of the hearing date or medical examination. Each party in need of an interpreter shall also be encouraged to give timely notice to the agency conducting the hearing or medical examination so that appropriate arrangements can be made.

"(m) The rules of confidentiality of the agency, if any, that may apply in an adjudicatory hearing, shall apply to any interpreter in the hearing or medical examination, whether or not the rules so state.

"(n) The interpreter shall not have had any involvement in the issues of the case prior to the hearing.

"As used in subdivisions (d) and (e), the terms 'administrative law judge' and 'hearing officer' shall not be construed to require the use of an Office of Administrative Hearings' administrative law judge or hearing officer.

"(o) Evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is presumed inadmissible absent an offer of proof establishing its relevance and reliability and that its probative value is not substantially outweighed by the probability that its admission will create substantial danger of undue prejudice or confuse the issue.

"(p) For purposes of this section 'complainant' means any person claiming to have been subjected to conduct which constitutes sexual harassment, sexual assault, or sexual battery.

"(q) This section shall become operative on July 1, 1995."

Former Notes

Former § 11513, added by Stats.1992, c. 1302 (A.B.3107), § 8, amended by Stats.1993, c. 701 (S.B.358), § 1, relating

to the applicable rules of evidence, became inoperative July 1, 1995, and was repealed by its own terms, operative January 1, 1996. See this section.

Former § 11513, added by Stats.1945, c. 867, p. 1632, § 1, amended by Stats.1965, c. 299, p. 1366, § 135, operative Jan. 1, 1967; Stats.1972, c. 1390, p. 2887, § 1; Stats.1977, c. 1057, p. 3197, § 4, operative July 1, 1978; Stats.1985, c. 324, § 20; Stats.1985, c. 1328, § 6; Stats.1992, c. 1302, § 7, relating to evidence, examination of witnesses, interpreters, and inadmissibility of evidence of complainant's sexual conduct, by its own terms became inoperative July 1, 1993, and was repealed Jan. 1, 1994. See this section.

Derivation

Former § 11513, added by Stats.1992, c. 1302, § 8, amended by Stats.1993, c. 701, § 1.

Former § 11513, added by Stats.1945, c. 867, p. 1632, § 1; amended by Stats.1965, c. 299, p. 1366, § 135, operative Jan. 1, 1967; Stats.1972, c. 1390, p. 2887, § 1; Stats.1977, c. 1057, p. 3197, § 4, operative July 1, 1978; Stats.1985, c. 324, § 20; Stats.1985, c. 1328, § 6.

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Party defined for purposes of this chapter, see Government Code § 11500.
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NOTES OF DECISIONS

<See, also, Notes of Decisions under Government Code § 11513.5.>

1. Construction with evidentiary law

Common-law rules of evidence are not based on constitutional interdictions and administrative tribunals are not bound by such rules except those perpetuated in governing regulations. Schoeps v. Carmichael, C.A.9 (Cal.)1949, 177 F.2d 391, certiorari denied 70 S.Ct. 566, 339 U.S. 914, 94 L.Ed. 1340. Administrative Law And Procedure 313

Ordinary rules of evidence or procedure do not apply to those who exercise executive or administrative functions or functions akin to them, and usual incidences attending upon a judicial or quasi-judicial hearing need not be present when an administrative functionary has the duty to determine a fact, but it is enough that the functionary has before

him facts upon which to act. The Golden Sun, S.D.Cal.1939, 30 F.Supp. 354. Officers And Public Employees 107

Technical rules of evidence do not apply to administrative hearings. Big Boy Liquors, Limited v. Alcoholic Beverage Control Appeals Bd. (1969) 81 Cal.Rptr. 258, 71 Cal.2d 1226, 459 P.2d 674. Administrative Law And Procedure 313

Administrative bodies are not expected to observe meticulously all of rules of evidence applicable to court trial, but common sense and fair play dictate certain basic requirements for conduct of any hearing at which facts are to be determined, and among those are the following: evidence must be produced at hearing by witnesses personally present, or by authenticated documents, maps or photographs; ordinarily, hearsay evidence standing alone can have no weight, including hearsay evidence concerning someone else's opinion; cross-examination within reasonable limits must be allowed; and telephone calls to officials sitting in case, statements made in letters and arguments made in petitions should not be considered as evidence. Desert Turf Club v. Board of Sup'rs of Riverside County (App. 1956) 141 Cal.App.2d 446, 296 P.2d 882. Administrative Law And Procedure 458.1

Where the legislature has created a professional board such as the board of dental examiners and has conferred on it power to administer the provisions of a general regulatory plan governing the members of the profession, such a board is not required to conduct its proceedings for the revocation of a license in accordance with theories developed in the field of criminal law on matters of evidence. Webster v. Board of Dental Examiners of Cal. (1941) 17 Cal.2d 534, 110 P.2d 992. Health 218

Rules of evidence followed in administrative proceedings are more liberal than those in formal judicial proceedings and all relevant evidence probative of the issues is admissible. 14 Op.Atty.Gen. 155 (1949).

2. Nature of proceedings

In quasi-judicial proceedings, witnesses should be sworn and examined, and a record made, upon which reviewing courts may be enabled to determine whether substantial evidence was or was not considered by quasi-judicial body, and proceedings should be conducted in a quasi-judicial manner. Nishkian v. City of Long Beach (App. 1951) 103 Cal.App.2d 749, 230 P.2d 156. Administrative Law And Procedure 475; Administrative Law And Procedure 476

A hearing by the board of medical examiners for revocation of license of physician for unprofessional conduct need not be conducted according to the technical rules relating to evidence and witnesses, and any relevant evidence may be admitted, if it is the sort of evidence on which responsible persons rely in conduct of serious affairs. Stuck v. Board of Medical Examiners of State (App. 1 Dist. 1949) 94 Cal.App.2d 751, 211 P.2d 389. Health 218

3. Full and fair hearing, generally

Motorist was deprived of the opportunity to present a meaningful defense in Department of Motor Vehicles (DMV) proceeding to suspend his driving privileges such that his due process rights were violated, where motorist's counsel requested blood alcohol test results approximately one month before suspension hearing but initially received the results only minutes before the hearing, and DMV hearing officer denied counsel's request for a continuance. Petrus v. State Dept. of Motor Vehicles (App. 4 Dist. 2011) 123 Cal.Rptr.3d 686, 194 Cal.App.4th 1240. Automobiles 144.2(1); Constitutional Law 4358

Due process rights of correctional officers dismissed from their employment by the Department of Youth Authority were not violated by denial of opportunity to speak personally to Department's wards to request interviews prior to

State Personnel Board hearing, where officers had been provided with wards' prior statements and, at the hearing, officers could call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any relevant matter even if not covered on direct examination, impeach witnesses, and rebut evidence. Cimarusti v. Superior Court (App. 2 Dist. 2000) 94 Cal.Rptr.2d 336, 79 Cal.App.4th 799, as modified. Officers And Public Employees 72.65

The fact that a fact finding tribunal does not see or hear witnesses does not in every instance constitute a denial of a fair and full hearing, but such hearing is given where fact finder fully reviews record and an opportunity is given parties to argue their contentions as to credibility of witnesses and other matters involved in the proceeding. Leeds v. Gray (App. 1 Dist. 1952) 109 Cal.App.2d 874, 242 P.2d 48. Administrative Law And Procedure 473

3.5. Administrative proceedings

Unauthenticated videotapes purportedly showing school district employee working on a job on a day he took sick leave, on which the school district relied to terminate his employment, were improperly admitted; absent a proper authenticating foundation for the videotapes, they were irrelevant to the administrative proceeding. Ashford v. Culver City Unified School Dist. (App. 2 Dist. 2005) 29 Cal.Rptr.3d 728, 130 Cal.App.4th 344. Schools 121

While administrative bodies are not expected to observe meticulously all of the rules of evidence applicable to a court trial, certain basic requirements for the conduct of any hearing at which facts are to be determined are necessary, including the evidence must be produced at the hearing by witnesses personally present, or by authenticated documents, maps or photographs, and ordinarily, hearsay evidence standing alone can have no weight. Ashford v. Culver City Unified School Dist. (App. 2 Dist. 2005) 29 Cal.Rptr.3d 728, 130 Cal.App.4th 344. Administrative Law And Procedure 462; Administrative Law And Procedure 476

4. Pro se appearance

Licensees electing to appear in propria persona, in administrative proceedings which culminated in suspension of their license, were not, by so appearing, entitled to any special privileges, and if objectionable evidence was offered they were required to object, just as if they were represented by counsel. Griswold v. Department of Alcoholic Beverage Control (App. 1956) 141 Cal.App.2d 807, 297 P.2d 762. Administrative Law And Procedure 474; Intoxicating Liquors 108.9

5. Pleading

In administrative proceedings, the courts are more interested with fair notice to the accused than they are to adherence to the technical rules of pleading. Nelson v. Department of Alcoholic Beverage Control (App. 1959) 166 Cal.App.2d 783, 333 P.2d 771. Administrative Law And Procedure 312

6. Burden of proof

In proceeding for mandate to compel board of examiners to permit plaintiff to take an examination for a license as a physician and surgeon of osteopathy, plaintiff had the burden to show her right to take the examination. Lay v. State Board of Osteopathic Examiners of Cal. (App. 3 Dist. 1960) 3 Cal.Rptr. 727, 179 Cal.App.2d 356. Mandamus 168(2)

In disciplinary administrative proceedings the burden of proof is upon the party asserting the affirmative and guilt must be established to a reasonable certainty and cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or uncorroborated hearsay, but such disciplinary proceedings are not criminal in nature and are not governed by the law applicable to criminal cases. Cornell v. Reilly (App. 1 Dist. 1954) 127 Cal.App.2d 178, 273 P.2d

572. Administrative Law And Procedure 460; Administrative Law And Procedure 462

7. Order of proof

Administrative law judge has discretion to control the order of evidence and testimony in an administrative hearing. Douglass v. Board of Medical Quality Assur. (App. 4 Dist. 1983) 190 Cal.Rptr. 506, 141 Cal.App.3d 645. Administrative Law And Procedure 476

Licensee's admission that he had bought five cases of beer from an unlicensed vendor for resale by his business was admissible in proceeding to suspend his on-sale general license as an admission by a party, an exception to hearsay rule. Mumford v. Department of Alcoholic Beverage Control (App. 4 Dist. 1968) 65 Cal.Rptr. 495, 258 Cal.App.2d 49. Evidence 222(2)

8. Ex parte communications

Ex parte communication between new motor vehicle dealer franchisor's attorney and administrative law judge (ALJ) could be characterized as "evidence", within ambit of Government Code, only if information was considered by ALJ for its bearing on issues resolved by findings in his proposed decision; if information was not so considered, it was not "evidence" taken or admitted, nor could attorney be characterized as opposing witness. Mathew Zaheri Corp. v. New Motor Vehicle Bd. (App. 3 Dist. 1997) 64 Cal.Rptr.2d 705, 55 Cal.App.4th 1305, rehearing denied , review denied. Antitrust And Trade Regulation 366

New motor vehicle dealer franchisee did not establish that franchisor's attorney's ex parte communication with administrative law judge (ALJ) resulted in violation of Government Code section governing evidence and examination of witnesses; ALJ did not consider this information for illicit purpose. Mathew Zaheri Corp. v. New Motor Vehicle Bd. (App. 3 Dist. 1997) 64 Cal.Rptr.2d 705, 55 Cal.App.4th 1305, rehearing denied , review denied. Antitrust And Trade Regulation 341

9. Witnesses, generally

Any error by the Department of Consumer Affairs, Bureau of Security and Investigative Services in refusing to consider the transcript of proceedings in which alarm company manager pled no contest to disturbing the peace was not prejudicial and did not require reversal of decision to revoke manager's license as an alarm company manager; a more favorable result was not likely if the ALJ considered defense counsel's representations at the plea hearing to the effect that the victim was a supporter of environmental terrorist causes and related matters, as, even if true, it did not justify manager chasing her down a residential street carrying a rifle and then holding her at gun point. Lone Star Sec. & Video, Inc. v. Bureau of Sec. and Investigative Services (App. 2 Dist. 2009) 98 Cal.Rptr.3d 559, 176 Cal.App.4th 1249, review denied. Telecommunications 1403

Day-care operators' right to confrontation of witness was not violated, in proceeding to revoke operators' day-care license, by exclusion of the operators from the hearing room during testimony of four-and one-half-year-old girl, who was allegedly sexually abused by one of the operators; girl's psychiatrist stated that requiring girl to testify in the physical presence of the operators would carry risk that girl would incur additional injury and would likely raise her level of fear, and operators were permitted to view girl's testimony on live, closed circuit television and to confer with their attorney prior to the commencement of his cross-examination of the girl. Seering v. Department of Social Services of State of Cal. (App. 1 Dist. 1987) 239 Cal.Rptr. 422, 194 Cal.App.3d 298. Constitutional Law 4278; Infants 1385; Infants 1402

Even if Evid.C. § 800 et seq. provisions governing expert testimony apply to violations of occupational safety

standards, employer waived any claim of error by failing to object to testimony of engineer from division of industrial safety that power line located near scaffolding carried more than 750 volts and, in any event, engineer's testimony concerning the "high voltage" warning marking was not hearsay. Gaehwiler v. Occupational Safety & Health Appeals Bd. (App. 1 Dist. 1983) 191 Cal.Rptr. 336, 141 Cal.App.3d 1041. Labor And Employment 2612

Section 11500 and this section permitting each party, who has been allowed to appear in proceeding to call and examine witnesses and to cross-examine opposing witnesses do not apply to county boards of equalization or assessment appeals boards. Stevens v. Fox Realty Corp. of Cal. (App. 2 Dist. 1972) 100 Cal.Rptr. 63, 23 Cal.App.3d 199. Taxation 2625; Taxation 2667

In a disciplinary action before a hearing officer conducted under the Administrative Procedure Act, to revoke or suspend a license issued by the insurance commissioner the respondent may not be called as a witness by the department under this section until he has had opportunity to testify in his own behalf and has failed to do so, and when so called he may be examined as if under cross-examination. 11 Op.Atty.Gen. 116 (1948).

10. Admissibility of evidence--In general

The more liberal the practice in admitting testimony in administrative proceedings, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. Bridges v. Wixon, U.S.Cal.1945, 65 S.Ct. 1443, 326 U.S. 135, 89 L.Ed. 2103. Administrative Law And Procedure 313

In administrative law judge (ALJ) hearing on a tenured teacher's termination, evidence of a prior administrative decision finding that two junior teachers were properly retained in a prior force reduction and school district superintendent's testimony regarding the junior teachers' qualifications were properly considered for the purpose of supplementing other evidence that had not been subject to any timely hearsay objection, even if the administrative decision and testimony would not have been sufficient by themselves to support a finding on the issue of the junior teachers' qualifications because they had been subject to timely hearsay objections**.** Bledsoe v. Biggs Unified School Dist. (App. 3 Dist. 2008) 88 Cal.Rptr.3d 13, 170 Cal.App.4th 127, modified on denial of rehearing, review denied. Schools 147.40(1)

A photocopy of letter written by husband of former patient was not admissible in physician's disciplinary proceeding in light of incompleteness of document, uncertainty of author as to when letter was written, and equivocal information as to how letter came into physician's possession. Pasha v. Board of Medical Quality Assur. (App. 2 Dist. 1985) 219 Cal.Rptr. 778, 174 Cal.App.3d 439. Health 218

Testimony given by witnesses under promise of immunity made in reliance on repealed statute could be considered against dentist seeking to vacate order suspending him from practicing dentistry. Parker v. Board of Dental Examiners of State of Cal. (1932) 216 Cal. 285, 14 P.2d 67. Evidence 154

11. ---- Extrajudicial evidence, admissibility of evidence

Administrative tribunals which are required to make a determination after a hearing cannot act upon their own information, and nothing can be considered as evidence that was not introduced at a hearing of which the parties had notice or at which they were present and the fact that there may be substantial and properly introduced evidence which supports the board's ruling is immaterial. English v. City of Long Beach (1950) 217 P.2d 22, 35 Cal.2d 155; La Prade v. Department of Water and Power of City of Los Angeles (1945) 162 P.2d 13, 27 Cal.2d 47.

In an administrative law judge (ALJ) hearing under the Administrative Procedure Act (APA) on a school district's termination of a tenured teacher in an economic layoff, a prior administrative law decision finding that school district

properly "skipped" two community day school teachers in an earlier economic layoff in favor of terminating more senior teachers was "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs," thus supporting its admission into evidence, even if it was hearsay; the decision was relevant to explain why the teachers were being skipped again in the new layoff, and thus why the plaintiff teacher was unable to bump them from their positions. Bledsoe v. Biggs Unified School Dist. (App. 3 Dist. 2008) 88 Cal.Rptr.3d 13, 170 Cal.App.4th 127, modified on denial of rehearing , review denied. Schools 147.40(1)

Hearing officer's observing of witnesses while testifying did not constitute taking of evidence outside hearing and was not an improper or secret method of taking evidence. Steele v. Los Angeles County Civil Service Commission (App. 1958) 166 Cal.App.2d 129, 333 P.2d 171. Administrative Law And Procedure 473

12. ---- Affidavits, admissibility of evidence

In proceeding to revoke optometrist's license on ground of violation of Bus. & Prof.C. § 650, prohibiting payment of unearned rebates as inducement for referring patients, affidavits of persons who allegedly had received rebates for referring patients were admissible. Mast v. State Bd. of Optometry (App. 2 Dist. 1956) 139 Cal.App.2d 78, 293 P.2d 148. Health 218

Under §§ 11510, 11514, relating to evidence in contested administrative hearings, where an affidavit is offered in evidence by the licensee or applicant and prior to the submission of the case for decision, and the presenting deputy of the department so requests, the licensee or applicant need not produce the affiant for cross-examination, but the affidavit remains subject to the limitations imposed by this section and would in itself be insufficient to support a finding, notwithstanding that affiant may be beyond the range of subpoena under § 11510(b). 6 Op.Atty.Gen. 219 (1945).

In hearings under §§ 11504, 11510 relating to evidence in contested administrative hearings, an affidavit under this section containing irrelevant matter need not be accepted in toto and relevant and otherwise admissible portions may be received and the inadmissible portion rejected. 6 Op.Atty.Gen. 219 (1945).

Under this section an officer of the insurance department presenting an affidavit in evidence is not a party, but the commissioner of insurance is a party in legal contemplation to the proceeding, and the presenting officer of the department would be required to follow the procedure set forth in the section. 6 Op.Atty.Gen. 219 (1945).

13. ---- Prior offenses, admissibility of evidence

It was prejudicial error, at disciplinary hearing involving state hospital psychiatric technician charged with masturbating a male mentally retarded patient to admit evidence of almost ten-year-old misdemeanor conviction under Pen.C. § 647 where prior offense involved only a vague suggestion of homosexual conduct, at time evidence was presented the employee had not put on a defense warranting rebuttal, evidence came among an array of irrelevant and incompetent suggestions of prior sexual misconduct and sole issue was credibility of witnesses. Coburn v. California State Personnel Bd. (App. 1 Dist. 1978) 148 Cal.Rptr. 134, 83 Cal.App.3d 801. Officers And Public Employees 72.62

Officer who conducted disciplinary hearing with respect to alleged fraudulent conduct of plumbing contractor properly admitted in evidence judgment showing conviction of the contractor for violation of building ordinance in connection with contractor's conduct in purportedly testing gas line it had installed whereas, in reality, it only tested two inch capped pipe. McNeil's Inc. v. Contractors' State License Bd. (App. 4 Dist. 1968) 68 Cal.Rptr. 640, 262 Cal.App.2d 322. Licenses 38

A judgment of conviction in federal court is "sort of evidence on which responsible persons rely" within purview of government code subsection making evidence of that sort admissible in administrative hearings, and therefore federal court judgment convicting real estate licensee of conspiracy, with regard to false statement in home loan report presented to Veterans' Administration was admissible, in license suspension proceedings, as proof of conduct of licensee on which such judgment was based, but being a determination of guilt by third persons upon evidence not before administrative agency in which such judgment was offered, evidence of such judgment was hearsay. Manning v. Watson (App. 1 Dist. 1952) 108 Cal.App.2d 705, 239 P.2d 688. Brokers 3

Under Educ.C.1959, § 12012 providing that any record of conviction of any applicant or holder of a teacher certification document shall be admissible in evidence in any civil action or administrative proceedings pertaining to the issuance, suspension or revocation of such certification document, a finding of fact may be made that a convicted party has committed the act constituting the crime for which the conviction is suffered based upon the sole evidence of a record of conviction even though the record of conviction may remain hearsay evidence as to the conduct of the convicted party. 34 Op.Atty.Gen. 34 (1959).

14. ---- Police reports, admissibility of evidence

A police officer's report, even if unsworn, constitutes the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, within the meaning of the statute governing evidence in administrative proceedings. Hildebrand v. Department of Motor Vehicles (App. 4 Dist. 2007) 62 Cal.Rptr.3d 234, 152 Cal.App.4th 1562. Administrative Law And Procedure 461

Department of Motor Vehicles (DMV) could consider, in addition to the arresting officer's sworn statement, the arresting officer's unsworn statement in license suspension hearing for driver driving with excessive blood-alcohol level, notwithstanding statute requiring officer to forward to DMV sworn statement of all relevant information; unsworn statement constituted type of evidence on which persons were accustomed to rely, and, provided that sworn statement was not devoid of relevant information, relaxed evidentiary standard furthered statutory purpose of providing efficient mechanism for suspending licenses of those driving with excessive blood-alcohol levels; disapproving *Solovij v. Gourley,* 87 Cal.App.4th 1229, 105 Cal.Rptr.2d 278, and *Dibble v. Gourley,* 103 Cal.App.4th 496, 126 Cal.Rptr.2d 709. MacDonald v. Gutierrez (2004) 8 Cal.Rptr.3d 48, 32 Cal.4th 150, 81 P.3d 975. Automobiles 144.2(9.7)

In contested hearing for review of suspension of driver's license for driving with blood-alcohol concentration of .08% or higher, non-arresting officer's report that licensee was driving at time of accident, which was based on statements of eyewitnesses and on licensee's own admission, constituted admissible evidence, even though report was not sworn. Lake v. Reed (1997) 65 Cal.Rptr.2d 860, 16 Cal.4th 448, 940 P.2d 311, rehearing denied. Automobiles 144.2(9.7)

15. ---- Laboratory tests, generally, admissibility of evidence

A forensic lab report need not be sworn, because of the relaxation of evidentiary rules applicable in administrative driver's license suspension hearing; such a report, prepared by a properly licensed lab, is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs and is thus admissible under the Administrative Procedure Act. Petricka v. Department of Motor Vehicles (App. 1 Dist. 2001) 107 Cal.Rptr.2d 909, 89 Cal.App.4th 1341. Automobiles 144.2(9.7)

Letter, signed by an assistant public health chemist of the department of public health's food and drug laboratory, giving analysis of alcoholic content of contents of bottles, though hearsay, would be admissible in evidence, to supplement other evidence, in proceedings before state department of alcoholic beverage control upon accusation that liquor licensee had violated rule by permitting waitresses to accept alcoholic drinks purchased for them by customers. Mercurio v. Department of Alcoholic Beverage Control (App. 1956) 144 Cal.App.2d 626, 301 P.2d

474. Intoxicating Liquors 108.5

Under this section, admission in proceeding before board for revocation of physician's license for having procured a criminal abortion, of laboratory tests indicating pregnancy of victim, was not improper. Marlo v. State Board of Medical Examiners of Department of Professional Standards (App. 2 Dist. 1952) 112 Cal.App.2d 276, 246 P.2d 69.

16. ---- Polygraph tests, admissibility of evidence

In administrative disciplinary proceedings resulting in finding that doctor was grossly negligent in treating child, it was proper to exclude evidence concerning polygraph test administered by "friendly polygrapher" and arranged by the doctor's attorney. Aengst v. Board of Medical Quality Assur. (App. 2 Dist. 1980) 167 Cal.Rptr. 796, 110 Cal.App.3d 275. Health 218

17. ---- Newspaper articles, admissibility of evidence

Hearing officer's excluding of article from trade journal containing excerpts from speech allegedly referring to unfair practices in sale of unspecified brands of alcoholic beverages was not erroneous, when liquor licensee was charged with violation of retail price maintenance provisions of Bus. & Prof.C. §§ 24749 to 24757. Wilke & Holzheiser, Inc. v. Department of Alcoholic Beverage Control (1966) 55 Cal.Rptr. 23, 65 Cal.2d 349, 420 P.2d 735. Intoxicating Liquors 108.5

Although hearsay, newspaper press clipping reporting indictment of specified persons on federal charge of illegally using telephones for organized nationwide horse racing betting system was admissible in proceeding before state horse racing board, for purpose of supplementing or explaining direct evidence. Epstein v. California Horse Racing Bd. (App. 2 Dist. 1963) 35 Cal.Rptr. 642, 222 Cal.App.2d 831. Evidence 318(1)

18. ---- Rebuttal, admissibility of evidence

Proof offered before hearing officer of state personnel board in disciplinary proceeding against employee of department of human resources who had been convicted of possession of marijuana that no letters, calls or other indications of actual discredit to the department had been received concerning employee's conduct or conviction was admissible to rebut inference that could be drawn from the misbehavior that the agency or the employment was discredited and to show that employee's conduct would not cause further discredit. Vielehr v. State Personnel Bd. (App. 5 Dist. 1973) 107 Cal.Rptr. 852, 32 Cal.App.3d 187. States 53

The evidence, including doctor's stipulation as to the truth of the allegations of the accusation and doctor's additional evidence by way of mitigation and testimony of witness given by way of rebuttal, supported decision of board of osteopathic examiners that doctor's license should be revoked for employing and aiding and abetting such witness, an unlicensed person, in treating the sick and for signing death certificate representing that doctor had attended a decedent whom doctor had never seen. Thayer v. Board of Osteopathic Examiners (App. 1958) 157 Cal.App.2d 4, 320 P.2d 28. Health 212

19. Hearsay evidence--In general

Unauthenticated videotapes purportedly showing school district employee working on a job on a day he took sick leave, on which the school district relied to terminate his employment, were hearsay evidence because they constituted out-of-court statements by the person making the videotapes, about employee's activities, and were offered to prove the truth of the district's assertion that employee was actively working on three specific days when he had claimed to be ill. Ashford v. Culver City Unified School Dist. (App. 2 Dist. 2005) 29 Cal.Rptr.3d 728, 130 Cal.App.4th

344. Evidence 318(1); Schools 121

There must be substantial evidence to support an administrative decision, and hearsay, unless specially permitted by statute, is not competent evidence to that end. Furman v. Department of Motor Vehicles (App. 6 Dist. 2002) 122 Cal.Rptr.2d 520, 100 Cal.App.4th 416, review denied. Administrative Law And Procedure 461; Administrative Law And Procedure 791

Hearsay, which is admitted without objection in administration proceeding, will have probative value unless there is some evidence, admissible in administrative proceedings, to contrary, and, unless objected to, will serve to shift burden of producing evidence of existence or nonexistence of fact disclosed; overruling Swegle v. State Board of Equalization, 125 Cal.App.2d 432, 270 P.2d 518, Benedetti v. Department of Alcoholic Beverage Control, 187 Cal.App.2d 213, 9 Cal.Rptr. 525, and Sunseri v. Board of Medical Examiners, 224 Cal.App.2d 309, 36 Cal.Rptr. 553. Kirby v. Alcoholic Beverage Control Appeals Bd. (App. 1 Dist. 1970) 87 Cal.Rptr. 908, 8 Cal.App.3d 1009. Administrative Law And Procedure 462

Hearsay evidence is admissible in administrative proceeding, but its use is limited and it alone cannot support a finding, though it may be used to supplement other evidence and aid in support of findings. Sunseri v. Board of Medical Examiners (App. 1 Dist. 1964) 36 Cal.Rptr. 553, 224 Cal.App.2d 309. Administrative Law And Procedure 461; Administrative Law And Procedure 462

Hearsay evidence is admissible in an administrative hearing if it is relevant and of such character or quality as that on which responsible persons are accustomed to rely in conduct of serious affairs. Mast v. State Bd. of Optometry (App. 2 Dist. 1956) 139 Cal.App.2d 78, 293 P.2d 148. Administrative Law And Procedure 313

19.5. ---- Admissible, hearsay evidence

Fire captain's hearsay statements of his observations of finding driver's vehicle stuck on railroad tracks and escorting him to safety were admissible in administrative hearing to suspend driver's license to supplement or explain driver's admissions about event. Hildebrand v. Department of Motor Vehicles (App. 4 Dist. 2007) 62 Cal.Rptr.3d 234, 152 Cal.App.4th 1562. Automobiles 144.2(9.7)

20. ---- Supplementing or explaining, hearsay evidence

Letter from real estate broker who had been convicted of violating Corporate Securities Act to his probation officer that he and real estate salesman who had sold stock in sand and gravel corporation had loaned $15,000 of their money to third parties and letter from persons who had purchased stock to same probation officer that broker and salesman had used money received in sale of stock to repay themselves $15,000 which had been loaned to third parties were hearsay but were admissible in disciplinary proceedings against broker and salesman to supplement testimony that money received for sale of stock was used to pay off old obligations and to pay broker and salesman salaries. Ring v. Smith (App. 2 Dist. 1970) 85 Cal.Rptr. 227, 5 Cal.App.3d 197. Brokers 3

At hearing before state board of equalization, minor's testimony that he bought beer from bartender behind bar and whiskey from same bartender who worked there all night, another minor's testimony that minors ordered beer at bar and saw bartender serve it, and bartender's testimony that he was bartender that night, was not hearsay, and, under this section, testimony as to prior identification of bartender by the minors was then admissible to supplement such direct evidence. Moyer v. State Bd. of Equalization (App. 1956) 140 Cal.App.2d 651, 295 P.2d 583. Evidence 317(2); Intoxicating Liquors 108.5

In proceeding before state real estate commissioner for revocation of license of broker on ground that she obtained

fees from registrants by false representations in newspaper advertisements concerning rental properties, testimony of registrants that at some of the places where registrants were directed to go by broker the owners told registrants that the places had been rented or that broker had been notified of such renting or that such places were not for rent or had not been listed with broker, was hearsay, but was properly admitted to explain direct evidence that registrants were unable to rent places. Dyer v. Watson (App. 1 Dist. 1953) 121 Cal.App.2d 84, 262 P.2d 873. Administrative Law And Procedure 327; Brokers 3; Evidence 116; Evidence 317(4)

21. ---- Other purposes, hearsay evidence

Where witness' testimony was introduced at hearing before fair employment practice commission as proof that absent witness and landlord spoke certain words, not to prove that those words represented the truth, but to show that landlord presented requirements to black prospective tenant that he did not present to the absent witness, a white man, when he represented himself to be a prospective tenant, testimony of witness concerning transaction between landlord and the absent witness was not inadmissible before the commission as hearsay. Stearns v. Fair Employment Practice Commission (1971) 98 Cal.Rptr. 467, 6 Cal.3d 205, 490 P.2d 1155. Civil Rights 1710

In proceeding to punish for violation of department of alcoholic beverage control rule prohibiting liquor licensees' female employees from soliciting alcoholic drinks, statements of these female employees in soliciting drinks, and questions posed by bartender to such an employee as to whether she wanted a drink were admissible to show what was said, and were not excluded by the hearsay rule. Greenblatt v. Munro (App. 1958) 161 Cal.App.2d 596, 326 P.2d 929. Evidence 317(2)

22. ---- Multiple hearsay evidence

Multiple hearsay testimony to the fact that witness interviewed prison inmate who told him what another inmate had said concerning activities of correctional officer was not sufficient in itself to support finding of violation of regulations by correctional officer when measured against this section admitting hearsay evidence in administrative hearing for purpose of supplementing or explaining other evidence but declaring such testimony not sufficient in itself to support finding unless it would be admissible over objection in civil action. Martin v. State Personnel Bd. (App. 3 Dist. 1972) 103 Cal.Rptr. 306, 26 Cal.App.3d 573. Administrative Law And Procedure 462; Officers And Public Employees 72.63

23. ---- Admissions, hearsay evidence

Since, as regarded hearing before state personnel board on charges that plaintiff correctional officer maintained a supply of marijuana at his residence, smoked marijuana in public, and on one occasion brought three marijuana cigarettes with him onto the prison premises, the testimony of an agent and officer of the department of corrections concerning admissions made by plaintiff would, over a hearsay objection, be admissible in a civil action as an admission by a party, such evidence could support a finding of fact by the hearing officer against plaintiff, if the evidence was not inadmissible on some other ground. Szmaciarz v. California State Personnel Bd. (App. 1 Dist. 1978) 145 Cal.Rptr. 396, 79 Cal.App.3d 904. Officers And Public Employees 72.62

24. ---- Transcripts, hearsay evidence

In administrative law judge (ALJ) hearing on a tenured teacher's termination, teacher's failure to make hearsay objections to all of the evidence of the qualifications of junior teachers who were not laid off waived the argument that all such evidence was hearsay evidence not sufficient in itself to support a finding; teacher made hearsay objections to admission of a prior administrative decision finding that the junior teachers were properly retained in a prior force reduction and to district superintendent's testimony regarding the qualifications of one junior teacher, but never objected to admission and consideration of a seniority list or superintendent's testimony regarding the other junior

teacher. Bledsoe v. Biggs Unified School Dist. (App. 3 Dist. 2008) 88 Cal.Rptr.3d 13, 170 Cal.App.4th 127, modified on denial of rehearing , review denied. Schools 147.40(1)

Where board of public health, in a proceeding to revoke a clinical laboratory technologist's license, admitted into evidence, a transcript of testimony taken in a prior proceeding against the licensee before the board of medical examiners, to revoke licensee's drugless practitioner's license when transcript was used solely for purpose of supplementing and explaining direct evidence, its admission was not prejudicial error. Cooper v. State Bd. of Public Health (App. 1951) 102 Cal.App.2d 926, 229 P.2d 27. Administrative Law And Procedure 764.1; Health 219

A transcript of testimony taken in a proceeding before the board of medical examiners to revoke license of drugless practitioner who was also a licensed chemical laboratory technologist, constituted "hearsay evidence" in a subsequent proceeding before the state board of health to revoke his license as a clinical laboratory technologist. Cooper v. State Bd. of Public Health (App. 1951) 102 Cal.App.2d 926, 229 P.2d 27. Administrative Law And Procedure 461; Health 218

25. ---- Stipulations, hearsay evidence

Department's receipt into evidence of verified complaint and stipulation settling fraud action against holder of real estate salesman's license and affirming truth of allegations of complaint, even if hearsay, was admissible to supplement or explain direct evidence in license revocation proceeding. Borror v. Department of Inv., Division of Real Estate (App. 1 Dist. 1971) 92 Cal.Rptr. 525, 15 Cal.App.3d 531.

In disciplinary proceeding, testimony contained in stipulation was properly received in evidence, notwithstanding its hearsay character, where it was used only for purpose of "supplementing or explaining" other evidence concerning conduct of bail agents sought to be disciplined and parties with whom they were dealing. Nardoni v. McConnell (1957) 48 Cal.2d 500, 310 P.2d 644. Stipulations 14(7)

26. ---- Police reports, hearsay evidence

In contested hearing for review of suspension of driver's license for driving with blood-alcohol concentration of .08% or higher, statements of witnesses that licensee was driving, which were contained in or attached to officer's report, were admissible under exception to hearsay rule to supplement or explain licensee's own admission that he was driving. Lake v. Reed (1997) 65 Cal.Rptr.2d 860, 16 Cal.4th 448, 940 P.2d 311, rehearing denied. Automobiles 144.2(9.7)

Although hearsay, officer's observations of licensee's driving that were incorporated into report of second officer, who did not have personal knowledge of licensee's driving, were admissible under public employee records exception in license suspension proceeding, and thus could be considered as competent evidence establishing that licensee was driving vehicle. McNary v. Department of Motor Vehicles (App. 4 Dist. 1996) 53 Cal.Rptr.2d 55, 45 Cal.App.4th 688. Automobiles 144.2(9.7)

Hearsay statement of police officer reporting blood test results was admissible as public employee record to the extent it recorded the officer's firsthand observations. Imachi v. Department of Motor Vehicles (App. 1 Dist. 1992) 3 Cal.Rptr.2d 478, 2 Cal.App.4th 809, modified. Administrative Law And Procedure 459; Automobiles 144.2(9.7)

In hearing to determine whether one's driver's license should be suspended for failure to submit to blood, breath or urine chemical test after arrest for drunken driving, arresting officer's sworn statement and police arrest reports were admissible to supplement and explain driver's testimony but not to impeach it. Goss v. Department of Motor Vehicles

(App. 4 Dist. 1968) 70 Cal.Rptr. 447, 264 Cal.App.2d 268. Automobiles 144.2(9.7)

Police officer's compilation of disposition of cases of 76 arrested persons, which was not an official record, was clearly hearsay as officer who made compilation had no personal knowledge of arrests or convictions and sentencing of persons arrested, but under circumstances would be used for purpose of supplementing and explaining direct evidence at hearing to revoke on-sale beer and wine license. Harris v. Alcoholic Beverage Control Appeals Bd. (App. 1 Dist. 1963) 28 Cal.Rptr. 74, 212 Cal.App.2d 106. Intoxicating Liquors 108.5

In hearing before city's board of police commissioners with respect to revocation of permit of owner of Turkish bath to operate Turkish bath and application for renewal of permit, testimony of police officers that, as to some of the patrons arrested at Turkish bath, there were convictions in court, was admissible, over objection that testimony was hearsay, where officers testified as to their own knowledge and the only arrest reports, to which objection was made, were those in which there was no disposition shown. Sultan Turkish Bath, Inc. v. Board of Police Com'rs of City of Los Angeles (App. 1959) 169 Cal.App.2d 188, 337 P.2d 203. Licenses 38

27. ---- Blood alcohol tests, hearsay evidence

Alcohol analysis report was not inadmissible hearsay, in hearing to suspend driver's license, even though the report was not typed until 6 days after driver's blood was analyzed; although the writing was not made at or near the time of the drunk driving incident, the report was substantially reliable in that the wording of the report reflected a post-ponement, not in the recording of the analysis, but merely in the typing of a journal-type entry, the report supple-mented other evidence introduced at the hearing, and the report was relevant to show that driver's blood alcohol content was above the legal limit. Komizu v. Gourley (App. 1 Dist. 2002) 127 Cal.Rptr.2d 229, 103 Cal.App.4th 1001. Automobiles 144.2(9.7)

A forensic alcohol report becomes an official record of the Department of Motor Vehicles (DMV), and thus is ad-missible at an administrative per se hearing, if it complies with the requirements governing the admission of evidence, including hearsay. Furman v. Department of Motor Vehicles (App. 6 Dist. 2002) 122 Cal.Rptr.2d 520, 100 Cal.App.4th 416, review denied. Automobiles 144.2(9.7); Automobiles 411

Emblem on scientific investigation report concerning motorist's blood alcohol level did not constitute a “seal” within meaning of evidence code, and thus report was not sufficiently authenticated to be admissible over motorist's hearsay objection in administrative hearing to suspend his driver's license, where the report was not signed by one. Jacobson v. Gourley (App. 4 Dist. 2000) 100 Cal.Rptr.2d 349, 83 Cal.App.4th 1331. Automobiles 144.2(9.7); Automobiles 422.1

Trial court, in proceeding challenging administrative suspension of drivers license for driving while intoxicated, properly considered driver's hearsay evidence which indicated that second of three blood-alcohol breath tests was invalid due to presence of mouth alcohol, since hearsay evidence supplemented Department of Motor Vehicle's (DMV) evidence indicating that second test was invalid but which gave no explanation; also, statute which placed limitation on how hearsay evidence could be used in administrative adjudication was to serve as check on sufficiency of evidence to warrant license suspension, but did not expressly limit manner in which driver's evidence may be considered. Robertson v. Zolin (App. 4 Dist. 1996) 51 Cal.Rptr.2d 420, 44 Cal.App.4th 147. Automobiles 144.2(9.7); Automobiles 422.1

Testing laboratory's report of blood test results was admissible in proceeding to suspend motorist's driving privileges under public records exception to hearsay rule, absent evidence report was not properly prepared. Santos v. Depart-ment of Motor Vehicles (App. 1 Dist. 1992) 7 Cal.Rptr.2d 10, 5 Cal.App.4th 537, rehearing denied and modified , review denied. Evidence 333(1)

Vehicle Code provisions requiring Department of Motor Vehicles to determine whether person was driving motor vehicle with blood alcohol level of .08 percent or more on basis of police officer's report and to consider its "official records" did not establish hearsay exception for reports of chemical test results. Santos v. Department of Motor Vehicles (App. 1 Dist. 1992) 7 Cal.Rptr.2d 10, 5 Cal.App.4th 537, rehearing denied and modified , review nied. Evidence 333(1)

Hearsay statement of public employee, such as statement of police officer or blood-alcohol tester's written report of test results, is admissible at Department of Motor Vehicles (DMV) hearing and is sufficient in and of itself to support finding that driver's blood-alcohol concentration exceeded permissible limits, if statements meet criteria of public employee business record exception to hearsay rule. Burge v. Department of Motor Vehicles (App. 1 Dist. 1992) 7 Cal.Rptr.2d 5, 5 Cal.App.4th 384, rehearing denied and modified , review denied. Administrative Law And Procedure 461; Automobiles 144.2(9.7); Automobiles 144.2(10.2); Automobiles 411

28. Sufficiency of evidence--In general

School district, which terminated employment of school bus driver when she lost her license after being convicted of drunk driving, produced convincing proof to a reasonable certainty of the alleged misconduct to support her termination. California School Employees Ass'n v. Board of Trustees of Templeton Unified School Dist. (App. 2 Dist. 1983) 192 Cal.Rptr. 633, 144 Cal.App.3d 392. Schools 63(1)

In proceeding before state personnel board to determine fitness of certain referee of unemployment insurance appeals board, the weight of the evidence was for the determination of the personnel board. Leeds v. Gray (App. 1 Dist. 1952) 109 Cal.App.2d 874, 242 P.2d 48. Administrative Law And Procedure 793; Officers And Public Employees 72.55(1)

A determination of an administrative body must be supported by the evidence which would be admissible in a court of law. 14 Op.Atty.Gen. 155 (1949).

29. ---- Hearsay evidence, sufficiency of evidence

Officer's sworn "Officer's Statement" and his unsworn arrest report, each incorporating hearsay statement that fire captain, a non-peace officer, observed driver was driver of vehicle, were admissible in administrative hearing to suspend driver's license, as records by public employees, to prove driver was driving vehicle; in reporting his personal observations of seeing driver's vehicle stuck on railroad tracks to the reporting police officer, fire captain was acting pursuant to his duty to observe the facts and report them correctly. Hildebrand v. Department of Motor Vehicles (App. 4 Dist. 2007) 62 Cal.Rptr.3d 234, 152 Cal.App.4th 1562. Automobiles 144.2(9.7)

Substantial evidence supported rejection of application for real estate salesperson's license by the Department of Real Estate (DRE), based on applicant's previous disbarment as an attorney, where hearsay evidence in opinions of State Bar Court and Review Department and unpublished appellate court opinions affirming underlying fraud judgment against attorney by former client was used only to supplement or explain prior disbarment, and thus was permissible. Berg v. Davi (App. 3 Dist. 2005) 29 Cal.Rptr.3d 803, 130 Cal.App.4th 223, rehearing denied , review denied. Brokers 3

Although former teacher failed to appear at hearing before commission for teacher preparation and licensing which recommended revocation of teacher's credentials and failed to object to hearsay evidence, where only evidence presented by commission to support its findings was hearsay, evidence did not support revocation of credentials. Carl S. v. Commission for Teacher Preparation and Licensing (App. 2 Dist. 1981) 178 Cal.Rptr. 753, 126 Cal.App.3d 365. Schools 132

In an administrative proceeding, for revocation of license, hearsay evidence alone is insufficient to satisfy requirement of due process of law, and mere uncorroborated hearsay does not constitute substantial evidence. Dyer v. Watson (App. 1 Dist. 1953) 121 Cal.App.2d 84, 262 P.2d 873. Administrative Law And Procedure 327; Constitutional Law 4262; Licenses 38

Generally, in absence of special statutes, an administrative agency cannot over objection, make findings of facts supported solely by hearsay evidence. Steen v. Board of Civil Service Com'rs (1945) 26 Cal.2d 716, 160 P.2d 816. Administrative Law And Procedure 462; Administrative Law And Procedure 484.1

30. ---- Business licensing, generally, sufficiency of evidence

Fact that reports of New York and Arizona insurance commissioners containing allegations with respect to applicant for insurance agent's license involving violations of law, various other misdealings, mismanagement and missing company property were hearsay, was no reason for rejecting reports which applicant himself offered in response to inquiry from commissioner concerning prior dealings in insurance business, and reports constituted substantial evidence to support decision of commissioner that he was unable to find that applicant was of good business reputation. Goldberg v. Barger (App. 2 Dist. 1974) 112 Cal.Rptr. 827, 37 Cal.App.3d 987. Insurance 1615

In proceeding culminating in revocation of boxing matchmaker's license, retired police officer's testimony that individual with whom licensee had associated was considered a "racketeer, a hoodlum and a mobster" was hearsay and would not sustain finding that licensee had associated with a "notorious criminal and racketeer." Rudolph v. Athletic Commission of Cal. (App. 2 Dist. 1960) 1 Cal.Rptr. 898, 177 Cal.App.2d 1. Evidence 317(2); Public Amusement And Entertainment 29

A board commits an "abuse of discretion" when it revokes a license to conduct a legitimate business without substantial competent evidence establishing just cause for revocation, and hearsay evidence alone is insufficient to support revocation unless specially permitted by statute. Walker v. City of San Gabriel (1942) 20 Cal.2d 879, 129 P.2d 349. Licenses 38

31. ---- Medical licensing, sufficiency of evidence

Evidence that pharmacist refilled prescriptions for dexedrine, seconal and dexamyl even though no refills were authorized supported finding of board of pharmacy that pharmacist had refilled prescriptions for dangerous drugs without authorization of prescribing doctor in violation of Bus. & Prof.C. § 4229. O'Mara v. California State Bd. of Pharmacy (App. 2 Dist. 1966) 54 Cal.Rptr. 862, 246 Cal.App.2d 8. Controlled Substances 10

Conviction of physician for violating Internal Revenue Code did not in and of itself establish existence of moral turpitude and he could offer evidence in disciplinary proceedings on question of whether he intentionally and for personal gain filed false income tax returns. Morris v. Board of Medical Examiners (App. 2 Dist. 1964) 41 Cal.Rptr. 351, 230 Cal.App.2d 704. Health 207; Health 218

In proceeding to revoke physician's license for performing an abortion, testimony of woman, that before alleged abortion another physician had advised her that she was pregnant, was inadmissible as hearsay, and board of medical examiners was unauthorized to base any conclusion thereon. Lanterman v. Board of Medical Examiners of Cal. (App. 2 Dist. 1935) 4 Cal.App.2d 319, 40 P.2d 913. Evidence 314(2)

Board of medical examiners had no jurisdiction to revoke license to practice medicine, where evidence heard by board was hearsay. Rinaldo v. Board of Medical Examiners of Cal. (App. 2 Dist. 1928) 93 Cal.App. 72, 268 P. 1076. Health

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32. ---- Liquor licensing, sufficiency of evidence

Fact that persons of ill repute congregate in a certain bar is not cause for revocation or even indefinite suspension of liquor license, it being necessary that it be proved by competent evidence that solicitation of acts of prostitution actually took place on premises. Swegle v. State Bd. of Equalization (App. 1 Dist. 1954) 125 Cal.App.2d 432, 270 P.2d 518. Intoxicating Liquors 106(4)

33. ---- Teacher licensing, sufficiency of evidence

Male teacher who engaged with fellow male teacher in limited noncriminal physical relationship of homosexual nature in first teacher's apartment on four separate occasions in a one-week period was not subject to disciplinary action under Educ.C.1959, § 13202, authorizing revocation of a teacher's life diplomas for immoral conduct, unprofessional conduct, and acts involving moral turpitude, in absence of any evidence that first teacher's conduct indicated his unfitness to teach; disapproving Sarac v. State Bd. of Education, 249 Cal.App.2d 58, 57 Cal.Rptr. 69. Morrison v. State Bd. of Educ. (1969) 82 Cal.Rptr. 175, 1 Cal.3d 214, 461 P.2d 375. Schools 132

34. ---- Driver licensing, sufficiency of evidence

Evidence produced by department of motor vehicles, in proceeding relating to suspension of driver's license, if itself insufficient, may be supplemented by testimony of licensee on his own behalf. August v. Department of Motor Vehicles (App. 4 Dist. 1968) 70 Cal.Rptr. 172, 264 Cal.App.2d 52. Automobiles 144.2(10.1)

Hearsay evidence alone is insufficient to support revocation of license. Nardoni v. McConnell (1957) 48 Cal.2d 500, 310 P.2d 644. Licenses 38

35. Privilege

Where proceedings brought against certificated employee by school district were neither criminal nor before a court of justice, and commission on professional competence had no authority, in proceeding to compel employee to submit to a deposition, to prosecute or punish employee for a public offense, no privilege was afforded to employee by subd. (b) of this section giving each party right to call and examine witnesses, and employee could be compelled to appear and testify at his deposition and could only refuse to disclose a matter which might tend to incriminate him. San Francisco Unified School Dist. v. Superior Court for City and County of San Francisco (App. 1 Dist. 1981) 172 Cal.Rptr. 42, 116 Cal.App.3d 231. Schools 147.31

36. Failure to object

Objection to hearsay evidence is not necessary during administrative hearing to preserve issue of evidence's admissibility. McNary v. Department of Motor Vehicles (App. 4 Dist. 1996) 53 Cal.Rptr.2d 55, 45 Cal.App.4th 688. Administrative Law And Procedure 670

Regardless of whether hearsay evidence would have been admissible over objection in civil actions, hearsay evidence that prisoner had seen correctional officer passing “hot dog” books to another prisoner, although probative of officer's disposition toward that prisoner, had no tendency to prove officer's connection with prisoner's unauthorized letter and the testimony at most raised suspicion that the prisoner had transmitted the letter to officer. Martin v. State Personnel Bd. (App. 3 Dist. 1972) 103 Cal.Rptr. 306, 26 Cal.App.3d 573. Officers And Public Employees 72.62

Even if testimony, in liquor license suspension proceeding arising from violations of minimum price schedule, that monthly trade paper, which contained minimum price schedule, was mailed to every distilled spirits licensee in trading area, was inadmissible hearsay, licensee could not properly first raise hearsay objection before Alcoholic Beverage Control Appeals Board. Kirby v. Alcoholic Beverage Control Appeals Bd. (App. 1 Dist. 1970) 87 Cal.Rptr. 908, 8 Cal.App.3d 1009. Intoxicating Liquors 108.10(1)

Even if exhibit constituted objectionable hearsay, it was of probative value in absence of objection to it when it was offered by board of medical examiners entertaining application of drugless practitioner to take written examination for license as physician and surgeon. Savelli v. Board of Medical Examiners (App. 1 Dist. 1964) 40 Cal.Rptr. 171, 229 Cal.App.2d 124, certiorari denied 85 S.Ct. 940, 380 U.S. 934, 13 L.Ed.2d 821. Health 157

Hearsay, even at common law, if unobjected to when offered, had probative value, and occupies a similar position in an administrative proceedings. Fox v. San Francisco Unified School District (App. 1952) 111 Cal.App.2d 885, 245 P.2d 603. Administrative Law And Procedure 476; Trial 105(2)

37. Statute of limitations

Bar of statute of limitations is matter of defense in administrative proceeding and burden of proof is upon party asserting the bar. International Union of Operating Engineers, Local No. 12 v. Fair Employment Practice Commission (App. 2 Dist. 1969) 81 Cal.Rptr. 47, 276 Cal.App.2d 504, certiorari denied 90 S.Ct. 1356, 397 U.S. 1037, 25 L.Ed.2d 648. Administrative Law And Procedure 309.1; Limitation Of Actions 195(3)

38. Continuance

Motorist was deprived of the opportunity to present a meaningful defense in Department of Motor Vehicles (DMV) proceeding to suspend his driving privileges such that his due process rights were violated, where motorist's counsel requested blood alcohol test results approximately one month before suspension hearing but initially received the results only minutes before the hearing, and DMV hearing officer denied counsel's request for a continuance. Petrus v. State Dept. of Motor Vehicles (App. 4 Dist. 2011) 123 Cal.Rptr.3d 686, 194 Cal.App.4th 1240. Automobiles 144.2(1); Constitutional Law 4358

Hearing officer was not required to offer automobile driver a continuance for purpose of curing defects in the evidence, on driver's request for hearing on suspension of his license for driving with blood alcohol content greater than .08%; if driver felt continuance was necessary, it was incumbent upon him to request one. Imachi v. Department of Motor Vehicles (App. 1 Dist. 1992) 3 Cal.Rptr.2d 478, 2 Cal.App.4th 809, modified. Administrative Law And Procedure 468; Automobiles 144.2(1)

39. Mandamus

Notice which was sent to probationary school teacher on May 15, 1967 of governing board's decision not to rehire teacher for ensuing year but which was not sent after full compliance with statutorily prescribed procedural requirements, including opportunity for teacher to cross-examine witnesses as to reasons for decision not to rehire, was ineffective and could not serve as valid notice for subsequent action of governing board in determining not to rehire teacher after proceeding initiated by ineffective notice had been set aside by writ of mandate. Ward v. Fremont Unified School Dist. (App. 1 Dist. 1969) 80 Cal.Rptr. 815, 276 Cal.App.2d 313. Schools 147.34(2)

In mandamus proceedings by discharged stenographer of civil service board of city, who was dismissed by board, on ground that she was unable to perform duties of stenographer because of defective vision, superior court did not have right to judge of intrinsic value of evidence or to weigh it, and its power was confined to determining whether there

was substantial evidence before board to support its findings. Thompson v. City of Long Beach (1953) 41 Cal.2d 235, 259 P.2d 649. Mandamus 172

In mandamus proceedings by discharged stenographer of civil service board of city, who was dismissed by board, on ground that she was unable to perform duties of stenographer because of defective vision, superior court was bound to disregard medical evidence contrary to medical evidence received by board in support of its findings. Thompson v. City of Long Beach (1953) 41 Cal.2d 235, 259 P.2d 649. Mandamus 168(4)

40. Review

Administrative tribunal need not observe strict rules of evidence enforced in courts, and admission or rejected of evidence is not ground for reversal in absence of denial of justice. Kunimori Ohara v. Berkshire, 1935, 76 F.2d 204. Administrative Law And Procedure 313

Police officer's hearsay statement reporting blood test results could not be sole basis for suspension of an automobile driver's license for driving with blood alcohol content greater than .08% and where test result was improperly considered, appellate court could not assume trial court did not rely primarily upon it, though there was other evidence. Imachi v. Department of Motor Vehicles (App. 1 Dist. 1992) 3 Cal.Rptr.2d 478, 2 Cal.App.4th 809, modified. Automobiles 144.2(10.2)

Where psychologist did not appear at disciplinary hearing and was not called to testify by administrative agency, court hearing psychologist's appeal from denial of review of the revocation of his license would not consider challenge to validity of this section which permits an agency to call a respondent to testify. Cooper v. Board of Medical Examiners (App. 1 Dist. 1975) 123 Cal.Rptr. 563, 49 Cal.App.3d 931. Health 223(2)

Where only time that teacher sought to prove that charges against her had been discriminatorily instituted was before evidence was offered to hearing officer to sustain charges against her, trial court on review should not have found that she sought to raise issue of discrimination but should have found against truth of such allegations of her defense and of her petition in trial court. Feist v. Rowe (App. 4 Dist. 1970) 83 Cal.Rptr. 465, 3 Cal.App.3d 404. Schools 147.44

West's Ann. Cal. Gov. Code § 11513, CA GOVT § 11513

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Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 3. Executive Department (Refs & Annos)
Part 1. State Departments and Agencies (Refs & Annos)
Chapter 5. Administrative Adjudication: Formal Hearing (Refs & Annos)
➞➞ § 11514. Affidavits

(a) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subdivision (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefor is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subdivision (a) shall be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of proponent or his attorney) at (here insert address) that you wish to cross-examine him. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven days after the date of mailing or delivering the affidavit to the opposing party).

CREDIT(S)

(Added by Stats.1947, c. 491, p. 1471, § 6.)

HISTORICAL AND STATUTORY NOTES

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Former Notes

Former § 11514, added by Stats.1945, c. 867, p. 1632, § 1, relating to affidavits, was repealed by Stats.1947, c. 491, p. 1471, § 5. See this section.

Derivation

Former § 11514, added by Stats.1945, c. 867, p. 1632, § 1.

CROSS REFERENCES

Control of illegally taken fish and wildlife, hearing, see Fish and Game Code § 2584.
Hearsay evidence, see Evidence Code § 1200 et seq.
Home furnishings, disciplinary proceedings against nonresidents, continuance, see Business and Professions Code § 19215.6.
Party defined for purposes of this chapter, see Government Code § 11500.

CODE OF REGULATIONS REFERENCES

Agency alternatives to formal hearings-alternative dispute resolution, procedures at arbitration, see 1 Cal. Code of Regs. § 1252.

Appeal hearings, see 2 Cal. Code of Regs. § 1896.20.

Evidence submitted to the commission, see 2 Cal. Code of Regs. § 1187.5.

Fair employment and housing commission, default hearings, see 2 Cal. Code of Regs. § 7430.

Office of Administrative Hearings, prehearing conferences, see 1 Cal. Code of Regs. § 1026.

LAW REVIEW AND JOURNAL COMMENTARIES

Practice and procedure under California Administrative Procedure Act. Charles H. Bobby, 15 Hastings L.J. 258 (1964).

LIBRARY REFERENCES

2005 Main Volume

Administrative Law and Procedure 458.1.
Westlaw Topic No. 15A.
C.J.S. Public Administrative Law and Procedure §§ 124 to 125.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Administrative Law § 557, Use of Affidavits.

CA Jur. 3d Insurance Adjusters and Investigations § 30, Continuance.

Treatises and Practice Aids

Employment Coordinator Workplace Safety § 4:237, Use of Affidavits.

Miller and Starr California Real Estate § 4:42, Disciplinary Process--Hearing Procedure.

1 Witkin Cal. Evid. 4th Hearsay § 297, Affidavits.

1 Witkin Cal. Evid. 4th Introduction § 66, Incompetent Hearsay: Administrative Procedure Act.

1 Witkin Cal. Evid. 4th Introduction § 69, Administrative Procedure Act.

9 Witkin Cal. Proc. 5th Administrative Proceedings § 111, Evidence.

NOTES OF DECISIONS

1. Admissibility, generally

Under this section and § 11510, if the insurance department offers an affidavit and the applicant or licensee requests the right to cross-examine the affiant, the department need not produce the affiant for cross-examination before the affidavit can be entered into evidence, notwithstanding the witness resides outside the county of the hearing and at a distance of more than 100 miles, as set forth in § 11510(b). 6 Op.Atty.Gen. 219 (1945).

2. Admissibility as hearsay

Provision of Government Code which sets out procedure for using affidavits in lieu of direct testimony in proceedings governed by Administrative Procedure Act (APA) creates special further exception to hearsay rule for administrative proceedings and was obviously not intended to restrict admission in administrative proceedings of evidence falling within other exceptions to hearsay rule. Poland v. Department of Motor Vehicles (App. 1 Dist. 1995) 40 Cal.Rptr.2d 693, 34 Cal.App.4th 1128. Administrative Law And Procedure 461

Provision of Government Code which sets out procedure for using affidavits in lieu of direct testimony in proceedings governed by Administrative Procedure Act (APA) was irrelevant to admission of report of breath test admitted in license suspension hearing for motorist arrested for driving under influence where report was independently admissible under exception to hearsay rule for public records. Poland v. Department of Motor Vehicles (App. 1 Dist. 1995) 40 Cal.Rptr.2d 693, 34 Cal.App.4th 1128. Automobiles 411

3. Weight accorded affidavit

Statute pursuant to which affidavit may be introduced in evidence but may be given only same effect as other hearsay evidence if opportunity to cross-examine affiant is not afforded after proper request did not affect evidentiary weight to be accorded to laboratory report of blood test results in administrative license suspension proceeding, even though motor vehicle department failed to produce blood test analyst pursuant to motorist's purported request; weight to be accorded report depended on whether it would be admissible over objection in civil action. Monaghan v. Department of Motor Vehicles (App. 1 Dist. 1995) 42 Cal.Rptr.2d 167, 35 Cal.App.4th 1621. Automobiles 144.2(10.2)

For agencies under the Administrative Procedure Act, affidavits may serve as direct evidence if no request to cross-examine is made. Windigo Mills v. California Unemployment Ins. Appeals Bd. (App. 5 Dist. 1979) 155 Cal.Rptr. 63, 92 Cal.App.3d 586. Administrative Law And Procedure 462

Under this section and Government Code § 11510, where an affidavit is offered in evidence by the licensee or applicant and prior to the submission of the case for decision, and the presenting deputy of the department so requests, the licensee or applicant need not produce the affiant for cross-examination, but the affidavit remains subject to the limitations imposed by § 11513(c) and would in itself be insufficient to support a finding, notwithstanding that affiant may be beyond the range of subpoena under § 11510(b). 6 Op.Atty.Gen. 219 (1945).

4. Failure to provide copy

Admission, in license suspension proceeding, of expert's declaration, which asserted that licensee's blood may have fermented, resulting in inaccurate blood alcohol content determination, was erroneous, given licensee's failure to provide Department of Motor Vehicles (DMV) with copy of declaration prior to hearing, so as to give DMV opportunity to cross-examine expert, as statutorily required. McNary v. Department of Motor Vehicles (App. 4 Dist. 1996) 53 Cal.Rptr.2d 55, 45 Cal.App.4th 688. Automobiles 144.2(9.7); Automobiles 425

5. Failure to request cross-examination

Motorist subject to administrative per se order based on blood test allegedly revealing blood alcohol concentration of at least .08% did not adequately invoke procedures for subpoenaing blood alcohol analyst such that suspension had to be set aside due to failure by motor vehicle department to produce analyst; motorist's letter to department merely demanded affidavits that department intended to use, asserted motorist's general right of cross-examination, and objected to use of affidavits not timely provided; moreover, even if letter constituted request for issuance of subpoenas, motorist took no further steps to secure analyst's attendance and never asked hearing officer to either continue hearing or to issue subpoena. Monaghan v. Department of Motor Vehicles (App. 1 Dist. 1995) 42 Cal.Rptr.2d 167, 35 Cal.App.4th 1621. Automobiles 144.2(9.5)

Where automobile dealer did not exercise its right to demand the opportunity to cross-examine witnesses whose affidavits were admitted in evidence in proceeding challenging the revocation of the dealer's new car dealer's license, the dealer was not entitled to complain on appeal that it was deprived of any right by the admission of the affidavits into evidence. Park Motors, Inc. v. Director, Dept. of Motor Vehicles (App. 3 Dist. 1975) 122 Cal.Rptr. 337, 49 Cal.App.3d 12. Mandamus 187.4

6. Failure to produce affiant for cross-examination

Statute, pursuant to which affidavit may be introduced in evidence but may be given only same effect as other hearsay evidence if opportunity to cross-examine affiant is not afforded after proper request, could not serve as basis for ordering motor vehicle department to produce blood test analyst at administrative hearing on suspension of motorist's license based on his blood alcohol concentration; statute did not impose burden or obligation of producing affiant as witness for cross-examination, but only set forth consequences of failing to satisfy request. Monaghan v. Department of Motor Vehicles (App. 1 Dist. 1995) 42 Cal.Rptr.2d 167, 35 Cal.App.4th 1621. Automobiles

144.2(9.7); Automobiles 422.1

7. Failure to object to admission

Department of Motor Vehicles (DMV) did not waive its objections to admission in license suspension proceeding of expert's affidavit regarding determination of licensee's blood alcohol content when it failed to object at time affidavit was admitted. McNary v. Department of Motor Vehicles (App. 4 Dist. 1996) 53 Cal.Rptr.2d 55, 45 Cal.App.4th 688. Automobiles 144.2(2.1)

West's Ann. Cal. Gov. Code § 11514, CA GOVT § 11514

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Education Code (Refs & Annos)
Title 2. Elementary and Secondary Education (Refs & Annos)
Division 3. Local Administration (Refs & Annos)
Part 24. School Finance (Refs & Annos)
Chapter 4. State School Fund--Computation of Allowance (Refs & Annos)
Article 1. General Provisions (Refs & Annos)

➞➞ § 41601. Reports of average daily attendance

For the purposes of this chapter, the governing board of each school district shall report to the Superintendent of Public Instruction during each fiscal year the average daily attendance of the district for all full school months during (1) the period between July 1 and December 31, inclusive, to be known as the "first period" report for the first principal apportionment, and (2) the period between July 1 and April 15, inclusive, to be known as the "second period" report for the second principal apportionment. Each county superintendent of schools shall report the average daily attendance for the schools and classes maintained by him or her and the average daily attendance for the county school tuition fund.

Each report shall be prepared in accordance with instructions on forms prescribed and furnished by the Superintendent of Public Instruction. Average daily attendance shall be computed in the following manner:

(a) The average daily attendance in the regular elementary, middle, and high schools, including continuation schools and classes, opportunity schools and classes, and special day classes, maintained by the school districts shall be determined by dividing the total number of days of attendance allowed in all full school months in each period by the number of days the schools are actually taught in all full school months in each period, exclusive of Saturdays or Sundays and exclusive of weekend makeup classes pursuant to Section 37223.

(b) The attendance for schools and classes maintained by a county superintendent of schools and the county school tuition fund shall be reported in the same manner as reported by school districts. The average daily attendance in special education classes operated by county superintendents of schools shall be determined in the same manner as all other attendance under subdivision (a). The average daily attendance in all other schools and classes maintained by the county superintendents of schools shall be determined by dividing the total number of days of attendance in all full school months in the first period by a divisor of 70, in the second period by 135 and at annual time by 175. For attendance in special classes and centers pursuant to Section 56364 or Section 56364.2, as applicable, the average daily attendance shall be reported by the county superintendents of schools, but credited for revenue limit purposes to the district in which the pupil resides.

(c) The days of attendance in classes for adults and regional occupational centers programs shall be reported in the same manner as all other attendance under subdivision (a). The average daily attendance in those schools and classes shall be determined by dividing the total number of days of attendance in all full school months in the first period by a divisor of 85 in the second period by 135 and at annual time by 175.

CREDIT(S)

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1977, c. 36, § 161, eff. April 29, 1977, operative April 30, 1977; Stats.1977, c. 570, § 3; Stats.1980, c. 1353, p. 4803, § 9, eff. Sept. 30, 1980; Stats.1980, c. 1354, p. 4862, § 37.5, eff. Sept. 30, 1980; Stats.1981, c. 1044, p. 3997, § 2; Stats.1983, c. 915, § 3; Stats.1989, c. 838, § 1; Stats.1992, c. 759 (A.B.1248), § 13, eff. Sept. 21, 1992; Stats.1995, c. 91 (S.B.975), § 28; Stats.1997, c. 825 (A.B.287), § 11, eff. Oct. 9, 1997; Stats.1998, c. 89 (A.B.598), § 11, eff. June 30, 1998, operative July 1, 1998; Stats.1998, c. 691 (S.B.1686), § 8.)

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Education Code (Refs & Annos)
Title 2. Elementary and Secondary Education (Refs & Annos)
Division 4. Instruction and Services (Refs & Annos)
Part 30. Special Education Programs (Refs & Annos)
Chapter 7.2. Special Education Funding (Refs & Annos)
Article 1. Administration (Refs & Annos)

§ 56836. Computation of apportionments

Commencing with the 1998-99 fiscal year and for each fiscal year thereafter, apportionments to special education local plan areas for special education programs operated by, and services provided by, districts, county offices, and special education local plan areas shall be computed pursuant to this chapter.

§ 56836.01. Responsibilities of administrators of special education local plan areas

Commencing with the 1998-99 fiscal year and each fiscal year thereafter, the administrator of each special education local plan area, in accordance with the local plan approved by the board, shall be responsible for the following:

(a) The fiscal administration of the annual budget plan pursuant to paragraph (1) of subdivision (b) of Section 56205 and annual allocation plan for multidistrict special education local plan areas pursuant to Section 56836.05 for special education programs of school districts and county superintendents of schools composing the special education local plan area.

(b) The allocation of state and federal funds allocated to the special education local plan area for the provision of special education and related services by those entities.

(c) The reporting and accounting requirements prescribed by this part.

§ 56836.02. Apportionments for districts and county offices; regionalized services and program specialists

(a) The superintendent shall apportion funds from Section A of the State School Fund to districts and county offices of education in accordance with the allocation plan adopted pursuant to Section 56836.05, unless the allocation plan specifies that funds be apportioned to the administrative unit of the special education local plan area. If the allocation plan specifies that funds be apportioned to the administrative unit of the special education local plan area, the administrator of the special education local plan area shall, upon receipt, distribute the funds in accordance with the method adopted pursuant to subdivision (i) of Section 56195.7. The allocation plan shall, prior to submission to the superintendent, be approved according to the local policymaking process established by the special education local plan area.

(b) The superintendent shall apportion funds for regionalized services and program specialists from Section A of the State School Fund to the administrative unit of each special education local plan area. Upon receipt, the administrator of a special education local plan area shall direct the administrative unit of the special education local plan area to distribute the funds in accordance with the budget plan adopted pursuant to paragraph (1) of subdivision (b) of Section 56205.

➞§ 56836.03. Revised local plans; transition guidelines; division of local plan areas

(a) On or after January 1, 1998, each special education local plan area shall submit a revised local plan. Each special education local plan area shall submit its revised local plan not later than the time it is required to submit its local plan pursuant to subdivision (b) of Section 56100 and the revised local plan shall meet the requirements of Chapter 3 (commencing with Section 56205).

(b) Until the board has approved the revised local plan and the special education local plan area begins to operate under the revised local plan, each special education local plan area shall continue to operate under the programmatic, reporting, and accounting requirements prescribed by the State Department of Education for the purposes of Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998. The department shall develop transition guidelines, and, as necessary, transition forms, to facilitate a transition from the reporting and accounting methods required for Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998, and related provisions of this part, to the reporting and accounting methods required for this chapter. Under no circumstances shall the transition guidelines exceed the requirements of the provisions described in paragraphs (1) and (2). The transition guidelines shall, at a minimum, do the following:

(1) Describe the method for accounting for the instructional service personnel units and caseloads, as required by Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998.

(2) Describe the accounting that is required to be made, if any, for the purposes of Sections 56030, 56140, 56156.4, 56361.5, 56362, 56363.3, 56366.2, 56366.3, 56441.5, and 56441.7.

(c) Commencing with the 1997-98 fiscal year, through and including the fiscal year in which equalization among special education local plan areas has been achieved, the board shall not approve any proposal to divide a special education local plan area into two or more units, unless the division has no net impact on state costs for special education; provided, however, that the board may approve a proposal that was initially submitted to the department prior to January 1, 1997.

➞§ 56836.04. Monitoring and review of special education programs; assurance of proper expenditures

(a) The Superintendent continuously shall monitor and review all special education programs approved under this part to ensure that all funds appropriated to special education local plan areas under this part are expended for the purposes intended.

(b) Funds apportioned to special education local plan areas pursuant to this chapter are to assist local educational agencies to provide special education and related services to individuals with exceptional needs and shall be expended exclusively for programs operated under this part.

➞§ 56836.05. Time for apportionments; multidistrict areas; changes in administrative units

(a) Apportionments made under this part shall be made by the superintendent as early as practicable in the fiscal year. Upon order of the superintendent, the Controller shall draw warrants upon the money appropriated, in favor of the eligible special education local plan areas.

(b) If the special education local plan area is a multidistrict special education local plan area, and the approved allocation plan does not specify that funds will be apportioned to the special education local plan area administrative unit, the special education local plan area shall submit to the superintendent an annual allocation plan to allocate funds received in accordance with this chapter among the local educational agencies within the special education

local plan area. The annual allocation plan may be revised during any fiscal year, and these revisions may be submitted to the superintendent as amendments. The amendments shall, prior to submission to the superintendent, be approved according to the policymaking process established by the special education local plan area.

(c) If funds are apportioned to a special education local plan area administrative unit in the 1998-99 fiscal year and the special education local plan area administrative unit is changed in the 1998-99 fiscal year or thereafter, monthly payments shall be made according to the schedule in paragraph (2) of subdivision (a) of Section 14041 unless all local educational agencies are on the same schedule. If all local educational agencies are on the same schedule, the appropriate schedule in paragraph (2), (7), or (8) of subdivision (a) of Section 14041 shall apply.

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Division 4. Instruction and Services (Refs & Annos)
Part 30. Special Education Programs (Refs & Annos)
Chapter 7.2. Special Education Funding (Refs & Annos)
Article 2. Computation of Apportionments (Refs & Annos)

§ 56836.06. Definitions

For the purposes of this article, the following terms or phrases shall have the following meanings, unless the context clearly requires otherwise:

(a) "Average daily attendance reported for the special education local plan area" means the total of the following:

(1) The total number of units of average daily attendance reported for the second principal apportionment pursuant to Section 41601 for all pupils enrolled in the district or districts that are a part of the special education local plan area.

(2) The total number of units of average daily attendance reported pursuant to subdivisions (a) and (b) of Section 41601 for all pupils enrolled in schools operated by the county office or offices that compose the special education local plan area, or for those county offices that are a part of more than one special education local plan area, that portion of the average daily attendance of pupils enrolled in the schools operated by the county office that are under the jurisdiction of the special education local plan area.

(b) For the purposes of computing apportionments pursuant to this chapter for the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area, the term "average daily attendance" shall mean the total number of units of average daily attendance reported for the second principal apportionment pursuant to subdivisions (a) and (b) of Section 41601 for all pupils enrolled in districts within Los Angeles County and all schools operated by the Los Angeles County Office of Education and the districts within Los Angeles County.

(c) "Special education local plan area" includes the school district or districts and county office or offices of education composing the special education local plan area.

(d) "The fiscal year in which equalization among special education local plan areas has been achieved" means the first fiscal year in which each special education local plan area is funded at or above the statewide target amount per unit of average daily attendance, as computed pursuant to Section 56836.11.

(e) For a charter school deemed a local educational agency for the purposes of special education, an amount equal to the amount computed pursuant to Section 56836.08 for the special education local plan area in which the charter school is included shall be apportioned by the State Department of Education pursuant to the local allocation plan developed pursuant to subdivision (i) of Section 56195.7 or 56836.05, or both. If the charter school is a participant in a local plan which only includes other charter schools pursuant to subdivision (f) of Section 56195.1, the amount computed pursuant to Section 56836.11, as adjusted for any amount for which the special education local plan area is eligible pursuant to the incidence multiplier set forth in Section 56836.155, shall be apportioned by the depart-

ment pursuant for each unit of average daily attendance reported pursuant to subdivision (a).

➞§ 56836.07. Allocation of funds for the special education local plan area under section 56331; proportionate share to the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area

For the 2004-05 fiscal year and each fiscal year thereafter for which there is an appropriation in the annual Budget Act for this purpose, the Superintendent shall allocate funds per unit of average daily attendance, as defined in Section 56836.06, reported for the special education local plan area to a special education local plan area for the purposes of Section 56331. For the 2004-05 fiscal year and each fiscal year thereafter for which there is an appropriation in the annual Budget Act for this purpose, the Superintendent shall determine a proportionate share, consistent with existing law, to the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area based on the ratio of the amount per unit of average daily attendance determined pursuant to Section 56836.10 to the amount of the statewide target per unit of average daily attendance determined pursuant to Section 56836.11.

➞§ 56836.08. Computations to determine funding for each local plan area; general fund moneys

(a) For the 1998-99 fiscal year, the superintendent shall make the following computations to determine the amount of funding for each special education local plan area:

(1) Add the amount of funding per unit of average daily attendance computed for the special education local plan area pursuant to paragraph (1) of subdivision (a) of Section 56836.10 to the inflation adjustment computed pursuant to subdivision (d) for the 1998-99 fiscal year.

(2) Multiply the amount computed in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the 1997-98 fiscal year, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010, as that subdivision read on July 1, 1996.

(3) Add the actual amount of the equalization adjustment, if any, computed for the 1998-99 fiscal year pursuant to Section 56836.14 to the amount computed in paragraph (2).

(4) Add or subtract, as appropriate, the adjustment for growth computed pursuant to Section 56836.15 from the amount computed in paragraph (3).

(b) For the 1999-2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of funding for each special education local plan area for the fiscal year in which the computation is made:

(1) Add the amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year pursuant to Section 56836.10 to the inflation adjustment computed pursuant to subdivision (d) for the fiscal year in which the computation is made.

(2) Multiply the amount computed in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the prior fiscal year.

(3) Add the actual amount of the equalization adjustment, if any, computed for the special education local plan area for the fiscal year in which the computation is made pursuant to Section 56836.14 to the amount computed in paragraph (2).

(4) Add or subtract, as appropriate, the adjustment for growth or decline in enrollment, if any, computed for the special education local plan area for the fiscal year in which the computation is made pursuant to Section 56836.15 from the amount computed in paragraph (3).

(c) For the 1998-99 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of General Fund moneys that the special education local plan area may claim:

(1) Add the total of the amount of property taxes for the special education local plan area pursuant to Section 2572 for the fiscal year in which the computation is made to the amount of federal funds allocated for the purposes of paragraph (1) of subdivision (a) of Section 56836.09 for the fiscal year in which the computation is made.

(2) Add the amount of funding computed for the special education local plan area pursuant to subdivision (a) for the 1998-99 fiscal year, and commencing with the 1999-2000 fiscal year and each fiscal year thereafter, the amount computed for the fiscal year in which the computations were made pursuant to subdivision (b) to the amount of funding computed for the special education local plan area pursuant to Article 3 (commencing with Section 56836.16).

(3) Subtract the sum computed in paragraph (1) from the sum computed in paragraph (2).

(d) For the 1998-99 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the inflation adjustment for the fiscal year in which the computation is made:

(1) For the 1998-99 fiscal year, multiply the sum of the statewide target amount per unit of average daily attendance for special education local plan areas for the 1997-98 fiscal year computed pursuant to paragraph (3) of subdivision (a) of Section 56836.11 and the amount determined pursuant to paragraph (e) of Section 56836.155 for the 1997-98 fiscal year that corresponds to the amount determined pursuant to paragraph (1) of subdivision (d) of Section 56836.155 by the inflation adjustment computed pursuant toSection 42238.1 for the 1998-99 fiscal year.

(2) For the 1999-2000 fiscal year and each fiscal year thereafter, multiply the sum of the statewide target amount per unit of average daily attendance for special education local plan areas for the prior fiscal year computed pursuant to Section 56836.11 and the amount determined pursuant to paragraph (1) of subdivision (d) of Section 56836.155 for the prior fiscal year by the inflation adjustment computed pursuant to Section 42238.1 for the fiscal year in which the computation is made.

(3) For the purposes of computing the inflation adjustment for the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area for the 1998-99 fiscal year and each fiscal year thereafter, the superintendent shall multiply the amount of funding per unit of average daily attendance computed for that special education local plan area for the prior fiscal year pursuant to Section 56836.10 by the inflation adjustment computed pursuant to Section 42238.1 for the fiscal year in which the computation is being made.

(e) For the 1998-99 fiscal year and each fiscal year thereafter to and including the 2002-03 fiscal year, the superintendent shall perform the calculation set forth in Section 56836.155 to determine the adjusted entitlement for the incidence of disabilities for each special education local plan area, but this amount shall not be used in the next fiscal year to determine the base amount of funding for each special education local plan area for the current fiscal year, except as specified in this article.

➞**§ 56836.09. Computation of funding for 1997-98 fiscal year; base for computation of 1998-99 fiscal year amounts**

For the purpose of computing the amount to apportion to each special education local plan area for the 1998-99 fiscal year, the superintendent shall compute the total amount of funding received by the special education local plan area for the 1997-98 fiscal year as follows:

(a) Add the following amounts that were received for the 1997-98 fiscal year:

(1) The total amount of federal funds apportioned to the special education local plan area pursuant to subdivisions (b) and (h) of the Schedule in Item 6110-161-0890 of Section 2.00 of the Budget Act of 1997 for the purposes of special education for individuals with exceptional needs enrolled in kindergarten and grades 1 to 12, inclusive.

(2) The total amount of property taxes allocated to the special education local plan area pursuant to Section 2572, excluding any property taxes used to fund a program for individuals with exceptional needs younger than three years of age in the special education local plan area for the 1997-98 fiscal year.

(3) The total amount of General Fund moneys allocated to the special education local plan area pursuant to Chapter 7 (commencing with Section 56700) plus the total amount received for equalization pursuant to Chapter 7.1 (commencing with Section 56835), as those chapters existed on December 31, 1998.

(4) The total amount of General Fund moneys allocated to another special education local plan area for any pupils with exceptional needs who are served by the other special education local plan area but who are residents of the special education local plan area for which this computation is being made.

(b) Add the following amounts received in the 1997-98 fiscal year:

(1) The total amount determined for the special education local plan area for the purpose of providing nonpublic, nonsectarian school services to licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities for the 1997-98 fiscal year pursuant to Article 3 (commencing with Section 56836.16).

(2) The total amount of General Fund moneys allocated for any pupils with exceptional needs who are served by the special education local plan area but who do not reside within the boundaries of the special education local plan area.

(3) The total amount of General Fund moneys allocated to the special education local plan area to perform the regionalized operations and services functions listed in Article 6 (commencing with Section 56836.23) and to provide the direct instructional support of program specialists in accordance with Section 56368.

(4) The total amount of General Fund moneys allocated to the special education local plan area for individuals with exceptional needs younger than three years of age pursuant to Chapter 7 (commencing with Section 56700), as that chapter existed on December 31, 1998.

(5) The total amount of General Fund moneys allocated to local educational agencies within the special education local plan area pursuant to Section 56771, as that section existed on December 31, 1998, for specialized books, materials, and equipment for pupils with low-incidence disabilities.

(c) Subtract the sum computed in subdivision (b) from the sum computed in subdivision (a).

➡ **§ 56836.095. 2001-2002 fiscal year computations**

For the 2001-02 fiscal year, the superintendent shall make the following computations in the following order:

(a) Calculate and carry out the equalization adjustments authorized pursuant to Sections 56836.12 and 56836.14.

(b) Complete the calculations required to adjust the statewide total average daily attendance pursuant to Section 56836.156, and adjust the statewide target per unit of average daily attendance for the 2001-02 fiscal year in accordance with this calculation.

(c) Determine and provide the amount of funding required for the special disabilities adjustment pursuant to Section 56836.155.

(d) Compute and distribute the amount of funding appropriated for increasing the statewide target amount per unit of average daily attendance pursuant to Section 56836.158.

(e) Compute and provide a permanent adjustment for each special education local plan area pursuant to Section 56836.159.

➞§ 56836.10. Amount of funding per unit of average daily attendance; computations

(a) The superintendent shall make the following computations to determine the amount of funding per unit of average daily attendance for each special education local plan area for the 1998-99 fiscal year:

(1) Divide the amount of funding for the special education local plan area computed for the 1997-98 fiscal year pursuant to Section 56836.09 by the number of units of average daily attendance, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010 as that subdivision read on July 1, 1997, reported for the special education local plan area for the 1997-98 fiscal year.

(2) Add the amount computed in paragraph (1) to the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the 1998-99 fiscal year.

(b) Commencing with the 1999-2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of funding per unit of average daily attendance for each special education local plan area for the fiscal year in which the computation is made:

(1) For the 1999-2000 fiscal year, divide the amount of funding for the special education local plan area computed for the 1998-99 fiscal year pursuant to subdivision (a) of Section 56836.08 by the number of units of average daily attendance upon which funding is based pursuant to subdivision (a) of Section 56836.15 for the special education local plan area for the 1998-99 fiscal year.

(2) For the 2000-01 fiscal year, and each fiscal year thereafter, divide the amount of funding for the special education local plan area computed for the prior fiscal year pursuant to subdivision (b) of Section 56836.08 by the number of units of average daily attendance upon which funding is based pursuant to subdivision (a) of Section 56836.15 for the special education local plan area for the prior fiscal year.

➞§ 56836.11. Statewide target amount per unit of average daily attendance; computation of equalization and other adjustments for fiscal years

(a) For the purpose of computing the equalization adjustment for special education local plan areas for the 1998-99 fiscal year, the Superintendent shall make the following computations to determine the statewide target amount per

unit of average daily attendance for special education local plan areas:

(1) Total the amount of funding computed for each special education local plan area exclusive of the amount of funding computed for the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area, pursuant to Section 56836.09 for the 1997-98 fiscal year.

(2) Total the number of units of average daily attendance reported for each special education local plan area for the 1997-98 fiscal year, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010 as that section read on July 1, 1996, and exclusive of the units of average daily attendance computed for the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area.

(3) Divide the sum computed in paragraph (1) by the sum computed in paragraph (2) to determine the statewide target amount for the 1997-98 fiscal year.

(4) Add the amount computed in paragraph (3) to the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the 1998-99 fiscal year to determine the statewide target amount for the 1998-99 fiscal year.

(b) Commencing with the 1999-2000 fiscal year to the 2004-05 fiscal year, inclusive, to determine the statewide target amount per unit of average daily attendance for special education local plan areas, the Superintendent shall multiply the statewide target amount per unit of average daily attendance computed for the prior fiscal year pursuant to this section by one plus the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

(c) Commencing with the 2005-06 fiscal year and each fiscal year thereafter, to determine the statewide target amount per unit of average daily attendance for special education local plan areas for the purpose of computing the incidence multiplier pursuant to Section 56836.155, the Superintendent shall add the statewide target amount per unit of average daily attendance computed for the prior fiscal year for this purpose to the amount computed in paragraph (2) of subdivision (d) or paragraph (2) of subdivision (e), as appropriate.

(d) For the 2005-06 fiscal year, the Superintendent shall make the following computation to determine the statewide target amount per unit of average daily attendance to determine the inflation adjustment pursuant to paragraph (2) of subdivision (d) of Section 56836.08 and growth pursuant to subdivision (c) of Section 56836.15, as follows:

(1) The 2004-05 fiscal year statewide target amount per unit of average daily attendance less the sum of the 2004-05 fiscal year total amount of federal funds apportioned pursuant to Schedule (1) in Item 6110-161-0890 of Section 2.00 of the Budget Act of 2004 for the purposes of special education for individuals with exceptional needs enrolled in kindergarten and grades 1 to 12, inclusive, divided by the total average daily attendance computed for the 2004-05 fiscal year.

(2) Multiply the amount computed in paragraph (1) by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

(3) Add the amounts computed in paragraphs (1) and (2).

(e) Commencing with the 2006-07 fiscal year and each fiscal year thereafter, the Superintendent shall make the following computation to determine the statewide target amount per unit of average daily attendance for special education local plan areas for the purpose of computing the inflation adjustment pursuant to paragraph (2) of subdivision (d) of Section 56836.08 and growth pursuant to subdivision (c) of Section 56836.15:

(1) The statewide target amount per unit of average daily attendance computed for the prior fiscal year pursuant to this section.

(2) Multiply the amount computed in paragraph (1) by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

(3) Add the amounts computed in paragraphs (1) and (2).

➞§ 56836.12. Local plan areas with amount per unit of average daily attendance below the statewide target amount; computation of equalization adjustment

(a) For the purpose of computing the equalization adjustment for special education local plan areas for the 1998-99 fiscal year, the superintendent shall make the following computations to determine the amount that each special education local plan area that has an amount per unit of average daily attendance that is below the statewide target amount per unit of average daily attendance may request as an equalization adjustment:

(1) Subtract the amount per unit of average daily attendance computed for the special education local plan area pursuant to subdivision (a) of Section 56836.10 from the statewide target amount per unit of average daily attendance determined pursuant to subdivision (a) of Section 56836.11.

(2) If the remainder computed in paragraph (1) is greater than zero, multiply that remainder by the number of units of average daily attendance reported for the special education local plan area for the 1997-98 fiscal year, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010, as that section read on July 1, 1996.

(b) Commencing with the 1999-2000 fiscal year, through and including the fiscal year in which equalization among the special education local plan areas has been achieved, the superintendent shall make the following computations to determine the amount that each special education local plan area that has an amount per unit of average daily attendance that is below the statewide target amount per unit of average daily attendance may request as an equalization adjustment:

(1) Add to the amount per unit of average daily attendance computed for the special education local plan area pursuant to subdivision (b) of Section 56836.10 for the fiscal year in which the computation is made the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the fiscal year in which the computation is made.

(2) Subtract the amount computed pursuant to paragraph (1) from the statewide target amount per unit of average daily attendance computed pursuant to subdivision (b) of Section 56836.11 for the fiscal year in which the computation is made.

(3) If the remainder computed in paragraph (2) is greater than zero, multiply that remainder by the number of units of average daily attendance reported for the special education local plan area for the prior fiscal year, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010, as that section read on July 1, 1996.

(c) This section shall not apply to the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area.

APPLICATION

<By its own terms, this section does not apply to the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area.>

➞§ 56836.13. Computation of amounts available for making equalization adjustments

Commencing with the 1998-99 fiscal year, through and including the fiscal year in which equalization among the special education local plan areas has been achieved, the superintendent shall make the following computations to determine the amount available for making equalization adjustments for the fiscal year in which the computation is made:

(a) Subtract the prior fiscal year funds pursuant to paragraph (1) of subdivision (c) of Section 56836.08 from the current fiscal year funds pursuant to paragraph (1) of subdivision (c) of Section 56836.08.

(b) The amount of any increase in federal funds computed pursuant to subdivision (a) shall result in a reduction in state general funds computed pursuant to paragraph (3) of subdivision (c) of Section 56836.08. This is the amount of state general funds that shall be designated in the annual Budget Act for the purpose of Section 56836.12, as augmented by any deficiency appropriation, for the purposes of equalizing funding for special education local plan areas pursuant to this chapter.

(c) Until the actual amount of any increase in federal funds pursuant to subdivision (a) can be determined for the current fiscal year, equalization apportionments pursuant to Section 56836.12 shall be certified based on the authority available in Item 6110-161-0001 of the Budget Act of 1998, or its successor in the annual Budget Act.

➞§ 56836.14. Local plan areas with amount per unit of average daily attendance below the statewide target amount; computation of actual amount of equalization adjustment

Commencing with the 1998-99 fiscal year, through and including the fiscal year in which equalization among the special education local plan areas has been achieved, the superintendent shall make the following computations to determine the actual amount of the equalization adjustment for each special education local plan area that has an amount per unit of average daily attendance that is below the statewide target amount per unit of average daily attendance:

(a) Add the amount determined for each special education local plan area pursuant to Section 56836.12 for the fiscal year in which the computation is made to determine the total statewide aggregate amount necessary to fund each special education local plan area at the statewide target amount per unit of average daily attendance for special education local plan areas.

(b) Divide the amount computed in subdivision (a) by the amount computed pursuant to Section 56836.13 to determine the percentage of the total amount of funds necessary to fund each special education local plan area at the statewide target amount per unit of average daily attendance for special education local plan areas that are actually available for that purpose.

(c) To determine the amount to allocate to the special education local plan area for a special education local plan area equalization adjustment, multiply the amount computed for the special education local plan area pursuant to Section 56836.12, if any, by the percentage determined in subdivision (b).

➞§ 56836.15. Mitigation of effects of declining enrollment

(a) In order to mitigate the effects of any declining enrollment, commencing in the 1998-99 fiscal year, and each fiscal year thereafter, the superintendent shall calculate allocations to special education local plan areas based on the average daily attendance reported for the special education local plan area for the fiscal year in which the computation is made or the prior fiscal year, whichever is greater. However, the prior fiscal year average daily attendance reported for the special education local plan area shall be adjusted for any loss or gain of average daily attendance reported for the special education local plan area due to a reorganization or transfer of territory in the special education local plan area.

(b) For the 1998-99 fiscal year only, the prior year average daily attendance used in this section shall be the 1997-98 average daily attendance reported for the special education local plan area, exclusive of average daily attendance for absences excused pursuant to subdivision (b) of Section 46010, as that section read on July 1, 1996.

(c) If in the fiscal year for which the computation is made, the number of units of average daily attendance upon which allocations to the special education local plan area are based is greater than the number of units of average daily attendance upon which allocations to the special education local plan area were based in the prior fiscal year, the special education local plan area shall be allocated a growth adjustment equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2).

(1) The statewide target amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11, added to the amount determined in paragraph (1) of subdivision (d) of Section 56836.155.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

(d) If in the fiscal year for which the computation is made, the number of units of average daily attendance upon which allocations to the special education local plan area are based is less than the number of units of average daily attendance upon which allocations to the special education local plan area were based in the prior fiscal year, the special education local plan area shall receive a funding reduction equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2):

(1) The amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

(e) If, in the fiscal year for which the computation is made, the number of units of average daily attendance upon which the allocations to the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area are based is greater than the number of units of average daily attendance upon which the allocations to that special education local plan area were based in the prior fiscal year, that special education local plan area shall be allocated a growth adjustment equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2).

(1) The amount of funding per unit of average daily attendance computed for the special education local plan area

for the prior fiscal year pursuant to Section 56836.10 multiplied by one plus the inflation adjustment computed pursuant to Section 42238.1 for the fiscal year in which the computation is being made.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

END OF DOCUMENT

Effective: October 7, 2005

West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 2. Elementary and Secondary Education (Refs & Annos)
Division 4. Instruction and Services (Refs & Annos)
Part 30. Special Education Programs (Refs & Annos)
Chapter 7.2. Special Education Funding (Refs & Annos)
Article 7. Federal Funding Allocations (Refs & Annos)

➡➡ § 56844. Use of federal funds to satisfy state-mandated funding obligations to local educational agencies

In complying with paragraph (17), regarding the prohibition against supplantation of federal funds, and paragraph (18), regarding maintenance of state financial support for special education and related services, of subsection (a) of Section 1412 of Title 20 of the United States Code, the state may not use funds paid to it under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) to satisfy state-mandated funding obligations to local educational agencies, including funding based on pupil attendance or enrollment, or on inflation.

CREDIT(S)

(Added by Stats.2005, c. 653 (A.B.1662), § 54, eff. Oct. 7, 2005.)

HISTORICAL AND STATUTORY NOTES

2013 Electronic Pocket Part Update

2005 Legislation

For legislative findings and declarations, cost reimbursement provisions, and urgency effective provisions relating to Stats.2005, c. 653 (A.B.1662), see Historical and Statutory Notes under Education Code § 33590.

Former Notes

Former § 56844, added by Stats.1993, c. 688 (A.B.1242), § 2, relating to provision of educational and supportive services through an emotionally disturbed children pilot project, was repealed by its own terms, operative Jan. 1, 1997.

West's Ann. Cal. Educ. Code § 56844, CA EDUC § 56844

Current with all 2012 Reg.Sess. laws, Gov.Reorg.Plan No. 2 of 2011-2012, and all propositions on 2012 ballots.

END OF DOCUMENT

C

HENRY BOSSERT and EFFIE BOSSERT, Appellants,
v.
SOUTHERN PACIFIC COMPANY (a Corporation), et al., Respondents.

Supreme Court of California.
S. F. No. 6916.
April 24, 1916.

NEGLIGENCE—EVIDENCE—PRIMA FACIE CASE FOR PLAINTIFF—APPEAL FROM JUDGMENT FOR DEFENDANT.

The fact that the plaintiff in an action to recover damages for bodily injuries caused by the defendant's alleged negligence made out a *prima facie* case does not of necessity require the reversal of a judgment for the defendant. The plaintiffs' proof may have been overcome by that of the defense, and in the absence of any showing or claim that it did not, it will be presumed on appeal that the jury decided for the defendant in accordance with the weight of the evidence.

ID.—MISCONDUCT OF JUDGE—DISPARAGING REMARKS TO WITNESS.

Severely disparaging remarks addressed by the judge to a witness produced by the plaintiff as a medical expert, after he had given false testimony as to his medical qualifications, and the court had refused to allow him to testify as an expert, will not warrant a reversal, especially where the plaintiffs fail to point out wherein the verdict is unjust or unsupported by the evidence.

ID.—INSTRUCTIONS—PRIOR INJURIES TO PLAINTIFF.

Where there was evidence tending to show that the plaintiff had received certain injuries long prior to the accident complained of, and was still suffering therefrom, and had received no injury on the occasion mentioned in the complaint, an instruction to the jury "that if they believed that the plaintiff did not receive any injuries at the time of the accident mentioned in the complaint, then it was unimportant whether that accident was caused by the negligence of the defendant or not, and that if they believed any injury proved to have been sustained by her was sustained prior to the time of the accident alleged in the complaint, and that none of the defendants were responsible for those injuries so sustained by her," they must find for the defendants, does not require the jury to find for the defendant even if they believed that the plaintiff had received the injury complained of and that it was caused by the negligence of the defendant.

APPEAL from a judgment of the Superior Court of Santa Cruz County. Lucas F. Smith, Judge.

The facts are stated in the opinion of the court.

***504** John H. Leonard, for Appellants.

Charles M. Cassin, and James L. Atteridge, for Respondents.

***505** SHAW, J.

The plaintiffs appeal from the judgment. The record was prepared in the mode provided in sections 953a, 953b, and 953c of the Code of Civil Procedure, and is in typewriting.

The first ground urged for reversal is "that plaintiffs made out a *prima facie* case." The plaintiffs do not print in their brief any statement which enables us to ascertain the nature of the action. We learn from the defendants' brief that it was an action to recover damages for bodily injuries alleged to have been caused to Effie Bossert by the negligence of the defendant. The fact that plaintiffs made out a *prima facie* case does not of necessity require a reversal. The proof of plaintiffs may have been overcome by that of the defense. In the absence of any showing or claim that it did not, we will presume that the jury decided for the defendants in accordance with the weight of the evidence.

The plaintiffs called a witness to testify as a physician regarding the nature of the injuries claimed to have been inflicted. On the examination as to his qualifications as an expert witness, he first testified that he was a graduate of the medical college of Miami University, in Ohio. On cross-examination he confessed that this testimony was false, and that he was

not a graduate of any medical college, or a regular practicing physician of any recognized school of medicine. The court refused to allow him to testify as an expert, and struck out some testimony which he had given before his want of qualifications was disclosed. At the close of the examination regarding his qualifications, the judge asked him if he understood the nature of an oath, and further stated that it would be his duty to call the attention of the grand jury to his testimony, saying to him that he was old enough to know better than to testify in such a way and to attempt to deceive the court and jury. This conduct, it is claimed, was prejudicial to the plaintiffs. It clearly appeared that the witness had given false testimony. The remarks of the court to the witness were not without cause. They were addressed to the witness, not to the jury. It would have been better if the court had not spoken to him during the trial or in the presence of the jury. But the testimony of the witness was properly excluded because it was incompetent. The episode had no real bearing on the case, and was no part of the evidence. The production of such a witness and his egregious***506** failure to qualify may have had some effect to prejudice the jury against the plaintiffs. This, however, was caused by their failure to ascertain the character of their witness and the nature of his testimony, before putting him on the stand. The remarks of the court could have added little, if anything, to the prejudice produced by the plaintiffs themselves. The error, if any, is not sufficient to warrant a reversal, especially in view of the failure of plaintiffs to point out wherein the verdict is unjust or unsupported by the evidence.

It was the province of the court to determine, from the examination as to the witness' qualifications, whether he was competent to testify as an expert. The plaintiffs did not have the right to submit that matter to the jury for their consideration.

In the course of the trial it appeared that Effie Bossert, who was the person injured, had suffered an injury to her spine and other organs many years before. There was evidence tending to prove that she was still suffering from these injuries, and that she had received no injury on the occasion mentioned in the complaint. In this connection the court instructed the jury that if they believed that she did not receive any injuries at the time of the accident to her, in 1910, as claimed in the complaint, then it was unimportant whether that accident was caused by the negligence of the defendant or not, and that, "If you believe that any injury proved to have been sustained by Effie Bossert was sustained by her at a time prior to September 17, 1910, and that none of the defendants were responsible for those injuries so sustained by her," they must find for the defendants. The plaintiffs contend that this instruction required the jury to find for the defendant, even if they believed that she had received the injury complained of, and that it was caused by the negligence of the defendant. We do not think the instruction is susceptible of this meaning. The phrase "if you believe *any injury* proved to have been sustained by Effie Bossert was sustained by her at a time prior to September 17, 1910," in the connection in which it was used, required the jury to find that she had not received any injury except such prior injury, before rendering a verdict for the defendants. These are the only points presented in support of the appeal. We find none of them meritorious.

The judgment is affirmed.

Sloss, J., and Lawlor, J., concurred.

Cal. 1916.
Bossert v. Southern Pac. Co.
172 Cal. 504, 157 P. 597

END OF DOCUMENT

CHARLES D. CHESNEY, Respondent,
v.
H. L. BYRAM, County Tax Collector, etc., Appellant.

L. A. No. 16484.

Supreme Court of California
April 29, 1940.

HEADNOTES

(1) Constitutional Law--Self-execution--Rule.

A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced.

(2) Taxation--Military Service--Exemptions--Constitutional Law.

Section 1 1/4, article XIII, of the Constitution of California, providing certain tax exemptions for those who have served in the army, navy, marine corps or revenue marine service in time of war, is self- executing, that is, it required no legislative enactment to put it into effect.

(3) Taxation--Claim of Exemption--Regulations.

Notwithstanding the fact that section 1 1/4, article XIII, of the state Constitution is self-executing, the legislature had power to enact legislation providing reasonable regulations for the exercise of the right to the exemptions granted therein.

(4) Taxation--Claim of Exemption--Section 3612, Political Code--Statutory Construction.

Section 3612 of the Political Code does not impose an unreasonable restriction or limitation upon the exercise of the right to exemption granted by section 1 1/4 of article XIII of the Constitution in requiring a claimant to make a claim of exemption provided for in said constitutional provision.

See 24 **Cal. Jur.** 106.

(5) Taxation--Constitutional Right--Waiver.

Section 3612 of the Political Code establishes a uniform system throughout the state for those desiring to claim the exemption granted under section 1 1/4 of article XIII of the Constitution; and a right granted by the Constitution may be waived by the inaction of the person entitled to exercise such right.

SUMMARY

APPEAL from a judgment of the Superior Court of Los Angeles County. Emmet H. Wilson, Judge. Reversed.

The facts are stated in the opinion of the court.

COUNSEL

Everett W. Mattoon, County Counsel, J. H. O'Connor, County Counsel, and Gordon Boller, Deputy County Counsel, for Appellant. ***461**

Holbrook & Tarr and W. Sumner Holbrook, Jr., for Respondent.

Bernard C. Brennan, as *Amici Curiae,* on Behalf of Respondent.

CARTER, J.

This is an appeal from a judgment of the Superior Court of Los Angeles County granting a writ of mandate against appellant, H. L. Byram, tax collector of the county of Los Angeles, compelling him to receive the sum of $21.84 as the full amount of taxes due on the real property of respondent for the fiscal year 1936-37, in lieu of taxes in the sum of $67 levied upon and extended against said property on the assessment roll of said county for said year.

Respondent's property was assessed by the Los Angeles County assessor for the fiscal year 1936-37 at the value of $1350. He claims an exemption in the amount of $1,000, by reason of his being a veteran within the meaning of section 1 1/4 of article XIII of the Constitution of California. He tendered payment to the appellant of taxes based upon the valuation of $350, which tender was refused. Respondent then secured a writ of mandate compelling appellant to accept the amount tendered and to issue a receipt in full for respondent's taxes.

The provision of the Constitution above referred to reads as follows:

"The property to the amount of one thousand dollars of every resident of this state who has served in the army, navy, marine corps or revenue marine service of the United States in time of war, and received an honorable discharge therefrom, ... shall be exempt from taxation; provided, this exemption shall not apply to any person named herein owning property of the value of five thousand dollars or more, or where the wife of such soldier or sailor owns property of the value of five thousand dollars or more. No exemption shall be made under the provisions of this act of the property of a person who is not a legal resident of the state."

Section 3612 of the Political Code provides that every person entitled to such exemption from taxation shall give to the assessor under oath all information required upon forms prescribed by the State Board of Equalization and failure ***462** of any person entitled to such exemption so to do shall be deemed as a waiver of such exemption.

The allegations of the petition for a writ of mandate bring respondent within the constitutional provision for exemption, to wit: that he is and was during the fiscal year 1936-37, a resident of California, that he served in the marine corps of the United States during the world war and received an honorable discharge therefrom, that he is married, that neither he nor his wife nor the two together owned property greater than $5,000 in value, and that in 1936 he furnished a copy of his honorable discharge to the county assessor. Respondent further alleged that at no time did he file an application for exemption or any affidavit as required by section 3612 of the Political Code.

The appellant, tax collector of the county of Los Angeles, contends that the failure of respondent herein to make the exemption claim required by Political Code section 3612 constituted a waiver of said exemption. The respondent, however, maintains his right thereto, claiming that the provision in said section, that a veteran having failed to make proof of his constitutional right to exemption prior to completion of the assessment roll "waives" such exemption, is unconstitutional and void, as being an invalid statutory "limitation" on such constitutional right.

The sole question then before this court is whether the waiver provision of section 3612 of the Political Code is an invalid infringement upon a constitutional right, or is a valid legislative provision regulating the exercise or assertion thereof.

Respondent contends that section 1 1/4 of article XIII of the Constitution is self-executing and that section 3612 of the Political Code is an attempt to limit the constitutional right to exemption from taxation granted to veterans under said provision of the Constitution. It has been held that:

(1) "A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced." (Cooley's Constitutional Limitations, 7th ed., p. 121; *Winchester v. Howard,* 136 Cal. 432, 439 [64 Pac. 692, 69 Pac. 77, 89 Am. St. Rep. 153]; *People v. Hoge,* 55 Cal. 612.) ***463**

(2) We are disposed to hold that the constitutional provision above-mentioned is self-executing; that is, that it required no legislative enactment to put it into effect. If the legislature had failed to make any provision for a veteran to avail himself of the tax exemption provided for in said provision of the Constitution, we are of the opinion that the veteran would nevertheless be entitled to the exemption provided for. How such exemption could be obtained, would be a matter first for the determination of the assessors of the respective political subdivisions, and in case of their failure to recognize the right granted to the veteran, their action would be subject to review by the courts. (3) However, it does not follow from the determination that the above-mentioned constitutional provision is self-executing, that the legislature did not have the power to enact legislation providing reasonable regulation for the exercise of the right to the exemption granted by the Constitution, and if section 3612 of the Political Code constitutes such reasonable regulation and not an invalid limitation of the right thereby granted, the power of the legislature to enact said section should be upheld. (*Chester v. Hall,* 55 Cal. App. 611 [204 Pac. 237]; *First M. E. Church v. Los Angeles County,* 204 Cal. 201 [267 Pac. 703].)

In the case of *Chester v. Hall, supra,* the court held that the requirement of section 1083a of the Political Code that the signer of a petition for a county charter election shall affix thereto the date of such signing is not void as making an additional require-

ment to the self-executing character of section 7 1/2 of article XI of the Constitution, since it in no manner prevents any person from signing but merely facilitates the operation of the constitutional provision and places a safeguard around the exercise of the rights thereby secured.

In that case the court said:

"It is clear that the constitutional provision in question is self- executing, but it does not follow that legislation may not be enacted to facilitate its operation and place safeguards around the exercise of the rights thereby secured so long as the right itself is not curtailed or its exercise unreasonably burdened. 'Legislation may be desirable, by way of providing convenient remedies for the protection of the right secured, or of regulating the claim of the right so that its ***464** exact limits may be known and understood; but all such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it.' Cooley's Constitutional Limitations, 7th ed., p. 122. See, also, *Welch v. Williams,* 96 Cal. 365 [31 Pac. 222]; *State v. Hooker,* 22 Okl. 712 [98 Pac. 964]; *City of Pond Creek v. Haskell,* 21 Okl. 711 [97 Pac. 338]; *Stevens v. Benson,* 50 Or. 269 [91 Pac. 577]; *State v. Superior Court,* 81 Wash. 623 [Ann. Cas. 1916B, 838, 143 Pac. 461].) The requirement of section 1083a of the Political Code that the signer of a petition shall 'affix thereto the date of such signing' in no manner prevents any person from signing or places an undue burden on the exercise of the right. The Constitution prescribed the qualifications of electors and provides that all persons having such qualifications 'shall be entitled to vote at all elections'. The Constitution makes no provision for the registration of electors, yet registration laws have always been upheld as reasonable regulations by the legislature for the purpose of ascertaining who are qualified electors and preventing illegal voting."

In the case of *First M. E. Church v. Los Angeles County, supra,* this court while declining to pass upon the question of whether or not section 1 1/2 of article XIII of the Constitution of California is self-executing, made this comment with respect to legislation enacted for the purpose of facilitating the operation of a self-executing provision of the Constitution:

"It may be assumed as argued by respondent, that even though a constitutional provision is self-executing, the legislature may, and in many instances must, enact legislation to facilitate its operation, and to provide convenient remedies for the protection of the right established, and for the determination thereof and the regulation of claims thereto. Such legislation must be in furtherance of the purposes of the constitutional provisions, but if so, it is valid and enforceable. The last provision of section 3611 is, we think, such a law. It is regulatory, and places no unreasonable burden upon those entitled under section 1 1/2 of article XIII of the Constitution to tax exemption. It creates no hardship to require of a property owner that he file an affidavit showing that the property claimed to be exempt is used solely ***465** for religious worship, that it is required for the convenient use and occupation of the building upon the premises, and that the same is not rented for such purposes and rent received by the owner therefor."

(4) We are not impressed with the argument advanced by respondent to the effect that the provisions of section 3612 of the Political Code imposes an unreasonable restriction or limitation upon the exercise of the right to the exemption granted by the constitutional provision above mentioned. On the other hand, it appears to us reasonable and proper that some method should be provided by the legislature for the determination of those who may be entitled to the exemption provided for in the Constitution. It is obvious that the burden should be upon the person claiming the exemption to establish his right thereto. The method provided for under section 3612 of the Political Code is a simple one and is available to all who desire to claim the exemption provided for under the above-mentioned provision of the Constitution; in fact, it would be much easier and simpler for a person claiming such exemption to comply with the provisions of section 3612 of the Political Code than to resort to the procedure followed by respondent in this case, even if the tax collector had complied with respondent's request to accept the sum of $21.84 in full payment of the taxes due from respondent, and the latter had not been required to institute this action.

It has been uniformly held that the legislature has the power to enact statutes providing for reasonable regulation and control of rights granted under constitutional provisions. (*Bergevin v. Curtz,* 127 Cal. 86 [59 Pac. 312]; *Chester v. Hall, supra; Crescent Wharf etc. Co. v. Los Angeles,* 207 Cal. 430 [278 Pac.

1028]; *Western Salt Co. v. City of San Diego,* 181 Cal. 696 [186 Pac. 345]; *Bancroft v. City of San Diego,* 120 Cal. 432 [52 Pac. 712]; *Sala v. City of Pasadena,* 162 Cal. 714 [124 Pac. 539]; *Potter v. Ames,* 43 Cal. 75.) In the case of *Bergevin v. Curtz, supra,* this court considered the effect of a statute requiring a citizen to register in order to exercise the voting franchise guaranteed by the Constitution. In discussing the power of the legislature to impose conditions on those entitled to exercise the voting franchise under the Constitution, this court said: ***466**

"We do not think the legislature, even if it attempted to do so, could add any essential to the constitutional definition of an elector. It is settled by the great weight of authority that the legislature has the power to enact reasonable provisions for the purpose of requiring persons who are electors and who desire to vote to show that they have the necessary qualifications, as by requiring registration, or requiring an affidavit or oath as to qualifications, as a condition precedent to the right of such electors to exercise the privilege of voting. Such provisions do not add to the qualifications required of electors, nor abridge the right of voting, but are only reasonable regulations for the purpose of ascertaining who are qualified electors, and to prevent persons who are not such electors from voting. These regulations must be reasonable and must not conflict with the requirements of the constitution. The legislature has required that all electors, as a condition of the right to vote, shall have their names properly and in due season entered upon the great register of the county. (Pol. Code, sec. 1094.) The section provides that in the register shall be entered the names of the qualified electors of the county, and 'that any elector who has registered and thereafter moved his residence to another precinct in the same county thirty days before an election may have his registration transferred to such other precinct upon his application'. *The legislature has made no attempt to change or add to the qualifications of an elector, but has simply provided a means whereby the elector who is entitled to vote may be known by having his name enrolled upon an authentic list."*

In the case of *Crescent Wharf etc. Co. v. Los Angeles, supra,* this court had before it a case involving the right of a person whose property had been appropriated for public use to compensation for such property in accordance with the provisions of section 14 of article I of the Constitution of California. In that case it was contended by the plaintiff that its right to recover such compensation could not be abrogated by a charter provision of the city of Los Angeles requiring the presentation of a claim as a condition precedent to the commencement of an action to recover the value of the property appropriated by the city. In answering this contention, this court speaking through the late Mr. Justice Seawell said: ***467**

"All that the framers of the Constitution meant to do was to protect the citizen in his ownership of property against the state or its agencies appropriating private property to public uses against the will of the owner without making just compensation for all damages which the owner should sustain by the exercise of governmental power. It was not intended to remove the subject matter beyond the operation of reasonable statutory enactments which affect property rights generally, such as the bar of the statute of limitations."

Certainly, if the legislature has the power to pass statutes providing reasonable regulations and control over the constitutional right of a citizen to vote and the constitutional right of a citizen to recover compensation for his property which has been appropriated to a public use, it should likewise have the power to enact statutory provisions providing reasonable regulations and control over the exercise of rights granted by the Constitution for the exemption of property from taxation.

In determining the reasonableness of the regulation provided for in section 3612 of the Political Code as applied to the exercise of the right of a veteran to exemption from taxation under section 1 1/4 of article XIII of the Constitution, let us examine the constitutional provision and ascertain to whom it applies and what property is exempted from taxation thereunder. It is obvious that the exemption therein provided for is available to veterans of a particular class, having specific qualifications as to experience, property ownership and residence, to wit: (1) He must be a resident of this state; (2) he must have served in the army, navy, marine corps or revenue marine service of the United States army in time of war; (3) he must have received an honorable discharge; and, (4) neither he nor his wife is the owner of property of the value of $5,000 or more. If such veteran falls within the classification above-outlined, he is entitled to an exemption from taxation of any property owned by him up to the value

of $1,000. It is obvious that before an assessor can determine whether or not a property owner is entitled to an exemption under the above-mentioned provision of the Constitution, it is necessary to obtain sufficient information to enable him to ascertain whether or not such person comes within the classification specified therein. It ***468** is likewise obvious that such determination and ascertainment is necessary in order to enable the assessor to make up his assessment roll and determine the value of property within the political subdivision subject to assessment and taxation. Such determination must be made not later than the first of July of each year as the assessment roll is thereupon submitted to the Board of Equalization of the respective political subdivisions and the valuation determined by such board is used as the basis for the tax rate required to raise revenue for the maintenance of the government.

It would seem to be consonant with the establishment of a sound fiscal policy to have all matters of exemption of property from taxation determined not later than July 1st of each year, and it is obvious that this can only be done by the application of a uniform regulation to those who are entitled to exemptions. The legislature undoubtedly had the foregoing considerations in mind in the adoption of section 3612 of the Political Code and similar enactments for the determination of claims for exemption of property from taxation. Such regulations, if reasonable, as those provided for under section 3612 of the Political Code, do not constitute a limitation or restriction upon the constitutional right of the person entitled to the exemption, but simply establishes a rule for the determination of whether or not the right is to be exercised or waived.

(5) The provisions of section 3612 of the Political Code establish a uniform system throughout the state for those desiring to claim the exemption granted by the Constitution under the provisions of section 1 1/4 of article XIII thereof. It amply safeguards the exercise of the right of those entitled to the exemption, facilitates the operation of the system of assessment and taxation now authorized by law, and protects the public against the fraudulent claims of those not entitled to the exemption who may nevertheless assert their claim thereto. Such legislation is clearly not in contravention of the constitutional right to which it relates.

That a right to have property exempted from taxation can be waived, there can be no doubt. Even counsel for respondent in the case at bar concedes that unless appropriate legal proceedings were instituted by the exemption claimant to resist the payment of the tax or the recovery of the tax after ***469** the same is paid within the time provided for in the statute of limitation applicable thereto, the exemption claimant would lose his right; in other words, the exemption claimant would waive his right to the exemption by failing to assert his claim in time to have his exemption noted on the assessment roll or by failing to take appropriate action thereafter within the period of time allowed by the statute for the recovery of taxes paid under protest.

It is well settled that a right granted by the Constitution may be waived by the inaction of the person entitled to exercise such right. Probably the most common example of such waiver is disclosed by those cases where a property owner whose property has been taken or damaged for public use fails to avail himself of the remedies provided for by statute to either recover the property so taken or compensation and damages for its taking. It has been repeatedly held that mere inaction on the part of the owner of such property may constitute a waiver of the right to compensation or damages guaranteed to him by section 14 of article I of the Constitution of California. (*Bigelow v. Ballerino,* 111 Cal. 559 [44 Pac. 307]; *Gurnsey v. Northern Cal. Power Co.,* 160 Cal. 699 [117 Pac. 906, 36 L. R. A. (N. S.) 185]; *Sala v. City of Pasadena, supra; Yonker v. City of San Gabriel,* 23 Cal. App. (2d) 556 [73 Pac. (2d) 623].)

The trial court based its decision in favor of the respondent in this action upon the case of *St. John's Church v. County of Los Angeles,* 5 Cal. App. (2d) 235 [42 Pac. (2d) 1093], wherein it was held that a similar provision of the Constitution (sec. 1 1/2 of art. XIII) exempting church properties from taxation was self-executing, and that no legislation was necessary to achieve its purpose, and that no legislation was permissible that would impair, limit or destroy the rights thereby granted. In the written opinion filed by the learned trial judge in overruling the demurrer in the case at bar, he said:

"On the authority of that case (*St. John's Church v. County of Los Angeles*) it must be held that that part of section 3612 of the Political Code which declares

that failure to make the affidavit and to furnish the evidence therein required operates as a waiver of the constitutional exemption is void by reason of its being in excess of the power of the ***470** legislature to impair or destroy the exemption granted by a self- executing provision of the Constitution."

While it may be argued that a different rule should be applied to the legislation relating to the exemption of church property under the above-mentioned provision of the Constitution, it is our conclusion that the same rule should be applied to such legislation as that involved in the case at bar, and we therefore disapprove the holding of the District Court of Appeal in the case of *St. John's Church v. County of Los Angeles, supra,* to the effect that the provision in subdivision 3 of section 3611 of the Political Code that the failure on the part of the person claiming the exemption to make the affidavit mentioned therein should be deemed a waiver of such exemption is ineffective for the reason that it constitutes an attempt by the legislature to limit the exemption provided for in section 1 1/2 of article XIII of the Constitution.

In view of what we have said with respect to the power of the legislature to enact statutes providing for reasonable regulation and control of a constitutional right, we deem it unnecessary to devote further time in this opinion to a discussion of the St. John's Church case. We can see no reason why the same rule as to waiver of the right to exemption should not apply to church property as to any other right granted by the Constitution, and we think it is immaterial whether such waiver is the result of the failure of the exemption claimant to comply with the provisions of the statute providing such reasonable regulation or is the result of inaction on the part of such claimant.

The regulation provided for in section 3611 of the Political Code before its amendment in 1929 was held not to be unreasonable in the case of *First M. E. Church v. Los Angeles County, supra,* as appears from the portion of the opinion in said case hereinabove quoted. The 1929 amendment to section 3611 of the Political Code simply provides that the failure of the exemption claimant to make the affidavit required by said section constitutes a waiver of the exemption. From what we have heretofore said with reference to a similar provision contained in section 3612 of the Political Code, this amendment did not transform said section from a reasonable regulation into an invalid limitation upon the exercise ***471** of the constitutional right granted by section 1 1/2 of article XIII of the Constitution.

The basis of the decision of the District Court of Appeal in the St. John's Church case appears to be that property subject to exemption from taxation under the provisions of section 1 1/2 of article XIII of the Constitution of California, is not subject to assessment and taxation and that any attempt to place the same on the assessment roll of a political subdivision for the purpose of assessment and taxation is abortive. In the opinion in said case, the court said:

"The basic question is whether or not the property is taxable and while reasonable regulations may be made for the making of preliminary proof and while a failure to comply therewith may subject an owner of such property to the burden of making his proof in a more inconvenient and expensive manner, through an action in court, it cannot confer an authority to tax which has been expressly withheld by the Constitution. The authority to levy such a tax thus withheld cannot be acquired by a statute providing, in effect, that if the owner does not claim the exemption before the assessment roll is completed the tax will be levied."

The inevitable result to be obtained by the line of reasoning which is the basis of the decision in the St. John's Church case must be, that if an owner of property exempt from taxation under the provisions of section 1 1/2 of article XIII of the Constitution would fail to assert a claim of exemption for said property, and the same would be assessed and the taxes thereon become delinquent and the property sold in accordance with the law authorizing the sale of property for delinquent taxes, a purchaser at such delinquent tax sale would not acquire a valid title to the property; in other words, all proceedings in connection with the assessment, levy of taxes and sale of said property would be void. It would therefore follow that the owner of such property could ignore all proceedings instituted by public officials to have said property subjected to assessment, levy and payment of taxes, and would suffer no loss as the result of such inaction or failure to assert a claim of exemption. It is obvious that such a situation would have a detrimental effect upon the administration of the laws providing for the assessment, levy and collection of taxes, and would create a condition of uncertainty with respect to what

property was ***472** available for the purpose of taxation within the respective political subdivisions which have the power to levy and collect taxes for the maintenance of local government.

The opinion of the District Court of Appeal in the St. John's Church case does not discuss the well-settled rules that a right granted under a provision of the Constitution may be waived and that the legislature has the power to enact statutes providing for reasonable regulation and control of a right granted by the Constitution. The application of these rules to the factual situation in said case would have resulted inevitably in the reversal of the judgment rendered therein.

The judgment is reversed with directions to the trial court to enter judgment in favor of appellant denying respondent the relief prayed for in his petition.

Gibson, J., Edmonds, J., Curtis, J., Shenk, J., Waste, C. J., and Houser, J., concurred.

Rehearing denied.

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END OF DOCUMENT

THE PEOPLE, Plaintiff and Respondent,
v.
RICHARD MARCELLUS DAVIS, Defendant and Appellant.

Crim. No. 7590.

Supreme Court of California
May 26, 1965.

HEADNOTES

(1) Criminal Law § 464--Evidence--Confessions--Admissibility.

In a murder prosecution, defendant's confession and his diagram of the murder scene were inadmissible where, at the time his statement was recorded, he was under arrest, the investigation had focused on him, the purpose of the interrogation was to elicit a confession, and there was no showing that he was allowed to see counsel, that he effectively waived this right, or that he was informed of his right to remain silent.

(2) Criminal Law § 1080(2)--Appeal--Reserving Questions--Evidence-- Admissions.

Where a murder case was tried before the decision in *Escobedo v. Illinois,* 378 U.S. 478 [84 S.Ct. 1758, 12 L.Ed.2d 977], defendant's failure to object to the admission of his confession and his diagram of the murder scene absent advice on his constitutional rights to counsel and to remain silent, does not preclude his raising the question on appeal.

(3) Criminal Law § 1382(27)--Appeal--Reversible Error--Evidence-- Confessions.

Though defendant in a murder prosecution testified to committing the same acts to which he confessed in a statement obtained from him by the police without first advising him of his constitutional rights to counsel and to remain silent, the error in admitting his confession resulted in a miscarriage of justice where his testimony was not only impelled by the erroneous admission of his confession, but the confession also rebutted his defense that he was guilty of no more than second degree murder, making it reasonably probable that a result more favorable to defendant would have been reached absent the error.

(4) Homicide § 118--Evidence--Motion Picture.

Where a motion picture of the victim of a gruesome murder is offered in evidence, the court must determine its admissibility by weighing its probative value against the danger of prejudice.

See **Cal.Jur.2d,** Evidence, §§ 226-230; **Am.Jur.,** Homicide (1st ed § 451).

(5) Homicide § 118--Evidence--Documentary Evidence.

In a murder case involving the defense that defendant killed the victim in a heat of passion because he had read notebooks containing notes passed between his wife and the victim which convinced him that they had been practicing Lesbians, it was not an abuse of discretion to refuse to admit the entire notebooks on the ground that the great bulk of the material was irrelevant and immaterial where defendant was allowed to present the passages he considered relevant, as circumstantial evidence of his state of mind.

(6a, 6b, 6c) Criminal Law § 556--Evidence--Expert Witnesses-- Qualifications.

In a murder case where the defense attempted to prove by two psychologists that defendant suffered from a temporary functional psychosis that made him legally insane, and psychiatric experts for the prosecution denied such a disability could exist, the trial court erred in ruling that only one with medical training could testify on the issue.

See **Cal.Jur.2d,** Evidence, § 293; **Am.Jur.,** Evidence (1st ed § 783).

(7) Criminal Law § 556--Evidence--Expert Witnesses--Qualifications.

A witness is qualified to testify about a matter calling for an expert opinion if his peculiar skill, training, or experience enable him to form an opinion that will be useful to the jury. (Code Civ. Proc., § 1870, subd. 9.)

(8) Criminal Law § 558--Evidence--Expert Witnesses--Qualifications.

Though determination of the qualification of a proffered witness is ordinarily within the trial court's discretion, the standards used in the exercise of this discretion, like other questions of law, are subject to review.

(9) Words and Phrases--"Functional Disorder."

A functional disorder is, by definition, nonorganic and without a biological cause.

(10) Criminal Law § 556--Evidence--Expert Witnesses--Qualifications.

Not all psychologists are competent to give an expert opinion on sanity; whether a psychologist qualifies as an expert on sanity in a particular case depends on the facts of that case, the questions propounded to the witness, and his peculiar qualifications.

SUMMARY

APPEAL, automatically taken under Pen. Code, § 1239, subd. (b), from a judgment of the Superior Court of San Diego County. William P. Mahedy, Judge. Reversed.

Prosecution for murder. Judgment of conviction imposing the death penalty reversed solely on the constitutional ground announced in *People v. Dorado, ante,* p. 338 [42 Cal.Rptr. 169, 398 P.2d 361].

COUNSEL

J. Perry Langford, under appointment by the Supreme Court, for Defendant and Appellant.

Stanley Mosk and Thomas C. Lynch, Attorneys General, William E. James, Assistant Attorney General, and Norman H. Sokolow, Deputy Attorney General, for Plaintiff and Respondent.

TRAYNOR, C. J.

Defendant killed his victim, Marion Burnett, by pounding her on the head and arms six or more times with a 16 1/2-pound stone. A jury found him guilty of murder of the first degree and sane at the time of the crime, and fixed his penalty at death. This appeal is automatic. (Pen. Code, § 1239, subd. (b).)

Defendant's wife of six months, Dorothy, left him and moved to her mother's house four days before the killing. Defendant had asked her several times to return. She always refused, in part apparently because of her belief that he was having sexual relations with her unmarried friend, Marion. Defendant had admitted to her that he had once engaged in ***794** sexual intercourse with Marion. Dorothy and Marion, however, remained close friends.

On the night of the killing, defendant went to his mother-in-law's home to attempt again to persuade Dorothy to return to him. Dorothy and Marion were there together, but were leaving to go to Marion's home. When Dorothy remarked that he arrived just as Marion was leaving, defendant became angry and left. He walked across the street toward his home, ran after he turned a corner, and headed toward Marion's home. When he arrived at the street on which Marion lived, he crossed the street and picked up a large stone. He recrossed the street and hid behind a hedge near the sidewalk. Several minutes later, Marion appeared alone. Defendant advanced toward her, she turned to face him, and he beat her repeatedly with the stone. He then ran, threw the stone into a bush, and returned to his home to join a game of dominoes. An autopsy revealed that Marion was pregnant when she died.

At the trial on the issue of guilt, the prosecution sought to prove that defendant was guilty of murder in the first degree on the grounds that the killing was premeditated and deliberate and was perpetrated by lying in wait. (Pen. Code, § 189.) The prosecution argued as follows: Defendant regarded Marion as the obstacle to his reconciliation with his wife. He may even have been carrying on an affair with Marion that he wished to terminate, particularly because of Marion's pregnancy. He decided early in the evening to kill Marion, or at least to injure her. When the opportunity arose, he ran ahead of her, secured a weapon, and then waited behind the hedge to attack her.

The defendant testified that he had intercourse with Marion only once, while he was drunk, and had no emission. He denied knowing of her pregnancy before he killed her. He presented a witness who testified that Marion accused the witness of being the father of her expected child. Defendant also testified that he thought both women would pass the hedge on their way to Marion's home. His defense was based on three, interrelated theories:

(1) Defendant claimed that the killing was not premeditated. When he hid behind the hedge, he expected both women to pass and he wanted only to scare or talk to them. When Marion passed alone, defendant emerged from his hiding place. She turned to him and he hid his face behind the stone. He stated,

"I didn't want to hit her at first but I didn't know she couldn't have seen me. I kept thinking ... if I don't ***795** she will tell Dorothy that I tried to or something and she might leave me." He then hit Marion on the forehead, she raised her arms in defense and screamed, and he hit her several more times.

(2) Defendant claimed that the killing was committed in a heat of passion. Several days before the killing, he read some notes, passed between Dorothy, Marion, and a third girl in high school the previous year, that convinced him that the girls had been practicing Lesbians. Because Marion and Dorothy were still friendly and were often together, defendant thought their relationship was another reason for Dorothy's leaving him. When Dorothy linked him with Marion on the night of the killing, he became incensed. When he later encountered Marion, he killed her in a heat of passion.

(3) Defendant claimed that he did not have the mental capacity at the time of the killing to premeditate and deliberate. A clinical psychologist, Dr. Robert G. Kaplan, testified that defendant was suffering from a temporary functional psychosis at the time of the killing and was incapable of wilful premeditation and deliberation.

To prove premeditation and deliberation and also to show the circumstances under which the killing was committed, the prosecution introduced a full, corrected, and signed statement made by defendant to the San Diego police. A diagram of the murder scene made by him was also introduced. (1) Defendant was arrested before noon two days after the killing. He was interrogated continuously by various police officers until, at 8 o'clock that evening he made the statement, recorded by a police stenographer, that was introduced against him. He made the diagram the next morning. Since the record does not show what the officers said to defendant and what he said to them before he made the recorded statement, it does not appear at what point the investigation began to focus on him. It is clear, however, that by the time the recorded statement was commenced, the investigation had focused on defendant and the purpose of the interrogation was to elicit a confession. Although defendant talked to his wife several times before making either the statement or the diagram, there was no showing that he was allowed to see counsel, that he had effectively waived his right to counsel, or that he was informed of his right to remain silent. Under these circumstances the statement and the diagram were inadmissible by virtue of the decision of the United States Supreme Court in ***796***Escobedo v. Illinois,* 378 U.S. 478 [84 S.Ct. 1758, 12 L.Ed.2d 977]. (*People v. Dorado, ante,* p. 338 [42 Cal.Rptr. 169, 398 P.2d 361]; *People v. Stewart, ante,* pp. 571, 576-581 [43 Cal.Rptr. 201, 400 P.2d 97]; *People v. Lilliock, ante,* pp. 618, 621 [43 Cal.Rptr. 699, 401 P.2d 4]; see also *Clifton v. United States,* 341 F.2d 649; *Galarza Cruz v. Delgado,* 233 F.Supp. 944; *State v. Dufour,* _____ R.I. _____ [206 A.2d 82, 85]; *State v. Neely,* _____ Ore. _____ [398 P.2d 482].) (2) Moreover, since this case was tried before the *Escobedo* decision, defendant's failure to object to the admission of the statement and the diagram into evidence does not preclude his raising the question on appeal. (*People v. Hillery, ante,* pp. 692, 711 [44 Cal.Rptr. 30, 401 P.2d 382] and cases cited.)

(3) It is contended, however, that since defendant took the stand and testified to committing the same acts he confessed to committing in his statement, we should make an exception to the rule that the erroneous admission of a confession into evidence is necessarily prejudicial. (See *People v. Dorado, ante,* pp. 338, 356-357 [42 Cal.Rptr. 169, 398 P.2d 361]; *People v. Stewart, ante,* pp. 571, 581 [43 Cal.Rptr. 201, 400 P.2d 97].) When defendant testified, however, the only substantial evidence that had been introduced connecting him with the crime was his statement and diagram. His testimony was therefore impelled by the erroneous admission of that evidence and cannot be segregated therefrom to sustain the judgment. (*People v. Dixon,* 46 Cal.2d 456, 458 [296 P.2d 557]; *People v. Ibarra,* 60 Cal.2d 460, 463 [34 Cal.Rptr. 863, 386 P.2d 487]; see also *People v. Mickelson,* 59 Cal.2d 448, 449 [30 Cal.Rptr. 18, 380 P.2d 658].)

Moreover, defendant's testimony at the trial was substantially less incriminating than his confession to the officers. Defendant testified that he did not lie in wait to harm his victim or his wife but only intended to scare or talk to them and that he decided to hit Marion with the rock only after she appeared alone and recognized him. If believed, this testimony would have supported a finding of second rather than first degree murder, and to rebut it the prosecution relied on evidence of premeditation contained in defendant's

statement. In questioning defendant the officers were careful to probe for such evidence, [FN1] and in his argument to the jury ***797** the prosecutor stressed its importance to show that the killing was premeditated. He pointed out that "Down at the police station before he talked to a lawyer, before he had time to learn about the differences in penalties between different degrees of murder, manslaughter, he was relatively frank with the police and he said a number of things, which I think should help us figure out-help us to confirm in our opinions the fact that he had planned this, the fact that he had been thinking about it for some time. ... So he admits to the police before he had acquired sophistication of learning that murder isn't just murder, it is of varying degrees and varying types and varying punishments, back then he admits that he began thinking of getting rid of Dorothy and Marion, way back at 7:00 o'clock. ..."

> FN1 "Q. To go back to the evening hours of the 4th, you made quite a point of asking your brother-in-law what time it was? A. I didn't ask him what time it was, I asked him was that clock right. Q. What was your reason? A. At the time I was on the verge of thinking of doing it and thinking of going there to play dominoes. Q. What do you mean when you say you were 'thinking of doing it'? A. I mean hitting Marion. I was thinking about the domino game too; they said they would be there around that time. Q. Were you thinking in terms of an alibi? A. Not then, no. Q. Why did you want to hurt Marion? A. Actually, I didn't want to hurt Marion alone. I would hurt Marion or Dorothy or anybody at the time that was with them. ..." Later, after a rambling, nonresponsive answer to a question, the interview continued: "Q. The original question was_____ A. I know. Q. You are building up to why and when you decided to do this. It has been kind of a long explanation and I wondered if we lost the point. We were up to Tuesday night. A. Around 7:00 I had just come from the park, playing basketball. I got to the record shop on Milbrae and Oceanview. Dorothy was standing out there. Again I asked if she was sure she was coming back. She said she didn't know, maybe. She mentioned Marion again. Q. That you and Marion were having an affair? A. Yes, she still thought I was. She wasn't too sure. I told her it was just one time. That's when I thought maybe if I could get rid of Dorothy or Marion, or hurt Dorothy or Marion, I could get it off my mind."

Even if we assume that in some cases a testimonial confession can make harmless the erroneous admission of an extrajudicial confession, defendant's testimony in this case did not do so. His testimony was not only impelled by the erroneous admission of the extrajudicial confession, but would have supported a verdict of second degree murder. The erroneously admitted confession rebutted his defense that he was guilty of no more than second degree murder. Whether or not its admission into evidence was necessarily prejudicial, it is reasonably probable that had it been excluded, a result more favorable to defendant would have been reached. Accordingly, the error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 4 1/2; *People v. Watson,* 46 Cal.2d 818, 836 [299 P.2d 245].)

Other questions remain that may arise on retrial.

(4) A motion picture film of the victim at the scene of ***798** the killing was admitted over defendant's objection. It appears on the face of the record [FN2] that the court failed to "*weigh* the probative value of the photographs in resolving a material issue as against the danger of prejudice to the defendant through needless arousal of the passions of the jurors." (*People v. Ford,* 60 Cal.2d 772, 801 [36 Cal.Rptr. 620, 388 P.2d 892].) If the motion picture is offered in evidence on retrial, the court must determine its admissibility by weighing its probative value against the danger of prejudice.

> FN2 In ruling on defendant's objection, the court stated: "Well, I viewed [the film] and I feel that while it is not pleasant to look at it is a legal exhibit and it is material for the purposes offered."

(5) The notes that convinced defendant of the homosexuality of his wife and the victim were written in three high school notebooks. Defendant contends that the notebooks should have been admitted in their entirety. Defendant testified that he learned of the girls' homosexual relationship by reading the entire notebooks. Upon request of the prosecution, defendant marked the passages that indicated such a relationship to him. The defense was allowed to read these pas-

sages to the jury; some 16 passages from various notes were read, and most were reread by defense counsel in his closing argument. The trial court refused, however, to allow the notebooks to be introduced because the great bulk of the material in them was irrelevant and immaterial.

Although the passages read from the notebooks were not used as hearsay, but as circumstantial evidence of defendant's state of mind (see *People v. Marsh,* 58 Cal.2d 732, 737-740 [26 Cal.Rptr. 300, 376 P.2d 300]; 6 Wigmore, Evidence (3d ed.) § 1789; 2 *id.,* § 740), these passages were apparently only a small part of the three notebooks. Defendant was allowed to present whatever passages he considered relevant, and he has not shown that their probative value would be enhanced by reading the rest of the notes. There was therefore no abuse of discretion in refusing to admit the entire notebooks.

At the trial on the issue of sanity, defendant sought to establish that he was suffering from a transitory or temporary functional psychosis at the time of the killing and was insane. Two psychiatrists testified for the prosecution that defendant was sane at the time of the killing and that temporary psychoses are never functional in nature. Dr. Robert G. Kaplan, a clinical psychologist who also testified at the trial on the issue of guilt, testified for the defense that because of a temporary functional psychosis at the time of the killing, ***799** defendant could not distinguish between right and wrong and did not know the nature and quality of his act.

(6a) Dr. Richard E. Worthington was also called by the defense. Dr. Worthington testified on *voir dire* that he obtained the degree of Doctor of Philosophy from the University of Chicago in 1940 under the Committee on Human Development, specializing in clinical psychology. Although he took the equivalent of about one year of medical school courses in physiology, neurology, and genetics, he did not attend medical school. He testified that he was "the fastest man to go through the University of Chicago"; he passed from freshman to Ph.D. in four and one-half years by taking three times the normal number of courses. He taught psychology at the University of Chicago and Cornell University, and worked as a psychologist at the Menninger Foundation for two years. He has published articles dealing with a wide range of topics within the field of psychology. He was certified by the Psychology Examining Committee of the State Board of Medical Examiners in 1958 (see Bus. & Prof. Code, § 2940 et seq.), and at the time of trial was vice chairman of that committee, which consists of eight members appointed by the Governor. (Bus. & Prof. Code, § 2910.) He was engaged in private practice in San Diego primarily in the treatment of emotional disturbances.

Dr. Worthington was excused by the court because of his lack of medical training. The court ruled that only a medical doctor is qualified to testify as an expert on the issue of sanity. [FN3] ***800** Defendant contends that this ruling was erroneous. [FN4]

FN3 The court's ruling was somewhat ambiguous. After questioning the witness concerning his medical training, the court simply stated: "The witness is not qualified as an expert on the subject of insanity under the rules, as I understand them, and that is it, period. The witness will be excused." During argument on a motion for new trial, the court attempted to clarify its position. "I didn't find, I invite your attention to this, I did not find that a psychologist, as such, would not be qualified and on the case of the other man [Dr. Kaplan] I simply asked the question, in the presence of the jury-to the District Attorney I may have gone so far as to say I had my doubts about his qualifications, and he said he had no objection to that man testifying, so he testified. Now, I still don't think it is proper and you could argue all day and I wouldn't change my ruling. ... Here is a man that comes in, glib of tongue, hasn't had a day's medical training at all and he is going to qualify as an expert on sanity, when a part of the mental condition of legal insanity, as we know it in California, is a medical proposition and I would like to see the Supreme Court tell me I am wrong. There is no use to argue that point any further. I am adamant in my opinion on that." Despite the court's statement that it did not hold that a psychologist as such is not qualified, it apparently based its exclusion of Dr. Worthington on the ground that he did not have sufficient medical training.

FN4 The prosecution did not object to the use

> of Dr. Kaplan because his views had already been presented to the jury at the trial on the issue of guilt. The court, however, made the following comment to the jury on Dr. Kaplan's testimony: "I will just simply instruct the jury that I don't know whether this witness is qualified either, because he holds no license to practice medicine, any kind of medicine in this state, he is not a psychiatrist and he is not licensed as such. ... I may say this to the jury, that a lay person, like we are, may testify as to ... our opinion as to the sanity of an individual if we are acquainted with him and with his habits of life. ..." This comment also raised the question whether only a medical doctor is qualified as an expert on legal sanity.

(7) A witness is qualified to testify about a matter calling for an expert opinion if his peculiar skill, training, or experience enable him to form an opinion that will be useful to the jury. (Code Civ. Proc., § 1870, subd. 9; *Estate of Toomes,* 54 Cal. 509, 514-515 [35 Am.Rep. 82]; *Oakes v. Chapman,* 158 Cal.App.2d 78, 83-84 [322 P.2d 241]; McCormick, Evidence, § 13.) (8) Although the determination of the qualification of a proffered witness is ordinarily within the discretion of the trial court (*People v. Busch,* 56 Cal.2d 868, 878 [16 Cal.Rptr. 898, 366 P.2d 314]; 2 Wigmore, Evidence (3d ed.) § 561), the standards used in the exercise of this discretion, like other questions of law, are subject to review. Recent cases considering the point have held that a qualified psychologist can testify concerning a defendant's mental condition. (*Jenkins v. United States,* 307 F.2d 637, 643-646; *Hidden v. Mutual Life Ins. Co.,* 217 F.2d 818, 821; *People v. Hawthorne,* 293 Mich. 15, 22-26 [291 N.W. 205]; *State v. Padilla,* 66 N.M. 289, 297-299 [347 P.2d 312]; *Watson v. State,* 161 Tex. Crim. 5, 8 [273 S.W.2d 879]; cf. *Carter v. State* (Okla. Crim. App.) 376 P.2d 351, 359- 360. But see *Dobbs v. State,* 191 Ark. 236, 239-242 [85 S.W.2d 694]; cf. *State v. Gibson,* 15 N.J. 384, 391 [105 A.2d 1]. See generally Lassen, *The Psychologist as an Expert Witness,* 50 A.B.A.J. 239; Louisell, *The Psychologist in Today's Legal World,* 39 Minn.L.Rev. 235; Scheflen, *The Psychologist as a Witness,* 32 Pa.B.A.Q. 329.) Many cases have also noted the use of psychologists in criminal cases without objection or comment. (E.g., *People v. Busch, supra,* 56 Cal.2d, at p. 875; *People v. McNichol,* 100 Cal.App.2d 554, 558 [224 P.2d 21]; *United States v. Chandler,* 72 F.Supp. 230, 237; see also *People v. Spigno,* 156 Cal.App.2d 279, 288-291 [319 P.2d 458].)

(6b) The defense attempted to prove through two psychologists that defendant was suffering from a temporary ***801** functional psychosis at the time of the crime that made him legally insane. The prosecution's psychiatric experts denied that such a disability could exist. Without the psychologists, therefore, defendant could not establish an insanity defense. The alleged disability did not involve a matter of mental illness completely within the realm of a physician. (9) A functional disorder is by definition nonorganic and without a biological cause. (6c) The trial court erred in ruling that only one with medical training could testify on the issue.

(10) It does not follow that all psychologists are competent to give an expert opinion on sanity. Many practicing psychologists are not concerned with problems of abnormal psychology and are not familiar with the clinical branch of their field. A certain level of training and experience is also necessary; one with only an undergraduate interest in psychology who has since pursued other fields would certainly not be qualified to give an expert opinion. (Cf. *People v. Chambers,* 162 Cal.App.2d 215, 219-220 [328 P.2d 236].) Moreover, not all questions relating to legal sanity can be answered by a psychologist. (See 2 Wigmore, Evidence (3d ed.) § 555, p. 634.) The interpretation of an electroencephalogram or the physiological effect of drugs, for example, may be beyond the ken of a psychologist without medical training. Whether a psychologist qualifies as an expert on sanity in a particular case depends on the facts of that case, the questions propounded to the witness, and his peculiar qualifications.

The judgment is reversed.

Peters, J., Tobriner, J., Peek, J., Dooling, J., [FN*] concurred.

> FN* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

SCHAUER, J. [FN*]

> FN* Retired Associate Justice of the Su-

preme Court sitting under assignment by the Chairman of the Judicial Council.

Dissenting.

In my view the evidence which was properly presented to the jury amply supports the verdicts as to guilt, sanity, and penalty. It must be recognized, however, that under the present status of relevant law as developed in *Escobedo v. Illinois* (1964) 378 U.S. 478 [84 S.Ct. 1758, 12 L.Ed.2d 977], and *People v. Dorado* (1965) *ante,* p. 338 [42 Cal.Rptr. 169, 398 P.2d 361] (and made applicable ex post facto in favor of the accused and against the People), the prosecuting attorney, properly under the old law ***802** but erroneously under the new, in his argument emphasized the difference between defendant's fact-statements as given before, and those given after, he had conferred with counsel and thereby "had acquired sophistication of learning that murder isn't just murder, it is of varying degrees and varying types and varying punishments, ..."

The old rule looked with favor on ascertaining the truth; the new rule looks with more favor on giving the illiterate an equal opportunity with the literate to falsify to his own advantage. Thus must police and judicial skills in sorting fact from fiction be developed the more; and thus will the practiced discernment of the trial judge-and of penal boards-probably have better opportunity to correctly recognize basic character and act accordingly. The difference between honesty and cupidity should not be overlooked. Enlightened perjury-or the giving of further opportunity to present it-does not appeal to me as a basis for finding a miscarriage of justice. In the circumstances of this case I am not persuaded that the verdict and judgment work a miscarriage of justice. (See Cal. Const., art. VI, § 4 1/2; *People v. Watson* (1956) 46 Cal.2d 818, 835-836 [299 P.2d 243] [12].)

I must also specifically dissent from the majority's holding that the trial court *erred as a matter of law* in ruling that the witness, Richard E. Worthington, Ph.D. (he had taught psychology and treated emotional disturbances) was not qualified to testify helpfully as an expert witness on any material issue of fact then before the court. A trial judge's discretion in this area should be well-nigh absolute. He is in a position far superior to that of any appellate court to appraise the significance of evidence. An appellate judge can merely read what a transcriber typed from what a phonographic reporter's notes reflect of what the reporter believed he heard. Perhaps an electronic recording device also recorded on disc or tape the sounds of the courtroom. But human reporter or electronic impression get only sounds; the attentive trial judge sees as well as hears. And as every experienced trial judge knows, that which he sees may well be more truth revealing than that which he hears.

From my reading of the record I cannot conclude that the trial judge in his handling of this case was other than fair, competent, careful, patient and sound in all material rulings, including his denial of a motion for a new trial.

For the reasons above stated I would affirm the judgment.

McComb, J., concurred. ***803**

Cal.
People v. Davis
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TOPANGA ASSOCIATION FOR A SCENIC COMMUNITY, Plaintiff and Appellant,
v.
COUNTY OF LOS ANGELES et al., Defendants and Respondents; JAMES WARREN BASSLER et al., Real Parties in Interest and Respondents

L.A. No. 30139.

Supreme Court of California
May 17, 1974.

SUMMARY

In administrative mandamus proceedings, the trial court refused to disturb a variance granted by a county agency permitting a mobile home park on about 28 acres of an area zoned for light agriculture and single family residences. (Superior Court of Los Angeles County, No. C-7268, Robert A. Wenke, Judge.)

The Supreme Court reversed and remanded the cause to the trial court with directions to issue a writ of mandamus requiring the county board of supervisors to vacate the order awarding a variance. The trial court was also directed to grant any further, appropriate relief. It was expressly held that regardless of the terms of a local zoning ordinance, the governing administrative agency, in adjudicating an application for a variance, must make findings such as will enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise the court of the basis of the agency's action. Also, it was held that as a prerequisite to sustaining a variance, the court must determine that substantial evidence supports the agency's findings and that they support the agency's decision. It was pointed out that Gov. Code, § 65906, outlining the circumstances under which a variance may be properly granted, emphasizes disparities between properties, rather than the treatment of the subject property's characteristics in the abstract. The court noted that the agency's report focussed almost exclusively on the qualities of the subject property and failed to provide comparative information on the surrounding properties, with the result that the agency's summary of "factual data," on which its decision apparently rested, did not include facts sufficient to satisfy the Government Code provision.

In Bank. (Opinion by Tobriner, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Zoning and Planning § 4--Variances--Findings.

Regardless of whether the local zoning ordinance commands that the variance board set forth findings, that body must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis of the board's action.

(2) Zoning and Planning § 4--Variances--Judicial Review.

Before sustaining a zoning variance, a reviewing court must scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision. And in making these determinations, the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision.

(3) Zoning and Planning § 4--Variances--Administrative Mandamus.

Code Civ. Proc., § 1094.5, governing judicial review of administrative agencies' adjudicatory decisions by mandamus, applies to the review of zoning variances awarded by bodies such as the Los Angeles County Regional Planning Commission.

(4) Administrative Law § 139--Administrative Mandamus--Court's Duties.

Code Civ. Proc., § 1094.5, relating to administrative mandamus, contemplates that, at a minimum, the reviewing court must determine both whether substantial evidence supports the administrative agency's findings and whether the findings support the agency's decision.

(5) Administrative Law § 143--Administrative Man-

damus--Record of Administrative Proceeding.

Implicit in Code Civ. Proc., § 1094.5, relating to administrative mandamus, is a requirement that the administrative agency which renders the challenged decision set forth findings to bridge the analytic gap between the raw evidence and the ultimate decision or order.

[See **Cal.Jur.2d,** Zoning, § 209; **Am.Jur.,** Zoning (1st ed § 225).]

(6) Zoning and Planning § 4--Findings--Contents.

Although a zoning variance board's findings need not be stated with the formality required in judicial proceedings, they must expose the board's mode of analysis to an extent sufficient to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board's action. (Not approving the language in *Kappadahl v. Alcan Pacific Co.* (1963) 222 Cal.App.2d 626, 639 [35 Cal.Rptr. 354]; *Ames v. City of Pasadena* (1959) 167 Cal.App.2d 510, 516 [334 P.2d 653], which endorses the practice of setting forth findings solely in the language of the applicable legislation.)

(7) Zoning and Planning § 4--Granting of Variance as Quasi-judicial Administrative Function.

Although the adoption of zoning regulations is a legislative function, the granting of variances is a quasi-judicial, administrative function.

(8) Zoning and Planning § 6(1)--Contractual Nature of Zoning Scheme.

A zoning scheme is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted. The rationale is that such mutual restriction can enhance total community welfare.

(9) Zoning and Planning § 4--Variances--Need for Compliance With All Legislative Requirements.

Inasmuch as a zoning variance may be sustained only if all applicable legislative requirements have been satisfied, the question whether a particular variance which had been granted by a county agency conformed to the criteria set forth in an applicable county ordinance became immaterial in the Supreme Court's administrative mandamus review of the variance once that court had concluded that the criteria set forth in Gov. Code, § 65906, for the granting of a variance had not been met.

(10) Zoning and Planning § 4--Variances--Statutory Criteria.

Gov. Code, § 65906, setting forth criteria for the granting of a zoning variance, emphasizes disparities between properties, not treatment of the subject property's characteristics in the abstract, and contemplates that, at best, only a small fraction of any one zone can qualify for a variance.

(11) Zoning and Planning § 4--Variances--Applicant's Burdens.

Speculation about land neighboring on land for which a zoning variance is sought will not support the award of a variance. The party seeking the variance must shoulder the burden of demonstrating to the applicable agency that the subject property satisfies the requirements for the variance sought. Neither the agency nor the reviewing court may assume without evidentiary basis that the character of neighboring property is different from that of the property for which the variance is sought.

(12) Zoning and Planning § 4--Limitations on Granting of Variances.

Radical alteration of the nature of an entire zone is a proper subject for legislation but not for piecemeal adjudication by an administrative agency through the granting of variances for large parcels.

(13) Zoning and Planning § 4--Prohibition of Variance Granting "Special Privilege."

In the absence of an affirmative showing that a particular parcel in a certain zone differed substantially and in relevant aspects from other parcels therein, a variance granted with respect to that parcel amounted to the kind of "special privilege" explicitly prohibited by Gov. Code, § 65906, establishing criteria for granting variances.

COUNSEL

Amdur, Bryson, Caplan & Morton and David L. Caplan for Plaintiff and Appellant.

John D. Maharg, County Counsel, Joe Ben Hudgens, John W. Whitsett and David H. Breier, Deputy County Counsel, for Defendants and Respondents.

Arnold J. Provisor for Real Parties in Interest.

TOBRINER, J.

We examine, in this case, aspects of the functions served by administrative agencies in the granting of zoning variances and of courts in reviewing these proceedings by means of administrative mandamus. We ***510** conclude that variance boards like the ones involved in the present case must render findings to support their ultimate rulings. We also conclude that when called upon to scrutinize a grant of a variance, a reviewing court must determine whether substantial evidence supports the findings of the administrative board and whether the findings support the board's action. [FN1] We determine in the present case that the last of these requisites has not been fulfilled.

FN1 We recently held in *Strumsky v. San Diego County Employees Retirement Association* (1974) 11 Cal.3d 28 [112 Cal.Rptr. 805, 520 P.2d 29], that if the order or decision of a local administrative agency substantially affects a "fundamental vested right," a court to which a petition for a writ of mandamus has been addressed upon the ground that the evidence does not support the findings must exercise its independent judgment in reviewing the evidence and must find abuse of discretion if the weight of the evidence fails to support the findings. Petitioner does not suggest, nor do we find, that the present case touches upon any fundamental vested right. (See generally *Bixby v. Pierno* (1971) 4 Cal.3d 130, 144-147 [93 Cal.Rptr. 234, 481 P.2d 242]; *Temescal Water Co. v. Dept. Public Works* (1955) 44 Cal.2d 90, 103 [280 P.2d 1].)

The parties in this action dispute the future of approximately 28 acres in Topanga Canyon located in the Santa Barbara Mountains region of Los Angeles County. A county ordinance zones the property for light agriculture and single family residences; [FN2] it also prescribes a one-acre minimum lot size. Upon recommendation of its zoning board and despite the opposition of appellant-petitioner - an incorporated nonprofit organization composed of taxpayers and owners of real property in the canyon - the Los Angeles County Regional Planning Commission granted to the Topanga Canyon Investment Company a variance to establish a 93-space mobile home park on this acreage. [FN3] Petitioner appealed without success to the county board of supervisors, thereby exhausting its administrative remedies. Petitioner then sought relief by means of administrative mandamus, again unsuccessfully, in Los Angeles County Superior Court and the Court of Appeal for the Second District.

FN2 Los Angeles County Zoning Ordinance No. 7276.

FN3 Originally the real party in interest, the Topanga Canyon Investment Company has been replaced by a group of successoral real parties in interest. We focus our analysis on the building plans of the original real party in interest since it was upon the basis of these plans that the zoning authorities granted the variance challenged by petitioner.

In reviewing the denial of mandamus below, we first consider the proper role of agency and reviewing court with respect to the grant of variances. We then apply the proper standard of review to the facts of the case in order to determine whether we should sustain the action of the Los Angeles County Regional Planning Commission. ***511**

1. *An administrative grant of a variance must be accompanied by administrative findings. A court reviewing that grant must determine whether substantial evidence supports the findings and whether the findings support the conclusion that all applicable legislative requirements for a variance have been satisfied.*

A comprehensive zoning plan could affect owners of some parcels unfairly if no means were provided to permit flexibility. Accordingly, in an effort to achieve substantial parity and perhaps also in order to insulate zoning schemes from constitutional attack, [FN4] our Legislature laid a foundation for the granting of variances. Enacted in 1965, section 65906 of the Government Code establishes criteria for these grants; it provides: "Variances from the terms of the zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification [¶] Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limi-

tations upon other properties in the vicinity and zone in which such property is situated." [FN5]

FN4 1 Appendix to Journal of the Senate (1970 Reg. Sess.) Final Report of the Joint Committee on Open Space Land (1970) pages 94-95; Bowden, *Article XVIII - Opening the Door to Open Space Control* (1970) 1 Pacific L.J. 461, 506. See *Metcalf v. County of Los Angeles* (1944) 24 Cal.2d 267, 270-271 [148 P.2d 645]; Gaylord, *Zoning: Variances, Exceptions and Conditional Use Permits in California* (1958) 5 U.C.L.A. L.Rev. 179; Comment, *The General Welfare, Welfare Economics, and Zoning Variances* (1965) 38 So.Cal.L.Rev. 548, 573. See generally Note, *Administrative Discretion in Zoning* (1969) 82 Harv.L.Rev. 668, 671. The primary constitutional concern is that as applied to a particular land parcel, a zoning regulation might constitute a compensable "taking" of property.

FN5 A third paragraph added to section 65906 declares: "A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property." This paragraph serves to preclude "use" variances, but apparently does not prohibit so-called "bulk" variances, those which prescribe setbacks, building heights, and the like. The paragraph became effective on November 23, 1970, 19 days after the Los Angeles County Regional Planning Commission granted the variance here at issue. Petitioner does not contend that the paragraph is applicable to the present case.

Applicable to all zoning jurisdictions except chartered cities (Gov. Code, § 65803), section 65906 may be supplemented by harmonious local legislation. [FN6] We note that Los Angeles County has enacted an ordinance which, ***512** if harmonious with section 65906, would govern the Topanga Canyon property here under consideration. Los Angeles County's Zoning Ordinance No. 1494, section 522, provides: [FN7] "An exception [variance] may ... be granted where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, and in the granting of such exception the spirit of the ordinance will be observed, public safety secured, and substantial justice done."

FN6 Government Code section 65800 declares that the code chapter of which section 65906 is a part is intended to provide minimum limitations within which counties and cities can exercise maximum control over local zoning matters. Article XI, section 11 of the California Constitution declares that "[a]ny county, city, town, or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with general laws."

FN7 This section recently was repealed but was in force when the zoning agencies rendered their decisions in the present case. For purposes of more succinct presentation, we refer in text to the section in the present tense.

Both state and local laws thus were designed to establish requirements which had to be satisfied before the Topanga Canyon Investment Company should have been granted its variance. Although the cases have held that substantial evidence must support the award of a variance in order to insure that such legislative requirements have been satisfied [FN8] (see, e.g., *Siller v. Board of Supervisors* (1962) 58 Cal.2d 479, 482 [25 Cal.Rptr. 73, 375 P.2d 41]; *Bradbeer v. England* (1951) 104 Cal.App.2d 704, 707 [232 P.2d 308]), they have failed to clarify whether the administrative agency must always set forth findings and have not illuminated the proper relationship between the evidence, findings, and ultimate agency action. [FN9]

FN8 The rule stated finds its source in authorities holding that all adjudicatory determinations of local agencies are entitled to no more than substantial evidence review. As indicated above (fn. 1, *ante*) those authorities no longer state the law with respect to adjudicatory determinations of such agencies which affect fundamental vested rights. Since no such right is involved in this case, however, the substantial evidence standard remains applicable. We note by way of caution, however, that merely because a case is said to involve a "variance" does not necessarily dictate a conclusion that no funda-

mental vested right is involved. The term "variance" is sometimes used, for example, to refer to permits for nonconforming uses which predate a zoning scheme. (See Hagman, Larson, & Martin, Cal. Zoning Practice (Cont. Ed. Bar) pp. 383-384.)

FN9 For descriptions of the history of judicial action in this state with respect to zoning variance grants, see Bowden, *Article XVIII - Opening the Door to Open Space Control* (1970) 1 Pacific L.J. 461, 507-509; 1 Appendix to Journal of the Senate (1970 Reg. Sess.) Final Report of the Joint Committee on Open Space Land (1970) pages 95-98; Hagman, Larson,& Martin, Cal. Zoning Practice, *supra*, pages 287-291.

One of the first decisions to emphasize the importance of judicial scrutiny of the record in order to determine whether substantial evidence supported administrative findings that the property in question met the legislative variance requirements was that penned by Justice Molinari in ***513** *Cow Hollow Improvement Club v. Board of Permit Appeals* (1966) 245 Cal. App.2d 160 [53 Cal.Rptr. 610]. Less than one year later, we followed the approach of that case in *Broadway, Laguna etc. Assn.* v. *Board of Permit Appeals* (1967) 66 Cal.2d 767 [59 Cal.Rptr. 146, 427 P.2d 810], and ordered that a zoning board's grant of a variance be set aside because the party seeking the variance had failed to adduce sufficient evidence to support administrative findings that the evidence satisfied the requisites for a variance set forth in the same San Francisco ordinance.

Understandably, however, the impact of these opinions remained uncertain. The San Francisco ordinance applicable in *Cow Hollow* and *Broadway* explicitly required the zoning board to specify its subsidiary findings and ultimate conclusions; this circumstance raised the question whether a court should require findings and examine their sufficiency in a case in which the applicable local legislation did not explicitly command the administrative body to set forth findings. Indeed language in *Broadway* intimated that such a case was distinguishable. (*Broadway, Laguna etc. Assn.* v. *Board of Permit Appeals, supra*, at pp. 772-773. See also *Stoddard v. Edelman* (1970) 4 Cal.App.3d 544, 549 [84 Cal.Rptr. 443]. Cf. *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 270 [104 Cal.Rptr. 761, 502 P.2d 1049].) Further, neither *Cow Hollow* nor *Broadway* confronted Government Code section 65906, since both cases concerned a chartered city. [FN10] There thus also remained uncertainty with respect to cases involving zoning jurisdictions other than chartered cities.

FN10 See page 511, *ante*.

Nevertheless, in an opinion subsequent to *Broadway; Hamilton* v. *Board of Supervisors* (1969) 269 Cal.App.2d 64 [75 Cal.Rptr. 106], a Court of Appeal set aside the grant of a variance by a planning commission under circumstances different from those in *Broadway* and *Cow Hollow*. The zoning jurisdiction involved in that controversy was a county, not a chartered city, and the court's opinion did not suggest that any applicable ordinance required administrative findings. Deeming Government Code section 65906 "concededly controlling," (*Hamilton v. Board of Supervisors, supra*, at p. 67), the court undertook the task of squaring the findings announced by the commission with the commission's grant of the variance and concluded that the findings were insufficient to sustain the variance.

(1) Consistent with the reasoning underlying these cases, we hold that ***514** regardless of whether the local ordinance commands that the variance board set forth findings, [FN11] that body must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board's action. (2) We hold further that a reviewing court, before sustaining the grant of a variance, must scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision. In making these determinations, the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision.

FN11 We note the apparent applicability of section 639 of the Los Angeles County Zoning Ordinance which was in effect at the time respondent granted the variance. That section provided: "After a hearing by a zoning board the said zoning board shall report to the commission its findings and recom-

mend the action which it concludes the commission should take." As explained in text, however, we rest our ruling upon Code of Civil Procedure section 1094.5.

Our analysis begins with consideration of Code of Civil Procedure section 1094.5, the state's administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. (3) Without doubt, this provision applies to the review of variances awarded by bodies such as the Los Angeles County zoning agencies that participated in the present case. [FN12] (4) Section 1094.5 clearly contemplates that at minimum, the reviewing court must determine both whether substantial evidence supports the administrative ***515** agency's findings and whether the findings support the agency's decision. Subdivision (b) of section 1094.5 prescribes that when petitioned for a writ of mandamus, a court's inquiry should extend, among other issues, to whether "there was any prejudicial abuse of discretion." Subdivision (b) then defines "abuse of discretion" to include instances in which the administrative order or decision "is not supported by the findings, *or* the findings are not supported by the evidence." (Italics added.) Subdivision (c) declares that "*in all ... cases*" (italics added) other than those in which the reviewing court is authorized by law to judge the evidence independently, [FN13] "abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record." (See *Zakessian v. City of Sausalito* (1972) 28 Cal.App.3d 794, 798 [105 Cal.Rptr. 105].)

FN12 *Allen v. Humboldt County Board of Supervisors* (1963) 220 Cal.App.2d 877, 882 [34 Cal.Rptr. 232]. See also *Siller* v. *Board of Supervisors* (1962) 58 Cal.2d 479, 481 [25 Cal.Rptr. 73, 375 P.2d 41]. The California Judicial Council's report reflects a clear desire that section 1094.5 apply to all agencies, regardless of whether they are subject to the Administrative Procedure Act and regardless of their state or local character. (See Judicial Council of Cal., 10th Biennial Rep. (1944) pp. 26, 45. See also *Temescal Water Co. v. Dept. Public Works* (1955) 44 Cal.2d 90, 101 [280 P.2d 1]; Deering, Cal. Administrative Mandamus (1966) p. 7.) "In the absence of compelling language in [a] statute to the contrary, it will be assumed that the Legislature adopted the proposed legislation with the intent and meaning expressed by the council in its report." (*Hohreiter* v. *Garrison* (1947) 81 Cal.App.2d 384, 397 [184 P.2d 323].)

Section 1094.5 makes administrative mandamus available for review of "any final administrative order or decision made as the result of a proceeding in which *by law* a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, corporation, board or officer." (Italics added.) Government Code section 65901 satisfies these requisites with respect to variances granted by jurisdictions other than chartered cities such as Los Angeles County's zoning agencies. Section 65901 provides, in part: "The board of zoning adjustment or zoning administrator shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining such matters, and applications for variances from the terms of the zoning ordinance."

FN13 See footnote 1, *supra*.

(5) We further conclude that implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. If the Legislature had desired otherwise, it could have declared as a possible basis for issuing mandamus the absence of substantial evidence to support the administrative agency's action. By focusing, instead, upon the relationships between evidence and findings and between findings and ultimate action, the Legislature sought to direct the reviewing court's attention to the analytic route the administrative agency traveled from evidence to action. In so doing, we believe that the Legislature must have contemplated that the agency would reveal this route. Reference, in section 1094.5, to the reviewing court's duty to compare the evidence and ultimate decision to "*the* findings" (italics added) we believe leaves no room for the conclusion that the Legislature would have been content to have a reviewing court

speculate as to the administrative agency's basis for decision.

Our ruling in this regard finds support in persuasive policy considerations. (See generally 2 Davis, Administrative Law Treatise (1958) § 16.05, pp. 444-449; Forkosch, A Treatise on Administrative Law (1956) § 253, pp. 458-464.) According to Professor Kenneth Culp Davis, the requirement that administrative agencies set forth findings to support their adjudicatory decisions stems primarily from judge-made law (see, e.g., *Zieky v. Town Plan and Zon. Com'n of Town of Bloomfield* (1963) 151 Conn. 265 [196 A.2d 758]; *Stoll v. Gulf Oil Corp.* (1958) 79 Ohio L.Abs. 145 [155 N.E.2d 83]), and is "remarkably uniform in both federal and state ***516** courts." As stated by the United States Supreme Court, the "accepted ideal ... is that 'the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained.' (*S.E.C. v. Chenery Corp.* (1943) 318 U.S. 80, 94.)" (2 Davis, *supra*, § 16.01, pp. 435-436. See also *Saginaw Broadcasting Co. v. Federal C. Com'n* (1938) 96 F.2d 554, 559 [68 App.D.C. 282].)

Among other functions, a findings requirement serves to conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions. (See 2 Cooper, State Administrative Law (1965) pp. 467-468; Feller, *Prospectus for the Further Study of Federal Administrative Law* (1938) 47 Yale L.J. 647, 666. Cf. Comment, *Judicial Control Over Zoning Boards of Appeal: Suggestions for Reform* (1965) 12 U.C.L.A. L.Rev. 937, 952.) [FN14] In addition, findings enable the reviewing court to trace and examine the agency's mode of analysis. (See *California Motor Transport Co. v. Public Utilities Com.* (1963) 59 Cal.2d 270, 274 [28 Cal.Rptr. 868, 379 P.2d 324]; *Swars v. Council of City of Vallejo* (1949) 33 Cal.2d 867, 871 [206 P.2d 355].)

FN14 Although at first blush, judicial enforcement of a findings requirement would appear to constrict the role of administrative agencies, in reality, the effect could be to the contrary. Because, notes Judge Bazelon, it provides a framework for principled decision-making, a findings requirement serves to "diminish the importance of judicial review by enhancing the integrity of the administrative process." (*Environmental Defense Fund, Inc. v. Ruckelshaus* (D.C.Cir. 1971) 439 F.2d 584, 598.) By exposing the administrative agency's mode of analysis, findings help to constrict and define the scope of the judicial function. "We must know what [an administrative] decision means," observed Mr. Justice Cardozo, "before the duty becomes ours to say whether it is right or wrong." (*United States v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.* (1935) 294 U.S. 499, 511 [79 L.Ed. 1023, 1032, 55 S.Ct. 462].)

Absent such roadsigns, a reviewing court would be forced into unguided and resource-consuming explorations; it would have to grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency. [FN15] (6)**(See fn. 16.)** [FN16] Moreover, ***517** properly constituted findings enable the parties to the agency proceeding to determine whether and on what basis they should seek review. (See *In re Sturm* (1974) *ante*, pp. 258, 267 [113 Cal.Rptr. 361, 521 P.2d 97]; *Swars v. Council of City of Vallejo, supra,* at p. 871.) They also serve a public relations function by helping to persuade the parties that administrative decision-making is careful, reasoned, and equitable.

FN15 "Given express findings, the court can determine whether the findings are supported by substantial evidence, and whether the findings warrant the decision of the board. If no findings are made, and if the court elects not to remand, its clumsy alternative is to read the record, speculate upon the portions which probably were believed by the board, guess at the conclusions drawn from credited portions, construct a basis for decision, and try to determine whether a decision thus arrived at should be sustained. In the process, the court is required to do much that is assigned to the board. ..." (3 Anderson, American Law of Zoning (1968) § 16.41, p. 242.)

FN16 Although a variance board's findings

"need not be stated with the formality required in judicial proceedings" (*Swars v. Council of City of Vallejo, supra*, at p. 872), they nevertheless must expose the board's mode of analysis to an extent sufficient to serve the purposes stated herein. We do not approve of the language in *Kappadahl v. Alcan Pacific Co.* (1963) 222 Cal.App.2d 626, 639 [35 Cal.Rptr. 354], and *Ames v. City of Pasadena* (1959) 167 Cal.App.2d 510, 516 [334 P.2d 653], which endorses the practice of setting forth findings solely in the language of the applicable legislation.

By setting forth a reasonable requirement for findings and clarifying the standard of judicial review, we believe we promote the achievement of the intended scheme of land use control. Vigorous and meaningful judicial review facilitates, among other factors, the intended division of decision-making labor. (7) Whereas the adoption of zoning regulations is a legislative function (Gov. Code, § 65850), the granting of variances is a quasi-judicial, administrative one. (See *Johnston v. Board of Supervisors* (1947) 31 Cal.2d 66, 74 [187 P.2d 686]; *Kappadahl v. Alcan Pacific Co.* (1963) 222 Cal.App.2d 626, 634 [35 Cal.Rptr. 354].) If the judiciary were to review grants of variances superficially, administrative boards could subvert this intended decision-making structure. (See 1 Appendix to Sen. J. (1970 Reg. Sess.) Final Rep. of the Joint Committee on Open Space Land (1970) pp. 102-103.) They could "[amend] ... the zoning code in the guise of a variance" (*Cow Hollow Improvement Club v. Board of Permit Appeals, supra*, at p. 181), and render meaningless, applicable state and local legislation prescribing variance requirements.

Moreover, courts must meaningfully review grants of variances in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought. (8) A zoning scheme, after all, is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. (See, e.g., 1 Appendix to Sen. J. (1970 Reg. Sess.) Final Rep. of the Joint Committee on Open Space Land (1970) p. 91; Bowden, *Article XXVIII - Opening the Door to Open Space Control* (1970) 1 Pacific L.J. 461, 501.) If the interest of ***518** these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests.

Abdication by the judiciary of its responsibility to examine variance board decision-making when called upon to do so could very well lead to such subversion. [FN17] Significantly, many zoning boards employ adjudicatory procedures that may be characterized as casual. (See Comment, *Judicial Control over Zoning Boards of Appeal: Suggestions for Reform* (1965) 12 U.C.L.A. L.Rev. 937, 950. Cf. *Bradbeer v. England* (1951) 104 Cal.App.2d 704, 710 [232 P.2d 308].) The availability of careful judicial review may help conduce these boards to insure that all parties have an opportunity fully to present their evidence and arguments. Further, although we emphasize that we have no reason to believe that such a circumstance exists in the case at bar, the membership of some zoning boards may be inadequately insulated from the interests whose advocates most frequently seek variances. (See e.g., 1 Appendix to Sen. J. (1970 Reg. Sess.) Final Rep. of the Joint Committee on Open Space Land (1970) p. 100.) Vigorous judicial review thus can serve to mitigate the effects of insufficiently independent decision-making.

FN17 See generally Comment, *Zoning: Variance Administration in Alameda County* (1962) 50 Cal.L.Rev. 101, 107 and footnote 42. See also Note, *Administrative Discretion in Zoning* (1969) 82 Harv.L.Rev. 668, 672 and sources cited therein.

2. *The planning commission's summary of "factual data" - its apparent "findings" - does not include facts sufficient to satisfy the variance requirements of Government Code section 65906.*

As we have mentioned, at least two sets of legislative criteria appear applicable to the variance awarded: Government Code section 65906 and Los Angeles County Zoning Ordinance No. 1494, section 522. (9) The variance can be sustained only if *all* applicable legislative requirements have been satisfied. Since we conclude that the requirements of section 65906 have not been met, the question whether the variance conforms with the criteria set forth in Los Angeles County Zoning Ordinance No. 1494, section 522 becomes immaterial. [FN18] ***519**

FN18 We focus on the statewide requirements because they are of more general application. If we were to decide that the criteria of section 65906 had been satisfied, we would then be called upon to determine whether the requirements set forth in the county ordinance are consistent with those in section 65906 and, if so, whether these local criteria also had been satisfied.

The local criteria need be squared with the state criteria since the section 65906 requirements prevail over any inconsistent requirements in the county ordinance. The stated purpose of title 7, chapter 4, of the Government Code, which includes section 65906, is to provide limitations - albeit minimal ones - on the adoption and administration of zoning laws, ordinances, and regulations by counties and nonchartered cities. (See fn. 6, *ante*.) Section 65802 of the code declares that "[n]o provisions of [the Government Code], other than the provisions of [chapter 4], and no provisions of any other code or statute shall restrict or limit the procedures provided in [chapter 4] by which the legislative body of any county or city enacts, amends, administers, or provides for the administration of any zoning law, ordinance, rule or regulation." The clear implication is that chapter 4 does restrict or limit these procedures. (See also Cal. Const., art. XI, § 11.)

If local ordinances were allowed to set a lesser standard for the grant of variances than those provided in section 65906, a county or city could escape the prohibition against granting use variances added to section 65906 in 1970 (see fn. 5, *ante*) merely by enacting an ordinance which would permit the grant of use variances. Clearly the Legislature did not intend that cities and counties to which the provisions of chapter 4 apply should have such unfettered discretion.

We summarize the principal factual data contained in the Los Angeles County Regional Planning Commission's report, which data the commission apparently relied on to award the variance. [FN19] The acreage upon which the original real party in interest [FN20] sought to establish a mobile home park consists of 28 acres; it is a hilly and in places steep parcel of land. At the time the variance was granted, the property contained one single-family residence. Except for a contiguous area immediately to the southeast which included an old and flood-damaged subdivision and a few commercial structures, the surrounding properties were devoted exclusively to scattered single-family residences.

FN19 We confine our analysis to the relationship between the commission's fact summary and its ultimate decision; we do not consider the testimonial evidence directly. To sustain the grant of the variance of course would require that we conclude that substantial evidence supports the findings and that the findings support the variance award. Since we decide below, however, that the commission's fact summary does not include sufficient data to satisfy the section 65906 requirements, we need not take the further step of comparing the transcript to the fact summary. Our basis for so proceeding lies in Code of Civil Procedure section 1094.5, which defines "abuse of discretion," one of several possible grounds for issuance of a writ of mandamus, to include instances in which "the order or decision [of the administrative agency] is not supported by the findings, *or* the findings are not supported by the evidence." (Italics added.)

FN20 See footnote 3, *ante*.

The proposed mobile home park would leave 30 percent of the acreage in its natural state. An additional 25 percent would be landscaped and terraced to blend in with the natural surroundings. Save in places where a wall would be incompatible with the terrain, the plan contemplated enclosure of the park with a wall; it further called for rechanneling a portion of Topanga Canyon Creek and anticipated that the developers would be required to dedicate an 80-foot-wide strip of the property for a proposed realignment of Topanga Creek Boulevard. ***520**

The development apparently would partially satisfy a growing demand for new, low cost housing in the area. Additionally, the project might serve to attract further investment to the region and could pro-

vide a much needed fire break. Several data indicate that construction on the property of single-family residences in conformance with the zoning classification would generate significantly smaller profits than would development of the mobile home park. Single-family structures apparently would necessitate costly grading, and the proposed highway realignment would require a fill 78 feet high, thereby rendering the property unattractive for conventional residential development. Moreover, the acreage is said not to be considered attractive to parties interested in single-family residences due, in the words of the report's summary of the testimony, to "the nature of the inhabitants" in the vicinity and also because of local flood problems.

These data, we conclude, do not constitute a sufficient showing to satisfy the section 65906 variance requirements. That section permits variances "*only* when, because of *special* circumstances applicable to the property, ... the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification." (Italics added.) (10) This language emphasizes *disparities* between properties, not treatment of the subject property's characteristics in the abstract. (See *Minney v. City of Azusa* (1958) 164 Cal.App.2d 12, 31 [330 P.2d 255]; cf. *In re Michener's Appeal* (1955) 382 Pa. 401 [115 A.2d 367, 371]; *Beirn* v. *Morris* (1954) 14 N.J. 529 [103 A.2d 361, 364]; Note, *Administrative Discretion in Zoning* (1969) 82 Harv. L.Rev. 668, 671-672.) It also contemplates that at best, only a small fraction of any one zone can qualify for a variance. (See generally 3 Anderson, American Law of Zoning (1968) § 14.69, pp. 62-65.)

The data contained in the planning commission's report focus almost exclusively on the qualities of the property for which the variance was sought. In the absence of comparative information about surrounding properties, these data lack legal significance. Thus knowledge that the property has rugged features tells us nothing about whether the original real party in interest faced difficulties different from those confronted on neighboring land. [FN21] Its assurances that it would landscape and terrace parts of the property and leave others in their natural state are all well and good, but they bear not at all on the critical issue whether a variance ***521** was necessary to bring the original real party in interest into substantial parity with other parties holding property interests in the zone. (See *Hamilton v. Board of Supervisors, supra*, at p. 66.)

> FN21 Indeed, the General Plan for Topanga Canyon suggests that the subject property is not uniquely surfaced; it states that the entire area is characterized by "mountainous terrain, steep slopes and deep canyons interspersed with limited areas of relatively flat or rolling land."

The claim that the development would probably serve various community needs may be highly desirable, but it too does not bear on the issue at hand. Likewise, without more, the data suggesting that development of the property in conformance with the general zoning classification could require substantial expenditures are not relevant to the issue whether the variance was properly granted. Even assuming for the sake of argument that if confined to the subject parcel and no more than a few others in the zone, such a burden could support a variance under section 65906, for all we know from the record, conforming development of other property in the area would entail a similar burden. Were that the case, a frontal attack on the present ordinance or a legislative proceeding to determine whether the area should be rezoned might be proper, but a variance would not. (1 Appendix to Sen. J. (1970 Reg. Sess.) Final Rep. of the Joint Committee on Open Space Land (1970) p. 95; Bowden, *Article XVIII - Opening the Door to Open Space Control* (1970) 1 Pacific L.J. 461, 506.)

Although they dispute that section 65906 requires a showing that the characteristics of the subject property are exceptional, the current real parties in interest would nevertheless have us speculate that the property is unlike neighboring parcels. They point out that the plot has rugged terrain and three stream beds [FN22] and that the Topanga Creek Boulevard realignment would bisect the property. (11) Speculation about neighboring land, however, will not support the award of a variance. The party seeking the variance must shoulder the burden of demonstrating before the zoning agency that the subject property satisfies the requirements therefor. (*Tustin Heights Association v. Board of Supervisors* (1959) 170 Cal.App.2d 619, 627 [339 P.2d 914].) Thus neither an administrative agency nor a reviewing court may assume without evidentiary basis that the character of neighboring

property is different from that of the land for which the variance is sought. [FN23] ***522**

FN22 Interestingly, since the witnesses who testified in favor of the variance never mentioned the stream beds, the original real party in interest apparently did not regard the beds as disadvantageous. Rather, a witness who opposed the variance offhandedly mentioned the beds as illustrative of the scenic beauty of the area. The trial court seized upon this testimony and used it in justifying the variance award.

FN23 In fact, other parcels in the zone may well have the features that the successoral real parties in interest speculate are confined to the subject property. Rugged terrain apparently is ubiquitous in the area (see fn. 21, *ante*), and because the stream beds and highway must enter and exit the subject property somewhere, they may all traverse one or more neighboring parcels. Further, for all we know from the commission's findings, stream beds may traverse most parcels in the canyon.

(12) Moreover, the grant of a variance for nonconforming development of a 28-acre parcel in the instant case is suspect. Although we do not categorically preclude a tract of that size from eligibility for a variance, we note that in the absence of unusual circumstances, so large a parcel may not be sufficiently unrepresentative of the realty in a zone to merit special treatment. By granting variances for tracts of this size, a variance board begins radically to alter the nature of the entire zone. Such change is a proper subject for legislation, not piecemeal administrative adjudication. (See *Sinclair Pipe Line Co.* v. *Village of Richton Park* (1960) 19 Ill.2d 370 [167 N.E.2d 406]; *Appeal of the Catholic Cemeteries Association* (1954) 379 Pa. 516 [109 A.2d 537]; *Civil City of Indianapolis v. Ostrom R. & Construction Co.* (1931) 95 Ind.App. 376 [176 N.E. 246].) (13) Since there has been no affirmative showing that the subject property differs substantially and in relevant aspects from other parcels in the zone, we conclude that the variance granted amounts to the kind of "special privilege" explicitly prohibited by Government Code section 65906.

We submit, in summary, that this case illumines two important legal principles. First, by requiring that administrative findings must support a variance, we emphasize the need for orderly legal process and the desirability of forcing administrative agencies to express their grounds for decision so that reviewing courts can intelligently examine the validity of administrative action. Second, by abrogating an unsupported exception to a zoning plan, we conduce orderly and planned utilization of the environment.

We reverse the judgment and remand the cause to the superior court with directions to issue a writ of mandamus requiring the Los Angeles Board of Supervisors to vacate its order awarding a variance. We also direct the superior court to grant any further relief that should prove appropriate.

Wright, C. J., McComb, J., Mosk, J., Burke, J., Sullivan, J., and Clark, J., concurred. ***523**

Cal.
Topanga Assn. for a Scenic Community v. County of Los Angeles
11 Cal.3d 506, 522 P.2d 12, 113 Cal.Rptr. 836

END OF DOCUMENT

ARCHIE TOBE et al., Plaintiffs and Appellants,
v.
CITY OF SANTA ANA et al., Defendants and Respondents.
DAWN ZUCKERNICK et al., Petitioners,
v.
THE MUNICIPAL COURT FOR THE CENTRAL ORANGE JUDICIAL DISTRICT OF ORANGE COUNTY, Respondent; THE PEOPLE, Real Party in Interest.

No. S038530.

Supreme Court of California
Apr 24, 1995.

SUMMARY

Homeless persons and taxpayers petitioned the superior court for a writ of mandate, seeking to bar enforcement of a city ordinance banning "camping" and storage of personal property, including camping equipment, in designated public areas. The superior court struck some language from the ordinance but otherwise denied the petition. (Superior Court of Orange County, No. 696000, James L. Smith, Judge.) In a related action, persons who had been charged in municipal court with violating the ordinance demurred unsuccessfully to the complaints and thereafter sought a writ of mandate to compel the municipal court to sustain their demur rers. (Municipal Court for the Central Orange Judicial District of Orange County, Nos. 93CM02392, 93CM02393, 93CM02361, 93CM02519, 93CM02525, 93CM02358, 93CM02513, 93CM02354, 93CM02516, 93CM02530, 93CM02386 and 93CM02520, Gregory Lewis, Judge.) The Court of Appeal, Fourth Dist., Div. Three, Nos. G014257 and G014536, consolidated the appeal with the writ petition, and, ruling that the ordinance was unconstitutional, reversed the judgment of the superior court and ordered that a writ of mandate be issued directing the municipal court to sustain the demurrers to the counts pleading violations of the ordinance.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that both writ petitions stated only facial and not as applied challenges to the ordinance. The court also held that the three persons who sought to bar enforcement of the ordinance had a sufficient beneficial interest to bring the action, even though two had never been cited under the ordinance and the third was not a homeless person, since, as taxpayers, they had standing under Code Civ. Proc., § 526a, to restrain illegal expenditure or waste of city funds on future enforcement of an unconstitutional ordinance or an impermissible means of enforcement of a facially valid ordinance. However, the court held that, absent a basis for believing that the ordinance would not have been adopted if the public areas of the city had been appropriated for living accommodation by any group other than the homeless, or that it was the intent of the city council the ordinance be enforced only against homeless persons, the ordinance was not subject to attack on the basis that the city council may have hoped its impact would be to discourage homeless persons from moving to the city. Nor could it be assumed that the purpose of the ordinance was simply to drive the homeless out of the city. Further, the Court of Appeal erred in holding that the ordinance impermissibly infringed on the right of the homeless to travel; in holding that the ordinance was invalid because it permitted punishment for the status of being indigent or homeless, and thus permitted cruel and unusual punishment; and in holding that the ordinance was unconstitutionally vague and overbroad. (Opinion by Baxter, J., with Lucas, C. J., Kennard, Arabian and George, JJ., concurring. Separate concurring opinions by Kennard and Werdegar, JJ. Separate dissenting opinion by Mosk, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Constitutional Law § 19--Constitutionality of Legislation-- Raising Question of Constitutionality--Challenge as "Facial" or "As Applied"-- Ordinance Banning "Camping" in Public Areas--Petition by Homeless Persons and Taxpayers for Writ of Mandate to Bar Enforcement of Ordinance.

A petition for a writ of mandate brought by homeless persons and taxpayers, seeking to bar enforcement of a city ordinance banning "camping" and storage of personal property in designated public areas, stated only a facial and not an as applied challenge to the ordinance, and the trial court did not err in

failing to rule on an as applied challenge, since plaintiffs did not perfect a basis for such a ruling. Although the petition alleged in conclusory language that a pattern of constitutionally impermissible enforcement of the ordinance had existed, plaintiffs never identified the particular applications of the law to be enjoined. The only relief sought in the petition was a writ of mandate enjoining any enforcement of the ordinance by defendants, which is the kind of relief sought in a facial attack. Also, since no evidentiary hearing was held, plaintiffs did not create a factual record on which an injunction limited to improper applications of the ordinance could have been fashioned. Even assuming that plaintiffs attempted to challenge the ordinance on the basis that homeless persons whose violation thereof was involuntary could offer a due-process-based necessity defense, declarations submitted by plaintiffs did not demonstrate that the ordinance had been enforced in a constitutionally impermissible manner against such persons.

[See 7 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 56 et seq.]

(2a, 2b, 2c, 2d) Constitutional Law § 19--Constitutionality of Legislation--Raising Question of Constitutionality--Challenge as "Facial" or "As Applied"--Ordinance Banning "Camping" in Public Areas--Petition for Writ of Mandate to Compel Dismissal of Charges for Violation of Ordinance.

A petition for a writ of mandate by persons who had been charged with violation of a city ordinance banning "camping" and storage of personal property in designated public areas, to compel the trial court to sustain their demurrers to the complaints and to dismiss the charges, stated only a facial and not an as applied challenge to the ordinance. None of the complaints included any allegations identifying the charged individuals as involuntarily homeless persons whose violation of the ordinance was involuntary and/or occurred at a time when shelter beds were unavailable. Although the petition for a writ of mandate included allegations regarding the city's past efforts to rid the city of its homeless population, those allegations, even if true, were irrelevant to the legal sufficiency of the complaints. The demurrers and petition for a writ of mandate necessarily constituted only a facial attack on the ordinance since the defendants could not, on a demurrer to the accusatory pleading, offer evidence that the ordinance was invalid as applied to their individual circumstances. Moreover, the People had no opportunity to present evidence regarding the circumstances in which charged individuals had been arrested, as the only issue before the trial court in ruling on the demurrer was the sufficiency of the complaints.

(3) Constitutional Law § 19--Constitutionality of Legislation--Raising Question of Constitutionality--"Facial" and "As Applied" Challenges Compared.

A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual. To support a determination of facial unconstitutionality, voiding the statute as a whole, the party challenging the provision cannot prevail by suggesting that, in some future hypothetical situation, constitutional problems may possibly arise as to the particular application of the statute. Rather, the challenger must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions. An as applied challenge may seek (1) relief from a specific application of a facially valid statute or ordinance to an individual or class of individuals who are under allegedly impermissible present restraint or disability as a result of the manner or circumstances in which the statute or ordinance has been applied, or (2) an injunction against future application of the statute or ordinance in the allegedly impermissible manner it is shown to have been applied in the past. It contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied and to consider whether, in those particular circumstances, the application deprived the individual to whom it was applied of a protected right.

(4a, 4b) Constitutional Law § 19--Constitutionality of Legislation-- Raising Question of Constitutionality--By Criminal Defendant.

When a criminal defendant claims that a facially valid statute or ordinance has been applied in a constitutionally impermissible manner to the defendant, the court evaluates the propriety of the application on a case-by-case basis to determine whether to relieve the defendant of the sanction. However, when a criminal defendant seeks relief from a present application of a criminal statute or ordinance on constitutional grounds, it is not the administrative agency's "application" of the statute that is determinative. Whether the particular application of a statute declaring conduct criminal is constitutionally permissible can be determined only after the circumstances of its application have been established by conviction or

otherwise. Only then is an "as applied" challenge ripe. To obtain mandate or other relief from penalties imposed under a past application of the law, the defendant must presently be suffering some adverse impact of the law which the court has the power to redress.

(5a, 5b) Constitutional Law § 23--Constitutionality of Legislation-- Raising Question of Constitutionality--Burden of Proof--"As Applied" Challenge.

If a plaintiff seeks to enjoin future, allegedly impermissible, applications of a facially valid statute or ordinance, the plaintiff must demonstrate that such application is occurring or has occurred in the past. If instead it is contended that an otherwise valid statute has been applied in a constitutionally impermissible manner in the past and the plaintiff seeks an injunction against future application of the statute in that manner, the plaintiff must show a pattern of impermissible enforcement.

(6) Constitutional Law § 21--Constitutionality of Legislation--Raising Question of Constitutionality--Standing Essential to Raise Question.

In most cases, a plaintiff seeking relief from the constitutionally impermissible application of an otherwise valid statute or ordinance, either by a petition for a writ of mandamus or a complaint for declaratory and injunctive relief, must have a sufficient beneficial interest to have standing to prosecute the action, and there must be a present impermissible application of the challenged statute or ordinance which the court can remedy.

(7) Mandamus and Prohibition § 3--Mandamus--Standing to Obtain Writ.

Under Code Civ. Proc., § 1086, which expresses the controlling statutory requirements for standing to petition for a writ of mandate, the requirement that a petitioner be "beneficially interested" means that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.

(8) Constitutional Law § 21--Constitutionality of Legislation--Raising Question of Constitutionality--Standing Essential to Raise Question--Homeless Persons Challenging Ordinance Banning "Camping" in Public Areas.

Three plaintiffs had a sufficient beneficial interest to bring an action challenging the constitutionality of a city ordinance banning "camping" and storage of personal property in designated public areas, even though two had never been cited under the ordinance and the third was not a homeless person, since, as taxpayers, they had standing under Code Civ. Proc., § 526a, to restrain the illegal expenditure or waste of city funds on future enforcement of an unconstitutional ordinance or an impermissible means of enforcement of a facially valid ordinance.

(9) Indictment and Information § 39--Defects and Objections--Demurrer--Use.

A demurrer to a criminal complaint lies only to challenge the sufficiency of the pleading and raises only issues of law.

(10) Appellate Review § 126--Scope of Review--As Dependent on Procedural Posture of Case.

The procedural posture of a case is not simply a "technicality," but is crucial to determining the proper scope of appellate review. The procedural posture of a case also determines the ability of the parties to exercise their rights to present relevant evidence and to the creation of a full record adequate to enable the reviewing court to make a reasoned decision on the questions before it. When an appellate court fails to limit the scope of review to issues properly presented in the trial court, it denies litigants their right to have appellate questions decided on the basis of a full record which exposes all of the relevant facts and circumstances.

(11) Constitutional Law § 27--Constitutionality of Legislation--Rules of Interpretation--Motives of Legislature--Ordinance Banning "Camping" in Public Areas.

While the intent or purpose of the legislative body must be considered in construing an ambiguous statute or ordinance, the motive of the legislative body is generally irrelevant to the validity of the statute or ordinance. Thus, absent a basis for believing that a city ordinance banning "camping" and storage of personal property in designated public areas would not have been adopted if the public areas of the city had been appropriated for living accommodation by any group other than the homeless, or that it was the intent of the city council that the ordinance be enforced only against homeless persons, the ordinance was not subject to attack on the basis that the city council may have hoped that its impact would be to discourage

homeless persons from moving to the city. Nor could it be assumed that the purpose of the ordinance was simply to drive the homeless out of the city. The ordinance banned use of public property in the city for purposes for which it was not designed. At the time it was adopted, the city had agreed not to engage in discriminatory law enforcement, and the declared purpose of the ordinance did not suggest that it was to be enforced solely against the homeless.

(12) Constitutional Law § 21--Constitutionality of Legislation--Raising Question of Constitutionality--Standing Essential to Raise Question-- Consideration of Hypothetical Situations--Challenge on Basis of Prohibition of Constitutionally Protected Conduct.

One will not be heard to attack a statute on grounds that are not shown to be applicable to himself or herself and a court will not consider every conceivable situation which might arise under the language of the statute and will not consider the question of constitutionality with reference to hypothetical situations. If the statute clearly applies to a criminal defendant's conduct, the defendant may not challenge it on grounds of vagueness. However, in some cases, a defendant may make a facial challenge to the statute if he or she argues that the statute improperly prohibits a substantial amount of constitutionally protected conduct, whether or not its application to his or her own conduct may be constitutional.

(13) Constitutional Law § 52--First Amendment and Other Fundamental Rights of Citizens--Right to Travel.

Although no provision of the federal Constitution expressly recognizes a right to travel among and between the states, that right is recognized as a fundamental aspect of the federal union of states. For all the great purposes for which the federal government was formed, we are one people, with one common country. We are all citizens of the United States, and, as members of the same community, we must have the right to pass and repass through every part of it without interruption, as freely as in our own states. The right to travel, or right of migration, is an aspect of personal liberty which, when united with the right to travel, requires that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations that unreasonably burden or restrict this movement.
[See 7 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, §§ 287, 288.]

(14) Constitutional Law § 52--First Amendment and Other Fundamental Rights of Citizens--Right to Travel--Intrastate Travel--What Constitutes Violation of Right.

The right of intrastate travel, which includes intramunicipal travel, is a basic human right protected by Cal. Const., art. I, §§ 7 and 24. Such a right is implicit in the concept of a democratic society and is one of the attributes of personal liberty under common law. However, a violation of the right of intrastate travel occurs only when there is a direct restriction of the right to travel. Indirect or incidental burdens on travel resulting from otherwise lawful governmental action are not impermissible infringements of the right to travel, and, when legislation creating a burden on the right to travel is subjected to an equal protection analysis, strict scrutiny is not required, nor must a compelling need be demonstrated in order to sustain the legislation. If there is any rational relationship between the purpose of the statute or ordinance and a legitimate government objective, the law must be upheld.

(15a, 15b, 15c) Constitutional Law § 52--First Amendment and Other Fundamental Rights of Citizens--Right of Homeless to Travel--As Violated by Ordinance Banning "Camping" in Public Areas:Parks, Squares, and Playgrounds § 6--Use.

The Court of Appeal erred in holding that a city ordinance banning "camping" and storage of personal property in designated public areas impermissibly infringed on the right of the homeless to travel. The ordinance was nondiscriminatory; it forbade use of the public streets, parks, and property by residents and nonresidents alike for purposes other than those for which the property was designed. The provisions of the ordinance did not inevitably conflict with the right to travel, and it was capable of constitutional application. The ordinance had no impact, incidental or otherwise, on the right to travel except insofar as a person, homeless or not, might have been discouraged from traveling to the city because camping on public property was banned. An ordinance that bans camping and storing personal possessions on public property does not directly impede the right to travel. Even assuming that the ordinance may have constituted an incidental impediment to some individuals' ability to travel to the city, it was capable of applications that did not offend the constitution, and thus it had to be upheld. Further, there is no constitutional mandate that sites on public property be made available for camping to facilitate a homeless person's right to travel, just as

there is no right to use public property for camping or storing personal belongings.

(16) Constitutional Law § 25--Constitutionality of Legislation--Rules of Interpretation--Presumption of Constitutionality.

All presumptions favor the validity of a statute. The court may not declare it invalid unless it is clearly so.

(17) Constitutional Law § 52--First Amendment and Other Fundamental Rights of Citizens--Right to Travel--As Including Right to Live or Stay Where One Will.

The right to travel does not endow citizens with a right to live or stay where they will. While an individual may travel where he or she will and remain in a chosen location, that constitutional guaranty does not confer immunity against local trespass laws and does not create a right to remain without regard to the ownership of the property on which the person chooses to live or stay, be it public or privately owned property.

(18) Constitutional Law § 1--Creation or Recognition of Constitutional Right as Imposing Obligation on Local Government to Provide Means to Enjoy Right.

With few exceptions, such as the right to counsel guaranteed by U.S. Const., 6th Amend., the creation or recognition of a constitutional right does not impose on a state or governmental subdivision the obligation to provide its citizens with the means to enjoy that right.

(19) Criminal Law § 519.2--Punishment--Cruel and Unusual--Ordinance Banning "Camping" in Public Areas--As Unconstitutional Punishment for Status as Indigent or Homeless:Parks, Squares, and Playgrounds § 6--Use.

The Court of Appeal erred in concluding that a city ordinance banning "camping" and storage of personal property in designated public areas was invalid because it permitted punishment for the status of being indigent or homeless, and thus permitted a punishment which violated the prohibition of cruel and unusual punishment under U.S. Const., 8th Amend., and the ban on cruel or unusual punishment of Cal. Const., art. I, § 17. The ordinance permitted punishment for proscribed conduct, not punishment for status. Neither the language of the ordinance nor the evidence submitted by the persons who had been cited under it supported a conclusion that a person could be convicted and punished under the ordinance solely on the basis that he or she had no fixed place of abode. The United States Supreme Court has not held that the Eighth Amendment prohibits punishment of acts derivative of a person's status. Further, homelessness is not readily classified as a "status." Rather, there is a substantial definitional distinction between a "status" and a "condition." Even assuming the accuracy of the declarations submitted by the persons who had been cited under the ordinance with respect to their descriptions of the circumstances in which they had been cited, it was not clear that none had alternatives to either the condition of being homeless or the conduct that led to homelessness and to the citations.
[See 3 **Witkin & Epstein,** Cal. Criminal Law (2d ed. 1989) § 1344.]

(20a, 20b, 20c) Constitutional Law § 115--Substantive Due Process-- Statutory Vagueness--Ordinance Banning "Camping" in Public Areas:Parks, Squares, and Playgrounds § 6--Use.

The Court of Appeal erred in holding that a city ordinance banning "camping" and storage of personal property in designated public areas was unconstitutionally vague. The stated purpose of the ordinance was to make public streets and other areas readily accessible to the public and to prevent use of public property "for camping purposes or storage of personal property" which "interferes with the rights of others to use the areas for which they were intended." The terms which the Court of Appeal considered vague were not so when the purpose clause of the ordinance was considered and the terms were read in that context as they should have been. Thus, there was no possibility that any law enforcement agent would have believed that picnicking in a public park constituted "camping" within the meaning of the ordinance or would have believed that leaving a towel on a beach or an umbrella in a library constituted storage of property in violation of the ordinance. Further, the ordinance gave adequate notice of the conduct it prohibited and did not invite arbitrary or capricious enforcement.
[Vagueness as invalidating statutes or ordinances dealing with disorderly persons or conduct, note, 12 **A.L.R.3d** 1448.]

(21) Constitutional Law § 113--Substantive Due Process--Statutory Vagueness.

A penal statute must define the offense with sufficient precision that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. The constitutional interest implicated in ques-

tions of statutory vagueness is that no person be deprived of life, liberty, or property without due process of law, as assured by both the federal Constitution (U.S. Const., 5th and 14th Amends.) and the California Constitution (Cal. Const., art. I, § 7). To satisfy the constitutional command, a statute must be sufficiently definite to provide adequate notice of the conduct proscribed and provide sufficiently definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement. Only a reasonable degree of certainty is required, however. The analysis begins with the strong presumption that legislative enactments must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears. A statute should be sufficiently certain so that a person may know what is prohibited thereby and what may be done without violating its provisions, but it cannot be held void for uncertainty if any reasonable and practical construction can be given to its language.

(22) Words, Phrases, and Maxims--Camp.

"Camp" means to pitch or occupy a camp, to live temporarily in a camp or outdoors.

(23a, 23b) Constitutional Law § 115--Substantive Due Process--Statutory Overbreadth--Ordinance Banning "Camping" in Public Areas:Parks, Squares, and Playgrounds § 6--Use.

A city ordinance banning "camping" and storage of personal property in designated public areas was not unconstitutionally overbroad, was not facially invalid in that respect, and was capable of constitutional application. The ordinance did not exceed the police power of the city, since there is no fundamental right to camp on public property, persons who do so are not a suspect classification, and the persons challenging the validity of the ordinance did not claim that it was invidiously discriminatory on its face. A city has the power to regulate conduct on a street, sidewalk, or other public place or on or in a place open to the public (Pen. Code, § 647c) and local ordinances governing the use of municipal parks are specifically authorized (Pub. Resources Code, § 5193). Further, a city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws (Cal. Const., art. XI, § 7). A city not only has the power to keep its streets and other public property open and available for the purposes to which they are dedicated, it has a duty to do so. Also, none of the persons challenging the validity of the ordinance had identified a constitutionally protected right that was impermissibly restricted by application or threatened application of the ordinance. [See 8 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 792 et seq.]

(24) Constitutional Law § 113--Substantive Due Process--Effect of Challenge to Law on Grounds of Vagueness or Overbreadth.

A facial challenge to a law on grounds that it is overbroad and vague is an assertion that the law is invalid in all respects and cannot have any valid application, or a claim that the law sweeps in a substantial amount of constitutionally protected conduct. The concepts of vagueness and overbreadth are related, in the sense that if a law threatens the exercise of a constitutionally protected right a more stringent vagueness test applies.

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BAXTER, J.

The Court of Appeal invalidated, on constitutional grounds, an ordinance of the City of Santa Ana (Santa Ana) which banned "camping" and storage of personal property, including camping equipment, in designated public areas. We granted the petitions for review of Santa Ana and the People to consider whether the ordinance is valid on its face and whether either of the actions involved in the consolidated appeal stated an "as applied" challenge to the ordinance.

We conclude only a facial challenge was perfected in the lower courts and that the Santa Ana ordinance is valid on its face. It does not impermissibly restrict the right to travel, does not permit punishment for status, and is not unconstitutionally vague or overbroad, the only constitutional claims pursued by plaintiffs. [FN1]

> FN1 The Tobe petition for writ of mandate stated a cause of action based on an alleged violation of equal protection. The petition alleged in support of the equal protection claim only that the respondents had not and would not arrest nonhomeless persons who engaged in the same conduct for which the plaintiffs had been arrested. They offered no evidence to support that equal protection theory and did not argue an equal protection claim in the Court of Appeal or in this court. We deem that claim to have been abandoned. The Zuckernick petition did not make an equal protection claim.

We shall, therefore, reverse the judgment of the Court of Appeal.

I. Background

In October 1992, Santa Ana added article VIII, section 10-400 et seq. (the ordinance) to its municipal code. The declared purpose of the ordinance was ***1081** to maintain public streets and other public areas in the city in a clean and accessible condition. Camping and storage of personal property in those areas, the ordinance recited, interfered with the rights of others to use those areas for the purposes for which they were intended.

The ordinance provides:

"Sec. 10-402. Unlawful Camping.

"It shall be unlawful for any person to camp, occupy camp facilities or use camp paraphernalia in the following areas, except as otherwise provided:

"(a) any street;

"(b) any public parking lot or public area, improved or unimproved.

"Sec. 10-403. Storage of Personal Property in Public Places.

"It shall be unlawful for any person to store personal property, including camp facilities and camp paraphernalia, in the following areas, except as otherwise provided by resolution of the City Council:

"(a) any park;

"(b) any street;

"(c) any public parking lot or public area, improved or unimproved." [FN2]

> FN2 Section 10-401 of the ordinance defines the terms:
>
> "(a) *Camp* means to pitch or occupy camp

facilities; to use camp paraphernalia.

"(b) *Camp facilities* include, but are not limited to, tents, huts, or temporary shelters.

"(c) *Camp paraphernalia* includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks or non-city designated cooking facilities and similar equipment.

"(d) *Park* means the same as defined in section 31-1 of this Code.

"(e) *Store* means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

"(f) *Street* means the same as defined in section 1-2 of this Code."

Plaintiffs in these consolidated actions [FN3] are: (1) homeless persons and taxpayers who appealed from a superior court order which struck "to live ***1082** temporarily in a camp facility or outdoors" from the ordinance, [FN4] but otherwise denied their petition for writ of mandate by which they sought to bar enforcement of the ordinance (Tobe), [FN5] and (2) persons who, having been charged with violating the ordinance, demurred unsuccessfully to the complaints and thereafter sought mandate to compel the respondent municipal court to sustain their demurrers (Zuckernick).

FN3 The Court of Appeal opinion recites that the appeal and the mandate petition had been consolidated. We find no order in the record consolidating the appeal of the Tobe parties and the mandate petition of the Zuckernick parties in that court, however. We deem the recital in the Court of Appeal opinion to be such an order.

FN4 The ordinance has been amended accordingly. That action is not disputed by the parties.

FN5 Although the Tobe petition is denominated a petition for writ of "Mandate/Prohibition," prohibition lies only to restrain "the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person." (Code Civ. Proc., § 1102.) None of the named respondents exercises judicial functions in the enforcement of the ordinance. We consider the petition one for mandamus alone therefore. (*Neal v. State of California* (1960) 55 Cal.2d 11, 16 [9 Cal.Rptr. 607, 357 P.2d 839].)

Plaintiffs offered evidence to demonstrate that the ordinance was the culmination of a four-year effort by Santa Ana to expel homeless persons. There was evidence that in 1988 a policy was developed to show "vagrants" that they were not welcome in the city. To force them out, they were to be continually moved from locations they frequented by a task force from the city's police and recreation and parks departments; early park closing times were to be posted and strictly enforced; sleeping bags and accessories were to be disposed of; and abandoned shopping carts were to be confiscated. Providers of free food were to be monitored; sprinklers in the Center Park were to be turned on often; and violations of the city code by businesses and social service agencies in that area were to be strictly enforced. This effort led to a lawsuit which the city settled in April 1990.

Santa Ana then launched an August 15, 1990, sweep of the civic center area arresting and holding violators for offenses which included blocking passageways, drinking in public, urinating in public, jaywalking, destroying vegetation, riding bicycles on the sidewalk, glue sniffing, removing trash from a bin, and violating the fire code. Some conduct involved nothing more than dropping a match, leaf, or piece of paper, or jaywalking. The arrestees were handcuffed and taken to an athletic field where they were booked, chained to benches, marked with numbers, and held for up to six hours, after which they were released at a different location. Homeless persons among the arrestees claimed they were the victims of discriminatory enforcement. The municipal court found that they had been singled out for arrest for offenses that rarely, if ever, were the basis for even a citation.

In October 1990, Santa Ana settled a civil action for injunctive relief, agreeing to refrain from discriminating on the basis of homelessness, from taking

action to drive the homeless out of the city, and from conducting ***1083** future sweeps and mass arrests. That case, which was to be dismissed in 1995, was still pending when the camping ordinance was passed in 1992.

Evidence in the form of declarations regarding the number of homeless and facilities for them was also offered. In 1993 there were from 10,000 to 12,000 homeless persons in Orange County and 975 permanent beds available to them. When National Guard armories opened in cold weather, there were 125 additional beds in Santa Ana and another 125 in Fullerton. On any given night, however, the number of shelter beds available was more than 2,500 less than the need.

The Court of Appeal majority, relying in part on this evidence, concluded that the purpose of the ordinance-to displace the homeless-was apparent. On that basis, it held that the ordinance infringed on the right to travel, authorized cruel and unusual punishment by criminalizing status, and was vague and overbroad. The city contends that the ordinance is constitutional on its face. We agree. We also conclude that, if the Tobe petition sought to mount an as applied challenge to the ordinance, it failed to perfect that type of challenge.

II. Preliminary Considerations

A. *Facial or As Applied Challenge.*

(1a),(2a) Plaintiffs argue that they have mounted an as applied challenge to the ordinance as well as a facial challenge. While they may have intended both, we conclude that no as applied challenge to the ordinance was perfected. The procedural posture of the Zuckernick action precludes an as applied challenge, which may not be made on demurrer to a complaint which does not describe the allegedly unlawful conduct or the circumstances in which it occurred. The Tobe plaintiffs did not clearly allege such a challenge or seek relief from specific allegedly impermissible applications of the ordinance. Moreover, assuming that an as applied attack on the ordinance was stated, the plaintiffs did not establish that the ordinance has been applied in a constitutionally impermissible manner either to themselves or to others in the past.

Because the Court of Appeal appears to have based its decision in part on reasoning that would be appropriate to a constitutional challenge based on a claim that, as applied to particular defendants, the Santa Ana ordinance was invalid, we must first consider the nature of the challenge made by these petitioners. ***1084**

(3) A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual. (*Dillon v. Municipal Court* (1971) 4 Cal.3d 860, 865 [94 Cal.Rptr. 777, 484 P.2d 945].) " 'To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute .... Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.' " (*Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 267 [5 Cal.Rptr.2d 545, 825 P.2d 438], quoting *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180-181 [172 Cal.Rptr. 487, 624 P.2d 1215].)

An as applied challenge may seek (1) relief from a specific application of a facially valid statute or ordinance to an individual or class of individuals who are under allegedly impermissible present restraint or disability as a result of the manner or circumstances in which the statute or ordinance has been applied, or (2) an injunction against future application of the statute or ordinance in the allegedly impermissible manner it is shown to have been applied in the past. It contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied and to consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right. (See, e.g., *Broadrick v. Oklahoma* (1973) 413 U.S. 601, 615-616 [37 L.Ed.2d 830, 841-843, 93 S.Ct. 2908]; *County of Nevada v. MacMillen* (1974) 11 Cal.3d 662, 672 [114 Cal.Rptr. 345, 522 P.2d 1345]; *In re Marriage of Siller* (1986) 187 Cal.App.3d 36, 49 [231 Cal.Rptr. 757].) (4a) When a criminal defendant claims that a facially valid statute or ordinance has been applied in a constitutionally impermissible manner to the defendant, the court evaluates the propriety of the application on a case-by-case basis to determine whether to relieve the defendant of the sanction. (*Hale v. Morgan* (1978) 22 Cal.3d 388, 404 [149 Cal.Rptr. 375, 584 P.2d 512].)

(5a) If a plaintiff seeks to enjoin future, allegedly impermissible, types of applications of a facially valid statute or ordinance, the plaintiff must demonstrate that such application is occurring or has occurred in the past. In *Bowen v. Kendrick* (1988) 487 U.S. 589 [101 L.Ed.2d 520, 108 S.Ct. 2562], for instance, the court first distinguished the nature of facial and as applied challenges to a statute which authorized federal grants to organizations for services related to premarital adolescent sexual relations and pregnancy. The plaintiffs had standing as taxpayers to raise an establishment clause challenge to the statute and to its application. The Supreme Court held that the as ***1085** applied challenge could be resolved only by considering how the statute was being administered. Plaintiffs had to show that specific grants were impermissible because the grants went to " 'pervasively sectarian' religious institutions" or had been used to fund " 'specifically religious activit[ies].' " (487 U.S. at p. 621 [101 L.Ed.2d at pp. 548-549].) The matter was remanded because the district court had not identified the particular grantees or the particular aspects of their programs for which constitutionally improper expenditures had been made. Finally, the court held, a remedy should be fashioned to withdraw federal agency approval of such grants.

(4b) When a criminal defendant seeks relief from a present application of a criminal statute or ordinance on constitutional grounds, it is not the administrative agency's "application" of the statute that is determinative, however. Whether the particular application of a statute declaring conduct criminal is constitutionally permissible can be determined only after the circumstances of its application have been established by conviction or otherwise. (See, e.g., *Murgia v. Municipal Court* (1975) 15 Cal.3d 286 [124 Cal.Rptr. 204, 540 P.2d 44].) Only then is an as applied challenge ripe. To obtain mandate or other relief from penalties imposed under a past application of the law, the defendant must presently be suffering some adverse impact of the law which the court has the power to redress.

(5b) If instead it is contended that an otherwise valid statute has been applied in a constitutionally impermissible manner in the past and the plaintiff seeks an injunction against future application of the statute in that manner, the plaintiff must show a pattern of impermissible enforcement. (See, e.g., *Van Atta v. Scott* (1980) 27 Cal.3d 424 [166 Cal.Rptr. 149, 613 P.2d 210]; *White v. Davis* (1975) 13 Cal.3d 757 [120 Cal.Rptr. 94, 533 P.2d 222]; *Wirin v. Horrall* (1948) 85 Cal.App.2d 497 [193 P.2d 470]; cf. *Sundance v. Municipal Court* (1986) 42 Cal.3d 1101 [232 Cal.Rptr. 814, 729 P.2d 80].)

(6) In most cases a plaintiff seeking this relief, either by a petition for writ of mandamus or complaint for declaratory and injunctive relief, must have a sufficient beneficial interest to have standing to prosecute the action, and there must be a present impermissible application of the challenged statute or ordinance which the court can remedy. (7) "[Code of Civil Procedure] [s]ection 1086 expresses the controlling statutory requirements for standing for mandate: 'The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.' The requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain the writ only if the person has ***1086** some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796 [166 Cal.Rptr. 844, 614 P.2d 276].)

(8) We need not decide if the Tobe plaintiffs have such a beneficial interest even though two have never been cited under the ordinance and one is not a homeless person, because as taxpayers they have standing under Code of Civil Procedure section 526a to restrain illegal expenditure or waste of city funds on *future* enforcement of an unconstitutional ordinance or an impermissible means of enforcement of a facially valid ordinance. (*White v. Davis, supra*, 13 Cal.3d 757, 764.) We must determine, therefore, whether the petitions at issue in this case stated and have perfected an as applied challenge to the Santa Ana ordinance.

1. *The Tobe petition.*

(1b) The first of these actions (Tobe) has been prosecuted as a petition for writ of mandate by two homeless residents of Santa Ana, each of whom intends to remain in the city, and neither of whom can find affordable housing. The third plaintiff is a resident of Santa Ana. All are taxpayers. Respondents are Santa Ana, its mayor, its city manager, and its police chief.

Plaintiffs allege that they have been convicted in the past for violating the ordinance and expect to be arrested in the future for sleeping in public and conducting other ordinary and necessary daily activities in public areas. The allegations of the petition do not describe the circumstances of the past arrests and the petition does not allege or describe either the arrests or convictions of other persons that are claimed to have been unconstitutional applications of the ordinance.

The petition alleges that respondents' "pattern of arresting, detaining, harassing and incarcerating involuntarily homeless persons such as petitioners, for sleeping and engaging in other ordinary and essential activities of daily life" violates the rights of homeless persons. The only allegations that describe the pattern of enforcement that is claimed to be constitutionally impermissible are ones which state that respondents have caused plaintiffs and other homeless persons to risk arrest and/or detention without probable cause and other "abuses, indignities and punishment" for their homeless status and presence in Santa Ana. Although the petition alleges in conclusory language that a pattern of constitutionally impermissible enforcement of the ordinance existed, plaintiffs never identified the particular applications of the law to be enjoined. The only relief sought in the petition is a writ of ***1087** mandate enjoining *any* enforcement of the ordinance by respondents. That relief is the kind of relief sought in a facial attack.

Moreover, no alternative writ was issued and no evidentiary hearing was held. Plaintiffs did not create a factual record on which an injunction limited to improper applications of the ordinance could have been fashioned.

Thus, notwithstanding the contrary conclusion of the dissent, the allegations of the petition did not clearly state an as applied challenge to the ordinance and the petition did not seek relief from constitutionally impermissible applications or methods of enforcing the ordinance. The petition sought to enjoin *any* application of the ordinance to *any* person in *any* circumstance. And, contrary to the view of the dissent, which relies on "concessions" of the parties and the reporter's transcript, rather than the actual judgment of the court, the superior court did not rule on the petition as one encompassing an as applied challenge. The order of that court which directed issuance of a peremptory writ invalidating one sentence of the ordinance as vague, did not identify or dispose of any such challenge. Instead, the court found only that "enforcement of Santa Ana Ordinance NS-2160 ... does not violate the rights of homeless persons to freedom of movement" and that "petitioners' challenges to the constitutionality of the remaining portions of Santa Ana Ordinance NS-2160 are without merit."

The petition sought to enjoin enforcement of the ordinance on the ground that it was invalid because it violated the rights of the homeless. The court ruled that enforcement did not violate those rights. The court made no findings related to a pattern of enforcement of the ordinance and the judgment makes no mention of the manner in which the ordinance has been applied.

Moreover, even assuming that plaintiffs attempted to allege and prosecute an as applied challenge, and that the superior court did entertain plaintiffs' argument that they had mounted an as applied challenge to the ordinance, the superior court did not err in failing to rule on an as applied challenge as plaintiffs did not perfect a basis for ruling on such a challenge.

The only documents in the record that describe the manner in which the ordinance has been applied are declarations submitted six months after the petition was filed in conjunction with the superior court's hearing on plaintiffs' motion for issuance of a peremptory writ. Some of the declarations were by persons other than plaintiffs who stated that they had been arrested or cited for violation of the ordinance. None of those declared that he or she had ever been convicted and had a sentence imposed for violation of the ***1088** ordinance. None stated facts to support a conclusion that citations were given solely for the purpose of harassment and were not prosecuted thereafter, and none stated facts to support either the claim that the ordinance had been enforced discriminatorily against the homeless or the claim that a pattern of constitutionally impermissible enforcement existed. The declarations, which were the only evidence offered in the case, [FN6] reflected only that persons who were homeless engaged in conduct that violated the ordinance and were arrested or cited for so doing. [FN7] The declarations described the conduct which led to citations only from the perspective of the person cited. They left unclear whether it may have appeared to the of-

ficer who issued the citation that the individual was using or storing camp paraphernalia, or living temporarily, on public property.

> FN6 Santa Ana did not offer evidence to rebut the declarants' description of the circumstances in which they were cited for violating the ordinance, believing the declarations to be irrelevant to the issues raised by the petition.

> FN7 We do not understand plaintiffs to be arguing that a person who chooses voluntarily to camp on public property has a constitutionally protected right to do so, or that it would be improper to cite and convict such persons for violating the ordinance.

Moreover, assuming that persons whose violation of the ordinance is involuntary may offer a due-process-based necessity defense, the declarations did not demonstrate an impermissible pattern of enforcement against such persons. [FN8]

> FN8 Unlike the dissent, we cannot conclude that the city intends to enforce the ordinance against persons who have no alternative to "camping" or placing "camp paraphernalia" on public property. (Dis. opn., *post*, p. 1123, fn. 14.) A senior deputy district attorney expressed his opinion at oral argument before this court that a necessity defense might be available to "truly homeless" persons and said that prosecutorial discretion would be exercised.

Two of the declarants were plaintiffs. One was not homeless. The other conceded, contrary to the allegations of the petition, that he had never been cited under the ordinance.

Only one of the remaining seven declarants explained why he had not been able to find lawful shelter on the night he was cited for violation of the ordinance. That declarant was unable to get on the bus to the armory shelter on the night he was cited. His declaration, like those of most of the other declarants, did not indicate that he had applied for public assistance that might have made it possible to find housing. Among the reasons given by the other declarants for "camping" on public property at the time they were cited were that the civic center area was "safer," that the declarant had been turned away from a shelter a few weeks earlier and had not returned, that the civic center was convenient to food and there was safety in numbers, that the declarant had missed the bus to the armory, that shelters were so noisy and overcrowded that the declarant could not sleep there, and that the declarant ***1089** did not like the armory because there was too much noise and he liked to be by himself.

While one of the declarants claimed to be schizophrenic, and stated that she had applied for and was awaiting Social Security assistance, she did not state whether she had sought public assistance from the county or that she had been turned away by a homeless shelter on the night she was cited.

Assuming that plaintiffs attempted to mount an as applied challenge to the ordinance on this basis, therefore, they simply did not demonstrate that the ordinance had been enforced in a constitutionally impermissible manner against homeless persons who had no alternative but to "camp" on public property in Santa Ana.

As discussed above, an as applied challenge assumes that the statute or ordinance violated is valid and asserts that the manner of enforcement against a particular individual or individuals or the circumstances in which the statute or ordinance is applied is unconstitutional. All of the declarants who had been cited under the ordinance described conduct in which they had engaged and that conduct appears to have violated the ordinance. None describes an impermissible means of enforcement of the ordinance or enforcement in circumstances that violated the constitutional rights the petition claimed had been violated. None demonstrated that the circumstances in which he or she was cited affected the declarant's right to travel. None states facts to support a conclusion that any punishment, let alone cruel and unusual punishment proscribed by the Eighth Amendment, had been imposed. Since no constitutionally impermissible pattern, or even single instance, of constitutionally impermissible enforcement was shown, no injunction against such enforcement could be issued and none was sought by plaintiffs.

Because the Tobe plaintiffs sought only to enjoin *any* enforcement of the ordinance and did not demonstrate a pattern of unconstitutional enforce-

ment, the petition must be considered as one which presented only a facial challenge to the ordinance.

2. *The Zuckernick petition.*

(2b) The second action (Zuckernick) has been prosecuted as a petition for writ of mandate to compel the municipal court in which petitioners are charged with violation of the ordinance to sustain their demurrers to the complaints and to dismiss the charges. The petition was filed in the Court of Appeal after the municipal court overruled the demurrers. ***1090**

The Zuckernick petition arises out of an order overruling a demurrer to a criminal complaint. (9) A demurrer to a criminal complaint lies only to challenge the sufficiency of the pleading and raises only issues of law. (*People v. McConnell* (1890) 82 Cal. 620 [23 P. 40]; *Ratner v. Municipal Court for the Los Angeles Judicial District* (1967) 256 Cal.App.2d 925, 929 [64 Cal.Rptr. 500]; see also, 4 Witkin, Cal. Criminal Law (2d ed. 1989) § 2127, p. 2498.) Penal Code section 1004 expressly limits demurrers to defects appearing on the face of the accusatory pleading:

"The defendant may demur to the accusatory pleading at any time prior to the entry of a plea, *when it appears upon the face thereof* either:

"1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, or, if an information or complaint that the court has no jurisdiction of the offense charged therein;

"2. That it does not substantially conform to the provisions of Sections 950 and 952, and also Section 951 in case of an indictment or information;

"3. That more than one offense is charged, except as provided in Section 954;

"4. That the facts stated do not constitute a public offense;

"5. That it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution." (Italics added.)

(2c) The Zuckernick petitioners demurred to the complaints on the ground that they did not conform to the provisions of Penal Code sections 950 and 952; [FN9] that the facts alleged did not constitute a public offense; that the complaints contained matters constituting a legal justification or excuse ***1091** or other legal bar to the prosecution; and that the offense charged was unconstitutionally vague and overbroad, and violated the right to travel. The demurrer recited in addition that it was "based upon the fact that the ordinances and penal statutes allegedly violated are unconstitutionally overbroad and vague in violation of the Fourteenth Amendment to the United States Constitution and article I, section 7 of the California Constitution; unconstitutionally infringe on the defendant's right to travel and freedom of travel [*sic*]." Elsewhere the demurrer also asserted that the ordinance violates the Eighth Amendment prohibition against cruel and unusual punishment and the state constitutional prohibition against cruel or unusual punishment. (Cal. Const., art. I, § 17.) [FN10]

FN9 Penal Code section 950:

"The accusatory pleading must contain:

"1. The title of the action, specifying the name of the court to which the same is presented, and the names of the parties;

"2. A statement of the public offense or offenses charged therein."

Penal Code section 952: "In charging an offense, each count shall contain, and shall be sufficient if it contains in substance, a statement that the accused has committed some public offense therein specified. Such statement may be made in ordinary and concise language without any technical averments or any allegations of matter not essential to be proved. It may be in the words of the enactment describing the offense or declaring the matter to be a public offense, or in any words sufficient to give the accused notice of the offense of which he is accused. In charging theft it shall be sufficient to allege that the defendant unlawfully took the labor or property of another."

FN10 We assume, and respondents do not contend otherwise, that if a statute under

which a defendant is charged with a crime is invalid, the complaint is subject to demurrer under subdivisions 1, 4 and 5 of Penal Code section 1004 on the ground that the court lacks jurisdiction because the statute is invalid, the facts stated do not constitute a public offense, and the complaint contains matter which constitutes a legal bar to the prosecution. (See *Dillon v. Municipal Court*, *supra*, 4 Cal.3d 860, 865; *In re Cregler* (1961) 56 Cal.2d 308, 310 [14 Cal.Rptr. 289, 363 P.2d 305]; *Mandel v. Municipal Court* (1969) 276 Cal.App.2d 649, 652 [81 Cal.Rptr. 173].)

We do not agree with the Court of Appeal in *People v. Jackson* (1985) 171 Cal.App.3d 609, 615 [217 Cal.Rptr. 540], that grounds other than those specified in Penal Code section 1004 may be urged in support of a "common law demurrer" raising "constitutional and other attacks on the sufficiency of an accusatory pleading." Penal Code section 1002 specifies: "The only pleading on the part of the defendant is either a demurrer or a plea." Penal Code section 1004 specifies the grounds on which a demurrer may be made, and we have recognized that if a constitutional challenge is based on matters not appearing on the face of the accusatory pleading a demurrer will not lie. (*In re Berry* (1968) 68 Cal.2d 137, 146 [65 Cal.Rptr. 273, 436 P.2d 273].)

None of the complaints in the Zuckernick proceedings included any allegations identifying the defendant as an involuntarily homeless person whose violation of the ordinance was involuntary and/or occurred at a time when shelter beds were unavailable. [FN11] Although the petition for writ of mandate included allegations regarding Santa Ana's past efforts to rid the city of its homeless population, those allegations, even if true, were irrelevant to the legal sufficiency of the complaints. (*Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 166 [101 Cal.Rptr. 880, 496 P.2d 1248]; *People v. Williams* (1979) 97 Cal.App.3d 382, 391 [158 Cal.Rptr. 778].)

FN11 The allegations charging violation of the ordinance recited only that: "On or about [date] said defendant, in violation of Section 10-402 of the Santa Ana Municipal Code, a Misdemeanor, did willfully and unlawfully, camp, use camp facilities, or camp paraphernalia in a public street or a public parking lot or other public area."

The Zuckernick demurrers and petition for writ of mandate necessarily constituted only a facial attack on the ordinance since the defendants could not, on a demurrer to the accusatory pleading, offer evidence that as applied ***1092** to their individual circumstances the ordinance was invalid. (See *Dillon v. Municipal Court*, *supra*, 4 Cal.3d 860, 865.) Those allegations are also irrelevant in determining the facial validity of the ordinance insofar as petitioners alleged that it violated their right to travel and constituted cruel and unusual punishment for status, since they do not establish that there were no circumstances in which the ordinance could be constitutionally applied.

Therefore, while we are not insensitive to the importance of the larger issues petitioners and amici curiae [FN12] seek to raise in these actions, or to the disturbing nature of the evidence which persuaded the Court of Appeal to base its decision on what it believed to be the impact of the ordinance on homeless persons, the only question properly before the municipal and superior courts and the Court of Appeal for decision was the facial validity of the ordinance.

FN12 Many of those issues are the result of legislative policy decisions. The arguments of many amici curiae regarding the apparently intractable problem of homelessness and the impact of the Santa Ana ordinance on various groups of homeless persons (e.g., teenagers, families with children, and the mentally ill) should be addressed to the Legislature and the Orange County Board of Supervisors, not the judiciary. Neither the criminal justice system nor the judiciary is equipped to resolve chronic social problems, but criminalizing conduct that is a product of those problems is not for that reason constitutionally impermissible. (See *Sundance v. Municipal Court*, *supra*, 42 Cal.3d 1101, and conc. opn. of Grodin, J., *id.* at p. 1139.)

(10) We emphasize that the procedural posture of a case is not simply a "technicality." The procedural posture of a case is crucial to determining the proper

scope of appellate review. (See, e.g., *Sebago, Inc. v. City of Alameda* (1989) 211 Cal.App.3d 1372, 1379 [259 Cal.Rptr. 918].) The procedural posture of a case also determines the ability of the parties to exercise their right to present relevant evidence and to the creation of a full record adequate to enable the reviewing court to make a reasoned decision on the questions before it. When an appellate court fails to limit the scope of review to issues properly presented in the trial court, it denies litigants their right to have appellate questions decided on the basis of a full record which exposes all of the relevant facts and circumstances.

(2d) The importance of these considerations is most clearly demonstrated in the Zuckernick matter. There the People had no opportunity to present evidence regarding the circumstances in which the petitioners had been arrested, as the only issue before the municipal court in ruling on the demurrer was the sufficiency of the complaints. That court properly ruled that the complaints were sufficient. How then can a reviewing court find error in that ruling on the basis of evidence unrelated to the sufficiency of the complaint which the People had no opportunity to rebut in the municipal court? ***1093**

In the Tobe matter, notwithstanding the declarations that were submitted by the plaintiffs, there was no evidence that the ordinance had been applied to any person in a constitutionally impermissible manner.

This court's consideration will, therefore, be limited to the facial validity of the ordinance.

B. *Motive of Legislators.*

The Court of Appeal also considered the evidence of Santa Ana's past attempts to remove homeless persons from the city significant evidence of the purpose for which the ordinance was adopted. It then considered that purpose in assessing the validity of the ordinance. (11) While the intent or purpose of the legislative body must be considered in construing an ambiguous statute or ordinance (Code Civ. Proc., § 1859; *People v. Pieters* (1991) 52 Cal.3d 894, 898-899 [276 Cal.Rptr. 918, 802 P.2d 420]), the motive of the legislative body is generally irrelevant to the validity of the statute or ordinance. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 145 [130 Cal.Rptr. 465, 550 P.2d 1001]; *City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898, 913 [120 Cal.Rptr. 707, 534 P.2d 403]; *County of Los Angeles v. Superior Court* (1975) 13 Cal.3d 721, 726-727 [119 Cal.Rptr. 631, 532 P.2d 495]; *Sunny Slope Water Co. v. City of Pasadena* (1934) 1 Cal.2d 87, 99 [33 P.2d 672]; *In re Sumida* (1918) 177 Cal. 388, 390 [170 P. 823]; *Hadacheck v. Alexander* (1915) 169 Cal. 616, 617 [147 P. 259]; *Odd Fellows' Cem. Assn. v. City and County of San Francisco* (1903) 140 Cal. 226, 235-236 [73 P. 987]; *Dobbins v. City of Los Angeles* (1903) 139 Cal. 179, 184 [72 P. 970], revd. on other grounds (1904) 195 U.S. 223 [49 L.Ed. 169, 25 S.Ct. 18]; *People v. County of Glenn* (1893) 100 Cal. 419, 423 [35 P. 302].) [FN13]

FN13 While the Court of Appeal considered Santa Ana's past actions and the documents suggesting that the city had mounted a concerted effort to remove homeless persons, it did not acknowledge that, as part of the settlement of a lawsuit seeking to enjoin further unlawful attempts to remove homeless persons, Santa Ana had agreed to take no further action to drive the homeless from the city. The Court of Appeal nonetheless assumed that the adoption of a facially neutral ordinance prohibiting camping and storing personal possessions on public property was a renewed effort to do so and a violation of the settlement agreement. Had it been a violation of the settlement agreement, however, the Tobe plaintiffs' appropriate recourse would have been through an action to enforce the settlement.

The Court of Appeal relied in part on *Pottinger v. City of Miami* (S.D. Fla. 1992) 810 F.Supp. 1551, 1581, for its assumption that consideration of the motives of the Santa Ana City Council may be considered in assessing the validity of the ordinance. That is not the rule in this state, but even were it so, *Pottinger* was not a challenge to the facial validity of the Miami ***1094** ordinance in question there. Moreover, the district court's conclusion that the ordinance was invalid as applied was not based on the motives of the legislators in enacting the ordinance. The court considered internal memoranda and evidence of arrest records as evidence of the purpose underlying *enforcement* of the ordinance against homeless persons.

Absent a basis for believing that the ordinance would not have been adopted if the public areas of

Santa Ana had been appropriated for living accommodation by any group other than the homeless, or that it was the intent of that body that the ordinance be enforced only against homeless persons (see, e.g., *Parr v. Municipal Court* (1971) 3 Cal.3d 861 [92 Cal.Rptr. 153, 479 P.2d 353]), the ordinance is not subject to attack on the basis that the city council may have hoped that its impact would be to discourage homeless persons from moving to Santa Ana.

We cannot assume, as does the dissent, that the sole purpose of the Santa Ana ordinance was to force the homeless out of the city. The city had agreed to discontinue such attempts when it settled the prior litigation. The record confirms that the city faced a problem common to many urban areas, the occupation of public parks and other public facilities by homeless persons. Were we to adopt the approach suggested by the dissent, any facially valid ordinance enacted by a city that had once acted in a legally impermissible manner to achieve a permissible objective could be found invalid on the basis that its past conduct established that the ordinance was not enacted for a permissible purpose. Absent evidence other than the enactment of a facially valid ordinance, we cannot make that assumption here.

The dissent relies on *Parr v. Municipal Court, supra*, 3 Cal.3d 861, as supporting invalidation of a facially valid ordinance on the ground that it is motivated by impermissible legislative intent. The Santa Ana ordinance and the circumstances of its adoption are distinguishable from the Carmel ordinance at issue in *Parr*, however. There, the city had not entered into a court-approved settlement in which it stipulated that it would not engage in discriminatory enforcement of the law against "undesirables," and, unlike the Santa Ana ordinance, the Carmel ordinance banned a customary use of the city park-sitting or lying on the lawn. A "Declaration of Urgency" which accompanied the Carmel ordinance stated that its purpose was to regulate the use of public property, parks, and beaches by transient visitors.

The Carmel ordinance was challenged as facially invalid on grounds that it discriminated against undesirable and unsanitary persons, referring to them as "hippies" and "transients." In *Parr v. Municipal Court, supra*, 3 Cal.3d 861, we rejected the People's argument that only the operative language of ***1095** the ordinance should be considered because the declaration of purpose suggested that the operative sections were intended to be limited in their application to the group it described. On that basis we concluded that the Carmel ordinance had a discriminatory purpose.

The ordinance, by contrast, bans use of public property in the city for purposes for which it was not designed. At the time it was adopted the city had agreed not to engage in discriminatory law enforcement. And no declaration of purpose comparable to that which accompanied the Carmel ordinance was made. The declared purpose of the ordinance did not suggest that it was to be enforced solely against the homeless. We cannot, for those reasons, join the assumption of the dissent that the purpose of the ordinance is simply to drive the homeless out of Santa Ana. [FN14]

FN14 We also decline to join the conclusion of the dissent that enactment of an ordinance like that adopted by Santa Ana, whose purpose is to preserve public property for its intended use, is constitutionally impermissible because it may lead to the adoption of similar ordinances in other cities with the result that the homeless are everywhere excluded from living on public property.

C. *Facial Challenges on Vagueness Grounds.*

The Court of Appeal granted relief to the Zuckernick petitioners without regard to either the limitations on a demurrer to a criminal complaint or vagueness challenges by criminal defendants.

(12) "The rule is well established ... that one will not be heard to attack a statute on grounds that are not shown to be applicable to himself and that a court will not consider every conceivable situation which might arise under the language of the statute and will not consider the question of constitutionality with reference to hypothetical situations." (*In re Cregler, supra*, 56 Cal.2d 308, 313.) If the statute clearly applies to a criminal defendant's conduct, the defendant may not challenge it on grounds of vagueness. (*Parker v. Levy* (1974) 417 U.S. 733, 756 [41 L.Ed.2d 439, 457-458, 94 S.Ct. 2547]; *People v. Green* (1991) 227 Cal.App.3d 692, 696 [278 Cal.Rptr. 140].) However, in some cases, a defendant may make a facial challenge to the statute, if he argues that the statute improperly prohibits a " 'substantial amount of constitutionally protected conduct,' " whether or not its ap-

plication to his own conduct may be constitutional. (*Kolender v. Lawson* (1983) 461 U.S. 352, 358-359, fn. 8 [75 L.Ed.2d 903, 909-910, 103 S.Ct. 1855].) [FN15]

FN15 Because we conclude that the ordinance is not overbroad, we need not decide whether the overbreadth doctrine is applicable outside the area of freedoms protected by the First Amendment. The Supreme Court has stated that overbreadth challenges will be entertained only if a First Amendment violation is alleged. "[O]utside the limited First Amendment context, a criminal statute may not be attacked as overbroad." (*Schall v. Martin* (1984) 467 U.S. 253, 268, fn. 18 [81 L.Ed.2d 207, 220, 104 S.Ct. 2403].)

Other decisions of the United States Supreme Court suggest that this limitation is not invariably observed. (See *Kolender v. Lawson, supra*, 461 U.S. 352, 358-359, fn. 8 [75 L.Ed.2d 903, 909-910.) We will assume arguendo that the overbreadth doctrine may be applied outside the First Amendment context.

The Zuckernick petitioners argued in support of their demurrers that the ordinance failed to give fair and adequate notice of prohibited conduct, had ***1096** vague enforcement standards which encourage arbitrary and discriminatory arrests and convictions, and reached constitutionally protected conduct. The vagueness aspect of their challenge to the ordinance is governed by the rule stated in *In re Cregler, supra*, 56 Cal.2d 308, 313. The last ground, an overbreadth, not a vagueness, argument, is governed by *Kolender v. Lawson, supra*, 461 U.S. 352, 358-359, fn. 8 [75 L.Ed.2d 903, 909-910].)

The Zuckernick petitioners' vagueness challenge was addressed to the terms "camp," "camp facilities," and "camp paraphernalia," as defined in the ordinance, and the term "temporary shelter," which is not defined. The definitions in the ordinance include terms which those petitioners do not claim are vague and which may apply to petitioner's conduct. Thus the People may seek to establish violation of the ordinance on the basis that one or more of the petitioners pitched or used a tent on a public street or parking lot. Because the Zuckernick challenge to the ordinance was brought by demurrer and the nature of their conduct has not been determined, those petitioners cannot show at this stage of the proceedings that the ordinance did not clearly apply to their conduct. To that extent, therefore, the vagueness challenge of the Zuckernick petitioners is premature.

The Tobe plaintiffs are not persons presently charged with violating the ordinance, however. Their actions do not seek to avoid prosecution for criminal acts. They are suing as taxpayers to restrain expenditure of public funds on the enforcement of an allegedly unconstitutional ordinance. (Code Civ. Proc., § 526a.) The restrictions applicable to vagueness challenges by criminal defendants do not apply to their action.

With these considerations in mind, we now turn to the constitutional bases for the decision of the Court of Appeal.

III. Facial Validity of the Santa Ana Ordinance

A. *Right to Travel.*

(13) Although no provision of the federal Constitution expressly recognizes a right to travel among and between the states, that right is recognized ***1097** as a fundamental aspect of the federal union of states. "For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States." (*Passenger Cases* (1849) 48 U.S. (7 How.) 283, 492 [12 L.Ed. 702, 791] (dis. opn. of Taney, C. J.).)

In the *Passenger Cases, supra*, 48 U.S. 283, the court struck down taxes imposed by the States of New York and Massachusetts on aliens who entered the state from other states and countries by ship. The basis for the decision, as found in the opinions of the individual justices, was that the tax invaded the power of Congress over foreign and interstate commerce. The opinion of Chief Justice Taney, in which he disagreed with the majority on the commerce clause issue, also addressed the tax as applied to citizens of the United States arriving from other states. That tax he believed to be impermissible. Some later decisions of the court trace recognition of the constitutional right of unburdened interstate travel to that opinion. (See, e.g., *Shapiro v. Thompson* (1969) 394 U.S. 618, 630 [22 L.Ed.2d 600, 612-613, 89 S.Ct. 1322].) And, relying on the dissenting opinion of the Chief Justice in

the *Passenger Cases*, the court struck down a tax on egress from the State of Nevada in *Crandall v. Nevada* (1867) 73 U.S. (6 Wall.) 35 [18 L.Ed. 745], holding that the right of interstate travel was a right of national citizenship which was essential if a citizen were to be able to pass freely through another state to reach the national or a regional seat of the federal government.

Other cases find the source of the right in the privileges and immunities clause. In *Paul v. Virginia* (1868) 75 U.S. (8 Wall.) 168 [19 L.Ed. 357], the court rejected a challenge predicated on the privileges and immunities clause made by a corporation to a tax imposed by the State of Virginia on out-of-state insurance companies. In so doing, it recognized interstate travel as a right guaranteed to citizens. "It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; *it gives them the right of free ingress into other States, and egress from them*; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws." (*Id.* at p. 180 [19 L.Ed at p. 360], italics added.)

In the *Slaughter-House Cases* (1872) 83 U.S. (16 Wall.) 36 [21 L.Ed. 394], the court equated the rights protected by the privileges and immunities ***1098** clause to those in the corresponding provision of the Articles of Confederation which provided that the inhabitants of each state were to have " 'the privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State ....' " (83 U.S. at p. 75 [21 L.Ed. at p. 408].)

The privileges and immunities clause was also the source of the right of interstate travel as an incident of national citizenship recognized by the court in *Twining v. New Jersey* (1908) 211 U.S. 78, 97 [53 L.Ed. 97, 105, 29 S.Ct. 14] and *United States v. Wheeler* (1920) 254 U.S. 281, 293 [65 L.Ed. 270, 273, 41 S.Ct. 133]. In *Williams v. Fears* (1900) 179 U.S. 270, 274 [45 L.Ed. 186, 188-189, 21 S.Ct. 128], the right was held to be one protected by the Fourteenth Amendment as well as other provisions of the Constitution. "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the Fourteenth Amendment and by other provisions of the Constitution." (*Ibid.*) Again, in *Kent v. Dulles* (1958) 357 U.S. 116, 127 [2 L.Ed.2d 1204, 1211, 78 S.Ct. 1113], freedom to travel was recognized as "an important aspect of the citizen's 'liberty.' " (See also *Edwards v. California* (1941) 314 U.S. 160, 177, 183 [86 L.Ed. 119, 127, 62 S.Ct. 164] (conc. opns. of Douglas, J. and Jackson, J.).)

The right to travel, or right of migration, now is seen as an aspect of personal liberty which, when united with the right to travel, requires "that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." (*Shapiro v. Thompson*, *supra*, 394 U.S. 618, 629 [22 L.Ed.2d 600, 612]; see also *United States v. Guest* (1966) 383 U.S. 745, 757-758 [16 L.Ed.2d 239, 248-250, 86 S.Ct. 1170].)

In a line of cases originating with *Shapiro v. Thompson*, *supra*, 394 U.S. 618, the court has considered the right to travel in the context of equal protection challenges to state laws creating durational residency requirements as a condition to the exercise of a fundamental right or receipt of a state benefit. In those cases the court has held that a law which *directly* burdens the fundamental right of migration or interstate travel is constitutionally impermissible. Therefore a state may not create classifications which, by imposing burdens or restrictions on newer residents which do not apply to all residents, deter or penalize migration of persons who exercise their right to travel to the state.

In *Shapiro*, where public assistance was denied residents who had lived in the state for less than one year, the court held that durational residence as a ***1099** condition of receiving public assistance constituted invidious discrimination between residents, and that if a law had no other purpose than chilling the exercise of a constitutional right such as that of migration of needy persons into the state the law was impermissible. (*Shapiro v. Thompson*, *supra*, 394 U.S. 618, 627, 631 [22 L.Ed.2d 600, 613].) Further, "any

classification which serves to penalize the exercise of [the right of migration], unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional." (*Id.* at p. 634 [22 L.Ed.2d at p. 615].)

Next, durational residence requirements for voting were struck down by the court in *Dunn v. Blumstein* (1972) 405 U.S. 330 [31 L.Ed.2d 274, 92 S.Ct. 995]. Again the question arose as an equal protection issue. The court held that the state must have a compelling reason for the requirement because it denied residents the right to vote, a fundamental political right, and because the law "classif[ies] ... residents on the basis of recent travel, penalizing those persons ... who have gone from one jurisdiction to another during the qualifying period. Thus, the durational residence requirement directly impinges on the exercise of a second fundamental personal right, the right to travel." (*Id.* at p. 338 [31 L.Ed.2d at pp. 281-282].) The court emphasized the imposition of a "direct" burden on travel: "Obviously, durational residence laws single out the class of bona fide state and county residents who have recently exercised this constitutionally protected right, and penalize such travelers directly." (*Ibid.*) It also took care to point out, as it had in *Shapiro v. Thompson*, *supra*, 394 U.S. 618, 638, fn. 21 [22 L.Ed.2d 600, 617]), that a law which did not penalize residents on the basis of recent travel would not be vulnerable to a similar challenge. The court explained: "Where, for example, an interstate migrant loses his driver's license because the new State has a higher age requirement, a different constitutional question is presented. For in such a case, the new State's age requirement is not a *penalty* imposed solely because the newcomer is a new resident; instead, all residents, old and new, must be of a prescribed age to drive." (405 U.S. at p. 342, fn. 12 [31 L.Ed.2d at p. 284].)

The court's focus on whether the law directly burdened, by penalizing, interstate travel continued in *Memorial Hospital v. Maricopa County* (1974) 415 U.S. 250 [39 L.Ed.2d 306, 94 S.Ct. 1076], in which a durational residence requirement for indigent, nonemergency medical care at county expense was challenged. The court held that the restriction denied newcomers equal protection, impinged on the right to travel by denying basic necessities of life, and penalized interstate migration. (*Id.* at pp. 261-262 [39 L.Ed.2d at pp. 316-317]; see also *Benson v. Arizona State Bd. of Dental Examiners* (9th Cir. 1982) 673 F.2d 272, 277 [licensing requirement that did not disadvantage newcomers vis-a-vis previous residents did not penalize exercise of right to travel].) ***1100**

In each of these cases the court had before it a law which denied residents a fundamental constitutional right (voting) or a governmental benefit (public assistance, medical care) on the basis of the duration of their residence. The law created two classes of residents. In *Zobel v. Williams* (1982) 457 U.S. 55 [72 L.Ed.2d 672, 102 S.Ct. 2309], where the right to share in oil revenues was based on the duration of residence in Alaska, the court noted that the right to travel analysis in those cases, which did not create an actual barrier to travel, was simply a type of equal protection analysis. "In addition to protecting persons against the erection of actual barriers to interstate movement, the right to travel, when applied to residency requirements, protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer term residents. In reality, right to travel analysis refers to little more than a particular application of equal protection analysis. Right to travel cases have examined, in equal protection terms, state distinctions between newcomers and longer term residents." (*Id.* at p. 60, fn. 6 [72 L.Ed.2d at pp. 677-678].)

(14) The right of intrastate travel has been recognized as a basic human right protected by article I, sections 7 and 24 of the California Constitution. (*In re White* (1979) 97 Cal.App.3d 141 [158 Cal.Rptr. 562].) There the court concluded that a condition of probation which barred a defendant convicted of prostitution from designated areas in the City of Fresno should be modified to avoid an overly restrictive impact on the defendant's right to travel. The court held that "the right to intrastate travel (which includes intramunicipal travel) is a basic human right protected by the United States and California Constitutions as a whole. Such a right is implicit in the concept of a democratic society and is one of the attributes of personal liberty under common law. (See 1 Blackstone, Commentaries 134; U.S. Const., art. IV, § 2 and the 5th, 9th and 14th Amends.; Cal. Const., art. I, § 7, subd. (a) and art. I, § 24 ....)" (*Id.* at p. 148.) In *White*, as in the early United States Supreme Court cases, the court addressed a direct burden on travel.

Neither the United States Supreme Court nor this

court has ever held, however, that the incidental impact on travel of a law having a purpose other than restriction of the right to travel, and which does not discriminate among classes of persons by penalizing the exercise by some of the right to travel, is constitutionally impermissible.

By contrast, in a decision clearly relevant here, a zoning law which restricted occupancy to family units or nonfamily units of no more than two persons was upheld by the Supreme Court, notwithstanding any incidental impact on a person's preference to move to that area, because the law was ***1101** not aimed at transients and involved no fundamental right. (*Village of Belle Terre v. Boraas* (1974) 416 U.S. 1, 7 [39 L.Ed.2d 797, 803, 94 S.Ct. 1536].)

Courts of this state have taken a broader view of the right of intrastate travel, but have found violations only when a direct restriction of the right to travel occurred. (*Adams v. Superior Court* (1974) 12 Cal.3d 55, 61-62 [115 Cal.Rptr. 247, 524 P.2d 375].) In *In re White*, *supra*, the petitioner had been barred directly from traveling to specified areas. In *In re Marriage of Fingert* (1990) 221 Cal.App.3d 1575 [271 Cal.Rptr. 389], a parent had been ordered to move to another county as a condition of continued custody of a child. Indirect or incidental burdens on travel resulting from otherwise lawful governmental action have not been recognized as impermissible infringements of the right to travel and, when subjected to an equal protection analysis, strict scrutiny is not required. If there is any rational relationship between the purpose of the statute or ordinance and a legitimate government objective, the law must be upheld. (*Adams v. Superior Court*, *supra*, 12 Cal.3d 55, 61-62.)

This court has also rejected an argument that any legislation that burdens the right to travel must be subjected to strict scrutiny and sustained only if a compelling need is demonstrated. In *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038], an initiative ordinance which banned issuance of new building permits until support facilities were available was challenged as an impermissible burden on the right to travel. We rejected the argument because the impact of the ordinance was only an indirect burden on the right to travel. The ordinance did not penalize travel and resettlement, although an incidental impact was to make it more difficult to establish residence in the place of one's choosing. (*Id.* at pp. 602-603; see also *R.H. Macy & Co. v. Contra Costa County* (1990) 226 Cal.App.3d 352, 367-369 [276 Cal.Rptr. 530].)

We do not question the conclusion of the Court of Appeal that a local ordinance which forbids sleeping on public streets or in public parks and other public places may have the effect of deterring travel by persons who are unable to afford or obtain other accommodations in the location to which they travel. (15a) Assuming that there may be some state actions short of imposing a direct barrier to migration or denying benefits to a newly arrived resident which violate the right to travel, the ordinance does not do so. It is a nondiscriminatory ordinance which forbids use of the public streets, parks, and property by residents and nonresidents alike for purposes other than those for which the property was designed. It is not constitutionally invalid because it may have an incidental impact on the right of some persons to interstate or intrastate travel. ***1102**

As we have pointed out above, to succeed in a facial challenge to the validity of a statute or ordinance the plaintiff must establish that " 'the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional provisions.' " (*Arcadia Unified School Dist. v. State Dept. of Education*, *supra*, 2 Cal.4th 251, 267, quoting *Pacific Legal Foundation v. Brown*, *supra*, 29 Cal.3d 168, 180-181.) (16) All presumptions favor the validity of a statute. The court may not declare it invalid unless it is clearly so. (*Calfarm Ins. Co.* v. *Deukmejian* (1989) 48 Cal.3d 805, 814-815 [258 Cal.Rptr. 161, 771 P.2d 1247].)

(15b) Since the Santa Ana ordinance does not on its face reflect a discriminatory purpose, and is one which the city has the power to enact, its validity must be sustained unless it cannot be applied without trenching upon constitutionally protected rights. The provisions of the Santa Ana ordinance do not inevitably conflict with the right to travel. The ordinance is capable of constitutional application. The ordinance prohibits "any person" from camping and/or storing personal possessions on public streets and other public property. It has no impact, incidental or otherwise, on the right to travel except insofar as a person, homeless or not, might be discouraged from traveling to Santa Ana because camping on public property is banned. An ordinance that bans camping and storing personal

possessions on public property does not directly impede the right to travel. (*People v. Scott* (1993) 20 Cal.App.4th Supp. 5, 13 [26 Cal.Rptr.2d 179].) Even assuming that the ordinance may constitute an incidental impediment to some individuals' ability to travel to Santa Ana, since it is manifest that the ordinance is capable of applications which do not offend the Constitution in the manner suggested by petitioners and the Court of Appeal, the ordinance must be upheld.

Our conclusion that the Santa Ana ordinance does not impermissibly infringe on the right of the homeless, or others, to travel, finds support in the decision of the United States District Court in *Joyce v. City and County of San Francisco* (N.D.Cal. 1994) 846 F.Supp. 843. The plaintiffs, on behalf of a class of homeless individuals, sought a preliminary injunction to prevent implementation of a program of enforcement (the Matrix Program) of state and municipal laws which were commonly violated by the homeless residents of the city. Among the laws to be enforced were those banning "camping" or "lodging" in public parks and obstructing sidewalks. It was claimed, inter alia, that the Matrix Program infringed on the right to travel. The court rejected that argument and refused to require the city to show a compelling state interest to justify any impact the program might have on the right of the class members to travel. It noted that the program was not facially discriminatory as it did not distinguish between persons who were ***1103** residents of the city and those who were not. In so doing, the court suggested that the opinion of the Court of Appeal in this case was among those which constituted extensions of the right to travel that appeared to be "unwarranted under the governing Supreme Court precedent." (*Id.* at p. 860.) We agree.

(17) The right to travel does not, as the Court of Appeal reasoned in this case, endow citizens with a "right to live or stay where one will." While an individual may travel where he will and remain in a chosen location, that constitutional guaranty does not confer immunity against local trespass laws and does not create a right to remain without regard to the ownership of the property on which he chooses to live or stay, be it public or privately owned property.

(18) Moreover, lest we be understood to imply that an as applied challenge to the ordinance might succeed on the right to travel ground alone, we caution that, with few exceptions, [FN16] the creation or recognition of a constitutional right does not impose on a state or governmental subdivision the obligation to provide its citizens with the means to enjoy that right. (*Harris v. McRae* (1980) 448 U.S. 297, 317-318 [65 L.Ed.2d 784, 804-806, 100 S.Ct. 2671]; *Maher v. Roe* (1977) 432 U.S. 464, 471-474 [53 L.Ed.2d 484, 492-495, 97 S.Ct. 2376].) (15c) Santa Ana has no constitutional obligation to make accommodations on or in public property available to the transient homeless to facilitate their exercise of the right to travel. (*Lindsey v. Normet (*1972) 405 U.S. 56, 74 [31 L.Ed.2d 36, 50-51, 92 S.Ct. 862].) Petitioners' reliance on *Clark v. Community for Creative Non-Violence* (1984) 468 U.S. 288 [82 L.Ed.2d 221, 104 S.Ct. 3065], for the proposition that Santa Ana is obliged to provide areas in which camping is permitted on public property is misplaced. The issue in *Clark* was whether the refusal of the National Park Service to permit demonstrators who wished to call attention to the plight of the homeless to sleep in Lafayette Park and on the Mall in the nation's capital violated the First Amendment rights of the demonstrators. The court held that it did not, as other areas were available for the purpose. *Clark* dealt with an affirmative right-that of free speech -which could be restricted in public fora only by reasonable, content-neutral time, place and manner restrictions. (*Id.* at p. 293 [82 L.Ed.2d at p. 293-294].) The court expressly recognized the authority of the National Park Service "to promulgate rules and regulations for the use of the parks in ***1104** accordance with the purposes for which they were established." [FN17] (468 U.S. at p. 289 [82 L.Ed.2d at p. 224].) Petitioners in this case make no claim that the right they seek, to camp on public property in Santa Ana, is expressive conduct protected by the First Amendment. There is no comparable constitutional mandate that sites on public property be made available for camping to facilitate a homeless person's right to travel, just as there is no right to use public property for camping or storing personal belongings. [FN18]

FN16 E.g., the right to counsel guaranteed by the Sixth Amendment to the United States Constitution.

FN17 The ordinance mirrors the National Park Service rules and regulations governing camping in several respects. Those rules prohibit camping by using park lands as living accommodations and storing personal

belongings on them. (36 C.F.R. §§ 2.22, 2.61 (1994).)

FN18 Petitioners' argument that Santa Ana may not deny homeless persons the right to live on public property anywhere in the city unless it provides alternative accommodations also overlooks the Legislature's allocation of responsibility to assist destitute persons to counties. (Welf. & Inst. Code, §§ 17000-17001.5.) If the inability of petitioners and other homeless persons in Santa Ana to afford housing accounts for their need to "camp" on public property, their recourse lies not with the city, but with the county under those statutory provisions.

The Court of Appeal erred in holding that the Santa Ana ordinance impermissibly infringes on the right of the homeless to travel.

B. *Punishment for Status.*

(19) The Court of Appeal invalidated the ordinance for the additional reason that it imposed punishment for the "involuntary status of being homeless." [FN19] On that basis the court held the ordinance was invalid because such punishment violates the Eighth Amendment prohibition of cruel and unusual punishment, and the ban on cruel or unusual punishment of article I, section 17 of the California Constitution. We disagree with that construction of the ordinance and of the activity for which punishment is authorized. The ordinance permits punishment for proscribed conduct, not punishment for status.

FN19 In reaching that decision, the Court of Appeal did not distinguish between involuntarily being homeless, and involuntarily engaging in conduct that violated the ordinance. The court assumed that an involuntarily homeless person who involuntarily camps on public property may be convicted or punished under the ordinance. That question, which the Court of Appeal and the dissent address, and which might be raised in an as applied challenge to the ordinance, is not before us because plaintiffs offered no evidence that the ordinance was being applied in that manner. We express no opinion on the proper construction of the ordinance, in particular on whether the conduct it prohibits must be "willful," or on whether or in what circumstances a necessity defense is available.

The holding of the Court of Appeal is not limited to the face of the ordinance, and goes beyond even the evidence submitted by petitioners. Neither the language of the ordinance nor that evidence supports a conclusion that a person may be convicted and punished under the ordinance solely ***1105** on the basis that he or she has no fixed place of abode. No authority is cited for the proposition that an ordinance which prohibits camping on public property punishes the involuntary status of being homeless or, as the Court of Appeal also concluded, is punishment for poverty. *Robinson v. California* (1962) 370 U.S. 660 [8 L.Ed.2d 758, 82 S.Ct. 1417], on which the court relied, dealt with a statute which criminalized the status of being addicted to narcotics. The court made it clear, however, that punishing the conduct of using or possessing narcotics, even by an addict, is not impermissible punishment for status. (370 U.S. at pp. 664, 666 [8 L.Ed.2d at pp. 761-763].)

A plurality of the high court reaffirmed the *Robinson* holding in *Powell v. Texas* (1968) 392 U.S. 514 [20 L.Ed.2d 1254, 88 S.Ct. 2145], where it rejected a claim that punishment of an alcoholic for being drunk in public was constitutionally impermissible. "The entire thrust of *Robinson's* interpretation of the Cruel and Unusual Punishment Clause is that criminal penalties may be inflicted only if the accused has committed some act, has engaged in some behavior, which society has an interest in preventing, or perhaps in historical common law terms, has committed some *actus reus*. It thus does not deal with the question of whether certain conduct cannot constitutionally be punished because it is, in some sense, 'involuntary' or 'occasioned by a compulsion.' " (*Id.* at p. 533 [20 L.Ed.2d at p. 1268].)

As the district court observed in *Joyce v. City and County of San Francisco*, *supra*, 846 F.Supp. 843, 857, the Supreme Court has not held that the Eighth Amendment prohibits punishment of acts derivative of a person's status. Indeed, the district court questioned whether "homelessness" is a status at all within the meaning of the high court's decisions. "As an analytical matter, more fundamentally, homelessness is not readily classified as a 'status.' Rather, as expressed for the plurality in *Powell* by Justice Marshall, there is a

'substantial definitional distinction between a "status " ... and a " condition" ....' 392 U.S. at 533, 88 S.Ct. at 2155. While the concept of status might elude perfect definition, certain factors assist in its determination, such as the involuntariness of the acquisition of that quality (including the presence or not of that characteristic at birth), *see Robinson*, 370 U.S. at 665-69 & [fn.] 9, 82 S.Ct. at 1420-21 & [fn.] 9, and the degree to which an individual has control over that characteristic." (846 F.Supp. at p. 857.)

The declarations submitted by petitioners in this action demonstrate the analytical difficulty to which the *Joyce* court referred. Assuming arguendo the accuracy of the declarants' descriptions of the circumstances in which they were cited under the ordinance, it is far from clear that none had alternatives to either the condition of being homeless or the conduct that led to homelessness and to the citations. ***1106**

The Court of Appeal erred, therefore, in concluding that the ordinance is invalid because it permits punishment for the status of being indigent or homeless.

C. *Vagueness and Overbreadth.*

The Court of Appeal concluded that the ordinance was vague and overbroad. It based its vagueness conclusion on the nonexclusive list of examples of camping "paraphernalia" and "facilities" in the definitions of those terms. Those definitions were so unspecific, the court reasoned, that they invited arbitrary enforcement of the ordinance in the unfettered discretion of the police. The overbreadth conclusion was based on reasoning that the ordinance could be applied to constitutionally protected conduct. In that respect the court held that the verb "store" was overbroad as it could be applied to innocent conduct such as leaving beach towels unattended at public pools and wet umbrellas in library foyers.

1. *Vagueness.*

(20a) The Tobe respondents and the People, real party in interest in the Zuckernick matter, argue that the Court of Appeal failed to apply the tests enunciated by the United States Supreme Court and this court in applying the vagueness doctrine. It has isolated particular terms rather than considering them in context. We agree.

(21) A penal statute must define the offense with sufficient precision that "ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." (*Kolender v. Lawson*, *supra*, 461 U.S. 352, 357 [75 L.Ed.2d 903, 909]; see also *Papachristou v. City of Jacksonville* (1972) 405 U.S. 156, 162 [31 L.Ed.2d 110, 115-116, 92 S.Ct. 839]; *United States v. Harriss* (1954) 347 U.S. 612, 617 [98 L.Ed. 989, 996, 74 S.Ct. 808]; *Thornhill v. Alabama* (1940) 310 U.S. 88, 97-98 [84 L.Ed. 1093, 1099-1100, 60 S.Ct. 736].) "The constitutional interest implicated in questions of statutory vagueness is that no person be deprived of 'life, liberty, or property without due process of law,' as assured by both the federal Constitution (U.S. Const., Amends. V, XIV) and the California Constitution (Cal. Const., art. I, § 7)." (*Williams v. Garcetti* (1993) 5 Cal.4th 561, 567 [20 Cal.Rptr.2d 341, 853 P.2d 507].)

To satisfy the constitutional command, a statute must meet two basic requirements: (1) The statute must be sufficiently definite to provide adequate notice of the conduct proscribed; and (2) the statute must provide sufficiently definite guidelines for the police in order to prevent arbitrary and ***1107** discriminatory enforcement. (*Williams v. Garcetti*, *supra*, 5 Cal.4th 561, 567; *Walker v. Superior Court* (1988) 47 Cal.3d 112, 141 [253 Cal.Rptr. 1, 763 P.2d 852]; *People v. Superior Court (Caswell)* (1988) 46 Cal.3d 381, 389-390 [250 Cal.Rptr. 515, 758 P.2d 1046].) Only a reasonable degree of certainty is required, however. (46 Cal.3d at p. 391.) The analysis begins with "the strong presumption that legislative enactments 'must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears. [Citations.] A statute should be sufficiently certain so that a person may know what is prohibited thereby and what may be done without violating its provisions, but it cannot be held void for uncertainty if any reasonable and practical construction can be given to its language.' " (*Walker v. Superior Court*, *supra*, 47 Cal.3d at p. 143.)

(20b) The Court of Appeal erred in holding that the ordinance is unconstitutionally vague. The terms which the Court of Appeal considered vague are not so when the purpose clause of the ordinance is considered and the terms are read in that context as they should be. (*Williams v. Garcetti*, *supra*, 5 Cal.4th 561, 569; see also *Clark v. Community for Creative Non-Violence*, *supra*, 468 U.S. 288, 290-291 [82

L.Ed.2d 221, 224-226]; *United States v. Musser* (D.C. Cir. 1989) 873 F.2d 1513 [277 App.D.C. 256]; *United States v. Thomas* (D.C. Cir. 1988) 864 F.2d 188, 197-198 [274 App.D.C. 385]; *ACORN v. City of Tulsa, Okl.* (10th Cir. 1987) 835 F.2d 735, 744-745.) Contrary to the suggestion of the Court of Appeal, we see no possibility that any law enforcement agent would believe that a picnic in a public park constituted "camping" within the meaning of the ordinance or would believe that leaving a towel on a beach or an umbrella in a library constituted storage of property in violation of the ordinance.

The stated purpose of the ordinance is to make public streets and other areas readily accessible to the public and to prevent use of public property "for camping purposes or storage of personal property" which "interferes with the rights of others to use the areas for which they were intended." No reasonable person would believe that a picnic in an area designated for picnics would constitute camping in violation of the ordinance. The ordinance defines camping as occupation of camp facilities, living temporarily in a camp facility or outdoors, or using camp paraphernalia. The Court of Appeal's strained interpretation of "living," reasoning that we all use public facilities for "living" since all of our activities are part of living, ignores the context of the ordinance which prohibits living not in the sense of existing, but dwelling or residing on public property. Picnicking is not living on public property. It does not involve occupation of "tents, huts, or temporary shelters" "pitched" on public property or residing on public property.

Nor is the term "store" vague. Accumulating or putting aside items, placing them for safekeeping, or leaving them in public parks, on public ***1108** streets, or in a public parking lot or other public area is prohibited by the ordinance. When read in light of the express purpose of the ordinance - to avoid interfering with use of those areas for the purposes for which they are intended - it is clear that leaving a towel on a beach, an umbrella in the public library, or a student backpack in a school, or using picnic supplies in a park in which picnics are permitted is not a violation of the ordinance.

Unlike the Court of Appeal, we do not believe that *People v. Mannon* (1989) 217 Cal.App.3d Supp. 1 [265 Cal.Rptr. 616], and *People v. Davenport* (1985) 176 Cal.App.3d Supp. 10 [222 Cal.Rptr. 736], which upheld application of similar ordinances, were wrongly decided.

(22) In *Mannon* the appellate department rejected a claim that the defendants were not "camping" within the definition of a Santa Barbara city ordinance. The court reasoned: "There is nothing ambiguous about the meaning of the word 'camp.' The definition is 'to pitch or occupy a camp ... to live temporarily in a camp or outdoors.' (Webster's Third New Intern. Dict. (1965) p. 322.) The illustrations of the word 'camp' utilized in the municipal code do not vary the traditional meaning of that word, they merely supplement it. The illustrations are consistent with the ordinary meaning of the word, i.e., living temporarily in the outdoors.... [A] reasonable person would understand 'camp' to mean to temporarily live or occupy an area in the outdoors, and would not be deceived or mislead by the undertaking of further explanation in the municipal code." (217 Cal.App.3d at pp. Supp. 4-5.)

(20c) The ordinance is not vague. It gives adequate notice of the conduct it prohibits. It does not invite arbitrary or capricious enforcement. The superior court properly rejected that basis of the Tobe plaintiffs' challenge to the ordinance. The Court of Appeal erred in reversing that judgment on that ground.

2. *Overbreadth.*

(23a) The Court of Appeal reasoned that the ordinance was broader than necessary since it banned camping on all public property. There is no such limitation on the exercise of the police power, however, unless an ordinance is vulnerable on equal protection grounds or directly impinges on a fundamental constitutional right.

If the overbreadth argument is a claim that the ordinance exceeds the police power of that city, it must also fail. There is no fundamental right to camp on public property; persons who do so are not a suspect classification; ***1109** and neither of the petitions claims that the ordinance is invidiously discriminatory on its face. The Legislature has expressly recognized the power of a city "to regulate conduct upon a street, sidewalk, or other public place or on or in a place open to the public" (Pen. Code, § 647c) and has specifically authorized local ordinances governing the use of municipal parks. (Pub. Resources Code, § 5193.) Adoption of the ordinance was clearly within the police

power of the city, which may "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7; *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 676 [209 Cal.Rptr. 682, 693 P.2d 261]; *Birkenfeld v. City of Berkeley, supra*, 17 Cal.3d 129, 159-160.) As the more than 90 cities and the California State Association of Counties that have filed an amicus curiae brief in this court have observed, a city not only has the power to keep its streets and other public property open and available for the purpose to which they are dedicated, it has a duty to do so. (*San Francisco Street Artists Guild v. Scott* (1974) 37 Cal.App.3d 667, 674 [112 Cal.Rptr. 502].)

(24) The Court of Appeal also failed to recognize that a facial challenge to a law on grounds that it is overbroad and vague is an assertion that the law is invalid in all respects and cannot have *any* valid application (*Hoffman Estates v. Flipside, Hoffman Estates* (1982) 455 U.S. 489, 494, fn. 5 [71 L.Ed.2d 362, 369, 102 S.Ct. 1186]), or a claim that the law sweeps in a substantial amount of constitutionally protected conduct. The concepts of vagueness and overbreadth are related, in the sense that if a law threatens the exercise of a constitutionally protected right a more stringent vagueness test applies. (*Id.* at p. 499 [71 L.Ed.2d at p. 372]; *Kolender v. Lawson, supra*, 461 U.S. 352, 358-359, fn. 8 [75 L.Ed.2d 903, 909-910].)

(23b) Neither the Tobe plaintiffs nor the Zuckernick petitioners have identified a constitutionally protected right that is impermissibly restricted by application or threatened application of the ordinance. There is no impermissible restriction on the right to travel. There is no right to use of public property for living accommodations or for storage of personal possessions except insofar as the government permits such use by ordinance or regulation. Therefore, the ordinance is not overbroad, and is not facially invalid in that respect. It is capable of constitutional application.

Since the ordinance is not unconstitutionally overbroad, and the facial vagueness challenge must fail, the Court of Appeal erred in ordering dismissal of the complaints in the Zuckernick prosecution and enjoining enforcement of the ordinance. ***1110**

IV. Disposition

The judgment of the Court of Appeal is reversed.

Lucas, C. J., Kennard, J., Arabian, J., and George, J., concurred.

KENNARD, J.,

Concurring.-I join in the majority opinion. I write separately to clarify a point.

The concurring opinion of Justice Werdegar states that the majority "evidently reject[s] on its merits, the claim that a homeless person may not constitutionally be punished for publicly engaging in harmless activities necessary to life, such as sleeping." (Conc. opn. of Werdegar, J., *post*, at p. 1111.) Because that issue is not properly before us in this facial challenge to the ordinance, the majority does not address it, and it expressly says so: "[T]he Court of Appeal did not distinguish between involuntarily being homeless, and involuntarily engaging in conduct that violated the ordinance. The court assumed that an involuntarily homeless person who involuntarily camps on public property may be convicted or punished under the ordinance. That question, which the Court of Appeal and the dissent address, and which might be raised in an 'as applied' challenge to the ordinance, is not before us because plaintiffs offered no evidence that the ordinance was being applied in that manner. We express no opinion on the proper construction of the ordinance, in particular on whether the conduct it prohibits must be 'willful,' or on whether or in what circumstances a necessity defense is available." (Maj. opn., *ante*, at p. 1104, fn. 19.)

Thus, the majority does *not* decide whether a person who by reason of necessity falls asleep in a public park may constitutionally be successfully prosecuted. Moreover, the majority does not address, much less reject on its merits, a claim that there are no constitutional limits on punishing conduct regardless of the circumstances. Nor does it determine whether or not homelessness is a "status" as that term is described in *Robinson v. California* (1962) 370 U.S. 660 [8 L.Ed.2d 758, 82 S.Ct. 1417], and in *Powell v. Texas* (1968) 392 U.S. 514 [20 L.Ed.2d 1254, 88 S.Ct. 2145]. What the majority does decide is the issue before it: that the challenged *camping* ordinance does not on its face constitute prohibited punishment based on status. (Maj. opn., *ante*, at pp. 1104-1106.)

WERDEGAR, J.,

Concurring.-I concur in the result and much of the reasoning of the majority. Specifically, I agree the procedural history of both ***1111** cases (Tobe and Zuckernick) dictates they be treated as purely facial challenges to the ordinance, and that the ordinance survives such a challenge. I write separately because in the process of rejecting plaintiffs' attack on the ordinance as cruel or unusual punishment, the majority enters into the merits of an as applied attack, an issue not properly before us. I would leave the question to another day, when we are presented with a case that requires its resolution.

To succeed, a *facial* attack on the anticamping ordinance as cruel and unusual punishment (U.S. Const., 8th Amend.) or as cruel or unusual punishment (Cal. Const., art. I, § 17) would require showing punishment under the ordinance, in *all its possible applications*, is cruel, unusual or both. Plaintiffs have not seriously advanced that proposition, and it could be rejected in few words. Clearly, *some* acts of camping in public places-pitching a tent in the middle of a street, for example-may constitutionally be punished.

The majority unnecessarily goes far beyond that reasoning, however, to consider, and evidently reject on its merits, the claim a homeless person may not constitutionally be punished for publicly engaging in harmless activities necessary to life, such as sleeping. Apparently the majority would reject this claim for two reasons: first, because, in its view, *conduct* may always be constitutionally punished no matter how inseparable it is, causally or logically, from a person's status or condition (maj. opn., *ante*, at pp. 1104-1105); and second, because it questions whether homelessness is a "status" at all within the meaning of the United States Supreme Court's decision in *Robinson v. California* (1962) 370 U.S. 660 [8 L.Ed.2d 758, 82 S.Ct. 1417] (maj. opn., *ante*, at p. 1105.)

Not surprisingly, since it has disavowed the intent to consider the merits of an as applied challenge, the majority treats these issues cursorily. In so doing, it fails to consider the legal arguments actually made, or the authorities cited, by petitioners and their allied amici curiae. This portion of the majority opinion is pure dictum and should be read as such.

MOSK, J.

I dissent.

By addressing only the facial challenges to the Santa Ana ordinance now before us and looking only to its neutral language, the majority sidestep the pressing and difficult issues raised in this case. In the process, they erect new procedural barriers that will make future as applied challenges to the ordinance costly and protracted, while shielding the ordinance from meaningful review. Unlike the majority, I decline to ignore the purpose and effect of the ordinance, whether it is assessed on its face or as applied. ***1112**

The City of Santa Ana (hereafter the City or Santa Ana) enacted the challenged ordinance as the latest offensive in its five-year campaign to banish the homeless. Under its broad provisions, a person who "camps" in any public area or "stores" any personal property in any public area is subject to citation and arrest for a criminal offense punishable by six months in jail. (Santa Ana Ord. No. NS-2160, adding art. VIII, § 10-400 et seq. to Santa Ana Mun. Code (hereafter the ordinance), §§ 10-402, 10-403.) It has been enforced against homeless persons whose sole "crime" was to cover themselves with a blanket and rest in a public area. Homeless persons with no alternative but to temporarily leave their personal belongings in public places are also subject to repeated citation and arrest for violation of the ordinance's prohibition against "storing" property.

The City has conceded that the purpose of the ordinance is to address the "problem" of the homeless living in its parks and other public areas. The ordinance has, moreover, been enforced in a manner that specifically targets the homeless.

For those reasons, I conclude that the ordinance is unconstitutional both on its face and as applied to the homeless residents of Santa Ana. Although a city may reasonably control the use of its parks and other public areas, it cannot constitutionally enact and enforce an ordinance so sweeping that it literally prevents indigent homeless citizens from residing within its boundaries if they are unable to afford housing and unable to find a space in the limited shelters made available to them. The City cannot solve its "homeless problem" simply by exiling large numbers of its homeless citizens to neighboring localities.

Although not unconstitutionally vague, the ordinance fails under our decision in *Parr v. Municipal Court* (1971) 3 Cal.3d 861 [92 Cal.Rptr. 153, 479

P.2d 353] (hereafter *Parr*), because it violates the guaranty of equal protection under both the United States Constitution (14th Amend.) and the California Constitution (art. I, § 7, subd. (a)). It also impermissibly impairs the fundamental right of the homeless, under both the United States and California Constitutions, to travel freely within the state. [FN1]

> FN1 Because I believe the ordinance is invalid on these grounds, I find it unnecessary to reach the issue whether the ordinance also punishes the homeless on the basis of their status in violation of the Eighth Amendment or article I, section 17, of the California Constitution. (But see *Robinson v. California* (1962) 370 U.S. 660, 665-667 [8 L.Ed.2d 758, 762-763, 82 S.Ct. 1417]; *Powell v. Texas* (1968) 392 U.S. 514, 551 [20 L.Ed.2d 1254, 1278, 88 S.Ct. 2145] (conc. opn. of White, J.); *id.* at pp. 567, 570 [20 L.Ed.2d at pp. 1286-1287, 1288] (dis. opn. of Fortas, J.); *Pottinger v. City of Miami* (S.D.Fla. 1992) 810 F.Supp. 1551, 1561-1565 [city's practice of arresting homeless persons for such activities as sleeping, standing, and congregating in public places violated the Eighth Amendment].)

I. *Facial and As Applied Claims*

The majority conclude that this action raises only facial claims. I disagree. ***1113**

a. *Pleadings and Proceedings Below*

The Tobe plaintiffs expressly pleaded both facial and as applied claims in their petition for writ of mandate. [FN2] They also submitted factual evidence to support both the as applied and facial claims, including expert declarations and declarations by individual plaintiffs and others.

> FN2 Thus the petition alleged that the City had a "custom, practice, and policy of harassing, arresting, and otherwise interfering with petitioners and other homeless individuals for engaging in ordinary and essential activities of daily life in the public areas where petitioners are forced to live." Plaintiffs specifically pleaded, inter alia, that respondents "abused their discretion in enacting and *selectively enforcing Ordinance NS-2160 against homeless persons* in violation of their right to equal protection in that the ordinance abridges the fundamental right of the homeless to travel and to freedom of movement." (Italics added.) The petition expressly challenged particular applications of the ordinance, including the practice of arresting homeless persons for sleeping and possessing property in public areas. In their prayer for relief plaintiffs requested issuance of a peremptory writ of mandate compelling the City to refrain from enforcing the ordinance, i.e., the equivalent of an injunction against *future application* of the ordinance.

In opposing the writ, the City expressly acknowledged and addressed the Tobe plaintiffs' as applied claims. Thus, it conceded in its memorandum in opposition to the petition that "the present case involves a constitutional attack on a municipal ordinance, *both as applied and as written,* which, inter alia, prohibits camping on public property." (Italics added.) The City also conceded that "petitioners contend that the ordinance, *as applied to them*, abridges their right to travel" and that "petitioners contend that the Ordinance, *as applied* to homeless persons, punishes the status and condition of homelessness." (Italics added.)

At the hearing on their petition in the trial court, plaintiffs again expressly argued that the ordinance violated the Eighth Amendment and abridged the right to travel both on its face *and as applied*. [FN3] The trial court repeatedly acknowledged that the claims included both facial and as applied challenges. Thus it stressed that the "thrust of this case" was the contention that the ordinance "is designed and enacted *and implemented* as an effort to address a perceived problem by the authorities of the City of Santa Ana that regards the people who have been classified generically as, quote, 'homeless,' end quote." (Italics added.) The court expressly observed that the claims based on the right to travel and on the Eighth Amendment involved the "*application* of the statute," and it expressly considered how the ordinance "*in* ****1114*** *application* ... has a tendency to impact certain classes of people more than others." (Italics added.)

> FN3 Thus counsel for plaintiffs argued: "If the court were to conclude that the Ordinance on its face does not abridge the right to travel then I would submit to the court by way of

> our declarations and exhibits ... that in fact *as applied* this ordinance abridges the right to travel of petitioners and homeless residents of the City of Santa Ana." (Italics added.)

The trial court properly addressed the vagueness and overbreadth claims solely as facial challenges; they were brought as such. By contrast, however, in rejecting the right to travel and Eighth Amendment claims the court did not indicate that it was limiting itself to a facial analysis or that it was precluded from considering the factual evidence submitted by plaintiffs. Indeed, as the City has repeatedly conceded, the court expressly considered and rejected plaintiffs' as applied arguments, together with the portions of the evidence that plaintiffs brought to its attention in support of those arguments. [FN4]

> FN4 Again, during oral argument before this court the City was pressed on the question whether plaintiffs raised as applied claims; it candidly admitted that plaintiffs challenged the ordinance both facially and as applied and that the Court of Appeal properly addressed the as applied claims. In supplemental briefing, the City once more conceded that plaintiffs raised both facial and as applied claims in the writ petition, that both parties addressed facial and as applied claims in their memoranda, and that they "argued *both aspects* of the right to travel/equal protection issue" at the hearing in the trial court. (Italics added.) As the City also conceded: "It is clear from a review of the reporter's transcript of the April 8, 1993 hearing that Judge Smith upheld the constitutionality of the ordinance, *both as written and as applied*. In rejecting appellants' 'as applied' attack, Judge Smith rejected appellants' supporting evidence." (Italics added.) These frank concessions by the City, which it documented with specific citations to the record, squarely refute the majority's conclusions that the allegations of the petition did not clearly state an as applied challenge and that the trial court did not rule on the petition as one encompassing an as applied challenge. (See maj. opn., *ante*, p. 1087.)

The City did not submit evidence or attempt to dispute or rebut the evidence submitted by plaintiffs, much of it derived from the City's own records. At oral argument before this court the City conceded that it was not precluded in the trial court from presenting evidence or disputing the declarations submitted by plaintiffs; it had the opportunity to present and rebut evidence but chose not to do so. As the record clearly shows, the City's strategy was to argue that the ordinance, both facially and as applied, was a valid exercise of its police power. It therefore regarded the evidence submitted by plaintiffs as essentially irrelevant. I have no trouble concluding that the City's strategy in this regard resulted in a waiver.

In its order directing issuance of a peremptory writ of mandate, the trial court ruled that "*enforcement* of Santa Ana Ordinance NS-2160 ... does not violate the rights of *homeless persons* to freedom of movement.... The Court further finds that petitioners' challenges to the constitutionality of the remaining portions of Santa Ana Ordinance NS-2160 are without merit. The Court finds that with the exception of the second clause of Santa Ana ***1115** Municipal Code § 10-401(a), Santa Ana Ordinance NS-2160 is constitutionally valid." (Italics added.)

Nothing quoted in the order demonstrates that the trial court intended to, or did, address only the facial claims. [FN5] On the contrary, the order appears on its face to reject both facial *and* as applied claims: the court expressly and specifically refers to "enforcement" of the ordinance and to its constitutionality vis-a-vis the "rights of homeless persons."

> FN5 The majority purport to rely only on the "actual judgment of the court" and not on the concessions of parties and the reporter's transcript of the hearing on the writ. (Maj. opn., *ante*, p. 1087.) The judgment, however, does not refer to the grounds of the ruling. It provides in its entirety: "It Is Hereby Ordered, Adjudged and Decreed that: [¶] 1. Judgment is entered for petitioners granting the Peremptory Writ of Mandate. [¶] 2. The Court reserves jurisdiction over the issues of attorney's fees and costs. Any motion for attorney's fees and costs shall be filed in this Department."

The majority nonetheless conclude-despite the order, the transcript of the hearing, and the concessions of the parties-that no as applied challenge to the

ordinance was "perfected." But they point to no deficiency in the pleadings. Instead, they merely note that "plaintiffs never identified the particular applications of the law to be enjoined," and the "only relief sought in the petition is a writ of mandate enjoining *any* enforcement of the ordinance by respondents." (Maj. opn., *ante*, pp. 1086-1087.) [FN6] The City made no objection on that ground, nor is there any indication in the record that the trial court declined to address the as applied claims on that basis. Certainly, had the trial court found merit in the as applied claims, it could readily have fashioned appropriate relief. [FN7] ***1116**

FN6 Although the majority observe that "the petition alleges in conclusory language that a pattern of unconstitutionally impermissible enforcement of the ordinance existed" (maj. opn., *ante*, p. 1086), there can be no doubt that under California's liberal pleading rules the petition was adequately pleaded: it gave notice of the claims and clearly alleged a pattern of constitutionally impermissible enforcement. The undisputed declarations in support of the petition show with specificity that the ordinance was repeatedly enforced against persons who were homeless. The prayer seeks relief as follows: "That a peremptory writ of mandate issue pursuant to Code of Civil Procedure Section 1085 compelling respondents to refrain from enforcement of Santa Ana Municipal Code Section NS02160 ... [S]uch other and further relief as the Court may deem just and proper." The majority fail to identify any requirement of the Code of Civil Procedure or local rules that plaintiffs further delineate the relief sought on their as applied claims. Indeed, it is a rule of long standing that when an answer is filed a court may grant any relief consistent with the issues raised. (See, e.g., *Wright v. Rogers* (1959) 172 Cal.App.2d 349, 367-368 [342 P.2d 447].)

FN7 For example, the court could have required that the City enforce the provisions of the ordinance prohibiting sleeping or storing personal property only against those persons who are *not* homeless. An ordinance that prevented only those *with* homes from "camping" in public areas might be constitutional; it would, of course, be of limited practical utility.

b. *Justiciability and Standing*

Plaintiffs include persons who have been cited under the ordinance and who, because they are homeless, are likely to be cited again. They thus have a direct personal stake in the outcome of this action. [FN8]

FN8 The majority question whether plaintiffs are "truly"-or even sufficiently-homeless, concluding that the declarations they submitted did not establish that the conduct for which they were cited was "involuntary." I am satisfied that the undisputed sworn statements of plaintiffs and others cited under the ordinance that they lack the present means to house themselves are sufficient to establish standing and to demonstrate a pattern of enforcement of the ordinance against homeless persons. We need not inquire into the "voluntariness" of all the acts or decisions that might have led to their current plight. As many of the briefs and expert submissions point out, the question whether the homeless, particularly the large proportion of homeless who are mentally ill or addicted to drugs or alcohol, are "voluntarily" living in the streets is complex. Even when services or welfare benefits are available, it may be beyond the resources of many homeless persons to avail themselves of such assistance.

In any event, in light of the shortage of services and beds for the homeless, including the mentally ill and unaccompanied children, the question of "voluntariness" is almost academic. The undisputed fact is that Santa Ana has only 332 beds for a population of approximately 3,000 homeless. The vast majority of homeless in Santa Ana do not have the alternative of sleeping in a bed, off the streets. (See also Vernez et al., Review of California's Program for the Homeless Mentally Disabled (1988) pp. 1, 13, 15 [RAND study prepared for California Department of Mental Health, reporting, inter alia, that about 30 percent of Orange County homeless suffer from severe mental disorders]; Stats. 1988, ch. 1517, § 1, p. 5382

> [legislative finding that the extreme shortage of mental health services in California has led to redirection of long-term psychiatric patients "into a state of homelessness"]; Stats. 1985, ch. 1286, § 1.5, p. 4415 [legislative finding that "large numbers of mentally disordered adults are homeless"]; State of Cal., Department of Youth Authority, Policy Review and Update: Statewide Needs Assessment of Youth Shelters and Youth Centers (1993) pp. 1, II.2-3 [indicating that Orange County has only 31 beds for unaccompanied children, although there are an estimated 3,000 to 4,000 unaccompanied children in the county]; United States Conference of Mayors, A Status Report on Hunger and Homelessness in America's Cities: 1993-A 26 City Survey (Dec. 1993) p. 29 [children, including unaccompanied children or "runaways," account for an estimated 30 percent of the homeless population].)

In addition, plaintiffs address their as applied claims broadly to the unlawful implementation of the ordinance against *all* homeless persons. Plaintiffs thus have sufficient interest as citizens of Santa Ana, under our "public right/public duty" doctrine, to bring claims on behalf of other homeless persons who have, as a group, been targeted by the ordinance. (See *Green v. Obledo* (1981) 29 Cal.3d 126, 144-145 [172 Cal.Rptr. 206, 624 P.2d 256]; *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439 [261 Cal.Rptr. 574, 777 P.2d 610].) The case "poses a question which is of broad public interest, is likely to recur, and should receive uniform resolution throughout the state." (*Ramirez v. Brown* (1973) 9 Cal.3d 199, 203 [107 Cal.Rptr. 137, 507 P.2d 1345].)

Our courts have repeatedly applied the "public right/public duty" exception to the general rule that ordinarily a writ of mandate will issue only to ***1117** persons who are "beneficially interested." (Code Civ. Proc., § 1086.) Thus in *Green v. Obledo*, *supra*, 29 Cal.3d 126, recipients of welfare benefits petitioned for writ of mandate challenging the compliance of a regulation with the Social Security Act. We held that " ' "where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced .... " ' " (*Id.* at p. 144; accord, *Common Cause v. Board of Supervisors*, *supra*, 49 Cal.3d at p. 439.) [FN9]

> FN9 (See also *Parr*, *supra*, 3 Cal.3d 359 [plaintiff had standing to challenge an anti-"hippie" ordinance although she was herself manifestly not a "hippie" but a resident and merchant in the city]; *Timmons v. McMahon* (1991) 235 Cal.App.3d 512, 518 [286 Cal.Rptr. 620] [applying public interest exception in case involving eligibility rights for welfare benefits]; *Driving Sch. Assn. of Cal. v. San Mateo Union High Sch. Dist.* (1992) 11 Cal.App.4th 1513 [14 Cal.Rptr.2d 908] [applying public interest exception in case seeking to prevent school district from charging high school students tuition for a drivers' training class].)

Furthermore, plaintiffs show a sufficient beneficial interest as citizens who seek to restrain the illegal expenditure or waste of city funds to implement an ordinance in an unconstitutional manner. (See Code Civ. Proc., § 526a; *Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-269 [96 Cal.Rptr. 42, 486 P.2d 1242, 45 A.L.R.3d 1206] [an action to restrain county or city officials from continuing to enforce provisions of an unconstitutional law presents a true case or controversy, regardless of whether the plaintiff and the defendant each have a special, personal interest in the outcome of the action]; *Van Atta v. Scott* (1980) 27 Cal.3d 424, 450, fn. 28 [166 Cal.Rptr. 149, 613 P.2d 210] [an action that "meets the criteria of section 526a satisfies case or controversy requirements"]; *Ames v. City of Hermosa Beach* (1971) 16 Cal.App.3d 146, 150 [93 Cal.Rptr. 786].) As we have emphasized, "it has never been the rule in this state that parties in [taxpayer suits] must have a personal interest in the litigation.... '[N]o showing of special damage to the particular taxpayer has been held necessary.' " (*Blair v. Pitchess*, *supra*, 5 Cal.3d at pp. 269-270.)

Because the City has used, and continues to use, taxpayer funds to cite and prosecute persons who store belongings or sleep in public places in violation of an ordinance challenged as unconstitutional, these citizen-plaintiffs have a sufficient interest to confer standing. Consequently, plaintiffs' as applied claims challenging the implementation of the ordinance against homeless persons present "a true case or con-

troversy." (*Blair v. Pitchess*, *supra*, 5 Cal.3d at p. 269.)

The majority also conclude that an as applied claim challenging a criminal statute is justiciable only after "the circumstances of its application have ***1118** been established by conviction or otherwise." (Maj. opn., *ante*, p. 1085.) But in analogous cases we have not required conviction as a prerequisite to standing. Thus in *Murgia v. Municipal Court* (1975) 15 Cal.3d 286 [124 Cal.Rptr. 204, 540 P.2d 44], we concluded that the defendants, members of a particular union, could obtain discovery to determine whether various penal statutes were being discriminatorily enforced against them in violation of equal protection. The defendants had been charged with, but not yet convicted of, violations of the statutes. (*Id.* at p. 291, fn. 2.) Indeed, we implicitly acknowledged that the defense of discriminatory enforcement did not reach the question of guilt or innocence: "Because the particular defendant, unlike similarly situated individuals, suffers prosecution simply as the subject of invidious discrimination, such defendant is very much the direct victim of the discriminatory enforcement practice. Under these circumstances, discriminatory prosecution becomes a compelling ground for dismissal of the criminal charge, since prosecution would not have been pursued except for the discriminatory design of the prosecuting authorities." (*Id.* at p. 298, fn. omitted.) [FN10]

FN10 Similarly, under the Eighth Amendment it is not essential to have a formal adjudication of guilt to challenge a provision that makes status a criminal offense. In *Joyce v. City and County of San Francisco* (N.D.Cal. 1994) 846 F.Supp. 843, 853, the district court expressly rejected the defendants' contention that a claim under the Eighth Amendment could be made only by a party convicted of a criminal offense. As *Joyce* emphasized, that proposition was refuted by the United States Supreme Court in *Ingraham v. Wright* (1977) 430 U.S. 651, 666-668 [51 L.Ed.2d 711, 726-728, 97 S.Ct. 1401], which expressly provided that in addition to proscribing certain types of punishments to those convicted of crimes, the amendment "imposes substantive limits on what can be made criminal." Like *Joyce*, this case alleges discrimination on the basis of the status of homelessness-i.e., it challenges the ordinance under the substantive provisions of the Eighth Amendment. Moreover, "fines ... traditionally have been associated with the criminal process" and subjected to the limitations imposed by the Eighth ment. (*Ingraham v. Wright*, *supra*, 430 U.S. at p. 664 [51 L.Ed.2d at pp. 725-726].)

The majority also plainly imply that an as applied challenge must necessarily be restricted to a case-by-case showing by each individual who is convicted under the ordinance that he or she was "truly homeless" and that the ordinance was improperly applied in each case. Such a requirement-which is tantamount to requiring an individual trial of a "necessity" defense for each person cited under the ordinance-is unwarranted. (See, e.g., *Ramirez v. Brown*, *supra*, 9 Cal.3d 199 [holding that challenged provisions were unconstitutional as applied to all ex-felons]; *Van Atta v. Scott*, *supra*, 27 Cal.3d at pp. 433, 452-453 [holding that San Francisco's manner of applying statutes for pretrial release of criminal defendants violated due process].) It would needlessly subject large numbers of homeless persons to the criminal justice system for wholly innocuous conduct and overwhelm ***1119** our already strained judicial resources, while effectively insulating the ordinance from meaningful review. [FN11]

FN11 We have recognized that mandamus review is appropriate where, as here, important issues would be effectively removed from judicial review if standing is not conferred. (See *Driving Sch. Assn. of Cal. v. San Mateo Union High Sch. Dist.*, *supra*, 11 Cal.App.4th at p. 1519 ["High school students who take this brief 24-hour class are unlikely to have the financial resources or the economic interest necessary to maintain the protracted litigation necessary to test the School District's authority to charge tuition for the class."].) In this case, similarly, the targets of the ordinance are unlikely to have the financial resources to test the City's authority on a case-by-case basis. Because the City may cite, arrest, and detain homeless residents repeatedly without "actually convicting" them in a full-blown judicial proceeding, even under the majority's construction it would be justiciable as an issue

"evading review."

Significantly, federal courts recently addressing similar challenges to "anti-camping" measures have consistently done so by examining ordinances as applied to the homeless in general, *not* on a case-by-case basis, and have not required conviction to establish standing. (See *Pottinger v. City of Miami, supra*, 810 F.Supp. at p. 1554 [challenging manner in which city "applies these laws to homeless individuals"]; *Joyce v. City and County of San Francisco, supra*, 846 F.Supp. at p. 846 [challenging ordinance "only insofar as it specifically penalizes certain 'life sustaining activities' engaged in by the homeless"]; *Johnson v. City of Dallas* (N.D.Tex. 1994) 860 F.Supp. 344, 346 [addressing constitutionality of city ordinances "enacted, enforced, or both, allegedly to remove homeless persons from public view"].)

In sum, there is ample authority to conclude that these plaintiffs have standing and state justiciable claims, both facial and as applied. Most of the plaintiffs have been cited and fined for violations of the ordinance, and most are taxpayers. Moreover, because Santa Ana has effectively criminalized sleeping and storing personal property in any public places, plaintiffs and other homeless persons in Santa Ana-who have no legal alternative but to sleep and store personal property in public short of leaving the city altogether-will necessarily be subject to future citation and/or arrest. The as applied claims are therefore properly before us.

II. *Equal Protection*

In my view the ordinance violates equal protection under the rule of our decision in *Parr, supra*, 3 Cal.3d 861, because it intentionally discriminates against homeless persons who have no alternative but to sleep and store their property in public areas of the City. [FN12] ***1120**

FN12 The majority incorrectly assert that plaintiffs did not pursue an equal protection theory. The writ petition expressly pleaded equal protection claims, including violations of the right to travel. *Parr, supra*, 3 Cal.3d 861, a case devoted to equal protection analysis, was extensively briefed by the parties and amici curiae. Moreover, as discussed below, the right to travel is properly analyzed under an equal protection test.

a. *Scope of Analysis*

As amici curiae for the City concede, "Neither we nor the Court can or should avoid that [*sic*] this case involves questions about the homeless, although the text of the Ordinance is neutral and does not single out the homeless in any manner." Although I believe we can construe the ordinance both facially and as applied, in either case we must look beyond the neutral face of the measure to its underlying purpose and its impact on particular groups.

There is ample precedent for doing so. In *Shapiro v. Thompson* (1969) 394 U.S. 618, 628 [22 L.Ed.2d 600, 611-612, 89 S.Ct. 1322], the Supreme Court examined the legislative history of the statutes there challenged and found "weighty evidence that exclusion from the jurisdiction of the poor who need or may need relief was the specific object of these provisions." [FN13]

FN13 (See also *Arlington Heights v. Metropolitan Housing Corp.* (1977) 429 U.S. 252, 265-266 [50 L.Ed.2d 450, 464-465, 97 S.Ct. 555] [recognizing the relevance of discriminatory purpose in assessing the validity of a rezoning decision]; *Parr, supra*, 3 Cal.3d 861; *Serrano v. Priest* (1976) 18 Cal.3d 728, 740-741, 747 [135 Cal.Rptr. 345, 557 P.2d 929] [invalidating California's facially neutral school financing scheme in its entirety on the basis of evidence showing it had a discriminatory effect]; see generally, *California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844 [157 Cal.Rptr. 676, 598 P.2d 836] ["both the legislative history of the statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose"].)

In *Parr, supra*, 3 Cal.3d 861, we addressed a challenge to a facially neutral ordinance enacted by the City of Carmel-by-the-Sea that was similarly aimed at "an extraordinary influx of undesirable and unsanitary visitors to the City, sometimes known as 'hippies.' " (*Id.* at p. 863.) We determined that despite the neutral terms of the ordinance, we were required to look beyond its literal language to determine its purpose. We stressed that " '[a] state enactment cannot be construed for purposes of constitutional analysis without concern for its immediate objective [citations]

and for its ultimate effect [citations].' " (*Id.* at p. 864.)

Among other precedents, we cited Justice Stephen J. Field's perceptive opinion in *Ho Ah Kow v. Nunan* (D.Cal. 1879) 12 F. Cas. 252 (No. 6,546), which invalidated a facially neutral San Francisco ordinance requiring every male entering the county jail to have his hair cut to a uniform length of one inch. Under the ordinance a Chinese man convicted of a misdemeanor violation was subjected to loss of his traditional queue.

Justice Field based his ruling on a conclusion that the purpose and effect of the ordinance-although not expressed on the face of the provision-was ***1121** to punish the then racially unpopular Chinese: "The class character of this legislation is none the less manifest because of the general terms in which it is expressed." (*Ho Ah Kow v. Nunan, supra*, 12 F. Cas. at p. 255.) He referred to statements of supervisors in debate on the passage of the ordinance for the purpose of ascertaining the "general object of the legislation proposed, and the mischiefs sought to be remedied." (*Ibid.*) He added, "When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men; and where an ordinance, though general in its terms, only operates upon a special race, sect or class, it being universally understood that it is to be enforced only against that race, sect or class, we may justly conclude that it was the intention of the body adopting it that it should only have such operation, and treat it accordingly." (*Ibid.*)

Guided by Justice Field, we declined in *Parr* to "blind ourselves to official pronouncements of hostile and discriminatory purpose solely because the ordinance employs facially neutral language." (3 Cal.3d at p. 865.) We examined the purpose expressed by the Carmel City Council in enacting the measure and concluded that "[t]he irrefragable implication is that the Carmel City Council sought, through Municipal Code section 697.02, to rid the city of the blight it perceived to be created by the presence of the hippies." (*Ibid.*)

In construing the Carmel ordinance we also examined its probable impact: "Those officials responsible for the enforcement of the law are put on notice that the public property in the city is in imminent danger because of the influx of a particular class against which the ordinance is unmistakably directed. The inevitable effect must be discriminatory enforcement consistent with the discriminatory purpose expressed by the council ...." (*Parr, supra*, 3 Cal.3d at p. 868.) On these grounds we held that the ordinance violated equal protection by stigmatizing a particular group. In the present case as well, we are obligated to look behind the neutral facade of the ordinance.

b. *Purpose and Effect of the Ordinance*

As in *Parr, supra*, 3 Cal.3d 861, although the ordinance is neutral on its face we need not go far afield to determine the purpose that the City sought to achieve. Over the past four years, Santa Ana has engaged in what the Court of Appeal aptly called a "crusade against the homeless."

In a memorandum titled "Vagrants," dated June 16, 1988, the City's executive director of the recreation and community services agency informed the City Park Superintendent: "A task force has been formed in an ***1122** effort to deal with the vagrants. The City Council has developed a policy that the vagrants are no longer welcome in the City of Santa Ana.... In essence, the mission of this program will be to move all vagrants and their paraphernalia out of Santa Ana by continually removing them from the places that they are frequenting in the City."

The City's vagrancy task force developed and implemented a plan that included discouraging food providers-such as the Orange County Rescue Mission and the Salvation Army-from feeding the homeless, turning on sprinklers in public parks, and confiscating and destroying the personal property of homeless residents. After a legal challenge to that plan the City agreed to a settlement in April 1990 that included posting maintenance hours, ceasing to conduct maintenance "sweeps" in public areas, and providing for storage and retrieval of confiscated property.

Only a few months later, however, in August 1990, the Santa Ana police mounted "Operation Civic Center," described in an internal memorandum as follows: "Eddie West Field [an open-air football stadium adjacent to the Civic Center] was used as the command post because it supplied a secured area where we could house multiple arrestees. In addition, it also allowed access to restroom facilities and water for the persons arrested. Four Police Service Officers were assigned to the command post to process all arrestees. This included photographing, fingerprint-

ing, documentation and running record and warrant checks. Two officers were also assigned to the command post for care and custody of the arrestees. Five 2-man observer teams were assigned throughout the plaza area looking for criminal activity. Each of the five 2-man teams was completely concealed and was able to observe the violations from a safe and secure location. Five 2-man arrest teams were called into the plaza area by the observers and the arrest teams took the violators into custody. The violators were then transported to the command post at Eddie West Field where they were processed."

There were 28 arrests for littering, 2 for drinking in public, 7 for urinating in public, 18 for jaywalking, 2 for destroying vegetation, 2 for riding bicycles on a sidewalk, 1 for glue sniffing, 1 for removing trash from a bin, and 2 for an obscure violation of the City's fire code. Two persons who proved they had homes were released. The homeless arrestees were handcuffed, transported to an athletic field for booking, chained to benches for up to six hours, and identified with numbers written on their arms with markers. At the conclusion of the detention, the police loaded the homeless into vans, drove them to the edge of the Central Command Area of the Santa Ana Police Department, and dropped them off.

The homeless brought a further civil action against the City for injunctive relief, asserting they were victims of discriminatory law enforcement. The ***1123** trial court agreed, ruling that the homeless were a cognizable class who had been singled out for arrest for offenses that rarely, if ever, even drew citations in Santa Ana. The trial court concluded: "In short, this Court finds that the Santa Ana Police Department deliberately and intentionally implemented a program which targeted those persons living in the Civic Center, the homeless."

In October 1990 the City apparently settled the action. It agreed that "it shall be [] the policy of [the City of Santa Ana] to refrain from discriminating against individuals on the basis of their homelessness" and it shall not "take individual or concerted action to drive homeless individuals from Santa Ana." The stipulation was made an order of the court, but no judgment has been entered. The case is to be dismissed during this year.

The ordinance before us reflects the same purpose as Santa Ana's previous official policies: to drive "vagrants" out of Santa Ana. There can be no doubt that it was enacted to resolve what the City refers to in its brief as "the homeless problem." As that brief explains: "The City is directly impacted by the homeless problem because homeless persons attempt to live on property it owns or controls, thereby causing the myriad of public health and police related concerns which the City must combat in the face of constantly diminishing financial resources." The City again expressly conceded at oral argument that the purpose of the ordinance was to address the problem of homeless persons "camping" in public areas, including the parking lot across from city hall. [FN14]

> FN14 The majority expressly venture no opinion on whether and in what circumstances a necessity defense might be available. (Maj. opn., *ante*, p. 1104, fn. 19.) They nonetheless note that a deputy district attorney "expressed his opinion at oral argument" that a necessity defense "might" be available to "truly homeless" persons. (Maj. opn., *ante*, p. 1088 fn. 8.) Because of that "opinion" the majority refuse to conclude that the City intends to enforce the ordinance against persons who have no alternative to "camping" or storing "camp paraphernalia" on public property. Nothing in the ordinance provides an exception for homeless persons, however, and the district attorney's "opinion" does not purport to bind the City or even to express the *City's* intent in implementing the ordinance. Moreover, even if a necessity defense were available, it would not prevent the City from repeatedly citing and arresting homeless persons and subjecting them to an endless round of costly and complex judicial proceedings. Thus the effect of the ordinance would continue to be to drive the homeless from Santa Ana, as it is clearly intended to do.

Even if the City had not so candidly admitted its purpose, however, the inevitable effect of the ordinance is to target the homeless. Because there are beds in local shelters for only about one in ten homeless persons in Santa Ana, an ordinance outlawing "camping" in all public areas effectively accomplishes the purpose of driving out the homeless, despite its neutral wording. Although the City and amici curiae

observe that the ordinance ***1124** would also apply to the mayor and the Girl Scouts, it is unlikely that any significant number of Santa Ana residents or visitors other than the homeless would choose to sleep, protected only by a blanket, in a public parking lot or to store personal property in the open. [FN15]

> FN15 (See Waldron, *Homelessness & the Issue of Freedom* (1991) 39 UCLA L.Rev. 295, 313 [Anticamping ordinances "have and are known and even intended to have a specific effect on the homeless which is different from the effect they have on the rest of us.... [E]veryone is perfectly well aware of the point of passing these ordinances, and any attempt to defend them on the basis of their generality is quite disingenuous."].)

We concluded in *Parr, supra*, 3 Cal.3d at page 870, that "we cannot be oblivious to the transparent, indeed the avowed, purpose and the inevitable effect of the ordinance in question: to discriminate against an ill-defined social caste whose members are deemed pariahs by the city fathers. This court has been consistently vigilant to protect racial groups from the effects of official prejudice, and we can be no less concerned because the human beings currently in disfavor are identifiable by dress and attitudes rather than by color." That vigilance is even more important now. Today's pariahs are no longer the relatively carefree "hippies," many of whom chose that lifestyle, but persons who are homeless largely by necessity and who face far greater restrictions under this ordinance than merely keeping off the grass. [FN16]

> FN16 The majority attempt to distinguish *Parr* on its facts, arguing that the Carmel ordinance "banned a customary use of the city park." (Maj. opn., *ante*, p. 1094.) But their discussion of *Parr* is merely dictum, because they decline to acknowledge or address the equal protection claims on the merits. It is also unpersuasive. The Carmel ordinance made it unlawful to "[c]limb any tree; or walk, stand or sit upon monuments, vases, fountains, railings, fences, planted areas, or upon any other property *not designed or customarily used for such purposes*, or to sit on any sidewalks or steps, or to lie or sit on any lawns." (*Parr, supra*, 3 Cal.3d at p. 862, italics added.) Thus, *Parr* did not turn on the issue of the "customary" use of the public areas in Carmel, but, as here, on whether a city could prohibit innocuous behavior for the constitutionally impermissible purpose of driving a disfavored group from its bounds. The majority also argue unpersuasively that we must ignore the obvious purpose of the Santa Ana ordinance because, two years previously, Santa Ana had agreed to discontinue attempts to force the homeless to leave. Their approach permits the City to continue to discriminate against the homeless so long as it does not expressly articulate an impermissible purpose. We have explicitly rejected the notion that the mere appearance of neutrality can be used to shield discriminatory legislation. (*Parr, supra*, 3 Cal.3d at p. 870; see also *Mulkey v. Reitman* (1966) 64 Cal.2d 529 [50 Cal.Rptr. 881, 413 P.2d 825], affd. *sub nom. Reitman v. Mulkey* (1967) 387 U.S. 369 [18 L.Ed.2d 830, 87 S.Ct. 1627].)

A century ago Anatole France exposed the cruel hypocrisy of such "neutral" laws against the indigent: "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread." (France, Le Lys Rouge (1894) ch. 7.) Even under a facial analysis we cannot blind ourselves to the evident intent of the Santa Ana ordinance. Recognizing that intent, I would hold that the ordinance ***1125** impermissibly discriminates against the homeless and thereby violates equal protection. [FN17]

> FN17 We need not hold, therefore, that homeless persons are members of a "suspect class" in order to invalidate the ordinance on equal protection grounds. As in *Parr, supra*, 3 Cal.3d 861, the purpose of the ordinance-to banish a disfavored group-is plainly not a legitimate state interest. (See also *U. S. Dept. of Agriculture v. Moreno* (1973) 413 U.S. 528, 534 [37 L.Ed.2d 782, 787-789, 93 S.Ct. 2821] [invalidating a federal statute that discriminated against "hippies" and "hippie" communes: "if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* governmental

est."]; *Cleburne v. Cleburne Living Center, Inc.* (1985) 473 U.S. 432, 448 [87 L.Ed.2d 313, 325-326, 105 S.Ct. 3249] [holding city's denial of building permit invalid because the decision discriminated against the "mentally retarded"].)

III. *Right to Travel*

The ordinance also impermissibly penalizes the fundamental right of indigent homeless persons to travel to or remain in Santa Ana, by denying them the basic necessities of sleeping and storing personal belongings in any public areas.

a. *Constitutional Freedom to Travel and Abide*

Both the United States Supreme Court and the courts of California have expressly recognized a fundamental constitutional right to travel, "a basic human right protected by the United States and California Constitutions as a whole." (*In re White* (1979) 97 Cal.App.3d 141, 148 [158 Cal.Rptr. 562]; see, e.g., *Shapiro v. Thompson, supra*, 394 U.S. at p. 629 [22 L.Ed.2d at p. 612].) [FN18] A law implicates the right to travel when it either penalizes travel or is intended to impede travel. (*Attorney General of N.Y. v. Soto-Lopez, supra*, 476 U.S. at p. 903 [90 L.Ed.2d pp. 905-906] ["A state law implicates the right to travel when it actually deters such travel [citations], when impeding travel is its primary objective [citations], or when it ' "uses any classification which serves to penalize the exercise of that right." ' "].)

FN18 Although the Supreme Court has never reached a consensus concerning the specific constitutional source of the right to travel, it has often either relied upon or recognized the equal protection clause as a potential source of the right. (See, e.g., *Shapiro v. Thompson, supra*, 394 U.S. at pp. 630, 634 [22 L.Ed.2d at pp. 612-613, 614-615]; *Zobel v. Williams* (1982) 457 U.S. 55, 66-67 [72 L.Ed.2d 672, 681-682, 102 S.Ct. 2309] (conc. opn. of Brennan, J.); *Memorial Hospital v. Maricopa County* (1974) 415 U.S. 250, 253-270 [39 L.Ed.2d 306, 312-322, 94 S.Ct. 1076]).) " '[T]he right to travel receives its most forceful expression in the context of equal protection analysis.' " (*Attorney General of N.Y. v. Soto-Lopez* (1986) 476 U.S. 898, 902, fn. 2 [90 L.Ed.2d 899, 905, 106 S.Ct. 2317], (plur. opn. of Brennan, J.).)

The United States Supreme Court has repeatedly rejected statutes designed to exclude the indigent. Thus in *Edwards v. California* (1941) 314 U.S. 160, 174 [86 L.Ed. 119, 125-126, 62 S.Ct. 164], the court struck down ***1126** a California statute that prohibited the transportation of indigent nonresidents into California. The court explained that a community may not "gain a momentary respite from the pressure of events by the simple expedient of shutting its gates to the outside world." (*Id.* at p. 173 [86 L.Ed. at p. 125].) Similarly, in *Shapiro v. Thompson, supra*, 394 U.S. at page 629 [22 L.Ed.2d at p. 612], the court held that the right to travel was triggered by any attempt to "fence out" indigents. (See also *Memorial Hospital v. Maricopa County, supra*, 415 U.S. 250 [indigents' right to travel and settle in Arizona was impermissibly penalized by durational residency requirements for nonemergency medical care for indigents at county expense].)

The right to travel includes the right to *stay* as well as the right to go. (See, e.g., *Kent v. Dulles* (1958) 357 U.S. 116, 126 [2 L.Ed.2d 1204, 1210, 78 S.Ct. 1113] ["Freedom of movement is basic in our scheme of values."]; *Dunn v. Blumstein* (1972) 405 U.S. 330, 338 [31 L.Ed.2d 274, 281-282, 92 S.Ct. 995] [right to travel ensures "freedom to enter *and abide*"], italics added; *Attorney General of N.Y. v. Soto-Lopez, supra*, 476 U.S. at p. 903 [90 L.Ed.2d at pp. 905-906] [right encompasses burdens on freedom to enter and abide in states]; *Papachristou v. City of Jacksonville* (1972) 405 U.S. 156 [31 L.Ed.2d 110, 92 S.Ct. 839] [vagrancy ordinance offends freedom of movement].) Our courts, too, have recognized that the right to travel includes the "concomitant right *not* to travel." (*In re Marriage of McGinnis* (1992) 7 Cal.App.4th 473, 480 [9 Cal.Rptr.2d 182], italics added; see also *In re White, supra*, 97 Cal.App.3d at pp. 148-149 [banishment violates constitutional right to freedom of travel]; *In re Barbak S.* (1993) 18 Cal.App.4th 1077, 1084-1086 [22 Cal.Rptr.2d 893] [same]; *People v. Bauer* (1989) 211 Cal.App.3d 937, 944 [260 Cal.Rptr. 62] [same].)

b. *Intrastate Travel*

This case involves *intra*state travel. In California we have expressly recognized that the constitutional right to freedom of movement necessarily embraces intrastate travel. "[T]he right to intrastate travel (which includes intramunicipal travel) is a basic hu-

man right protected by the United States and California Constitutions." (*In re White, supra*, 97 Cal.App.3d at p. 148; see also *In re Marriage of Fingert* (1990) 221 Cal.App.3d 1575, 1581 [271 Cal.Rptr. 389] [court order requiring parent to relocate or lose custody violates right to intrastate travel]; *People v. Bauer, supra*, 211 Cal.App.3d at p. 944 [requiring defendant to obtain official approval of choice of residence as a condition of probation impinges on right to intrastate travel].)

The right to intrastate travel in this state is protected without regard to federal decisions on the issue, because the rights guaranteed by the California Constitution " 'are not dependent upon those guaranteed by the United ***1127** States Constitution.' " (*In re White, supra*, 97 Cal.App.3d at p. 148.) Nonetheless, I would approve the holding in *White*, concluding that the United States Constitution ensures the right to intrastate, as well as interstate, travel.

Although the United States Supreme Court has not expressly addressed the right to intrastate travel, it has strongly suggested that such a broad reading of the right to travel is appropriate. Thus in *Kolender v. Lawson* (1983) 461 U.S. 352, 358 [75 L.Ed.2d 903, 909-910, 103 S.Ct. 1855], the court emphasized that a law prohibiting wandering the streets at night without identification implicated "consideration of the constitutional right to freedom of movement." (See also *Papachristou v. City of Jacksonville, supra*, 405 U.S. at p. 164 [31 L.Ed.2d at pp. 116-117] [" 'wandering or strolling' " are "historically part of the amenities of life as we have known them"].)

The Circuit Courts of Appeal have repeatedly concluded that the right encompasses intrastate travel. (See, e.g., *Spencer v. Casavilla* (2d Cir. 1990) 903 F.2d 171, 174; *Lutz v. City of York, PA.* (3d Cir. 1990) 899 F.2d 255, 268 ["the right to move freely about one's neighborhood or town ... is indeed 'implicit in the concept of ordered liberty' and 'deeply rooted in the Nation's history' "]; *King v. New Rochelle Municipal Housing Authority* (2d Cir. 1971) 442 F.2d 646, 648-649 [right to travel includes intrastate travel].) As the Second Circuit recognized in *King*, "It would be meaningless to describe the right to travel *between* states as a fundamental precept of personal liberty and not acknowledge a correlative constitutional right to travel *within* a state." (442 F.2d at p. 648, fn. omitted, italics added.)

c. *Impact of the Ordinance*

The majority conclude that the ordinance does not inevitably conflict with the right to travel because it "has no impact, incidental or otherwise, on the right to travel *except* insofar as a person, homeless or not, might be discouraged from traveling to Santa Ana because camping on public property is banned." (Maj. opn., *ante*, p. 1102, italics added.) But homeless persons are not simply "discouraged" from traveling to Santa Ana. They are effectively *prevented* from doing so, because the ordinance forbids them to sleep or store their personal belongings in any public area in the City. By criminalizing their unavoidable but innocuous conduct of sleeping and storing their personal effects, the ordinance has an immediate impact on the right of the homeless to enter or remain in Santa Ana. [FN19]

FN19 Even a provision that penalized travel "indirectly" would not be immune from strict constitutional scrutiny. As the Supreme Court stressed in *Dunn v. Blumstein, supra*, 405 U.S. at page 341 [31 L.Ed.2d at pp. 283-284]: " ' "Constitutional rights would be of little value if they could be ... indirectly denied." ' " In *Dunn*, the court invalidated a one-year residential requirement for voting in Tennessee, although there was no evidence that it in fact deterred-or was intended to deter-travel.

I therefore disagree with the majority's assertion that the effect of the ordinance on the homeless is merely "incidental." Criminalizing the harmless act of sleeping in a public place-when the vast majority of homeless ***1128** persons in Santa Ana have no legal alternative other than to "get out of town by sundown"-forbids a "necessity of life" and thereby effectively penalizes migration. (See *Memorial Hospital v. Maricopa County, supra*, 415 U.S. at pp. 258-259 [39 L.Ed.2d at pp. 314-316] [laws penalize travel when they deny a person a "necessity of life" such as nonemergency medical care for indigents at the county's expense].) Arresting or citing the homeless for sleeping in public also burdens their freedom of movement, because they must either forgo sleep or leave the City altogether to avoid criminal penalty. Moreover, as discussed above, the primary purpose for enforcing the ordinance against the homeless was to drive them out of public areas. [FN20]

FN20 The majority's reliance on cases involving only incidental and nondiscriminatory zoning and taxing provisions is therefore misplaced. (See maj. opn., *ante*, p. 1101; *R.H. Macy & Co. v. Contra Costa County* (1990) 226 Cal.App.3d 352, 367-369 [276 Cal.Rptr. 530] [unequal taxation under Proposition 13 had an "inconsequential" effect on interstate mobility and did not result in invidious discrimination, either directly or indirectly]; *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 602-603 [135 Cal.Rptr. 41, 557 P.2d 473] [zoning ordinance barring residential construction only incidentally burdened right to travel]; but see *id.* at p. 623 (dis. opn. of Mosk, J.) ["total exclusion of people from a community is both immoral and illegal"].)

The indirect effects of the ordinance may prove even more invidious. As one amicus curiae, a former mayor, points out, ordinances like Santa Ana's encourage an unhealthy and ultimately futile competition among cities to impose comparable restrictions in order to avoid becoming a refuge for homeless persons driven out by other cities. The case at bar provides a striking example of this domino effect: in response to the Santa Ana ordinance, surrounding communities quickly enacted similar measures to protect themselves from an influx of Santa Ana's homeless. [FN21] To carry this effect to its logical conclusion, if all communities followed suit the homeless could effectively be excluded from the entire State of California.

FN21 Fullerton, Long Beach, and Orange, for example, have passed anticamping ordinances. The City Attorney of Fullerton explained: "We're trying to protect ourselves so that when Santa Ana throws out their 1,300, they don't all come over here." (Schaffer, *Tent Cities: Laws Aim to Break Camp*, Orange County Register (June 7, 1992) pp. 1, 8.) Another amicus curiae, a former mayor of Laguna Beach, similarly observed in a letter to this court: "To the extent that Santa Ana officials 'succeed' [in excluding the homeless], the homeless poor migrate to other nearby cities in search of streets and other public places where they can sleep. Laguna Beach, already 'home' to many poor and homeless individuals, may have to take on yet more of a social support burden."

In striking down a California law that aimed to exclude the indigent of an earlier era, the Supreme Court observed: "in the words of Mr. Justice Cardozo: 'The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the ***1129** peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division.' [Citation.] [¶] ... [¶] ... [I]n not inconsiderable measure the relief of the needy has become the common responsibility and concern of the whole nation." (*Edwards v. State of California*, *supra*, 314 U.S. at pp. 173-174 [86 L.Ed.2d 124].) The same principle requires us to invalidate the Santa Ana ordinance.

d. *Strict Scrutiny*

Because the ordinance impairs the right to travel of plaintiffs and other homeless persons, it is subject to strict scrutiny. (See *Dunn v. Blumstein*, *supra*, 405 U.S. at pp. 339-342 [31 L.Ed.2d at pp. 282-284]; *Shapiro v. Thompson*, *supra*, 394 U.S. at p. 634 [22 L.Ed.2d at p. 615]; *Serrano v. Priest*, *supra*, 18 Cal.3d at p. 761; *Committee to Defend Reproductive Rights v. Myers* (1981) 29 Cal.3d 252, 276, fn. 22 [172 Cal.Rptr. 866, 625 P.2d 779, 20 A.L.R.4th 1118].) The applicable test, therefore, is whether the ordinance is narrowly tailored to meet a compelling governmental interest. (See *Plyler v. Doe* (1982) 457 U.S. 202, 216-217 [72 L.Ed.2d 786, 798-799, 102 S.Ct. 2382].)

The ordinance does not survive under that standard. As stated above, its true underlying purpose-to drive the homeless out of Santa Ana-is not a legitimate governmental interest. But even the more benign, if euphemistic, purpose expressed on the face of the ordinance fails under strict scrutiny.

The ordinance provides: "The public streets and areas within the City [of Santa Ana] should be readily accessible and available to residents and the public at large. The use of these areas for camping purposes or storage of personal property interferes with the rights of others to use the areas for which they were intended [*sic*]. The purpose of this article is to maintain public streets and areas within the city [of Santa Ana] in a clean and accessible condition." (Ord., § 10-400.)

The interests advanced by the City are, in essence, improving the aesthetic appearance of its public areas and maintaining facilities for general public use. These concerns are legitimate and, indeed, "substantial." (See *Clark v. Community for Creative Non-Violence* (1984) 468 U.S. 288, 296 [82 L.Ed.2d 221, 228-229, 104 S.Ct. 3065] [governmental interest in maintaining park was "substantial"].) But they are certainly not compelling.

Even if the City's asserted purposes were deemed compelling, moreover, the ordinance would nonetheless fail because it is not narrowly tailored to accomplish its objectives. Santa Ana could certainly maintain public areas in ***1130** "a clean and accessible condition" through less restrictive means than citing and arresting homeless persons-under a provision that includes a penalty of six months in jail-for sleeping or storing their personal belongings in public.

As a federal court explained in holding a similar ordinance unconstitutional: "Provision of alternative shelter and services would be the ideal means of accomplishing the same goals. However, in the absence of available shelter space or funds for services, the parks and streets could be cleaned and maintained without arresting the homeless. For example, the City could ask homeless individuals to relocate temporarily to another public area while maintenance crews work on a particular site. It could also establish regular times for each park to be cleaned so that homeless individuals would know not to be in a certain park on a particular day. Instead of arresting homeless individuals for being in the park after hours, the City could allow them to stay in a designated area in exchange for maintaining that area. Similarly, promotion of tourism and business and the development of the downtown area could be accomplished without arresting the homeless for inoffensive conduct." (*Pottinger v. City of Miami, supra*, 810 F.Supp. at p. 1582; see also *Clark v. Community for Creative Non-Violence, supra*, 468 U.S. 288 [ban on sleeping in Lafayette Park, across the street from the White House, was a reasonable time, place, and manner restriction on expression]; *Joyce v. City and County of San Francisco, supra*, 846 F.Supp. 843 [prohibition against sleeping in certain public places at certain times].)

The majority urge that the City has no affirmative constitutional obligation to provide accommodations for the "transient homeless" on or in public property. [FN22] That does not mean, however, that if the City declines to provide shelters for the homeless it may effectively banish them from all public areas. As long as the homeless have no other place where they may legally sleep and store their personal property in Santa Ana, the City cannot constitutionally prevent them from doing so in public places.

FN22 In referring generically to the "transient homeless," the majority overlook the fact that plaintiffs include long-term residents of Santa Ana who have lost their residences and jobs. In any event, as discussed above, the right to travel applies both to homeless residents of the City who wish to remain and to "transient" homeless persons who wish to enter and abide in the City.

The majority cite with approval a recent district court decision denying preliminary injunctive relief against implementation of the Matrix Program, a San Francisco ordinance addressing the "homeless problem." (*Joyce v. City and County of San Francisco, supra*, 846 F.Supp. 843.) Their reliance on *Joyce* is misplaced because the ordinances are crucially dissimilar. ***1131**

Unlike Santa Ana's ordinance, the Matrix Program did not involve a total ban on sleeping or storing property in public areas. Indeed, San Francisco police officers were instructed that " '[t]he mere lying or sleeping on or in a bedroll in and of itself does not constitute a violation' ...." (*Joyce v. City and County of San Francisco, supra*, 846 F.Supp. at p. 861.) Nor did San Francisco attempt to drive the homeless from the city; instead, it provided counseling and referral to local social service programs and attempted to provide temporary housing for the homeless. (*Id.* at pp. 847-848.) [FN23] The history of Santa Ana's efforts in dealing with the homeless, in sharp contrast, included an official policy of actively *discouraging* existing charitable services for the homeless, including the Salvation Army food program, and a task force directed to drive "vagrants" out of town. In enforcing the ordinance, Santa Ana police officers applied an official policy of citing individuals who were sleeping under blankets. [FN24]

FN23 Thus under the Matrix Program social workers were dispersed throughout the city

in order to contact homeless persons and a "Night Shelter Referral Program ... [was] designed to offer the option of shelter accommodations to those homeless individuals in violation of code sections pertaining to lodging, camping in public parks and sleeping in public parks during prohibited hours." (*Joyce v. City and County of San Francisco*, *supra*, 846 F.Supp. at p. 848.) San Francisco also estimated that in 1993-1994 it would spend $46.4 million for services to the homeless, of which over $8 million was specifically earmarked to provide housing. (*Ibid.*)

FN24 The majority also approve *People v. Scott* (1993) 20 Cal.App.4th Supp. 5, 13 [26 Cal.Rptr.2d 179], in which the Appellate Department of the Los Angeles Superior Court upheld a West Hollywood anticamping ordinance against a claim that it violated the right to travel of homeless residents. *Scott* offered no case authority to support its conclusory analysis. In any event it is factually distinguishable: there was no claim that the ordinance prohibited sleeping in any public area in West Hollywood and "no evidence [was] presented in this case to support the inference that West Hollywood has used this ordinance to interfere with a person's right to travel or even that it is being enforced in such a way as to drive homeless people out of its community." (*Ibid.*) Nonetheless, I would disapprove *Scott* to the extent that it could be construed to suggest that an ordinance like Santa Ana's, which *is* intended to "drive homeless people out of its community," does not impair the right to travel.

The City is not required, of course, to open *all* its public spaces at *all* hours to the homeless or to tolerate dangerous or unhealthful conduct. For example, it may enforce existing ordinances against such "camping" behavior as the erection of semipermanent structures, outdoor cooking, and public defecation and urination. It may also enforce existing laws against public drunkenness, drug use, vandalism, assault, theft, and similar misconduct. It may not, however, penalize individuals who have committed only the offense of being without shelter. Sleeping outdoors under a blanket is neither dangerous nor unhealthful to anyone other than the homeless persons who do so as a matter of necessity. Similarly, if the City does not choose to provide storage places for the personal property of the homeless, it may not criminalize their discreet "storage" of personal belongings in public areas. ***1132**

As the Court of Appeal aptly concluded, "The camping ordinance is a butcher knife where a scalpel is required.... The city may preclude the erection of structures in public places and it might ban 'camping' in select locations with a properly drafted ordinance, but it may not preclude people who have no place to go from simply living in Santa Ana. And that is what this ordinance is all about."

For all these reasons I would affirm the judgment of the Court of Appeal. ***1133**

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RENEE J., Petitioner,
v.
THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; ORANGE COUNTY SOCIAL SERVICES AGENCY et al., Real Parties in Interest.

No. S090730.

Supreme Court of California
Aug. 16, 2001.

SUMMARY

In child dependency proceedings, the trial court denied a mother reunification services, relying in part on Welf. & Inst. Code, § 361.5, subd. (b)(10), which states reunification services need not be provided where past efforts at reunification proved unsuccessful after removal of another child from the parent's custody. (Superior Court of Orange County, No. DP002263, Kim Garlin Dunning, Judge.) The Court of Appeal, Fourth Dist., Div. Three, No. G026981, granted the mother's petition for extraordinary relief.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that the Court of Appeal erred in its interpretation of Welf. & Inst. Code, § 361.5, subd. (b)(10), which states that reunification services need not be provided where past efforts at reunification proved unsuccessful after removal of another child, and where parental rights to another child have been severed. A clause at the end of § 361.5, subd. (b)(10) states that reunification services must nonetheless be afforded if the parent has made a "reasonable effort" to treat the problems that led to the other child's removal. Contrary to the Court of Appeal's construction, that clause applies only to the situation where parental ties to another child were severed, and not to the mother's situation, where prior reunification efforts for another child were unsuccessful. Although the statute was ambiguous and the canons of construction were of little assistance, recent legislative trends toward restricting the circumstances in which reunification services must be provided indicate a legislative intent to deny reunification services to a parent who previously has failed at reunification. This interpretation did not violate the mother's procedural or substantive due process rights. (Opinion by Werdegar, J., with George, C. J., Baxter, Chin, and Brown, JJ., concurring. Dissenting opinion by Kennard, J. (see p. 751).)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Delinquent, Dependent, and Neglected Children § 56--Dependent Children--Denial of Reunification Services--Past Failure to Reunify with Other Child--Application of Exception.

The Court of Appeal erred in granting a mother extraordinary relief from the trial court's order denying her reunification services and in its interpretation of Welf. & Inst. Code, § 361.5, subd. (b)(10), which states that reunification services need not be provided where past efforts at reunification proved unsuccessful after removal of another child, and where parental rights to another child have been severed. A clause at the end of § 361.5, subd. (b)(10) states that reunification services must nonetheless be afforded if the parent has made a "reasonable effort" to treat the problems that led to the other child's removal. Contrary to the Court of Appeal's construction, that clause applies only to the situation where parental ties to another child were severed, and not to the mother's situation, where prior reunification efforts for another child were unsuccessful. Although the statute was ambiguous and the canons of construction were of little assistance, recent legislative trends toward restricting the circumstances in which reunification services must be provided indicate a legislative intent to deny reunification services to a parent who previously has failed at reunification. This interpretation did not violate the mother's procedural or substantive due process rights. (Disapproving *Shawn S. v. Superior Court* (1998) 67 Cal.App.4th 1424 [80 Cal.Rptr.2d 80] and *In re Diamond H.* (2000) 82 Cal.App.4th 1127 [98 Cal.Rptr.2d 715] to the extent they are inconsistent with the court's decision.)

[See 10 Witkin, Summary of Cal. Law (9th ed. 1989) Parent and Child, § 703A; West's Key Number Digest, Infants k. 155.]

(2a, 2b) Statutes § 29--Construction--Language--Legislative Intent.

A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In

construing a statute, the first task is to look to the language of the statute itself. When the language is clear and there is no uncertainty as to the legislative intent, courts look no further and simply enforce the statute according to its terms. Additionally, however, courts must consider the statutory language in the context of the entire statute and the statutory scheme of which it is a part. Courts are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. When used in a statute, words must be construed in context, keeping in mind the nature and obvious purpose of the statute in which they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. Where a statute is theoretically capable of more than one construction a court must choose that which most comports with the intent of the Legislature. Principles of statutory construction are not rules of independent force, but merely tools to assist courts in discerning legislative intent.

(3) Statutes § 31--Construction--Language--Words and Phrases--Last Antecedent Rule.

A long-standing rule of statutory construction-the last antecedent rule-provides that qualifying words, phrases, and clauses are to be applied to the words or phrases immediately preceding them and are not to be construed as extending to or including others more remote. Exceptions to the rule, however, have been identified. One provides that when several words are followed by a clause that applies as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all. Another provides that when the sense of the entire act requires that a qualifying word or phrase apply to several preceding words, its application will not be restricted to the last.

(4) Statutes § 22--Construction--Reasonableness.

Courts must give a statute a reasonable and commonsense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity. Significance, if possible, should be attributed to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose, as the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. The court should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction.

(5) Delinquent, Dependent, and Neglected Children § 56--Dependent Children--Denial of Reunification Services--Past Failure to Reunify with Other Child--Application of Exception.

As a general rule, reunification services are offered to parents whose children are removed from their custody in an effort to eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible. Nevertheless, as evidenced by Welf. & Inst. Code, § 361.5, subd. (b), the Legislature recognizes that it may be fruitless to provide reunification services under certain circumstances. Once it is determined that one of the situations outlined in § 361.5, subd. (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources.

(6) Delinquent, Dependent, and Neglected Children § 56--Dependent Children--Reunification Services--Restriction--Past Failure to Reunify with Other Child

The Legislature intended to restrict provision of reunification services in the case of a parent who previously has failed to reunify (Welf. & Inst. Code, § 361.5, subd. (b)(10)). Before this subdivision applies, the parent must have had at least one chance to reunify with a different child through the aid of governmental resources and must have failed to do so. Experience has shown that with certain parents the risk of recidivism is a very real concern. Therefore, when another child of that same parent is adjudged a dependent child, it is not unreasonable to assume that reunification efforts will be unsuccessful. Further, the court may still order reunification services if the court finds, by clear and convincing evidence, that reunification is in the best interests of the child (Welf. & Inst. Code, § 361.5, subd. (c)).

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WERDEGAR, J.

This case calls upon us to construe Welfare and Institutions Code section 361.5, [FN1] which governs orders for reunification services in child dependency proceedings. Pursuant to subdivision (a) of that statute, whenever a child is removed from a parent's or guardian's custody, with certain exceptions not applicable here, the juvenile court shall order the social worker to provide services to the child and the child's parent or guardian. Subdivision (b) of the statute, however, provides that reunification services need not be offered when the court finds, by clear and convincing evidence, that any of a number of conditions exists. Subdivision (b)(10) of section 361.5 provides that services may be denied on a finding "[t]hat (A) the court ordered termination of reunification services for any siblings or half-siblings of the child because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a), or (B) the parental rights of a parent or guardian over any sibling or half-sibling of the child had been permanently severed, *and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent or guardian.*" (Italics added.)

FN1 Unless otherwise specified, all further statutory references are to the Welfare and Institutions Code.

(1a) Mother Renee J. was denied reunification services under subdivision (b)(10) of section 361.5. On the facts of this case, the correctness of that ruling hinges on whether the italicized language in the immediately preceding paragraph applies to both subparts (A) and (B), or only the latter. The Courts of Appeal are divided on the question, and the present Court of Appeal joined the court in *Shawn S. v. Superior Court* (1998) 67 Cal.App.4th 1424 [80 Cal.Rptr.2d 80], holding that the language applies to both subparts. (Accord, *In re Diamond H.* (2000) 82 Cal.App.4th 1127 [98 Cal.Rptr.2d 715]; but see *Marshall M. v. Superior Court* (1999) 75 Cal.App.4th 48 [88 Cal.Rptr.2d 891] (*Marshall M.*) [holding "reasonable effort" language applies only to subpart (B)]; *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 76 [82 Cal.Rptr.2d 493] [same]; *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 475 [73 Cal.Rptr.2d 793] [same]; see also *Marlene M. v. Superior Court* (2000) 80 Cal.App.4th 1139 [96 Cal.Rptr.2d 104] [implicitly concluding same].) Thus, in the absence of the requisite finding, the court granted Renee J.'s petition for extraordinary relief, ordering the juvenile court to vacate its order denying services and directing a new dispositional hearing be held at which services would be offered. ***740**

We find the statute ambiguous in the relevant respect and the canons of construction of little assistance in resolving the question before us. From recent legislative trends toward restricting the circumstances in which reunification services must be provided, however, we discern a legislative intent to deny reunification services to a parent who previously has failed at reunification. We conclude the Court of Appeal erred in its reading of the statute and therefore reverse.

Facts and Procedure

Sayrah R. was born to Renee J. in October 1998. Several of Renee's older children previously had been the subject of dependency proceedings: Anthony R., born in September 1996, Christopher R., born in September 1995, and Dylan J., born in December 1990, had been declared dependents of the Orange County Juvenile Court under section 300, subdivisions (b) and (j) in November 1996, after Anthony was born with a positive toxicology screen for methamphetamine.

Both Renee J. and Robert R., the father of Anthony, Christopher and Sayrah, had long-standing substance abuse problems and an extensive history of domestic violence. In January 1998, after Renee and Robert had received reunification services in the earlier dependency proceeding for 14 months without completing successfully any of the drug programs, testing regimens, parenting classes, housing procurements, domestic violence programs, or visitation schedules that had been prescribed for them by the trial court, the Orange County Juvenile Court terminated reunification services. Later, the court terminated Renee's and Robert's parental rights to Anthony and Christopher, who were in the process of being adopted. Renee's parental rights to Dylan J. were also terminated, and Dylan was in the process of being adopted by Renee's father and stepmother. [FN2]

FN2 Another sibling, Jesse K., born in July 1993, was living with his father, Brian K.

According to Renee, when she learned she was pregnant with Sayrah, she began to abstain from drugs and thereafter remained abstinent, although she completed no treatment programs. She acknowledged needing help, such as counseling or a program, in the area of substance abuse. Renee obtained prenatal care throughout the pregnancy, and Sayrah was healthy at birth.

From the time Sayrah was two months to four months old, Renee J. lived with Robert R. At that point, however, she stopped living with Robert and ended the relationship because he became emotionally abusive toward her and she feared he would physically abuse her again, as he had in the past. Thereafter, Renee lived with a friend for a short while and then began living ***741** with her friend Leticia Velez, a former schoolteacher. In lieu of rent, Renee provided child care services for Velez's children. Velez told the social worker she had not been very trusting of Renee at first because she had heard Renee had lost custody of her other children, but Velez began to trust her completely after seeing her consistency in disciplining the children. Velez also said she saw no sign of drug use in Renee during the time she lived with her.

In April 1999, Renee was arrested for burglary and forgery. She was convicted of possessing deceptive government identification, possessing a driver's license to commit forgery, receiving stolen property, second degree burglary and two counts of felony possession of bad checks or money orders. Renee was sentenced to 60 days in jail and 36 months' probation. She did not, however, turn herself in to serve her sentence. [FN3]

FN3 Previously, on February 26, 1998, Renee had been sentenced to 30 days in jail for forgery.

At the jurisdictional hearing in this case, Renee acknowledged she had committed the crimes that led to her arrest, explaining she was trying to get money to get herself and Sayrah away from Robert R. She admitted she was aware of the requirement that she turn herself in to serve 60 days, and of the warrant subsequently issued for her arrest. She testified she had planned to turn herself in, but "was trying to get things together to have a secure, safe place for Sayrah to stay."

On January 6, 2000, police officers on patrol recognized Renee as a person with outstanding warrants and arrested her. The officers found Sayrah in an improperly secured car seat. In a diaper bag in the car, police found a wallet, personal checks and credit cards that had previously been reported stolen. Renee's picture with an unknown male subject was found inside the wallet, along with the owner's identification. Renee asserted she had found the wallet and notified the owner, but had not had time to return it to her. Police confirmed that the owner of the wallet had received a call from a "Renee," who said she would bring the wallet to the owner's workplace but had never showed up. Renee was eventually sentenced to 150 days in jail on old warrants and probation violations. No new charges were filed in connection with Renee's possession of the reportedly stolen wallet. No drugs or paraphernalia were found in Renee's car.

When Sayrah was taken into protective custody, she was dirty and her diaper had not been changed for several hours, but she appeared healthy and developmentally normal. Because Renee could not provide the name of a relative to take custody of Sayrah, Sayrah was initially placed in a series of temporary homes. Later, Sayrah was moved to the home of her maternal grandfather and stepgrandmother, who, as noted, were in the process of adopting Sayrah's half brother, Dylan. The juvenile court established juris-

diction over the case on February 23, 2000, after finding Sayrah was a ***742** person described in section 300, subdivisions (b) (failure to protect due to substance abuse), (g) (no provision for support), and (j) (sibling abuse).

At the dispositional hearing on March 14, 2000, the juvenile court found, by clear and convincing evidence, that the reunification services offered to Renee in the cases of Sayrah's two siblings, Anthony and Christopher, and half sibling Dylan had been terminated because both Renee J. and Robert R. had failed to reunify. The juvenile court further found that Renee's parental rights to those children had been terminated and that neither Renee J. nor Robert R. had made a reasonable effort to treat the problems that had led to the removal of Renee's three other children. The court found that, under both subparts (A) and (B) of section 361.5, subdivision (b)(10), reunification services were not appropriate in this case. Although the Orange County Social Services Agency (SSA) specifically eschewed reliance on subdivision (b)(12) of section 361.5, the court nevertheless concluded that subdivision applied, in that Renee had a history of substance abuse. The court further found, by clear and convincing evidence, that the provisions of subdivision (c)(1) and (5) of section 361 applied and that to vest custody of Sayrah with her parents would be detrimental to her. The court then set the matter for a permanency planning hearing pursuant to section 366.26.

Renee petitioned for extraordinary relief pursuant to California Rules of Court, rule 39.1B. The Court of Appeal agreed with her that the juvenile court had erred in resting its decision on subdivision (b)(12) of section 361.5 because SSA had waived reliance on that provision and Renee had relied on the waiver. With respect to section 361.5, subdivision (b)(10), the Court of Appeal likewise found merit in Renee's arguments and, following *Shawn S. v. Superior Court, supra*, 67 Cal.App.4th 1424, read the "reasonable efforts" clause as applicable to both subparts (A) and (B). The Court of Appeal reasoned that abstinence from drugs, regardless of actual completion of a rehabilitation program, would constitute "the most important evidence that a drug problem is being addressed" and concluded that, in the absence of any evidence Renee was still using drugs or had exposed Sayrah to domestic violence, the juvenile court could not simply assume those conditions continued to exist. Having thus rejected both of the juvenile court's stated bases for denying reunification services to Renee, the Court of Appeal granted relief, ordering the juvenile court to vacate its order denying reunification services and setting the matter for a permanency planning hearing, and directing that court instead to hold a new dispositional hearing at which reunification services would be offered.

We granted SSA's petition for review in order to construe section 361.5, subdivision (b)(10). Renee's answer to the petition for review raised, as an ***743** additional issue for our review, the question whether interpreting section 361.5, subdivision (b)(10) to deny her reunification services would deprive her of due process.

Analysis

(2a) " 'A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. [Citations.] In construing a statute, our first task is to look to the language of the statute itself. [Citation.] When the language is clear and there is no uncertainty as to the legislative intent, we look no further and simply enforce the statute according to its terms. [Citations.] [¶] Additionally, however, we must consider the [statutory language] in the context of the entire statute [citation] and the statutory scheme of which it is a part. "We are required to give effect to statutes 'according to the usual, ordinary import of the language employed in framing them.' [Citations.] " [Citations.] " 'If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.' [Citation.] ... 'When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear.' [Citations.] Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. [Citations.]" ' " (*Phelps v. Stostad* (1997) 16 Cal.4th 23, 32 [65 Cal.Rptr.2d 360, 939 P.2d 760].)

We are directed to no legislative history expressly answering the question before us and, as a matter of English usage, nothing in section 361.5, subdivision (b)(10) clearly compels one reading over the other. To resolve the ambiguity, the parties cite various principles of statutory interpretation. (3) "A longstanding

rule of statutory construction-the 'last antecedent rule'-provides that 'qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote.' " (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 680 [183 Cal.Rptr. 520, 646 P.2d 191].) Exceptions to the rule, however, have been identified. One provides that when several words are followed by a clause that applies as much to the first and other words as to the last, " ' "the natural construction of the language demands that the clause be read as applicable to all." ' " (*Wholesale T. Dealers v. National etc. Co.* (1938) 11 Cal.2d 634, 659 [82 P.2d 3, 118 A.L.R. 486].) Another provides that when the sense of the entire act requires that a qualifying word or phrase apply to several preceding words, its application will not be restricted to the last. (*White v. County of Sacramento*, ***744** *supra*, at p. 681.) "This is, of course, but another way of stating the fundamental rule that a court is to construe a statute ' "so as to effectuate the purpose of the law." ' (2b) [Citation.] 'Where a statute is theoretically capable of more than one construction [a court must] choose that which most comports with the intent of the Legislature.' [Citation.]" (*Ibid.*, second bracketed insertion in original.) Principles of statutory construction are not rules of independent force, but merely tools to assist courts in discerning legislative intent.

(4) As the court in *Marshall M., supra*, 75 Cal.App.4th at pages 55-56, observed: "We must ... give the provision a reasonable and commonsense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity. [Citation.] Significance, if possible, should be attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose, as 'the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole.' [Citation.] ' "The court should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction." ' [Citation.]"

(5) The purpose of section 361.5 was explained in *In re Baby Boy H., supra*, 63 Cal.App.4th at page 478. "As a general rule, reunification services are offered to parents whose children are removed from their custody in an effort to eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible. [Citation.] Nevertheless, as evidenced by section 361.5, subdivision (b), the Legislature recognizes that it may be fruitless to provide reunification services under certain circumstances. [Citation.] Once it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.]"

(6) As pertinent, the *In re Baby Boy H.* court went on to infer that the Legislature intended to restrict provision of reunification services in the case of a parent who previously had failed to reunify. "The exception at issue here, section 361.5, subdivision (b)(10), recognizes the problem of recidivism by the parent despite reunification efforts. Before this subdivision applies, the parent must have had at least one chance to reunify with a different child through the aid of governmental resources and fail to do so. ***745** Experience has shown that with certain parents, as is the case here, the risk of recidivism is a very real concern. Therefore, when another child of that same parent is adjudged a dependent child, it is not unreasonable to assume reunification efforts will be unsuccessful. Further, the court may still order reunification services be provided if the court finds, by clear and convincing evidence, that reunification is in the best interests of the child. (§ 361.5, subd. (c).)" (*In re Baby Boy H., supra*, 63 Cal.App.4th at p. 478.)

(1b) We agree with *In re Baby Boy H.*'s understanding of the legislative purpose in enacting section 361.5, subdivision (b)(10) and with its interpretation of the statute. Renee cites factual differences between that case and this one, but any such differences are irrelevant to the pure question of statutory interpretation confronting us here. At the same time that it enacted subdivision (b)(10), moreover, the Legislature shortened from 12 months to six the period for provision of reunification services in the case of a child who was under age three at the time of removal from the physical custody of the parent. (§ 361.5, subd. (a)(2), added by Stats. 1996, ch. 1083, § 2.7.) One might thus characterize both of these amendments as aimed at expediting the dependency process in order to facili-

tate the placement of minors in stable, permanent homes, particularly in the cases of the youngest children and those least likely to benefit from reunification services. Consistent with this aim, we find it probable that the Legislature did not intend, in the case of a minor whose parent in connection with a prior dependency proceeding has already demonstrated an inability to benefit from services, to impose for denial of services an additional and arguably redundant requirement that the parent has made no reasonable effort to treat the underlying problem.

As the *Marshall M.* Court of Appeal reasoned (*supra*, 75 Cal.App.4th at p. 55), our reading of the statute accords significance to all its parts. Had the Legislature intended to require the finding of no reasonable effort in the case both of the parent whose service plan had been ordered terminated and of the parent whose rights over the child had been severed, there would have been no need to affix separate (A) and (B) labels to the two clauses. (Cf. *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1117 [81 Cal.Rptr.2d 471, 969 P.2d 564] [separately numbered paragraphing as emphasizing grammatical and analytical independence of clauses within Code Civ. Proc., § 425.16, subd. (e)].) Likewise, had the Legislature meant to require the no-reasonable-effort finding in both cases, it might have set forth that requirement as a preface to the two different scenarios. The Legislature, however, did neither.

Moreover, when viewed in the context of the different ways in which a child is removed from his or her parents, the distinction between subparts ***746** (A) and (B) of section 361.5, subdivision (b)(10) is a reasonable one. As the court in *Marshall M., supra*, 75 Cal.App.4th at page 56, observed, "Subparts (A) and (B) ... are similar in that each involve[s] a court's prior removal of another child of the parent ...." But, as the court explained, "there is also a key distinction between the two subparts. This distinction relates to whether the parent has previously failed when given a chance at reunification services." (*Ibid.*) Thus, under subpart (A), "the parent had an opportunity to reunify and failed. Therefore, the court selected a permanent plan for the sibling. In other words, in the case of subdivision (b)(10)(A), the parent did not make a reasonable effort to treat the problems that led to the sibling's removal because that parent necessarily failed to reunify. [¶] Section 361.5, subdivision (b)(10)(B) anticipates a discrete scenario. Subpart (B) requires a termination of rights but does not condition the termination upon a parent's failure to reunify. Indeed, the fact that the parent's rights over any sibling have been permanently severed ... does not inescapably establish that the parent failed to make a reasonable effort to treat the problems that led to the sibling's removal.... [¶] ... [I]n a case described by ... subpart (A), the court knows as a matter of law that the parent did not make reasonable efforts to treat the problems that led to the sibling's removal. The same cannot be said solely because a parent's rights over another child have been permanently severed." [FN4] (*Marshall M.*, *supra*, at pp. 56-57.)

FN4 SSA offers specific examples illuminating the difference between subparts (A) and (B) of Welfare and Institutions Code section 361.5, subdivision (b)(10). Whereas subpart (A) addresses dependent children whose parents have received reunification services, SSA posits, subpart (B) embraces children whose parents may not have received services. SSA observes that parental rights may be terminated outside the dependency system without provision of services, pursuant to the Family Code, by one parent against another in order to free a child from the burden of an absent or ineffective parent's custody rights, or to free a child for adoption. Thus, under Family Code section 7820, a parent or even a third party could bring an action to sever a parent's rights in the case of abandonment (Fam. Code, § 7822), neglect (*id.*, § 7823), the respondent parent's disability due to substance abuse (*id.*, § 7824), the respondent parent's conviction of a felony (*id.*, § 7825), the respondent parent's developmental disability or mental illness (*id.*, § 7826), or the child's being in an out-of-home placement for a one-year period (*id.*, § 7828). Parental rights also would be severed without provision of services in the case of a parent who voluntarily relinquishes his or her child to a public or private adoption agency pursuant to Family Code section 8700. Thus, for example, a mother who, as a young girl, had relinquished a child for adoption due to her inability to support the child and, years later, becomes involved in the dependency system with a subsequent child, might, under Welfare and Institutions

> Code section 361.5, subdivision (b)(10), subpart (B), argue that she had made a reasonable effort to improve her financial circumstances (i.e., she had treated the problem that led to the removal of the first child) and would benefit from reunification services. We agree with SSA that the Legislature reasonably could conclude that under these scenarios reunification services should be provided, in contrast to the case of a parent who previously had failed to reunify despite the provision of services.

As SSA observes, the legislative history of section 361.5, subdivision (b)(10) reveals that subparts (A) and (B) were originally drafted as ***747** separately numbered paragraphs and were only combined in the shaping of the final form of the amendment to section 361.5. (See Legis. Counsel's Dig., Assem. Bill No. 2679 (1995-1996 Reg. Sess.) as amended Feb. 22, 1996; Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2679 (1995-1996 Reg. Sess.) as amended Apr. 18, 1996; Sen. Rules Com., Office of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2679 (1995-1996 Reg. Sess.) as amended Aug. 22, 1996.) Of the two, only the provision that is now subpart (B) ever included the requirement of the no-reasonable-effort finding. Although the significance of this sequence of events is not free from doubt, we find it reasonable to infer that, in combining into one subdivision the two provisions that are now subparts (A) and (B), respectively, the Legislature meant to group together two thematically related scenarios (i.e., two distinct kinds of court-ordered removal of a child from a parent), while still applying different requirements to each.

The parties devote much of their remaining argument to an examination of technical aspects of the wording and punctuation of the statute, matters that we find less significant than its legislative history and evident purpose, as discussed above.

First, Renee argues that because both subpart (A) and subpart (B) of section 361.5, subdivision (b)(10) refer to a "sibling or half-sibling," and the "reasonable effort" clause also refers to a "sibling or half-sibling," the principle in *Wholesale T. Dealers v. National etc. Co., supra*, 11 Cal.2d at page 659, dictates that the latter clause refers to both subparts. Undercutting this argument, however, is the fact that-as Renee acknowledges-both subpart (A) and the "reasonable effort" clause, but not subpart (B), refer to a "removed" sibling. Obviously, the "reasonable effort" clause must apply, at a minimum, to subpart (B). The repetition (or absence) of certain words or phrases within the various parts of section 361.5, subdivision (b)(10), therefore, does not dictate the interpretation Renee urges.

Citing *Board of Trustees v. Judge* (1975) 50 Cal.App.3d 920, 927-928, footnote 4 [123 Cal.Rptr. 830], Renee further argues that the Legislature's use of a comma to separate the "reasonable effort" phrase from the antecedent phrases signifies it intended the phrase to apply to all antecedents rather than only the last. She also observes that the Legislature, after the enactment of section 361.5, subdivision (b)(10) but before its effective date, amended the statute to add that comma (Stats. 1997, ch. 793, § 18), the initial version of the statute not having included it (Stats. 1996, ch. 1083, § 2.7). We agree generally that the presence or absence of commas is a factor to be considered in interpreting a statute (see *Board of Trustees v. Judge*, *supra*, at p. 928, fn. ***748** 4), but find this principle not to be dispositive in the present case. Inasmuch as a comma properly joins the independent clauses of subpart (B) regardless of the existence of subpart (A), the inference that, by so amending the statute, the Legislature meant the "reasonable effort" clause to apply to both subparts arises only weakly, if at all, and the history of the provision, as discussed above, tends to refute it. [FN5]

> FN5 Of somewhat greater force, as a matter of grammatical interpretation, is the fact the "reasonable effort" clause refers to "*this* parent or guardian" (italics added); as SSA observes, the demonstrative pronoun "this" ordinarily is understood to refer to the nearer of two or more things or persons, hence in this context it arguably would relate to the parent or guardian described in subpart (B) of section 361.5, subdivision (b)(10).

Pointing out that courts are to avoid interpretations that render some words surplusage (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224]), Renee contends SSA's interpretation of section 361.5, subdivision (b)(10) runs afoul of this principle. She reasons that SSA justifies its discrepant treatment of the parent

who previously has failed at reunification with other siblings (i.e., facts triggering the application of subpart (A)), vis-a-vis the parent whose rights over another sibling had been permanently severed (i.e., facts triggering the application of subpart (B)), by equating the parental failure to complete a prior service plan, leading to a court-ordered termination of services (subpart (A)), with the failure to make a reasonable effort to treat the problems that led to the removal of the sibling. But the statute, according to Renee, contemplates that such effort be made "subsequently" to the court order, an impossibility under SSA's reading, inasmuch as the failure to complete the reunification plan necessarily *precedes* the court's order terminating services. Renee's argument, however, commits the fallacy of assuming its conclusion, i.e., only if one accepts the premise that the reasonable effort clause applies to subpart (A) does the referent for "subsequently" become an issue. But even were we to accept that premise, we disagree that the efforts must be made subsequent to the *termination* order. Rather, the statute by its terms refers to efforts subsequently made to treat the problem that led to *removal* of the child from the parents, which removal, in the case of subpart (A) cases, occurs before services are provided or terminated. (See *Marshall M., supra*, 75 Cal.App.4th at p. 57.)

In sum, we interpret the no-reasonable-effort clause as applicable only to subpart (B) of section 361.5, subdivision (b)(10). [FN6] If we have failed to ***749** discern correctly the Legislature's intent in enacting the statute, that body may clarify the statute accordingly. [FN7]

FN6 *Shawn S. v. Superior Court*, *supra*, 67 Cal.App.4th 1424, and *In re Diamond H.*, *supra*, 82 Cal.App.4th 1127, are disapproved to the extent they are inconsistent with our decision in this case.

FN7 California Rules of Court, rule 1456(f)(5), we note, is inconsistent with the interpretation of section 361.5, subdivision (b)(10) endorsed here. As relevant, the rule provides: "Reunification services need not be provided to a mother, statutorily presumed father, or guardian, if the court finds, by clear and convincing evidence, any of the following: [¶] ... [¶] (J) The court: [¶] (i) has terminated reunification services for a sibling or half-sibling of the child because the parent failed to reunify with the sibling or half-sibling, or finds that the parental rights of the parent over any sibling or half-sibling have been terminated; and [¶] (ii) finds that the parent or guardian has not made a reasonable effort to treat the problems that led to the removal of the sibling or half-sibling from that parent or guardian." The rule, as is evident, "does not track the language of section 361.5, subdivision (b)(10)." (*Marshall M., supra*, 75 Cal.App.4th at p. 59.)

Renee contends the interpretation of section 361.5, subdivision (b)(10) that we embrace in this case violates due process. Her argument is twofold: Procedural due process is denied by the statute's failure to place the burden on SSA to demonstrate the parent's unworthiness to receive reunification services, and substantive due process is violated by its exclusive reliance on the parent's problematic history and corresponding failure to require proof of the parent's *current* unfitness. We address each contention in turn.

For her procedural due process claim, Renee relies on *Santosky v. Kramer* (1982) 455 U.S. 745 [102 S.Ct. 1388, 71 L.Ed.2d 599] (*Santosky*), in which the United States Supreme Court held unconstitutional a New York statute permitting termination of parental rights based on a finding of permanent neglect made by a mere preponderance of the evidence. Because of the fundamental nature of the rights at stake and the irreparable harm an erroneous decision to terminate them would cause, as compared with the lesser societal costs of an erroneous decision to postpone their termination, the high court determined that the federal Constitution imposes a heightened standard, that of clear and convincing evidence. (*Santosky*, *supra*, at p. 769 [102 S.Ct. at p. 1403].)

Renee also distinguishes *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242 [19 Cal.Rptr.2d 698, 851 P.2d 1307] (*Cynthia D.*), in which this court rejected a parent's argument that California's child dependency scheme violates due process by allowing termination of parental rights based on a finding by a mere preponderance of the evidence that return of the child to parental custody would create a substantial risk of detriment to the child. In *Cynthia D.*, we held that, in the context of the entire process for terminating pa-

rental rights under the dependency statutes, the proof requirements at the selection and implementation hearing held pursuant to section 366.26 comport with due process "because the precise and demanding substantive and procedural requirements the petitioning agency must have satisfied before it ***750** can propose termination are carefully calculated to constrain judicial discretion, diminish the risk of erroneous findings of parental inadequacy and detriment to the child, and otherwise protect the legitimate interests of the parents. At this late stage in the process the evidence of detriment is already so clear and convincing that more cannot be required without prejudice to the interests of the adoptable child, with which the state must now align itself." (*Cynthia D.*, *supra*, at p. 256.)

At issue in both *Santosky* and *Cynthia D.* was the quantum of proof required for termination of parental rights, which indisputably are fundamental in nature. (*Santosky*, *supra*, 455 U.S. at pp. 758-759, 769 [102 S.Ct. at pp. 1397-1398, 1403].) Here, in contrast, Renee's parental rights have not been terminated. Renee assumes, but fails to establish, the foundational premise that she possesses a constitutionally protected liberty interest in the state's providing her with reunification services. The Courts of Appeal that have addressed this question have held to the contrary. (*In re Baby Boy H.*, *supra*, 63 Cal.App.4th at p. 475; *In re Christina A.* (1989) 213 Cal.App.3d 1073, 1078-1079 [261 Cal.Rptr. 903].) Although Renee may be understood to argue that reunification services constitute her only opportunity to reunify with Sayrah, and thus that a denial of services is tantamount to a slow termination of her rights, in our view the present state of the record does not enable this court to draw such a conclusion. For example, a petition pursuant to section 388 remains an available mechanism by which to modify the juvenile court's previous orders, given some sufficiently compelling new evidence or change of circumstances.

In any event, as SSA points out, even in the face of a finding under section 361.5, subdivision (b)(10), the juvenile court may still order reunification services if it finds, by clear and convincing evidence, that reunification is in the best interest of the child. (§ 361.5, subd. (c).) Thus, contrary to Renee's and amicus curiae California Public Defenders Association's substantive due process argument, evidence of a parent's current fitness may, in appropriate circumstances, persuade the juvenile court to order reunification services despite his or her problematic history. [FN8]

FN8 Amicus curiae contends the existence of subdivision (c)'s "bailout" provision cannot save section 361.5 from a due process challenge because, unlike the parental rights termination at issue in *Cynthia D.*, *supra*, 5 Cal.4th 242, the determination to withhold reunification services comes near the inception of the dependency case, before the state has borne the burden of repeatedly demonstrating parental unfitness at the various hearings required at specified stages of the proceedings. Our analysis of the *Santosky* factors, however, leads us to clude section 361.5, subdivision (b)(10) is constitutionally valid as we have interpreted it. First, considering the private interest affected (*Santosky*, *supra*, 455 U.S. at p. 759 [102 S.Ct. at pp. 1397-1398]; *Cynthia D.*, *supra*, at p. 254), we observe again that at the stage of the proceedings with which we are concerned, the juvenile court has already found jurisdiction over the child (see § 300), but has not yet reached the point at which a decision to terminate parental rights is to be made. The parent's interest, therefore, while significant, is of a somewhat lesser order than in the decisions on which Renee and amicus curiae rely. Second, the risk of erroneous factfinding (*Santosky*, *supra*, at p. 762 [102 S.Ct. at p. 1399]; *Cynthia D.*, *supra*, at pp. 254-255) is mitigated by the parent's right to counsel (§ 317, subd. (d)) and access to relevant records maintained by state or local public agencies, hospitals, medical or nonmedical practitioners, and child care custodians (§ 317, subd. (f)). Third, the governmental interest supporting the statutory procedure (*Santosky*, *supra*, at p. 766 [102 S.Ct. at pp. 1401-1402]; *Cynthia D.*, *supra*, at pp. 255-256)-"the state's *parens patriae* interest in preserving and promoting the welfare of the child, and the state's fiscal and administrative interest in reducing the cost and burden of such proceedings" (*Cynthia D.*, *supra*, at p. 255)-is substantial.

We are satisfied that, given the weighty interests of the state in assuring the proper care and safety of

children in the dependency system, and those of ***751** the children themselves, this provision sufficiently diminishes the risk of erroneous deprivations of services as to satisfy the requirements of due process. (See *Cynthia D., supra*, 5 Cal.4th at pp. 250-256.)

Disposition

The judgment of the Court of Appeal is reversed.

George, C. J., Baxter, J., Chin, J., and Brown, J., concurred.

KENNARD, J., Dissenting.

When a child is removed from a parent's custody as part of a dependency proceeding (Welf. & Inst. Code, § 300), [FN1] the juvenile court must normally order the social services agency to provide reunification services to the child and the parent. Without such services, a parent whose child has been removed has little hope of ever regaining custody of the child.

FN1 Unless otherwise stated, all statutory references are to the Welfare and Institutions Code.

But reunification services need not be provided in certain instances specified by statute. Subdivision (b)(10) of section 361.5 (section 361.5(b)(10)) describes two such instances: When past efforts at reunification proved unsuccessful after removal of another child, and when parental rights to another child have been severed. A clause at the end of section 361.5(b)(10) states that reunification services must nonetheless be afforded if the parent has made a "reasonable effort" to treat the problems that led to the other child's removal. At issue here is whether this clause (the reasonable effort clause) applies only when parental rights to the other child were severed, or whether it also applies when reunification services were unsuccessfully provided after removal of the other child.

The majority concludes that the reasonable effort clause applies only when parental rights were severed. I disagree. ***752**

I. Facts

Petitioner Renee J. and her boyfriend Robert R. had a long history of drug use and domestic violence. As a result, the Orange County Social Services Agency (SSA) removed their children, Anthony and Christopher, and Renee's daughter Dylan. After reunification services proved unsuccessful, the superior court terminated the parental rights of Renee and Robert as to those three children.

Thereafter Renee and Robert had Sayrah R., the subject of this proceeding, who was born in October 1998. According to Renee, she stopped using drugs when she was pregnant with Sayrah; when Sayrah was four months old, Renee broke up with Robert, taking Sayrah with her. Two months later she was charged and convicted of burglary and forgery. Sentenced to 60 days in jail, she failed to turn herself in to serve her sentence, and a bench warrant was issued for her arrest. When arrested on that warrant in January 2000, she was driving a car. Sayrah was in a child safety seat that lacked the required base and was not properly attached. Renee told police she was a transient, and she could not name a responsible adult who would care for Sayrah during incarceration.

SSA filed a petition asking the superior court to declare Sayrah a dependent child. The petition alleged that Renee's negligence in the matter of the safety seat showed a lack of concern for Sayrah's safety; that Renee was unable to care for Sayrah because of her history of drug abuse, her criminal history, her incarceration on the bench warrant, and her lack of a permanent residence; and that Renee had abused or neglected Sayrah's siblings and there was a substantial risk she would abuse or neglect Sayrah. The superior court found the allegations of the petition true.

At the time of the dispositional hearing, Renee was separated from Robert (who had apparently left the state), and there was no evidence that she had resumed using drugs. SSA argued that under section 361.5(b)(10), it need not provide reunification services to Renee because it had afforded them without success after removal of Renee's other children. The superior court construed section 361.5(b)(10) as entitling Renee to reunification services if she had made a reasonable effort to treat the problems that led to the removal of her other children, but it ruled that she had not made such an effort. It therefore refused to order reunification services.

Renee filed a petition for writ of mandate in the Court of Appeal to challenge the superior court's ruling. The Court of Appeal agreed with the superior

court that Renee was entitled to reunification services if she had ***753** made a reasonable effort to treat her problems, but it held that the superior court had abused its discretion when it ruled that Renee had not made such an effort. We granted review, limited to the question of whether a parent who made a reasonable effort to treat the problems that led to the previous removal of a child or children may obtain reunification services when another child is later removed in a dependency proceeding.

II. The Statutory Scheme

Subdivision (a) of section 361.5 sets forth the general rule that a parent whose child has been removed in a dependency proceeding must be afforded reunification services. Subdivision (b) of that section lists the relatively extreme or unusual circumstances in which reunification services are not required. These circumstances include death of a sibling from abuse or neglect, severe sexual abuse or physical harm, repeated physical or sexual abuse, parental conviction of a violent felony, and willful abduction of the child from placement by the parent.

At issue here are the circumstances described in section 361.5(b)(10). That provision states that reunification services need not be afforded if the superior court finds: "That (A) the court ordered termination of reunification services for any siblings or half-siblings of the child because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a), or (B) the parental rights of a parent or guardian over any sibling or half-sibling of the child had been permanently severed*, and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent or guardian.*" (Italics added.) The superior court and the Court of Appeal here concluded that the reasonable effort clause, italicized above, applies to both subparts of section 361.5(b)(10). SSA argues that it applies only to subpart (B).

Ordinarily, the removal of a child in the course of dependency proceedings would require reunification services. Thus, subpart (A) of section 361.5(b)(10) applies to *most* parents whose children were removed in dependency proceedings. Subpart (B), however, applies if reunification services for the sibling in a dependency proceeding were denied because of circumstances described in subdivision (b) of section 361.5, which we described earlier. Subpart (B) also applies when parental rights are severed outside of the dependency system. This occurs when a child has been abandoned or ***754** voluntarily relinquished for adoption, or when a third party brings an action to sever parental rights after the parent has been convicted of a felony or is seriously mentally ill. (Fam. Code, § 7800 et seq.)

III. Discussion

At issue here is how to construe section 361.5(b)(10). In performing that task, we are guided by these principles: "The aim of statutory construction is to discern and give effect to the legislative intent. (*Phelps v. Stostad* (1997) 16 Cal.4th 23, 32 [65 Cal.Rptr.2d 360, 939 P.2d 760].) The first step is to examine the statute's words because they are generally the most reliable indicator of legislative intent." (*Summers v. Newman* (1999) 20 Cal.4th 1021, 1026 [86 Cal.Rptr.2d 303, 978 P.2d 1225].) I therefore begin with the language of section 361.5(b)(10).

The majority insists that, "as a matter of English usage," nothing in the words of section 361.5(b)(10) indicates whether the Legislature intended the section's reasonable effort clause to apply only to subpart (B) of that section, or to subparts (A) *and* (B). (Maj. opn., *ante*, at p. 743.) I disagree. As I shall explain, when the words of section 361.5(b)(10) are given their "usual and ordinary meaning" (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 601 [7 Cal.Rptr.2d 238, 828 P.2d 140]), the reasonable effort clause at issue here logically applies to both subparts of that section.

Section 361.5(b)(10), as discussed earlier, does not require reunification services if the superior court finds: "*That* (A) the court ordered termination of reunification services for any siblings or half-siblings of the child because the parent ... failed to reunify ... after the sibling or half-sibling had been removed ... or (B) the parental rights of a parent ... over any sibling or half-sibling of the child had been permanently severed*, and that,* according to the findings of the court, this parent ... has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent

...." (Italics added.) As a matter of syntax, the second italicized "that" in that passage, which prefaces the reasonable effort clause, logically pairs with the first italicized "that" at the beginning of the section. Therefore, the reasonable effort clause after the second "that" necessarily applies to the entire section, not merely to subpart (B). Had the Legislature intended the reasonable effort clause to apply only to subpart (B), it could easily have omitted the second italicized "that."

Furthermore, in the reasonable effort clause the Legislature uses the phrase "the problems that led to *removal* ..." (italics added), which suggests that the clause applies to both subparts (A) and (B). As previously ***755** explained (see pt. II, *ante*), some parents fall under the provisions of subpart (B) (termination of parental rights to a sibling of the child without reunification services) not because the sibling was *removed*, but because the parents abandoned the sibling or voluntarily gave the sibling up for adoption. If anything, the word "removal" appears to refer to subpart (A), which uses the word "removed." Had the Legislature intended the reasonable effort clause to refer only to subpart (B), it would most likely have said "the problems that led to *termination of parental rights*," rather than "the problems that led to *removal*," as currently stated in the statute.

Aside from the statutory language, an examination of the policy concerns underlying the Legislature's decision to include the reasonable effort clause in section 361.5(b)(10) shows that it intended the clause to apply to both subparts of that provision. The purpose of the clause is to give a parent who has made a reasonable effort to deal with the problems that led to removal of one child a chance at reunification when a second child is removed. For example, if one child is removed because the parent is addicted to drugs, and the parent later gives up drugs but another child is thereafter removed because the parent has an abusive partner, the parent should, in the Legislature's view, be given a chance to reunify with the second removed child.

This policy applies equally to parents in subpart (A) (parents for whom previous reunification services were unsuccessful) as it does to parents in subpart (B) (parents whose parental rights were severed). As I have explained (see pt. II, *ante*), included in subpart (B) are parents who never received reunification services before losing custody of a child in an earlier proceeding because their treatment of that child was so bad that it fell within one of the statutorily described circumstances in which the court could deny reunification services. (See § 361.5, subd. (b).) I can think of no reason why the Legislature would have chosen to give such parents a chance at reunification when a second child became a dependent of the juvenile court, while denying that opportunity to parents who were unsuccessful in reunifying with a previously removed child. Yet that is the effect of the majority's holding today.

One more point. This court generally construes laws in a manner that avoids doubts about their constitutionality. (See, e.g., *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 509 [53 Cal.Rptr.2d 789, 917 P.2d 628].) This rule also applies when one of two possible constructions of a statute raises doubts about the constitutionality of another part of the statutory scheme. That is the case here. The majority's construction of the reasonable effort clause raises doubts about the constitutionality of another part of the Legislature's statutory scheme for the severance of parental rights to dependent children, as I explain below. ***756**

Under California's statutory scheme, parental rights may be permanently severed when a superior court finds by a *preponderance of the evidence* that returning the child to the parent's custody would create a substantial risk of detriment to the child. (See §§ 366.21, subd. (e), 366.22, subd. (a), 366.26, subd. (c)(1).) In *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242 [19 Cal.Rptr.2d 698, 851 P.2d 1307], a majority of this court rejected a due process challenge to that standard. As part of the basis for its decision, the majority noted that before a final determination by the superior court whether to sever a parental relationship, "there have been a *series of hearings involving ongoing reunification efforts* and, at each hearing, there was a statutory presumption that the child should be returned to the custody of the parent." (*Id.* at p. 253, italics added.) I dissented in *Cynthia D.*, reasoning that "the basic requirements of procedural due process do not allow the state to terminate parental rights in such a proceeding without clear and convincing evidence of a substantial risk of detriment to the child." (*Id.* at p. 257 (dis. opn. of Kennard, J.).)

Under the majority's decision today, a parent who, after failing to reunify with one removed child, makes a reasonable effort to treat the problems that caused that child's removal but then suffers the removal of a second child, may not, as to the second child, receive the "series of hearings involving ongoing reunification efforts" that the majority in *Cynthia D. v. Superior Court*, *supra*, 5 Cal.4th at page 253, relied on in upholding the constitutionality of the "preponderance of evidence" standard established by the statutory scheme. Thus, the majority's holding here weakens the underpinnings of *Cynthia D.*, and it raises doubts about the constitutionality of the preponderance of evidence standard that the *Cynthia D.* majority upheld. To avoid those constitutional issues, I would construe the reasonable effort clause broadly, applying it to all parents in section 361.5(b)(10).

Here, the Court of Appeal agreed with the superior court that the reasonable effort clause applied to Renee, but it disagreed with the superior court's finding that she was not entitled to reunification services with Sayrah because she had not made a reasonable effort to treat the problems that had led to the removal of her other children. Were the issue properly before this court, I might well find that the evidence supports the superior court's ruling that Renee did not make a reasonable effort to deal with her problems. But that issue is not before us. In its petition for review, SSA did not challenge the Court of Appeal's conclusion that Renee had made reasonable efforts to treat her problems; instead, it asserted that the reasonable effort clause was inapplicable. Therefore, I would affirm the judgment of the Court of Appeal, ***757** which applied the reasonable effort clause in reversing the superior court's ruling that Renee was not entitled to reunification services with reference to Sayrah. ***758**

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261 Cal.App.2d 832, 68 Cal.Rptr. 313
(Cite as: 261 Cal.App.2d 832)

EARL W. PORTER, Plaintiff and Respondent,
v.
CITY OF RIVERSIDE et al., Defendants and Appellants.

Civ. No. 8676.

Court of Appeal, Fourth District, Division 2, California.
May 6, 1968.

HEADNOTES

(1) Municipal Corporations § 232(6)--Ordinances--Validity--Harmony With Charter Provisions.

An ordinance stands in the same relationship to a city charter as a statute does to the Constitution of the state; thus, charter provisions constitute the organic law or local constitution of the city and the same presumptions that favor the constitutionality of state legislative enactments apply also to ordinances.

(2) Municipal Corporations § 242--Ordinances--Validity--Presumptions.

Every presumption is in favor of the constitutionality of an ordinance and the invalidity of such legislative act must be clear before it can be declared unconstitutional.

See **Cal.Jur.2d,** Municipal Corporations, § 416; **Am.Jur.,** Municipal Corporations (1st ed §§ 178, 179).

(3) Municipal Corporations § 234--Ordinances--Validity--Province of Courts.

The legislative action of a city council will be upheld by the courts unless beyond its powers, or unless its judgment or discretion is being fraudulently or corruptly exercised.

(4) Municipal Corporations § 242--Ordinances--Validity--Presumptions.

When the right to enact a law or ordinance depends on the existence of a fact, the passage of the act implies, and the conclusive presumption is, that the legislative body performed its duty and ascertained the existence of the fact before enacting and approving the law, a decision which the courts have no right to question or review.

(5) Municipal Corporations § 234, 242--Ordinances--Validity--Province of CourtsPresumptions.

Not only must a legislative act of a city be reviewed by a court in the light of every presumption favorable to its constitutionality, but the court must limit itself to a consideration of such matters as appear on the face of the enactment together with those facts which are matters of judicial cognizance.

(6) Municipal Corporations § 234--Ordinances--Validity--Province of Courts.

Where a statute or ordinance is valid on its face, and there are no other considerations of which the court can take judicial notice tending to establish unconstitutionality, the court will not go behind the statute or ordinance and receive evidence *aliunde* to establish facts that would tend to impeach and overturn the law.

(7a, 7b) Municipal Corporations § 232(6)--Ordinances--Validity--Harmony With Charter Provisions.

In an action to restrain a city from paying a fixed monthly expense allowance to each city councilman without presentation of a claim therefor, the trial court erred in determining that the ordinance authorizing such payment was invalid on the ground that the allowance was in excess of actual expenses and therefore included compensation for services, where the city charter provided that councilmen should be paid no salary but should receive, in addition to council-authorized travel expenses and other expenses when on official duty, an amount to be fixed by ordinance as reimbursement for other out of pocket expenditures and costs imposed on them in serving as councilmen, where the charter was silent as to presentation of claims for such allowance, where, in passing the ordinance, the council found that the councilmen's out of pocket expenditures and costs were and would continue to be at least equal to the sum fixed, and where such legislative finding was entirely reasonable and possible.

(8) Municipal Corporations § 234--Ordinances--Validity--Province of Courts.

261 Cal.App.2d 832, 68 Cal.Rptr. 313
(Cite as: 261 Cal.App.2d 832)

In an action to restrain a city from paying a fixed monthly expense allowance to city councilmen, the trial court exceeded its powers and also went beyond the issues generated by the complaint in admitting evidence *aliunde* for the purpose of contravening the express finding of the city council that each councilman's monthly out of pocket expenditures and costs did and would continue to exceed the amount fixed, where the court, if it did not regard such finding as creating a conclusive presumption of the validity of the enactment, should have confined its review to a consideration of those facts which appeared on the face of the ordinance, together with those facts within its judicial knowledge.

See **Cal.Jur.2d,** Municipal Corporations, § 406; **Am.Jur.,** Municipal Corporations (1st ed § 183).

SUMMARY

APPEAL from a judgment of the Superior Court of Riverside County. Russell S. Waite, Judge. Reversed.

Action by a taxpayer to restrain the City of Riverside from paying an expense allowance to city councilmen. Judgment for plaintiff reversed.

COUNSEL

John Woodhead, City Attorney, O'Melveny & Myers, and Howard J. Deards for Defendants and Appellants.

Henry W. Coil, Sr., as Amicus Curiae on behalf of Defendants and Appellants. ***834**

Thompson & Colegate and Michael R. Raftery for Plaintiff and Respondent.

KERRIGAN, Acting P. J.

The Charter of the City of Riverside was prepared by a Board of Freeholders, adopted by the electors, approved by the Legislature, and became effective in April 1953. The charter provision relating to councilmen's expenses reads as follows:

"Sec. 402. Compensation; reimbursement for expenses. The members of the city council shall receive *no compensation* for their services *as such,* but shall receive reimbursement on order of the city council for council-authorized traveling and other expenses when on official duty. *In addition, each member shall receive such amount as may be fixed by ordinance, which amount shall be deemed to be reimbursement of other out-of- pocket expenditures and costs imposed upon him in serving as a city councilman."* [Italics supplied.]

In May 1953, the council held its inaugural meeting and adopted an ordinance fixing each councilman's expense allowance in the sum of $200 per month. Thereafter, in July 1955, the council adopted Ordinance No. 2226, which increased the councilmen's expense allowance to $250 monthly. Ten years later, in August 1965, the council passed Ordinance No. 3300, which recited that the councilmen's original expense allowance was $200; that it was thereafter increased to $250 monthly; that inflation and greater demands on councilmen had resulted in an increase in out-of-pocket expenses; that the sum of $350 per month represented reasonable costs expenditures incurred by councilmen; that the expense allowance be increased to $350 monthly; and that the $350 "be paid monthly without presentation of any claim."

In September 1965 the plaintiff filed this acton, and the allegations of the complaint may be briefly summarized in the following manner: that Ordinance No. 3300 requires the payment to each councilman of $350 monthly "as purported reimbursement of out-of-pocket expenses without presentation of any claim, voucher, proof of payment or proof of authorization of such expenses by the council"; that such payment "as reimbursement for out-of-pocket expenses not shown to be expended, is, in fact, payment of compensation, as prohibited by the Riverside City Charter"; that such payment "will increase the burden of taxation in an unlawful manner, to wit, the payment of compensation to each City Councilman in direct violation of the Charter provisions of the City of Riverside." ***835** No allegations were contained in the complaint attacking the council's finding that the amount of out-of-pocket expenditures were at least $350 as being so unreasonable as to constitute arbitrary action or constructive fraud. Nor was there an allegation that the council acted in bad faith with improper motives in that $350 per month was in excess of actual expenses. Thus, the attack on the ordinance was based on the premise that section 402 of the charter was violated in the event the $350 additional allowance authorized by Ordinance No. 3300 was paid without requiring the presentation of itemized claims and vouchers showing actual expenditures. The complaint prayed that the city be restrained from paying

the $350 per month to the councilmen "as reimbursement of out-of-pocket expenses, without requiring proof of the nature of said ... expenses, the amount thereof, and that they are actually incurred. ..."

Defendants filed a general and special demurrer to the complaint. The demurrer was overruled and defendants answered.

During trial, the court permitted the introduction of evidence at plaintiff's counsel's request as to the actual monthly expenses incurred by members of the city council. The seven councilmen's expenses ranged from $150 to $555. From the evidence thus presented, the trial court determined that the $350 allowance fixed in Ordinance No. 3300 was "in excess of the actual and allowable out-of-pocket expenses and costs ..." incurred "and does ... include compensation for services rendered by the City Councilmen. ..." Judgment was therefore rendered in favor of the plaintiff wherein its was decreed: (1) Riverside City Ordinance No. 3300 was invalid in its entirety as violative of section 402 of the Riverside City Charter; (2) Ordinance No. 2226 [the prior ordinance authorizing $250 per month allowance] was valid and binding; and (3) defendants be restrained from paying the members of the City Council $350 per month pursuant to Ordinance No. 3300, "but that said injunction shall not, and does not, restrain or enjoin defendants from paying to the members of said City Council the sums provided by said Ordinance No. 2226 or any other sum provided to be paid by any subsequent amendment of said Ordinance No. 2226 or any subsequent ordinance of the City of Riverside. ..."

Defendants' assault on the judgment is stated in varying forms, which may be categorized in the following manner: (1) The complaint fails to state a cause of action; (2) the findings ***836** went beyond the issues framed by the pleadings; (3) the trial court erred in permitting the introduction of evidence relating to the councilmen's actual expenses; (4) insufficiency of the evidence to support the findings; and (5) the action is barred by reason of plaintiff's laches, unclean hands, and political motives.

Stated simply, the sole, crucial issue on appeal is whether Ordinance No. 3300 is valid under section 402 of the charter.

(1) An ordinance stands in the same relationship to a city charter as does a statute to the constitution of the state. Thus, charter provisions constitute the organic law or local constitution of the city. (*In re Pfahler,* 150 Cal. 71, 82 [88 P. 270, 11 Ann.Cas. 911, 11 L.R.A. N.S. 1092]; *Dalton v. Lelande,* 22 Cal.App. 481, 487 [135 P. 54].) The same presumptions that favor the constitutionality of state legislative enactments apply also to ordinances. (11 Cal.Jur.2d, Const. Law, § 74, pp. 407-408.) (2) Every presumption is in favor of constitutionality and the invalidity of a legislative act must be clear before it can be declared unconstitutional. (35 Cal.Jur.2d, Municipal Corporations, § 416, p. 223.) (3) The action of the Legislature will be upheld by the courts unless beyond its powers, "or its judgment or discretion is being fraudulently or corruptly exercised." (*Nickerson v. County of San Bernardino,* 179 Cal. 518, 522-523 [177 P. 465]; *Wine v. Boyar,* 220 Cal.App.2d 375, 381-382 [33 Cal.Rptr. 787].)

(4) When the right to enact a law depends upon the existence of a fact, the passage of the act implies, and the conclusive presumption is, that the Legislature performed its duty and ascertained the existence of the fact before enacting and approving the law-a decision which the courts have no right to question or review. (*Robins v. County of Los Angeles,* 248 Cal.App.2d 1, 6 [56 Cal.Rptr. 853]; *Taylor v. Cole,* 201 Cal. 327, 336-337 [257 P. 40]; *Smith v. Mathews,* 155 Cal. 752, 756 [103 P. 199].) (5) Not only must the legislative act be reviewed in the light of every presumption favorable to its constitutionality, but the court must limit itself to a consideration of such matters as appear on the face of the enactment (*Alameda etc. Water Dist. v. Stanley,* 121 Cal.App.2d 308, 315 [263 P.2d 632]; *People v. Sacramento Drainage Dist.,* 155 Cal. 373, 386 [103 P. 207]), together with those facts which are matters of judicial cognizance. (*Los Angeles County Flood Control Dist. v. Hamilton,* 177 Cal. 119, 125 [169 P. 1028]; *City of Ojai v. Chaffee,* 60 Cal.App.2d 54, 61 [140 P.2d 116]; *Whitcomb v. Emerson,* 46 Cal.App.2d 263, 276 [***837**115 P.2d 892].) (6) Stated in basic terms, where a statute is valid on its face, and there are no other considerations of which the court can take judicial notice tending to establish unconstitutionality, the courts will not go behind the statute or ordinance and receive evidence *aliunde* to establish facts that would tend to impeach and overturn the law. (*Taylor v. Cole, supra,* p. 337; *Stevenson v. Colgan,* 91 Cal. 649, 652 [27 P. 1089, 25 Am.St.Rep. 230, 14 L.R.A. 459].)

(7a) Whether we view the presumption in support of the validity of enactments as a conclusive presumption which the courts have no right to question or review (*Robins v. County of Los Angeles, supra,* 248 Cal.App.2d 1, 6; *Smith v. Mathews, supra,* 155 Cal. 752, 756), or follow the more limited rules to the effect that the enactment is presumed to be constitutional and must be deemed to have been enacted on the basis of any state of facts supporting it that "reasonably can be conceived" (*Higgins v. City of Santa Monica,* 62 Cal.2d 24, 30 [41 Cal.Rptr. 9, 396 P.2d 41]), or "reasonably could be assumed" (*Redevelopment Agency v. Hayes,* 122 Cal.App.2d 777, 806 [266 P.2d 105]), or are "possible" (*Galeener v. Honeycutt,* 173 Cal. 100, 103-104 [159 P. 595]), it inevitably follows that the trial court's determination holding the expense allowance invalid was erroneous.

Section 1 of Ordinance No. 3300 provides that each councilman's out-of- pocket expenditures and costs are "and will continue to be at least $350 per month."

(8) The foregoing finding by the council may be regarded as giving rise to a conclusive presumption sustaining the validity of the enactment (see *Robins v. County of Los Angeles, supra,* 248 Cal.App.2d 1, 6). However in the event the trial court determined that it was acting within its prereogative in questioning the council's determination that $350 monthly was required as an expense allowance, its review should have been confined to a consideration of those facts which appeared on the face of the ordinance, together with those facts within its judicial knowledge. (*Alameda etc. Water Dist. v. Stanley, supra,* 121 Cal.App.2d 308, 315; *Los Angeles County Flood Control Dist. v. Hamilton, supra,* 177 Cal. 119, 125.) Succinctly stated, it was certainly reasonable and possible that the councilmen's expenditures and costs amounted to $350 monthly, and inasmuch as the city's legislative body made such a determination, the court exceeded its powers in admitting evidence *aliunde* for the purposes of contravening such finding. ***838**

Galeener v. Honeycutt, supra, 173 Cal. 100, is a case involving a change of compensation; plaintiff was elected to the officer of supervisor of Madera County at a time when the statute fixing the compensation of supervisors provided that the compensation was $1,200 per year and 25c per mile for all distances traveled by the supervisors in the discharge of their duties as road commissioners, which mileage allowance was not to exceed $600 annually; a subsequent 1915 act changed the compensation to $1,800 per year for services as board members and as road commissioners; the act "found" that the change did not work an increase in compensation and declared that it was intended that it apply to the present incumbents; the enactment was attacked on the ground that it was violative of section 9 of article XI [since repealed] of the California Constitution, which prohibited the increase of compensation to incumbents during their term of office; the Supreme Court held that the Madera County statute was constitutional and explicitly stated: "There is absolutely nothing on the face of the law to show that each supervisor of Madera County is not actually required to travel two thousand four hundred miles per year in the discharge of his duties as road commissioner, and that such was the condition in both the years 1914 and 1915. If such a condition was possible, we must assume in favor of the legislative enactment that it existed, for, as was said ... in *Smith v. Mathews,* 155 Cal. 752, 756 [103 P. 199, 201], the doctrine of *Stevenson v. Colgan,* 91 Cal. 649 [27 P. 1089, 25 Am.St.Rep. 230, 14 L.R.A. 459] ... is that 'when the right to enact a law depends upon the existence of a fact, the passage of the act implies, and the conclusive presumption is, that the Governor and the Legislature have performed their duty and ascertained the existence of the fact before enacting and approving the law. ...' "

The trial court's finding that the councilmen's "actual" out-of-pocket expenses were less than $350 monthly went beyond the issues generated in the complaint, was based upon inadmissible evidence, and was therefore void. (*Simmons v. Simmons,* 166 Cal. 438, 441 [137 P. 20].)

(7b) Finally, under any reasonable interpretation of section 402 of the charter, it manifestly appears that while a councilman is not entitled to receive compensation "as such," he is expressly entitled to receive reimbursement on "order of the City Council for council-authorized travel and other expenses when on official duty." Furthermore, he is ***839** entitled to an additional allowance unconnected with travel and other official-duty expenses by reason of the following proviso: "In addition, each member shall receive such amount as may be fixed by ordinance, which amount shall be deemed to be reimbursement of other

out-of-pocket expenditures and costs imposed upon him in serving as a city councilman." Consequently, by the express provisions of the charter, each councilman is entitled to receive a sum fixed by ordinance as an additional expense allowance. Moreover, councilmen are not required to submit itemized claims or vouchers showing actual expenditures under the last-quoted section of the charter. While the charter precludes a councilman from receiving a salary for his governmental services, and while it has been judicially determined that when a city charter is silent on the subject of compensation of members of the council, an ordinance authorizing the payment of a salary to councilmen is invalid as being violative of the charter (*Woods v. Potter,* 8 Cal.App. 41, 45 [95 P. 1125]), the Riverside Charter unequivocally sanctions the payment of the expense allowance involved in the case under review.

The judgment is reversed.

Tamura, J., concurred.

Cal.App.4.Dist.
Porter v. City of Riverside
261 Cal.App.2d 832, 68 Cal.Rptr. 313

END OF DOCUMENT

JEROME C. CORNELL, Appellant,
v.
GEORGE R. REILLY et al., as Members of STATE BOARD OF EQUALIZATION, Respondents.

Civ. No. 16165.

District Court of Appeal, First District, Division 1, California.
Aug. 18, 1954.

HEADNOTES

(1a, 1b) Intoxicating Liquors § 82--Offenses--Evidence.
Finding that liquor licensee hired girls to solicit sales of alcoholic beverages, in violation of Pen. Code, § 303, is sustained by evidence that, among other things, when customer entered barroom a female employee asked him to buy her a drink and that bartender kept record of her drinks.

(2) Administrative Law § 6--Administrative Proceedings--Nature of Proceedings.
Although in disciplinary administrative proceedings burden of proof is on party asserting affirmative and guilt must be established to reasonable certainty and not based on surmise, conjecture, suspicion, theoretical conclusions or uncorroborated hearsay, the proceedings are not criminal in nature and not governed by law applicable to criminal cases.
See **Cal.Jur.2d,** Administrative Law and Procedure, §§ 86, 87; **Am.Jur.,** Public Administrative Law, § 107.

(3) Licenses § 55--Revocation--Proceedings--Purpose.
Administrative proceedings aimed at revoking license are not conducted for primary purpose of punishing an individual but to keep regulated business clean and wholesome and to protect public by determining whether licensee exercised his privilege in derogation of public interest.

(4) Intoxicating Liquors § 9.9--Licenses--Revocation.
Standards to be applied in proceeding for revocation of liquor license are not those applicable to criminal trials, the proceeding being a disciplinary function of Board of Equalization.
See **Cal.Jur.2d,** Alcoholic Beverages, § 33 et seq.

(5) Intoxicating Liquors § 9.9--Licenses--Revocation.
Board of Equalization need not define by law or rule all of things that will put liquor license in jeopardy. (Const. art. XX, § 22.)

(6) Intoxicating Liquors § 9.9--Licenses--Revocation.
Board of Equalization can revoke liquor license irrespective of violation of specific Penal Code section, if evidence shows situation contrary to public welfare or morals.

(7) Criminal Law § 369--Evidence--Intent.
Intent may be proved by circumstantial evidence. (Pen. Code, § 21.)

(8) Intoxicating Liquors § 9.9--Licenses--Revocation.
The asserted fact that liquor licensee had no specific intent to violate Pen. Code, § 303, would not prevent revocation of license because of acts of bartender-manager in hiring female employees to solicit drinks, since licensee who elects to operate business through employee is responsible to licensing authority for employee's conduct in exercise of license.

(9) Criminal Law § 1018--Judgment--Conclusiveness.
Acquittal of liquor licensee's bartender-manager of criminal charge of violation of Pen. Code, § 303, is not res judicata in proceedings before Board of Equalization aimed at revoking license.

SUMMARY

APPEAL from a judgment of the Superior Court of the City and County of San Francisco. Herbert C. Kaufman, Judge. Affirmed.

Proceeding in mandamus to review validity of order of State Board of Equalization revoking a liquor license. Judgment denying writ, affirmed.

COUNSEL

Donovan, Stuhr & Martin and Charles Stuhr for Appellant.

Edmund G. Brown, Attorney General, and William M.

Bennett, Deputy Attorney General, for Respondents.

PETERS, P. J.

The State Board of Equalization, after hearings before a hearing officer and the board, found that Jerome Cornell, the owner of an on-sale general liquor license and the operator of a restaurant-bar in San Francisco, had employed two girls to encourage customers to buy them drinks in violation of the law. Because of such violation, Cornell's liquor license was ordered revoked. Cornell, under the provisions of section 1094.5 of the Code of Civil Procedure, applied to the superior court for a writ of mandate to review the ***180** validity of the revocation order. That court found that the findings of the board were supported "by substantial evidence and by the weight of the evidence," that the findings constituted good cause for revocation, and denied the petition for a writ of mandate. Cornell appeals from the judgment based on those findings.

The accusation before the board contained two counts. The first charged Cornell with employing, on certain dates, two named girls for the purpose of procuring or encouraging the purchase or sale of alcoholic beverages, and with paying these girls a commission for such services. The second count is not here involved. [FN1] The first count charges, without mentioning, the commission of acts declared unlawful by section 303 of the Penal Code. That section makes it a misdemeanor for a liquor seller "to employ upon the premises where the alcoholic beverages are sold any person for the purpose of procuring or encouraging the purchase or sale of such beverages, or to pay any person a percentage or commission on the sale of such beverages for procuring or encouraging such purchase or sale." Section 24200 of the Business and Professions Code [FN2] provides that it is grounds for the suspension or revocation of a license "(a) When the continuance of a license would be contrary to public welfare or morals ... (b) ... the violation or the causing or the permitting of a violation by a licensee of ... any rules of the board ... or any other penal provisions of law of this State prohibiting or regulating the sale ... of alcoholic beverages. ..."

FN1 This second count charged Cornell with possession on the licensed premises on a certain date of 11 empty distilled spirits bottles, which, under the law, should have been destroyed. Cornell was found to have violated the law in this respect, and his license was suspended for 15 days for such violation. The validity of that suspension is not challenged in these mandate proceedings.

FN2 This section was added to the Business and Professions Code in 1953. Before that, its provisions, in substance, were to be found in 2 Deering's General Laws, Act No. 3796, section 40.

A hearing on the accusation was had, as provided by law, before a hearing officer, whose proposed decision, findings and conclusions, recommending revocation, were adopted by the board. Thereafter, Cornell, under the provisions of section 11521 of the Government Code, petitioned for a reconsideration, which was granted, and a second hearing was then had before the board. The board reaffirmed its original decision. It found that Cornell, on the dates in question, did employ the two girls named in the accusation "for the purpose of procuring ***181** or encouraging the purchase or sale of alcoholic beverages," in violation of section 303 of the Penal Code, but that it was not true that Cornell paid the girls a percentage or commission for procuring or encouraging such purchases or sales in violation of that section. Revocation of Cornell's license was ordered. The superior court, in the mandate proceedings, found these findings were supported and refused to grant the writ.

(1a) The basic facts as presented to the hearing officer and to the board, and as accepted by the board and the reviewing court, are not in serious dispute. Cornell, the owner of the bar and liquor license, was not present on the premises during the times the alleged offenses occurred, nor did he testify at the hearing before the hearing officer. During all times here relevant Cornell had delegated the operation of the bar to William Andrews, the bartender-manager. Just before midnight on March 24, 1953, several liquor control officers entered the bar. One of them, by the name of Wright, testified that he sat at the bar; that a woman, who later identified herself as Dottie Shannon, one of the entertainers, sat down beside him; that after some conversation he ordered a drink for himself and she asked "Am I in?"; that he replied that she was, whereupon the bartender Andrews, without further orders, served her a "champagne cocktail" taken from a Champale [FN3] bottle; that the bartender charged him eighty- five cents for the highball ordered

by him, and $1.50 for the cocktail served to the girl; that during the next hour he and Miss Shannon had three drinks each; that on each occasion he was charged $2.35 for the two drinks; that after the serving of the drinks the bartender made a notation on a pad lying beside the cash register.

> FN3 Champale is a malt beverage of low alcoholic content and much cheaper than champagne. It costs but 40 cents a bottle. The drinks here involved were 2 or 3 ounces each.

Officer Wright returned to the bar at about 10:50 p. m. on the night of March 27, 1953. He testified that on that occasion he observed Andrews serving drinks to Dottie Shannon and another identified liquor officer, and that each time a drink was served to the girl a notation was made by the bartender on the pad. Wright testified that he observed that the type of drink, price and procedure of notation were identical to his own prior experienced solicitation. Two other officers testified that on these occasions they had substantially similar ***182** experiences with Miss Shannon or Miss Lee, another entertainer. They corroborated Wright in all substantial respects.

The officers decided to and did make the arrest in the early morning hours of March 28, 1953. They confiscated the remainder of one of the girl's drinks, which, upon analysis, was discovered to have an alcoholic content of 5.1 per cent. They also confiscated the pad upon which the notations had been made, and 11 empty, but unbroken, distilled spirits bottles found under the bar. The pad contained the names of all of the entertainers and some other employees, and after each name were tally marks, and dollars and cents figures.

Andrews was then arrested. Vickie Lee, one of the entertainers for whom the officers had purchased drinks, told the officers at the time of Andrews' arrest that she was paid fifty cents by her employer for each "champagne cocktail" purchased for her. At the hearing before the hearing officer Miss Lee denied making any such statement, denied that she received any commission for the solicitation of drinks, and testified that she paid for all drinks consumed by herself when she cashed her paycheck each week. Andrews admitted keeping the pad with the tally marks after each entertainer's name, but testified that this was done to keep a record of the number of drinks each girl consumed and for which they were charged at the end of each week. This, according to him, was the reason for the tally marks and the dollars and cents figures after each girl's name on the pad. It will be noted that the officers had testified that they had paid $1.50 each for the drinks consumed by the entertainers, and that marks were made on the pad after the purchase of each drink for an entertainer. Thus, if Andrews' and Miss Lee's testimony had been believed, which it was not, the bar received double payment for the drinks consumed by the entertainers. Otherwise, there would have been no reason for keeping a record of drinks already paid for.

It was stipulated that if Cornell were present he would testify that Andrews had told him that the bar was being conducted lawfully and according to the rules and regulations of the board, and that, although female entertainers were employed, they were never paid any sums except the contract wages for their dancing and singing; in other words, were not employed to solicit drinks. The written contracts of the entertainers providing a salary for singing and dancing only were introduced into evidence, as well as certain paychecks issued to the entertainers. It also appears in evidence that ***183** Andrews had been charged with a violation of section 303 of the Penal Code and with keeping empty unbroken alcoholic beverage bottles on the premises, that he had been tried before a jury in the municipal court, and that he had been acquitted of both charges.

The basic argument of appellant is that administrative proceedings looking toward the revocation of a liquor license are criminal in nature insofar as the *quantum* of proof is concerned, and that the evidence here does not meet that test. The principal California case relied upon to establish this premise is *Messner v. Board of Dental Examiners,* 87 Cal.App. 199, where, at page 205 [262 P. 58], it is stated in reference to a proceeding resulting in the suspension of a dental license: "The statute [the Dental Act] is highly penal, and a proceeding thereunder for the revocation of a license to practice dentistry is in the nature of a criminal trial in which all intendments are in favor of the accused." Based on this argument, the appellant contends that all of the elements of the offense or offenses defined in section 303 of the Penal Code were not proved. Appellant admits that the evidence shows that he hired entertainers, but correctly points out that such is perfectly legal. He also admits that the evi-

dence shows that these entertainers solicited drinks from patrons of the bar, but correctly points out that mere solicitation by employees of drinks, under the law as it then existed, constituted no offense against the liquor laws so far as the licensee was concerned. He argues that to constitute an offense under section 303 of the Penal Code the employees must be hired "for the purpose" of soliciting drinks, [FN4] and that this requires evidence of a specific intent or *"mens rea"* on his part to so hire the employees. Appellant urges that there is no evidence at all of his specific intent to hire personnel to solicit drinks. Appellant further argues that, since the record shows that he personally was out of the city when the challenged acts took place, he cannot be held responsible for the acts of Andrews in the absence of any evidence that he authorized those acts, because the statute requires proof of his specific intent.

> FN4 The section prohibits the hiring of persons for the purpose of soliciting drinks or from paying any person a commission for soliciting drinks. So far as the "pay" provision of the statute is concerned, the board found the charge unfounded. The validity of the revocation, therefore, must be upheld, if at all, upon the charge of hiring employees for the purpose of soliciting drinks.

(2) It may be conceded that in disciplinary administrative ***184** proceedings the burden of proof is upon the party asserting the affirmative (*Bley v. Board of Dental Examiners,* 87 Cal.App. 193 [261 P. 1036]), and that guilt must be established to a reasonable certainty (*Furman v. State Bar,* 12 Cal.2d 212 [83 P.2d 12]; *Coffman v. Board of Architectural Examiners,* 130 Cal.App. 343 [19 P.2d 1002]) and cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or uncorroborated hearsay. (See cases collected 2 Cal.Jur.2d 248, § 145.) But it is now well settled that such proceedings are not criminal in nature, and are not governed by the law applicable to criminal cases. (See many cases collected 2 Cal.Jur.2d 169, § 87.) The contrary language found in the Messner case (87 Cal.App. 199, 205) above quoted has been classified as a mere "dictum," and expressly disapproved. (*Webster v. Board of Dental Examiners,* 17 Cal.2d 534, 539 [110 P.2d 992].) (3) The object of an administrative proceeding aimed at revoking a license is to protect the public, that is, to determine whether a licensee has exercised his privilege in derogation of the public interest, and to keep the regulated business clean and wholesome. Such proceedings are not conducted for the primary purpose of punishing an individual. (See cases collected 2 Cal.Jur.2d 169, § 87, at p. 170.) Hence, such proceedings are not criminal in nature.

These principles are now well settled in this state, although admittedly there was language in several early cases to the contrary. The problem was thoroughly discussed and settled in *Webster v. Board of Dental Examiners,* 17 Cal.2d 534 [110 P.2d 992]. In that case, at page 537, it is stated:

"Appellant first challenges the order of suspension on the theory that administrative proceedings to revoke a professional license are quasi- criminal in nature. It is suggested that the rules governing burden of proof, and *quantum* of proof must be those which apply in criminal trials, and that in consequence the board used an improper standard in weighing the evidence. This analogy between a proceeding to revoke a license and a criminal trial is found in a number of the earlier cases. ...

"Where, on the other hand, the legislature has created a professional board and has conferred upon it power to administer the provisions of a general regulatory plan governing the members of the profession, [FN5] the overwhelming weight of authority has rejected any analogy which would require ***185** such a board to conduct its proceedings for the revocation of a license in accordance with theories developed in the field of criminal law. [Citing many cases.] Many California cases have expressly rejected the contention that administrative proceedings for the revocation of a professional license are to be governed by criminal law theories on matters of evidence. [Citing many cases.] ...

> FN5 In the instant case the State Board of Equalization was created by and receives its powers directly from the Constitution. (Art. XX, § 22.)

"Some of the cases relied upon by appellant are clearly distinguishable. ... The statement in *Messner v. Board of Dental Examiners,* 87 Cal.App. 199, 205 [262 P. 58] ... that the proceedings were *quasi*-criminal in nature is *dictum* which is contradicted so far as it relates to matters of evidence by the long line

of cases cited above. ... The few remaining decisions which contain language tending to support petitioner's view are contrary to the great weight of authority in California and elsewhere, as pointed out above."

In *Kendall v. Board of Osteopathic Examiners,* 105 Cal.App.2d 239, 248 [233 P.2d 107], this court quoted, with approval, the following statement from *Murphy v. Board of Medical Examiners,* 75 Cal.App.2d 161, 166 [170 P.2d 510]: " 'The proceeding here involved is an administrative, disciplinary proceeding, and is not criminal in its nature, nor is it to be judged by the legal standards applicable to criminal prosecutions.' "

(4) Thus, it follows that this proceeding for the revocation of a liquor license is a disciplinary function of the State Board of Equalization, and that the standards to be applied are not those applicable to criminal trials. Furthermore, in the instant case, it was not necessary for the board to find that there had been a criminal violation of section 303 of the Penal Code in order to revoke the license. (5) Article XX, section 22, of the Constitution, confers on the board "the exclusive power to license ... sale of intoxicating liquors in this State, ... and shall have the power, in its discretion, to deny or revoke any specific liquor license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals." This means that since a liquor license is a permit to do what would, without such license, be unlawful, the board need not define by law or rule all of the things that will put that license in jeopardy. (*Moore v. State Board of Equalization,* 76 Cal.App.2d 758, 764 [174 P.2d 323]; see also Bus. & Prof. Code, § 24200; *Covert v. State Board of Equalization,* 29 Cal.2d 125, 131 [173 P.2d 545].) ***186** (6) Thus, although it is not indispensable to a holding in the instant case that the evidence supports the findings, because the evidence does show a violation of section 303 of the Penal Code, it is the law that appellant's license could have been revoked irrespective of a violation of a specific Penal Code section, if the evidence shows a situation contrary to public welfare or morals.

(1b) Tested by the standards applicable to administrative proceedings, or even by the standards applicable to criminal trials, the evidence here is sufficient to support the finding of a hiring for the purpose of solicitation. The fact that the girls were employed by appellant is conceded. The fact that they, on numerous occasions, solicited drinks from patrons of the bar was established by substantial evidence, and is not denied. The fact that the bartender-manager Andrews knew of such solicitation was established by the record kept by the bar of all drinks consumed by the entertainers, even though paid for by a patron. Under such a state of facts the inference that such solicitation was an integral part of the employment of the entertainers is not only reasonable, but almost inevitable. Thus, even if it was necessary to establish that appellant had a specific intent to hire the employees for solicitation purposes, such fact was established by clear evidence and the reasonable inferences therefrom. (7) Intent can, of course, be proved by circumstantial evidence. (Pen. Code, § 21; *People v. Von Mullendorf,* 110 Cal.App.2d 286 [242 P.2d 403].)

(8) The contention of appellant that even if a hiring of girls for the purpose of soliciting drinks was proved, the evidence shows such hiring was by Andrews, his manager and agent, and cannot be charged to him in the absence of evidence that he knew of or directed such acts, because the Penal Code section requires a specific intent on the part of the person charged, requires but brief consideration. The question is not whether appellant is criminally liable for the acts of Andrews, but whether the board can revoke a license because of the acts of the manager of the establishment in violating the provisions of section 303 of the Penal Code. Obviously, as was said in *Mantzoros v. State Board of Equalization,* 87 Cal.App.2d 140, 144 [196 P.2d 657]: "The licensee, if he elects to operate his business through employees must be responsible to the licensing authority for their conduct in the exercise of his license, else we would have the absurd result that liquor could be sold by employees at forbidden ***187** hours in licensed premises and the licensees would be immune to disciplinary action by the board. Such a result cannot have been contemplated by the Legislature. Even in the case of criminal statutes vicarious liability for the acts of employees is not unknown." By virtue of the ownership of a liquor license such owner has a responsibility to see to it that the license is not used in violation of law. Obviously, the economic benefits of the solicitation of drinks by the entertainers with Andrews' knowledge and participation redounded to the benefit of appellant. The responsibility for Andrews' acts in the operation of the license can and should be imputed to appellant.

(9) The somewhat related argument that Andrews' acquittal in the criminal action constitutes a conclusive determination, binding in this proceeding, that such offenses had not been committed is equally without merit. Even if appellant had been charged criminally and acquitted, such acquittal would be no bar in a disciplinary action based on the same facts looking towards the revocation of a license. (*Traxler v. Board of Medical Examiners,* 135 Cal.App. 37 [26 P.2d 710]; *Bold v. Board of Medical Examiners,* 135 Cal.App. 29 [26 P.2d 707]; *Saxton v. State Board of Education,* 137 Cal.App. 167 [29 P.2d 873].) Quite clearly, if the principle of res judicata is rejected where the defending party is identical in the two actions, it necessarily follows that it is not res judicata when the prior acquittal is of a different party.

The judgment appealed from is affirmed.

Bray, J., and Wood (Fred B.), J., concurred. ***188**

Cal.App.1.Dist.
Cornell v. Reilly
127 Cal.App.2d 178, 273 P.2d 572

END OF DOCUMENT

DESERT TURF CLUB (a Corporation), Appellant,
v.
THE BOARD OF SUPERVISORS OF RIVERSIDE COUNTY et al., Respondents.

Civ. No. 5262.

District Court of Appeal, Fourth District, California.
May 11, 1956.

HEADNOTES

(1) Constitutional Law § 107--Police Power--Legislative Discretion.

When the state sees fit to regulate a matter which is within its police power, its authority over the subject is plenary.

See **Cal.Jur.2d,** Constitutional Law, §§ 178, 179; **Am.Jur.,** Constitutional Law, § 305 et seq.

(2) Theaters and Exhibitions § 3--Regulation--Racing.

The state has taken over in its entirety the subject of horse racing.

See **Cal.Jur.,** Theaters, Shows, Exhibitions and Public Resorts, § 4 et seq.; **Am.Jur.,** Theaters, Shows, Exhibitions and Public Resorts, § 13 et seq.

(3) Theaters and Exhibitions § 3--Regulation--Racing.

A board of supervisors cannot overrule the act of the people of the state in adopting a constitutional amendment and the Legislature of the state in passing a full and comprehensive plan for licensing and control of horse racing by forbidding on moral grounds what the state expressly permits.

(4) Theaters and Exhibitions § 3--Regulation--Racing.

A board of supervisors, acting in good faith, may by properly adopting zoning restrictions exclude on soundly-based grounds the installation of a horse racing track or any other type of activity from those portions of the county as to which such exclusion is reasonable.

(5) Counties § 55--Boards--Powers.

A board of supervisors cannot, under the guise of doing one thing, accomplish a wholly disparate end.

(6) Administrative Law § 8, 9--Proceedings--Hearing--Evidence.

In an administrative hearing the evidence must be produced by witnesses personally present or by authenticated documents, maps or photographs; ordinarily hearsay evidence standing alone can have no weight, and this applies to hearsay evidence concerning someone else's opinion; cross- examination within reasonable limits must be allowed and statements in letters and arguments in petitions should not be considered.

(7) Counties § 176--Mandamus.

Where a board of supervisors, in denying a permit to use land subject to a zoning ordinance as a racetrack, based the denial on moral grounds of opposition to racing and betting under an erroneous conclusion as to the board's rights and duties, and, on the record legitimately before the board, abused its discretion, a writ of mandate will issue requiring the board to cancel the denial and, in the operation of its discretion in enforcement of the ordinance, to reconsider the application, giving no consideration to the alleged immorality of racing and betting.

(8) Courts § 75--Sessions.

The sessions of the superior court of a given county must be held in that county. (Gov. Code, §§ 68099, 69741.)

See **Cal.Jur.2d,** Courts, § 41; **Am.Jur.,** Courts, §§ 25, 26, 37 et seq.

SUMMARY

APPEAL from a judgment of the Superior Court of Riverside County. R. Bruce Findlay, Judge. [FN*] Reversed with directions.

FN* Assigned by Chairman of Judicial Council.

Proceeding in mandamus to compel a county board of supervisors to cancel its order denying a permit to conduct horse racing. Judgment denying writ reversed with directions.

COUNSEL

Thompson & Colegate and John E. Glover for Appellant.

Ray T. Sullivan, Jr., County Counsel, Leo A. Deegan, Deputy County Counsel, and James H. Angell, Assistant County Counsel, for Respondents.

CONLEY, J. pro tem. [FN*]

FN* Assigned by Chairman of Judicial Council.

This case involves the proper definition and delimitation of authority as between the state and the county of Riverside in their respective control and administration of horse racing and zoning.

The appellant, Desert Turf Club, a corporation, after securing a permit from the California Horse Racing Board to conduct quarter-horse racing at the site hereafter described, made written application to the Riverside County Planning Commission for a land use permit to establish, operate and maintain a race track on Zone M-3 land in the Northwest Quarter and the North Half of the Southwest Quarter of Section 6, Township 5 South, Range 6 East, S.B. B. & M., comprising 240 acres, situated on the east side of Del Sol Road, between Tamarisk Road and Avenue 40. The California Horse Racing Board by a decision and order of July 19, 1954, had determined: ***448**

"1. That the applicant, Desert Turf Club, has shown and established that the conducting of quarter-horse racing meetings of the proposed Palm Springs track would be in the public interest and would subserve the purposes of the California Horse Racing Act;

"2. That the conducting of quarter-horse racing meetings at the proposed Palm Springs track will be in the public interest and will subserve the purpose of the California Horse Racing Act."

After a public hearing pursuant to proper notice, the Riverside Planning Commission made its order and decision on February 23, 1955, recommending to the board of supervisors that the application be granted upon certain specified terms and conditions, all of which were afterwards accepted and agreed to by the applicant. In accordance with the requirements of article III of Ordinance 348 of Riverside County, the planning commission filed with the board of supervisors on March 2, 1955, in connection with its recommendation that the application be granted, a summary of the testimony presented at the public hearing and all reports and exhibits which had been introduced in evidence. Thereafter, the board of supervisors regularly noticed and held a public hearing on the question on March 28, 1955; besides the entire files and records of the planning commission on its hearing, the board received evidence from several witnesses respectively for and against the granting of the permit and also accepted as evidence various petitions and letters in opposition thereto. At the close of the hearing, the board, by unanimous vote, denied the application for the permit.

No findings of fact of any kind were made by the supervisors, but the record of the proceedings makes it abundantly clear that the board members took into consideration "every type of evidence that anybody cared to bring to us" and that they assumed that it was "up to the Board to look at all angles, the moral aspects or any other point."

On April 22, 1955, Desert Turf Club filed its petition for a writ of mandate praying that the board of supervisors be required to cancel its order denying the permit, and to make an order granting it and further praying that Charles Bixel, as Chief Building Inspector of Riverside County be required to issue the permit. The respondents below filed a general and special demurrer; at the hearing, which according to the reporter's transcript was held "Before Hon. R. Bruce Findlay, Superior Court Judge (of San Bernardino County), ***449** presiding as Superior Court Judge of Riverside County but actually sitting in San Bernardino County, California, May 24 and 25, 1955," it was stipulated that the special demurrer be deemed withdrawn, and that if the general demurrer should be overruled the cause would be submitted for decision substantially on the record of the hearing before the board of supervisors. The court overruled the general demurrer, denied the peremptory writ of mandate and discharged the alternative writ.

The trial court determined in its conclusions of law that the order of the board of supervisors denying the application for a permit was sufficiently supported by competent substantial evidence, that the board did not act arbitrarily, capriciously or unlawfully, and that

petitioner was not denied a fair trial and

"5. That, although the licensing throughout the State of California of horse racing tracks where pari-mutuel wagering is conducted is a matter of general and statewide concern, the same is, nevertheless, a municipal affair and is subject to local regulation as embodied by the provisions of Ordinance 348 of the County of Riverside, Section 3.1 of Article III thereof."

It is our opinion that the trial court erred in these views.

By the provisions of section 65300 of the Government Code each county in the state is required to create a planning commission; each of said latter bodies is directed to adopt a comprehensive long-term master plan for the development of the county (Gov. Code, § 65460). Zoning regulations by boards of supervisors are specifically authorized by law, it being provided that a county may by ordinance "regulate the use of buildings, structures, and land as between agriculture, industry, business, residence and other purposes." (Gov. Code, § 65800.) The Riverside County Zoning Ordinance Number 348, is a part of the master plan of land used in Riverside County, it having been adopted as recited in article I thereof "in order to classify, restrict, regulate and encourage the orderly use of land in the County of Riverside and to conserve and promote public health, peace, safety, comfort, convenience, and general welfare." Article III of the zoning ordinance provides that:

"All the unincorporated territory of the County which is not included under the terms of this ordinance in any other zone is hereby designated and classified as M-3 Zone. ***450**

"The restrictions pertaining to other zone classifications shall not be deemed or construed to apply to land or property in Zone M-3. The restrictions applicable to land use in M-3 Zone shall be only as hereinafter in this Article specifically set forth."

Article III, section 3.1 forbids a person to use any premises or erect any building in Zone M-3 for any of some 39 uses without first securing a permit; among these enumerated uses is "23. Race track, except for contests between human beings only."

By the adoption of section 25a of article IV of the Constitution, the people of the State of California enacted the controlling principle that the Legislature could provide for the regulation of horse races and horse race meetings throughout the state and wagering on the results thereof. (1) As is said in *Sandstrom v. California Horse Racing Board,* 31 Cal.2d 401, 407 [189 P.2d 17, 3 A.L.R.2d 90]:

"When the state sees fit to regulate upon a matter which is within its police power, its authority over the subject is plenary. ..."

Chapter 4 of division 8 (§§ 19400 to 19663) of the Business and Professions Code contains a full and comprehensive legislative treatment of legalized horse racing in this state which is a clear and complete plan for the state-wide control of the subject ter. Section 19480.5 of the Business and Professions Code provides that the board shall not issue any new license unless it shall determine that conducting horse racing meetings at such place will be in the public interest and will subserve the purposes of the provisions of state law relative to horse racing.

(2) There can be no legitimate doubt that the state has taken over in its entirety the whole subject of horse racing. There is also no room for doubt that many thousands of citizens (who were in a minority at the time the constitutional amendment was adopted) are uncompromisingly opposed to race tracks and any form of betting on horses, not only on abstract moral grounds, but because of their observations as to the practical effect on the community. They oppose, so they say, any improvement in the breed of horses that debases the breed of men.

It is not our province to pass on the moral question but only on the question of power. (3) The query to be answered is: can a board of supervisors overrule the act of the people of the state in adopting a constitutional amendment ***451** and the Legislature of the state in passing a full and comprehensive plan for the licensing and control of horse racing by forbidding on moral grounds what the state expressly permits? There is no escape, in our opinion, from a negative answer.

In *Shean v. Edmonds,* 89 Cal.App.2d 315, 325 [200 P.2d 879], it is said:

"Horse racing was recognized in this state in 1933 (Stats. 1933, p. 2046.) Section 25a of article IV of the Constitution gave certain powers regulating horse racing to the Legislature. 'The continuance of the grant of power' as expressed in certain sections of the Business and Professions Code 'did not affect its status as previously ratified and confirmed.' (*Sandstrom v. California Horse Racing Board,* 31 Cal.2d 401, 413 [189 P.2d 17, 3 A.L.R.2d 90].)

The opinion in *Cunningham v. Hart,* 80 Cal.App.2d 902, 906 [183 P.2d 75], thus enumerates various instances in which the adoption by the state of general laws covering the field deprives a local legislative body of any right to act relative to the subject matter involved:

"The following cases are examples of matters which have been determined to be of state-wide concern and in which general laws have prevailed over conflicting laws in municipalities adopting the 'home rule' afforded by section 6, article XI of the Constitution: *Ex parte Daniels,* 183 Cal. 636 [192 P. 442, 21 A.L.R. 1172], regulation of traffic on city streets. To the same effect, *Atlas Mixed Mortar Co. v. City of Burbank,* 202 Cal. 660 [262 P. 334]; *Mann v. Scott,* 180 Cal. 550 [182 P. 281]; *In re Murphy,* 190 Cal. 286 [212 P. 30]; *Pipoly v. Benson,* 20 Cal.2d 366 [125 P.2d 482, 147 A.L.R. 515]. Regulation of the character and standards of taxicab service to be performed on city streets, *In re Martinez,* 56 Cal.App.2d 473 [132 P.2d 901]. Appointment of a probation officer and the fixing of his salary payable out of the city and county treasury, pursuant to the Juvenile Court Law, *Nicholl v. Koster,* 157 Cal. 416 [108 P. 302]. Sustaining the Metropolitan Water District Act which permits individual municipalities to initiate proceedings in the formation of a water district, *City of Pasadena v. Chamberlain,* 204 Cal. 653 [269 P. 630]. Sustaining the City Boundary Line Act, *Gadd v. McGuire,* 69 Cal.App. 347 [231 P. 754]. Adoption of a pension system by a municipality does not take the place of the Workmen's Compensation Law in its application to city employees, *Sacramento v. Industrial Acc. Com.,* 74 Cal.App. 386 [240 P. 792]. General ***452** laws prohibiting the licensing by a city of a house of prostitution, *Farmer v. Behmer,* 9 Cal.App. 773 [100 P. 901]. General laws prohibiting the organization and control of a school district by a county, *Scott v. County of San Mateo,* 27 Cal.App. 708 [151 P. 33]. A statute claiming a city street to be a secondary state highway prevails over right of municipality to improve that street, *Southern California Roads Co. v. McGuire,* 2 Cal.2d 115 [39 P.2d 412]. Exclusive control in the state of liquor licensing, *Los Angeles Brewing Co.* v. [*City of*] *Los Angeles,* 8 Cal.App.2d 391 [48 P.2d 71]. Issuance and revocation of motor bus licenses within a city, *People v. Willert,* 37 Cal.App.2d Supp. 729 [93 P.2d 872]. Drunken driving provision in Motor Vehicle Act prevails over city ordinance, *Helmer v. Superior Court,* 48 Cal.App. 140 [191 P. 1001]. Liability of a municipality for tortious acts or omissions of its servants, *Douglass v. City of Los Angeles,* 5 Cal.2d 123 [53 P.2d 353]. Liability of a municipality for defective highways within its limits, *Wilkes v. City etc. of San Francisco,* 44 Cal.App.2d 393 [112 P.2d 759]."

This rule has also been applied by this court to a city ordinance requiring an electrical contractor, licensed by the state, to procure a local business license (*Horwith v. City of Fresno,* 74 Cal.App.2d 443 [168 P.2d 767]). (See *Agnew v. City of Los Angeles,* 110 Cal.App.2d 612 [243 P.2d 73].) And this court has pointed out that this principle gives the State of California the sole right to regulate and license the liquor business. (*City of San Diego v. State Board of Equalization,* 82 Cal.App.2d 453, 464 [186 P.2d 166].)

What does this holding do to the zoning ordinance? Nothing at all. The right to zone is by express provision of law a local matter. (4) A board of supervisors, acting of course in good faith, may by properly adopting zoning restrictions exclude on soundly-based grounds the installation of a horse racing track or any other type of activity from those portions of the county as to which such exclusion is reasonable, just as manufacturing establishments or business houses may be legitimately prohibited in residential districts. (5) But the board cannot under guise of doing one thing, accomplish a wholly disparate end. The board here, on moral grounds, contrary to the legislative fiat of the people, has in effect excluded all horse racing from all parts of the county-or, to borrow an analogy from the field of liquor regulation, has exercised a *local option* with respect to horse racing. There ***453** is no such thing as local option on this question under the present law.

If the opinion evidence of those persons opposed to the granting of the permit on the ground that horse

racing and its attendant betting are immoral be eliminated, there is insufficient evidence in the present record to uphold the decision of the board of supervisors, or the findings of the trial court. The testimony adduced on behalf of petitioner was: that the plans and specifications for the construction of the track and buildings in all respects conformed with state and county building codes and regulations; that access roads for ingress and egress were adequate to handle traffic; that the use and development of the land as proposed conformed with good and established planning and zoning regulations; that there would be no flood problem or water drainage problem; that the owners of all property within a distance of 500 feet from the exterior boundaries of the premises favored the granting of the application; that the nearest subdivided area is approximately one-half mile from the site; that government land and vineyards adjoin the proposed track; that no objections of any kind have been interposed by the Riverside County Flood Control and Water Conservation District or the Riverside County Agricultural Commissioner.

The opposing evidence of a number of citizens was that the nature of the general area as one of homes and farms would be violated by the building of a race track; that police problems, in the opinion of the witness based on hearsay, would be increased by the attraction to the course of undesirable types; that many petitioners opposed the coming of a race track believing that "gambling is a social evil." The Coachella Valley Ministerial Association filed a protest containing numerous names of citizens who opposed "the establishment of any race track where parimutuel betting is permitted"; attached to the signed document is a writing signed by Harvey W. Harper, Chairman, stating as further grounds of opposition "... it would not be within the public interest to bring such a questionable industry into this area" and asserting that it would be an economic burden, in that money would be taken away from the community by parimutuel betting, law enforcement problems would arise, county roads would be overtaxed and fire protection problems would arise; further it was said that "... It has been clearly demonstrated in other cases that credit ratings drop during racing seasons"; next the document states that a race track would ***454** be a social and cultural detriment through the attraction of "undesirable elements" and finally that the moral tone of the community would be lowered.

Supervisor Varner made the following observation at the close of the hearing:

"Out of 100 telephone calls received approximately ninety were in opposition to granting permission for the race track. I have received here and admitted in evidence some 20 letters, almost all-there were two in favor of it. There have been petitions submitted here today of between some four and five hundred names in opposition to granting this permit. In view of this fact it indicates to me that it is not in the public interest to grant this M-3 Permit to establish this quarter-horse race track. I move that the M-3 Permit be denied."

The motion having been seconded, all supervisors voted "Aye" and the permit was denied.

Some of the reasons advanced by the witnesses opposing the granting of the permit should weigh powerfully with the voters of California in determining whether race tracks and parimutuel betting should be allowed anywhere, but in view of the preemption by the state of the whole field of legislation and the passage of complete general laws on the subject such arguments are not available in the present situation. Counsel for respondents ably attempt a scholastic distinction between the abstract immorality of race tracks and parimutuel gambling which they concede is not available to respondents because the state has taken over that total legislative field, and the alleged objective social demoralization resulting from racing and gambling, which, they argue, may still be considered by the board of supervisors in judging whether a permit should be issued under the zoning ordinance. But, to use an old western expression, the hair goes with the hide. Those who believe strongly that gambling is immoral base their opinion largely, if not wholly, on its observed effect on people and the community. Similarly, the opposition to alcoholic drinks does not arise from any abstract hatred for alcohol as such, but from a dislike for what it does to drinkers, as individuals and social groups. The onus of the people's authorization of race tracks and parimutuel machines must be borne by the grouped voters of the whole state; they have, for the time being at least, decided the question, and whatever advantages or disadvantages go with the decision cannot be barred by local legislative action from the entire territory of any county, as has been done in this case. ***455**

Appellants also complain concerning the nature of the evidence accepted by the board of supervisors at the hearing. (6) While administrative bodies are not expected to observe meticulously all of the rules of evidence applicable to a court trial, common sense and fair play dictate certain basic requirements for the conduct of any hearing at which facts are to be determined. Among these are the following: the evidence must be produced at the hearing by witnesses personally present, or by authenticated documents, maps or photographs; ordinarily, hearsay evidence standing alone can have no weight (*Walker v. City of San Gabriel,* 20 Cal.2d 879, 881 [129 P.2d 349, 142 A.L.R. 1383]; *Englebretson v. Industrial Acc. Com.,* 170 Cal. 793, 797 [151 P. 421]; *Employers A. Corp. v. Industrial Acc. Com.,* 170 Cal. 800, 801 [151 P. 423]; *Dyment v. Board of Medical Examiners,* 93 Cal.App. 65 [268 P. 1073]; *Thrasher v. Board of Medical Examiners,* 44 Cal.App. 26 [185 P. 1006]), and this would apply to hearsay evidence concerning someone else's opinion; furthermore, cross-examination within reasonable limits must be allowed. Telephone calls to one of the officials sitting in the case, statements made in letters and arguments made in petitions should not be considered as evidence.

(7) As it appears to us that the board of supervisors based its action on an erroneous conclusion as to its legal rights and duties, and that upon the record legitimately before it the board acted in abuse of its discretion, a writ of mandate should issue. (*Tilden v. Blood,* 14 Cal.App.2d 407, 413-414 [58 P.2d 381]; *Martin v. Board of Supervisors,* 135 Cal.App. 96, 103 [26 P.2d 843]; *Walker v. City of San Gabriel, supra,* 20 Cal.2d 879; *Bleuel v. City of Oakland,* 87 Cal.App. 594, 597-598 [262 P. 477].)

But, as the board of supervisors has a proper field for the operation of its discretion in the enforcement of its zoning ordinance, after eliminating the moral ground of opposition to racing, this court cannot agree with the contentions of the appellant that the board of supervisors is wholly without jurisdiction to pass on the application, and that the permit of the State Racing Board is all that is required. (*Dormax Oil Co. v. Bush,* 42 Cal.App.2d 243 [108 P.2d 710].) The same observation applies to the contention that the board should be by-passed and a writ directed to the respondent building inspector, requiring him to issue a permit forthwith. The writ should be directed to the board of supervisors and its members requiring them to cancel and annul the order denying ***456** appellant's application, and to reopen the hearing with leave to hold a supplemental hearing upon due notice if they be so advised, and to reconsider the petition of appellants as to land use, wholly excluding any consideration as to the alleged immorality of horse racing and betting as authorized by state law, and wholly excluding from such consideration all testimony not received in open hearing, and all statements of alleged fact and arguments in petitions and letters on file, except the bare fact that the petitioners or letter writers approve or oppose the granting of the petition; also wholly excluding each and every instance of hearsay testimony unless supported by properly admissible testimony, it being further required that the attorneys representing any party in interest be granted a reasonable opportunity to examine or cross-examine every new witness produced.

Attention has already been called to the statement in the reporter's transcript that the case was tried before a superior court judge of San Bernardino County, "presiding as Superior Court Judge of Riverside County but actually sitting in San Bernardino County." The first page of the transcript begins:

"San Bernardino, California, May 24, 1955,

Afternoon Session

"Mr. Deegan: Your Honor, for the purpose of this case you are sitting as Superior Court Judge of Riverside County?

"The Court: Yes, I appreciate you gentlemen coming over here, otherwise we would be in the position of having to exchange judges, get started on a case here, never could seem to finish up at the same time."

We assume from the foregoing that the judge who tried the case had secured the essential assignment from the Chairman of the Judicial Council to sit and act in Riverside County, but that for convenience the case was actually tried in the San Bernardino County courthouse, with the tacit or express consent of the attorneys. Appellant does not raise any point as to jurisdiction or error in this respect. But this court cannot let pass unnoticed the impropriety involved in this irregular procedure. (8) The sessions of the superior court of a given county, under the law, must be

held in that county (Gov. Code, §§ 69741, 68099; 13 Cal.Jur.2d, "Courts," § 41).

The judgment is reversed, with instructions upon the going down of the remittitur to amend the findings of fact and conclusions ***457** of law in accordance with the views expressed in this opinion, and to enter a judgment granting a peremptory writ of mandate directed to the board of supervisors of Riverside County and the members thereof requiring them forthwith to cancel and annul their order denying appellant's petition and to proceed without delay to carry on and complete a hearing in the manner indicated and set forth in this opinion.

Barnard, P. J., and Griffin, J., concurred.

Cal.App.4.Dist.
Desert Turf Club v. Board of Sup'rs of Riverside County
141 Cal.App.2d 446, 296 P.2d 882

END OF DOCUMENT

C

BOARD OF TRUSTEES OF THE WOODLAND UNION HIGH SCHOOL DISTRICT OF YOLO COUNTY, Respondent,
v.
RUSSELL S. MUNRO, as Director of the Department of Alcoholic Beverage Control, et al., Defendants and Appellants; THOMAS P. RALEY, Intervener and Appellant.

Civ. No. 9372.

District Court of Appeal, Third District, California.
Sept. 11, 1958.

HEADNOTES

(1a, 1b) Administrative Law § 22--Judicial Review--Trial De Novo.

In reviewing the decision of an administrative body, given quasi-judicial powers by the Constitution, the reviewing court is limited to a determination of whether or not the decision is supported by substantial evidence and the court may not substitute its view for that of the administrative body, nor reweigh conflicting evidence. There can be nothing in the nature of a trial *de novo* in the reviewing court.

(2) Administrative Law § 22--Judicial Review--Hearing.

The reviewing court, in its consideration of the evidence in support of the decision of an
See **Cal.Jur.2d,** Administrative Law, § 219 et seq.; **Am.Jur.,** Public Administrative Law, § 206 et seq.
administrative body, must resolve conflicts, and indulge legitimate and reasonable inferences, in favor of that decision.

(3) Intoxicating Liquors § 9.4--Licenses--Issuance--Evidence.

A decision of the Department of Alcoholic Beverage Control to issue a general off-sale liquor license to a supermarket located in close proximity to a high school, a church, a public swimming pool, a proposed children's playground and a location on which a Y.M.C.A. building was to be erected, and that such action was not contrary to public welfare and morals, was supported by substantial evidence, despite conflicting testimony by witnesses for the school, church and Y.M.C.A., since the ultimate question was peculiarly a question for departmental resolution and there was no abuse of discretion in its determination.

(4a, 4b) Intoxicating Liquors § 9.4--Licenses--Issuance--Effect of Restrictive Covenant.

In granting an off-sale liquor license to a supermarket located on a tract subject to a restrictive covenant against the sale of intoxicating liquors, the Department of Alcoholic Beverage Control properly determined that the existence of the covenant did not justify the board in a holding that its violation would be a matter affecting public welfare and morals and left the parties to the covenant to resort to the courts if so advised, since the only legislative enactment restricting the licensing power of the department forbids the issuance of a license to premises located in territory where the exercise of rights thereunder would be contrary to a valid zoning ordinance (Bus. & Prof. Code, § 23790).

(5) Covenants § 1--Definitions.

Restrictive covenants are private contracts as opposed to public zoning ordinances.

SUMMARY

APPEALS from a judgment of the Superior Court of Yolo County. Ben R. Ragain, Judge. [FN*] Reversed.

FN* Assigned by Chairman of Judicial Council.

Proceeding in mandamus to review a decision of the Department of Alcoholic Beverage Control issuing a liquor license. Judgment granting writ directing reversal of department's decision, reversed.

COUNSEL

Edmund G. Brown, Attorney General, E. G. Funke, Assistant Attorney General, William T. Chidlaw and Robert W. Baker, Deputy Attorneys General, for Defendants and Appellants.

Downey, Brand, Seymour & Rohwer for Intervener and Appellant.

Anthony B. Avilla, District Attorney (Yolo), and Harry A. Ackley, Deputy District Attorney, for Respondent. ***442**

VAN DYKE, P. J.

This is an appeal from a judgment of the Superior Court for Yolo County, decreeing that a writ of mandate should issue against the appellant department and the appellant board, directing them to reverse their determination that a general off-sale liquor license should issue to Thomas P. Raley, the real party in interest. The basic question presented on this appeal is whether or not the Department of Alcoholic Beverage Control prejudicially abused its administrative discretion in granting the license.

The department made the following findings of fact: The proposed premises consist of a supermarket located in a neighborhood shopping center at the southeast corner of College Street and Granada Drive in the South Land Park area near the southerly outskirts of Woodland. The premises in question constitute one of a chain of eight Raley food markets, seven of which are located in Sacramento County, and all, or most of them, are licensed for off-sale general alcoholic beverages. There are presently no alcoholic beverage licenses in force in the vicinity of the premises. The applicant's store building is situated in the southerly part of the shopping center, and there is an adjacent main parking area immediately to the north of the applicant's building which is shared with patrons of a drive-in restaurant located at the corner of College Street and Granada Drive and with patrons of other retail stores in the shopping center. Immediately to the south of, and adjacent to, the proposed premises is another parking area reserved for the exclusive use of the applicant's customers. The main entrance to the applicant's store faces College Street, while a secondary entrance faces the general parking area to the north of the building. The nearest school to the proposed premises is the Woodland Union High School, located to the north of the premises and occupying land on both sides of College Street. The distance from the nearest point of the premises and the nearest point of the school property is approximately 365 feet. The evidence shows that the school board has under consideration the enlargement of the high school campus, which, although it occupies large areas of land on both sides of College Street lying to the north of the proposed premises, appears to be too small for present or proposed enlarged school activities. The distance from the proposed premises to the nearest point on school property could, by the additional school facilities proposed, be reduced to approximately 300 feet. Present enrollment of Woodland Union High School is approximately 1,000 students, which include age ***443** groups ranging from 13 to 19. The 19-year-old group would constitute but a small fraction of the enrollment. A considerable number of students frequent the area near the proposed premises by reason of their patronage of the drive-in restaurant and their purchases of ice cream and candy bars at applicant's store. Complaints of the neighboring residents have been directed toward the practice of these students discarding papers such as candy wrappers and other debris around the shopping center during the noon lunch period, after school hours and during evening when sports events are held at the school. There is insufficient evidence to show that the package sale of alcoholic beverages by applicant would aggravate this litter problem or that consumption in public of alcoholic beverages in the vicinity is, or would be of such proportions as to add appreciably to the litter. The evidence shows that by far the greatest number of sales of alcoholic beverages sold at other markets of similar type, operated by applicant, are made in conjunction with purchase of grocery items for consumption at the purchasers' homes. The applicant does not propose to sell alcoholic beverages from open shelves or refrigerators accessible to patrons on a self-service basis as is usual in his other and in most food stores of this kind, but he has submitted a revised floor plan whereby refrigerated beer, wines and so-called hard liquors will be sold only at a separate department located at the front of the store in the southwest corner and outside the check stands. Persons desiring to purchase alcoholic beverages will only be able to procure them at this portion of the store, which will be in charge of a clerk at all times that the liquor department is open for business. The proposed arrangement should effectively minimize the possibility of theft of alcoholic beverages by high school students or others, and will safeguard against inadvertent sale of alcoholic beverages to minors by clerks at the food-checking stands at times when they are busy with customers purchasing large lots of groceries. A children's public playground will, at some time in the future, occupy a park area proposed to be constructed across College Street and opposite the proposed premises. The evidence does not show what portion of this proposed public park will be used for playground purposes such as swings and other play

equipment. The width of College Street intervening between the proposed premises and the proposed park area is approximately 60 feet from curb to curb. A municipal swimming pool, which is patronized by increasing numbers of adults, ***444** students and other children to the extent of a total of 43,548 persons in 1955, is located to the northwest and across College Street from the premises in question, at a distance of about 400 feet airline measured from the nearest portion of the applicant's store building to the nearest point of the swimming pool enclosure. This pool is surrounded by a high wall and, with the exception of the upper portions of bleacher seats located against the south wall of the pool enclosure, the view of the proposed premises from the pool area is effectively blocked. The American Lutheran Church, with a total membership of about 530 persons, and holding the usual services on Sundays and meetings on most week nights is located on the west side of College Street and across the street from the proposed premises at a distance of about 171 feet from the nearest point of the applicant's building to the nearest corner of the church property. An additional distance of about 25 feet to the nearest church entrance makes the distance about 196 feet. It is proposed to construct a Y.M.C.A. building in about two to three years on the lot adjacent to and south of the church across the street from the proposed premises, at a distance of about 150 feet from the premises, measured by direct line between the respective buildings. There is no substantial evidence to show that the granting of a license for the off-sale of packaged alcoholic beverages would, under the method of operation proposed, constitute an undue moral hazard to the students of the high school, the church activities of the persons attending the church, or juveniles using the facilities of the proposed playground or the proposed Y.M.C.A. The premises in question are located on Lot 16 of Block 4 in the tract known as South Land Park. By a "Declaration of Restrictions" signed by Anton Paulsen, his wife, and others, the then owners of the South Land Park Tract executed August 31, 1946, and which was recorded on September 7, 1946, certain restrictions were imposed on this tract, providing that all lots, with the exception of Lot 16 of Block 4 on which the shopping center and the proposed premises are located shall be restricted to residential use. As to Lot 16 of Block 4 it is provided that said lot is "restricted to retail commercial purposes provided that no liquor or beverages shall be sold on said premises containing more than one-half of one per cent alcohol by volume." There is no evidence to show that issuance of the license in question would violate any valid zoning ordinance. It is stipulated, and it is found to be true, that the proposed premises are located in a shopping center, which, in turn, is located in a ***445** general residential area. A search of the record discloses substantial support for the findings of fact.

The conclusions of the department from the foregoing findings were as follows: Issuance of the license would not be contrary to public welfare and morals for the reason that although the proposed premises are located within the immediate vicinity of (1) a portion of the high school grounds, (2) a proposed children's public playground, (3) a church and (4) a proposed Y.M.C.A., an off-sale license would not expose the persons or juveniles involved to any undue moral hazard. Issuance of the license would violate a deed restriction, which appears to be valid and enforceable as to all parties in privity therewith, but public welfare and morals would not, in view of the findings on all other issues herein, be adversely affected by the issuance of an off-sale general license to this applicant and premises. The proposed premises are located in a residential area, but issuance of the license would not be contrary to public welfare and morals.

The scope of review of a decision of the Department of Alcoholic Beverage Control, like that of the review of a decision of any administrative body given quasi-judicial powers by the Constitution, is well established. The Constitution declares that the department "shall have the exclusive power ... to license the manufacture, importation and sale of alcoholic beverages in this State, ... The department shall have the power, in its discretion, to deny, suspend or revoke any specific alcoholic beverages license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals. ..." (1a) In reviewing the decision of such an administrative body, the reviewing court is limited to the determination of whether or not the decision is supported by substantial evidence and the court may not substitute its view for that of the administrative body, nor reweigh conflicting evidence. (*Dethlefsen v. Board of Equalization,* 145 Cal.App.2d 561, 563 [303 P.2d 7]; *Molina v. Munro,* 145 Cal.App.2d 601 [302 P.2d 818].) (2) The reviewing court, in its consideration of the evidence in support of the decision, must resolve conflicts, and indulge legitimate and reasonable inferences, in favor

of that decision. (*Thompson v. City of Long Beach,* 41 Cal.2d 235, 241 [259 P.2d 649]; *Oxman v. Department of Alcoholic Beverage Control,* 153 Cal.App.2d 740, 744 [315 P.2d 484]; *Marcucci v. Board of Equalization,* 138 Cal.App.2d 605 [292 P.2d 264].) (1b) There ***446** can be nothing in the nature of a trial de novo in the reviewing court.

(3) Tested by the foregoing rules, there is substantial evidence in the record which supports the decision of the department and, therefore, its decision must be upheld and the judgment appealed from must be reversed.

Witnesses for the protestants testified that if liquors were sold in Raley's market, minors would find a way of getting it, either by pilfering it from the store or inducing adults to purchase it, take it out of the store and give it to the minors; that this would happen generally when students were attending various athletic games and contests during evenings such as football and basketball games; that the pilfering and illegal obtaining through intervention of adults would be increased by the propinquity of the market to the school grounds; that handy access to the liquor supply would increase use of intoxicants by adult attendants at the games; that minors would obtain liquor more readily at that market than they would at other markets through misrepresentation of their ages and having obtained it would permit its use by themselves and other students. Representatives of the nearby church testified that they opposed granting the license on the same grounds urged by the school authorities, but admitted that so far as the church congregation was concerned they did not expect any bad effects upon their membership. Representatives of the Y.M.C.A., which proposed to build in the future a building in the general vicinity of the market, testified that their membership would be more apt to indulge in the use of alcoholic beverages than if the same were not so handy to their headquarters. Many of these witnesses claiming to be well versed with juvenile problems, particularly those encouraged by the use of alcoholic beverages, gave it as their opinion that transfer of the license would adversely affect public welfare and morals, thus testifying directly to the very issue to be passed on by the board.

Assuming the admissibility of such opinion evidence, we think it apparent that the evidence given by protestants' witnesses did not, as a matter of law, prove that the granting of the transfer of the license by the board would be contrary to public welfare or morals.

The ultimate question whether or not under all the circumstances the granting of the off-sale license would adversely affect public welfare and morals was on this record peculiarly an issue for departmental resolution. It is lawful to sell, ***447** possess and use intoxicating liquor in this state. Surely the board, which passes on the issuance of thousands of licenses under all conceivable conditions, can better determine the effect upon public welfare and morals of the granting of a license than can those who are not constantly so engaged. Undoubtedly, the protestants were completely and conscientiously serious in their objections and their witnesses were honestly apprehensive, as they said they were, that public welfare and morals would be adversely affected if Raley's application were granted, but the question was for resolution by the board and it cannot be said from this record that the board in anywise abused its discretion in granting the license.

(4a) With respect to the contentions of respondent that the license could not be validly issued during the existence of a valid covenant against the sale of intoxicating liquors, the research of counsel and of the court has disclosed little authority, and apparently the question is novel in California. The Constitution, which vests in the department the exclusive power to license the sale of intoxicating liquor, makes the power subordinate to laws enacted by the Legislature. The Legislature, by section 23790 of the Alcoholic Beverage Control Act, has provided that retail licenses shall not be issued for any premises located in territory where the exercise of the rights conferred would be contrary to a valid zoning ordinance of any county or city unless the premises had been used in the exercise of such rights at a time prior to the effective date of the zoning ordinance. We find no other legislative enactment restricting the licensing power of the board. (5) Restrictive covenants are private contracts as opposed to public zoning ordinances. In *Barnegat City Beach Assn. v. Busby,* 44 N.J. Law 627, the court said:

"... The question of jurisdiction is not affected by the existence of covenants and conditions against open bars for the sale of intoxicating drinks, contained in the deeds for lands in this locality. However binding this may be upon the parties to such instruments, they are in no wise obligatory upon the court in the exercise

of its statutory discretion to grant licenses for the public convenience, nor can such provisions render licenses granted invalid."

Apparently a contrary position has been taken by the courts in Pennsylvania. (See *Appeal of Cheris,* 127 Pa. Super. 355 [193 A. 162].)

(4b) In this case the board received in evidence a certified copy of a deed imposing the restriction. From the record it ***448** appears that the board considered the covenant to be valid and, further considering the covenant as one of the facts before it, specifically determined that its existence did not justify the board in a holding that its violation would be a matter affecting public welfare and morals. We think this conclusion of the board to have been warranted by the record before it. Apparently the board concluded that the covenant presented no insurmountable barrier to the granting of the license and left the parties to the covenant to resort to the courts if so advised. On this record this was a justifiable and proper disposition of the issue.

For the reasons given, the judgment appealed from is reversed.

Peek, J., and Schottky, J., concurred.

Respondent's petition for a hearing by the Supreme Court was denied November 5, 1958.

Cal.App.3.Dist.
Board of Trustees of Woodland Union High School Dist. of Yolo County v. Munro
163 Cal.App.2d 440, 329 P.2d 765

END OF DOCUMENT

5 Cal.App.4th 1513, 7 Cal.Rptr.2d 699, 74 Ed. Law Rep. 165
(Cite as: 5 Cal.App.4th 1513)

H FN*CALIFORNIA TEACHERS ASSOCIATION et al., Plaintiffs and Respondents,
v.
THOMAS W. HAYES, as Director of the Department of Finance, etc., Defendant and Respondent, BILL HONIG, as Superintendent of Public Instruction, etc., Defendant and Appellant; CALIFORNIA CHILDREN'S LOBBY et al., Real Parties in Interest and Appellants.

No. C009444.

Court of Appeal, Third District, California.
Apr 30, 1992.

FN* Reporter's Note: This case was previously entitled "California Teachers Association v. Huff."

SUMMARY

A teacher's association and three of its officers filed a petition for a writ of mandate against the Superintendent of Public Instruction and other state officials to prohibit the inclusion of funding for the Child Care and Development Services Act (Ed. Code, § 8200 et seq.) within the education funding guarantee of Prop. 98 (Classroom Instructional Improvement and Accountability Act). The trial court concluded that Prop. 98 was not intrinsically ambiguous, and that its plain meaning required that only appropriations allocated to, and administered by, school districts satisfied its minimum funding requirement. Accordingly, the trial court issued a writ of mandate prohibiting defendants from including any funds allocated to or administered by any entity or agency, other than a school district as defined in Ed. Code, § 41302.5, within the Prop. 98 education funding guaranties. The trial court also declared that Ed. Code, §§ 8203.5, subd. (c), 41202, subd. (f), which include funding for the Child Care and Development Services Act within the Prop. 98 guaranties, were unconstitutional. (Superior Court of Sacramento County, No. 363630, Michael T. Garcia, Judge.)

The Court of Appeal reversed. The court held that education and operation of the public schools are matters of statewide rather than local or municipal concern. Likewise, the court held that school moneys belong to the state, and the apportionment of funds to a school district does not give that district a proprietary right therein. Although the inclusion of funding for the act deprived school districts of absolute control over the funds the state is required to devote to education under Prop. 98, the court held that the measure did not expressly restrict the Legislature's plenary authority for education in the state, nor did it grant to school districts exclusive control over education funds. Accordingly, it held that the Legislature's inclusion of funding for the Child Care and Development Services Act within the Prop. 98 education funding guaranty was not facially unconstitutional. (Opinion by Sparks, Acting P. J., with Marler and Nicholson, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Universities and Colleges § 2--Organization and Affiliation--University of California.

The University of California is a public trust that finds its roots in the Constitution of 1849. The University of California has full powers of organization and government, subject only to limited legislative control. As such, it is not part of the public school system, and is subject to entirely different legal standards.

(2) Schools § 4--School Districts--Control and Operation--State Interest.

Although it is the legislative policy to strengthen and encourage local responsibility for control of public education through local school districts (Ed. Code, § 14000), education and operation of the public schools remain matters of statewide rather than local or municipal concern. Thus, local school districts are deemed agencies of the state for the administration of the school system, they are not a distinct and independent body politic, and they are not free and independent of legislative control.

(3) Schools § 4--School Districts--Control and Operation--Legislature's Powers.

The Legislature's power over the public school system has been variously described as exclusive, plenary, absolute, entire, and comprehensive, subject

only to constitutional constraints. Consequently, regulation of the education system by the Legislature is controlling over any inconsistent local attempts at regulation or administration of the schools. No one may obtain rights vested against state control by virtue of local provisions, ordinances or regulations. The Legislature has the power to create, abolish, divide, merge, or alter the boundaries of school districts. Indeed, the state is the beneficial owner of school property and local districts hold title as trustee for the state. School moneys belong to the state, and the apportionment of funds to a school district does not give that district a proprietary right therein. Thus, the Legislature can transfer property and apportion debts between school districts as it sees fit.

(4) Schools § 11--School Funds--Determination of Educational Purpose-- Legislative Discretion.

In including the Child Care and Development Services Act (Ed. Code, § 8200 et seq.) within the funding guarantee of Prop. 98 (Classroom Instructional Improvement and Accountability Act), the Legislature was not arbitrary and unreasonable in its determination that the act advanced the purposes of public education. Although the Legislature is given broad authority over education, it cannot divert education funds for other purposes. However, education is a broad and comprehensive matter, and the state Constitution places a broad meaning upon education. Moreover, the Legislature is given broad discretion in determining the types of programs and services which further the purposes of education.

(5) Constitutional Law § 23--Constitutionality of Legislation--Raising Question of Constitutionality--Burden of Proof--Facial Challenge to Statute.

When a challenge is made to the facial validity of a statute, a reviewing court's task is to determine whether the statute can constitutionally be applied. To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute. Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.
[See 7 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 58.]

(6) Constitutional Law § 27--Constitutionality of Legislation--Rules of Interpretation--Purpose, Wisdom, and Motives of Legislature.

The authority to make policy is vested in the Legislature, and neither arguments as to the wisdom of an enactment, nor questions as to the motivation of the Legislature, can serve to invalidate particular legislation. Where a petitioner makes a facial challenge to an enactment, a reviewing court's role is limited to determining whether the Legislature's choice is constitutionally prohibited.

(7a, 7b) Schools § 11--School Funds--Proposition 98 Funding Guarantee-- Legislative Control.

The Legislature's inclusion of funding for the Child Care and Development Services Act (Ed. Code, § 8200 et seq.) within the Prop. 98 (Classroom Instructional Improvement and Accountability Act) education funding guarantee was not facially unconstitutional. Although the inclusion of funding for the act deprived school districts of absolute control over the funds the state is required to devote to education under Prop. 98, the measure did not expressly restrict the Legislature's plenary authority for education in the state, nor did it grant to school districts exclusive control over education funds. The Constitution makes education and the operation of the public schools a matter of statewide rather than local or municipal concern. School districts do not have a proprietary interest in moneys which are apportioned to them. Accordingly, even though child care and development programs are not included within the definition of school districts, legislative programs which advance the educational mission of school districts and community college districts may constitutionally be included within the funding guaranty of Prop. 98.

(8) Constitutional Law § 39--Distribution of Governmental Powers--Between Branches of Government--Legislative Power.

Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. Accordingly, the entire lawmaking authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. In addition, all intendments favor the exercise of the Legislature's plenary authority. If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and

limitations imposed by the Constitution are to be construed strictly, and are not to be extended to include matters not covered by the language used.

(9) Constitutional Law § 10--Construction of Constitutions--Initiative Amendments--Conformation of Parts.

In an action challenging the propriety of including the Child Care and Development Services Act (Ed. Code, § 8200 et seq.) within the funding guarantee of Prop. 98 (Classroom Instructional Improvement and Accountability Act), construction of the constitutional provisions added by Prop. 98 had to be considered in light of all other relevant provisions of the Constitution. These provisions include those that contain, define, and limit the status of school districts and their relationship to the state. An initiative amendment to the Constitution must be interpreted in harmony with the other provisions of the organic law of this state of which it has become a part. To construe it otherwise would be to break down and destroy the barriers and limitations that the Constitution, read as a whole, has cast about legislation, both state and local.
[See **Cal.Jur.3d (Rev),** Constitutional Law, § 28.]
COUNSEL

Joseph R. Symkowick, Roger D. Wolfertz and Allan H. Keown for Defendant and Appellant.

James R. Wheaton, Gray, Cary, Ames & Frye and Paul J. Dostart as Amici Curiae on behalf of Defendant and Appellant.

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Kronick, Moskovitz, Tiedemann & Girard and Rochelle B. Schermer as Amici Curiae on behalf of Plaintiffs and Respondents.

Daniel E. Lungren, Attorney General, N. Eugene Hill, Assistant Attorney General, Cathy Christian and Marsha A. Bedwell, Deputy Attorneys General, for Defendant and Respondent.

SPARKS, Acting P. J.

At the November 1988 General Election, the electorate adopted Proposition 98, an initiative measure entitled "The Classroom Instructional Improvement and Accountability Act" [FN1] In general, Proposition 98 seeks to improve public education in California by establishing a minimum funding guarantee for public schools and by changing the way our state government treats its excess revenues. As the Legislative Analyst noted in her analysis of the initiative, Proposition 98 establishes a minimum level of funding for public schools and community colleges; requires the state to spend any excess revenues, up to a specified maximum, for public schools and community colleges; requires the Legislature to establish a state reserve fund; and requires the school districts to prepare and distribute "School ***1518** Accountability Report Cards" each year. (Ballot Pamp. analysis of Prop. 98 by Legislative Analyst as presented to the voters, Gen. Elec. (Nov. 8, 1988), p. 78, some capitalization and all paragraphing omitted.)

> FN1 Proposition 98 (Stats. 1988, p. A-264 et seq.) added two sections to the California Constitution, amended two other constitutional provisions and added six sections to the Education Code. It added section 5.5 to article XIII B of the California Constitution, amended section 2 of article XIII B, amended section 8 of article XVI, added section 8.5 to article XVI, and added sections 33126, 35256, 41300.1, 14020.1, 14022 and 41302.5 to the Education Code.
>
> The full text of Proposition 98 is set out in the appendix to this opinion.

To these ends, Proposition 98 sets a minimum funding level for "the monies to be applied by the state for the support of school districts and community college districts. ..." (Cal. Const., art. XVI, § 8, subd. (b).) It is around this phrase that the present controversy swirls. At issue in this case is the validity of the Legislature's decision to include funding for the Child Care and Development Services Act (Ed. Code, § 8200 et seq.) within the educational funding guarantees of Proposition 98. This decision was implemented by the enactment of Education Code section 41202,

subdivision (f), which declares that " 'monies to be applied by the state for the support of school districts and community college districts,' as used in Section 8 of Article XVI of the California Constitution, shall include funds appropriated for the Child Care and Development Services Act ...."

The California Teachers Association and three of its officers filed a petition for writ of mandate against the Director of Finance, the state Treasurer and the state Superintendent of Public Instruction to prohibit the inclusion of funding for the Child Care and Development Services Act within the Proposition 98 education funding guarantee. By stipulation, the California Children's Lobby, the Professional Association of Childhood Educators, the California Assocation for the Education of Young Children, and the Child Development Administrators Assocation, intervened in the action as real parties in interest. The trial court issued a writ of mandate prohibiting defendants from including any funds allocated to or administered by any entity or agency other than a school district as defined in Education Code section 41302.5, within the Proposition 98 educational funding guarantees, and declaring that Education Code sections 8203.5, subdivision (c), and 41202, subdivision (f), which include funding for the Child Care and Development Services Act within the Proposition 98 guarantees, are unconstitutional. Bill Honig, the State Superintendent of Public Instruction, and the real parties in interest appeal. We shall reverse.

I Procedural Background

Proposition 98 provides for the improvement of public education in two basic ways. The first, which is not implicated in this appeal, involves the allocation of state revenues in excess of the state appropriations limitation to elementary, high school and community college districts on a per-enrollment ***1519** basis for use solely for the purposes of instructional improvement and accountability. (Cal. Const., art. XIII B, § 2; art. XVI, § 8.5.) The second way, and the one involved here, establishes a minimum guaranteed state education funding level for "the moneys to be applied by the State for the support of school districts and community college districts ...." (Cal. Const., art. XVI, § 8, subd. (b).) [FN2]

FN2 Under Proposition 98 the minimum funding level is set as the greater of (1) the same percentage of general fund revenues as was set aside for school districts and community colleges in the 1986-1987 school year, or (2) the amount necessary to ensure that total state and local allocations be equal to the prior year's allocations, adjusted for cost of living and enrollment changes. (Cal. Const., art. XVI, § 8, subd. (b).) A third test was added at the June 1990 Primary Election by the passage of Proposition III. That measure is not involved here.

After its passage, the Legislature acted to implement Proposition 98. (Ed. Code, § 41200 et seq. [unless otherwise specified, all further statutory references will be to the Education Code].) One aspect of the Legislature's implementation is at issue in this appeal. As we have noted, in section 41202, subdivision (f), the Legislature provided, among other things: " 'State General Fund revenues appropriated for school districts and community college districts, respectively' and 'monies to be applied by the state for the support of school districts and community college districts,' as used in Section 8 of Article XVI of the California Constitution, shall include funds appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6 ...."

In order to ensure that the Child Care and Development Services Act serves the purposes of public education, the Legislature enacted section 8203.5, which provides: "(a) The Superintendent of Public Instruction shall ensure that each contract entered into under this chapter to provide child care and development services, or to facilitate the provision of those services, provides support to the public school system of this state through the delivery of appropriate educational services to the children served pursuant to the contract. [¶] (b) The Superintendent of Public Instruction shall ensure that all contracts for child care and development programs include a requirement that each public or private provider maintain a developmental profile to appropriately identify the emotional, social, physical, and cognitive growth of each child served in order to promote the child's success in the public schools. To the extent possible, the State Department of Education shall provide a developmental profile to all public and private providers using existing profile instruments that are most cost efficient. The provider of any program operated pursuant to a contract under Section 8262 shall be responsible for

maintaining developmental profiles upon entry through exit from a child developmental program. [¶] Notwithstanding any other provision of law, 'moneys to be applied by the [s]tate,' as used in subdivision (b) of ***1520** Section 8 of Article XVI of the California Constitution, includes funds appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6, whether or not those funds are allocated to school districts, as defined in Section 41302.5, or community college districts. [¶] (d) This section is not subject to Part 34 (commencing with Section 62000)." [FN3] ***1521**

FN3 In an uncodified provision the Legislature explained its purpose for including child care and development funds in the Proposition 98 funding guarantee: "The Legislature finds and declares as follows: [¶] (a) Since 1932, early childhood education and child development programs have been operated as part of the school programs that are conducted under the authority of the Superintendent of Public Instruction. In the 1988-89 fiscal year, 110,000 children in California were served in the state program of early childhood education and child development administered by the Superintendent of Public Instruction, as set forth in Chapter 2 (commencing with section 8200) of Part 6 of the Education Code. [¶] (b) Participation and enrollment in an early childhood education or child development program provides an opportunity for many children to hear their first English words (one in three speaks another language), to be introduced to the idea of numbers, to develop basic language concepts, to learn how to get along with other children and adults, and to begin to develop a positive self-image. [¶] (c) The Legislature has stated its intent that early childhood education and child development programs be a 'concomitant part of the educational system' by providing young children an equal opportunity for later school success. Those programs are considered by the general public to be an integral and essential part of the state's public education system. [¶] (d) Early childhood education programs for chldren of low-income families have been shown to increase high school graduation rates and college entry rates, to reduce the need for special education and grade level retention, and to reduce high school dropout rates. [¶] (e) In the state's early childhood education and development programs, each child is to receive an education program which is appropriate to his or her developmental, cultural, and linguistic needs. Each child is to receive a developmental profile, updated at regular intervals, which will be passed on to his or her elementary school. [¶] (f) In view of the unique function of early childhood education and child development programs, in supporting school districts by directly preparing children for participation in the public schools and by assisting those children in resolving special school-related problems, these programs constitute an essential and integral component of the overall system to carry out the mission of the public schools. Accordingly, in order to fully implement subdivision (b) of Section 8 of Article XVI of the California Constitution, which requires, in its introductory paragraph, a minimum level of funding 'for the support of' school districts, as defined, and community college districts, it is necessary to include, within the calculation of that funding, the funding provided by the Legislature for all early childhood education and development programs. Moreover, in accordance with the educational role of those programs, it is the responsibility of the Superintendent of Public Instruction to continue to ensure that all contracts for early childhood education and child develpment programs provide support to the public school system of this state through the delivery of appropriate educational services to the children served by the program. In addition, Section 8262.1 of the Education Code, as added by this act [in fact there is no section 8262.1], constitutes a necessary statutory implementation of that determination, which is consistent with the legislative history of the statutes that provide for the operation of early childhood education and child development programs. [¶] (g) For the period from the 1986-87 fiscal year to the present, the state's early childhood education and development programs have received funding adjustments for cost-of-living and enrollment increases that have been lower, overall, than the comparable adjustments for base revenue limits for school dis-

> tricts. [¶] However, it is the intent of the Legislature that the inclusion of early childhood education and child development programs within the calculation of the state's education funding obligation pursuant to Proposition 98 is not to result in requiring in that calculation the use of the lower level of funding received by these programs in the 1986- 87 fiscal year." (Stats. 1989, ch. 1394, § 1.)

The Child Care and Development Services Act is contained in sections 8200 through 8498. It is a comprehensive statewide master plan for child care and development services for children to age 14 and their parents. (§ 8201, subd. (a).) Among other things it includes such items as resource and referral programs (§§ 8210-8215), campus child care and development programs (§ 8225), migrant child care and development programs (§§ 8230-8233), preschool programs (§ 8235), general child care and development programs (§§ 8240-8242), and programs for children with special needs (§§ 8250-8252). Services under this statutory scheme may be provided directly by school districts or local education agencies or by contracts through such agencies, or services may be provided by private parties contracting with the state Department of Education. (See rep., Child Development, Program Facts, prepared by the Dept. of Ed., Child Development Div., Field Services Branch (1989) pp. 12-13.) Programs under the Child Care and Development Services Act are under the general supervision of the Superintendent of Public Instruction. (§ 8203.) In some instances federal funding is available and the Legislature has declared that federal reimbursement shall be claimed where available and that the Department of Education is designated as "the single state agency" responsible for the programs under federal requirements. (§§ 8205-8207.)

Plaintiffs filed this action to prohibit the inclusion of funding for the Child Care and Development Services Act within the Proposition 98 education funding guarantee. [FN4] They maintain that funds which are not allocated directly to and administered by school districts cannot be included within the provisions of Proposition 98. [FN5] The trial court agreed with plaintiffs. It concluded that Proposition 98 is not intrinsically ambiguous and that its ***1522** plain meaning requires that only appropriations allocated to, and administered by, school districts satisfy its minimum funding requirement. As the trial court saw it, "[t]he phrase 'monies to be applied by the state for the support of school districts,' taken as a whole, clearly refers to financial allocations for the financial support of school districts, and not the financial support of private child care and development programs which incidentallly benefit school districts." Judgment was entered accordingly and this appeal followed.

> FN4 Plaintiffs also contested the inclusion of funding for certain other types of programs within the Proposition 98 guarantee. In his answer defendant Bill Honig, as Superintendent of Public Instruction, conceded that plaintiffs are correct with respect to these other programs and no other party contests this concession. This appeal concerns only funding for the Child Care and Development Services Act.

> FN5 The Director of the Department of Finance, filed an answer in which he agreed with plaintiffs and he is a respondent in this appeal. The former state Treasurer successfully demurred on the ground that his function in this regard is purely ministerial and the Treasurer is not a party on appeal. Defendant Honig contested the petition with respect to child care and development programs and he is an appellant herein. As we have noted, the parties stipulated that the Children's Lobby et alia be permitted to intervene as real parties in interest and they are also appellants in this appeal. Amici curiae briefs in support of appellants have been filed by the state Legislature, the California Congress of Parents, Teachers and Students, Inc., and certain child advocacy and care provider organizations.

II Historical Background

There can be no doubt that education has historically been accorded an ascendant position in this state. Indeed, at the very start, article IX of our 1849 Constitution created the office of Superintendent of Public Instruction; required the Legislature to encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement; required the Legislature to establish a system of common schools; and established a fund for the support of the common schools. (See Stats. 1849, p. 32.)

As this recitation will demonstrate, the preeminent position of education in California has been a constant in a world of governmental flux. Section 1 of article IX of the Constitution now provides, as it has since 1879: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." Section 5 of article IX presently mandates, as it has since 1879: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established." Since 1933, our Constitution has provided that from state revenues there shall first be set apart the moneys to be applied by the state for the support of the public school system and institutions of higher education. (Cal. Const., art. XVI, § 8, subd. (a); see former art. XIII, § 15, Stats. 1935, p. IXIX.)

Section 6 of article IX of our Constitution establishes a State School Fund. That section provides, in relevant part: "The Legislature shall add to the State School Fund such other means from the revenues of the State as shall provide in said fund for apportionment in each fiscal year, an amount not less than one hundred eighty dollars ($180) per pupil in average daily attendance in the kindergarten schools, elementary schools, secondary schools, and technical schools in the Public School System during the next ***1523** preceding fiscal year. [¶] The entire State School Fund shall be apportioned in each fiscal year in such manner as the Legislature may provide, through the school districts and other agencies maintaining such schools, for the support of, and aid to, kindergarten schools, elementary schools, secondary schools, and technical schools except that there shall be apportioned to each school district in each fiscal year not less than one hundred twenty dollars ($120) per pupil in average daily attendance in the district during the next preceding fiscal year and except that the amount apportioned to each school district in each fiscal year shall be not less than twenty-four hundred dollars ($2,400)."

Article IX, section 6, of the Constitution also provides in part: "The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and State colleges, established in accordance with law and, in addition, the school districts and other agencies authorized to maintain them. (1)**(See fn. 6.)** No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System." [FN6]

> FN6 The University of California is a public trust which finds its roots in the Constitution of 1849. (See Stats. 1849, p. 32; and see Cal. Const., art. IX, § 9.) The University of California has "full powers of organization and government" subject only to limited legislative control. (*Ibid.*) As such, it is not part of the Public School System and is subject to entirely different legal standards. The University of California is beyond the scope of the issues presented in this appeal.

For the administration of this public school system, the Constitution creates the office of Superintendent of Public Education and establishes a State Board of Education. (Cal. Const., art. IX, §§ 2, 2.1.) It provides for county boards of education and superintendents of schools. (Cal. Const., art. IX, §§ 3-3.3.) It permits city charters to provide for the election or appointment of boards of education. (Cal. Const., art. IX, § 16.) Section 14 of article IX provides: "The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and community college districts, of every kind and class, and may classify such districts. [¶] The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established."

(2) It has been and continues to be the legislative policy of this state to strengthen and encourage local responsibility for control of public education ***1524** through local school districts. (§ 14000.) [FN7] Nevertheless, education and the operation of the public schools remain matters of statewide rather than local or municipal concern. (*Hall v. City of Taft* (1956) 47 Cal.2d 177, 179 [302 P.2d 574]; *Esberg v. Badaracco* (1927) 202 Cal. 110, 115- 116 [259 P. 730]; *Kennedy v. Miller* (1893) 97 Cal. 429, 431 [32 P.

558]; *Whisman v. San Francisco Unified Sch. Dist.* (1978) 86 Cal.App.3d 782, 789 [150 Cal.Rptr. 548].) Hence, local school districts are deemed to be agencies of the state for the administration of the school system and have been described as quasi-municipal corporations. (*Hall v. City of Taft, supra,* 47 Cal.2d at p. 181; *Pass School Dist. v. Hollywood Dist.* (1909) 156 Cal. 416, 418 [105 P. 122]; *Hughes v. Ewing* (1892) 93 Cal. 414, 417; *Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417, 421 [324 P.2d 328].) Thus, a school district is not a distinct and independent body politic and is not free and independent of legislative control. (*Allen v. Board of Trustees* (1910) 157 Cal. 720, 725-726 [109 P. 486].)

FN7 Although state funding for education is designed to enhance local responsibility for education, the Legislature has found it undesirable to yield total monetary authority to school districts. In the Statutes of 1981, chapter 100, section 1, at page 653, it is said: "The Legislature finds and declares that as a matter of policy the setting aside of categorical support for school districts is necessary to ensure the adequate funding for programs such as the provision of textbooks, pupil transportation, teacher retirement, special education for individuals with exceptional needs, and for educationally disadvantaged youths. The Legislature supports this policy of appropriating separately funds for special purposes because it provides funds for the intended purposes of the programs and because the substantial variation from district to district in terms of financial need for the programs cannot be accommodated adequately in general school support formulas. Although this act does not appropriate funds for inflation for categorical programs, it is the intent of the Legislature that, because categorical programs provide essential educational services, these programs should receive general inflation funds as provided in the Budget Act for other state programs." Our Supreme Court has determined that under our Constitution education is uniquely important and cannot be left totally under local monetary control. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 614 [96 Cal.Rptr. 601, 487 P.2d 1241].)

(3) The Legislature's power over the public school system has been variously described as exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints. (*Hall v. City of Taft, supra,* 47 Cal.2d at p. 181; *Pass School Dist. v. Hollywood Dist., supra,* 156 Cal. at p. 419; *San Carlos Sch. Dist. v. State Bd. of Education* (1968) 258 Cal.App.2d 317, 324 [65 Cal.Rptr. 711]; *Town of Atherton v. Superior Court, supra,* 159 Cal.App.2d 417, 421.) Indeed, it is said that the Legislature cannot delegate ultimate responsibility over education to other public or private entities. (*Hall v. City of Taft, supra,* 47 Cal.2d at p. 181; *Piper v. Big Pine School* Dist. (1924) 193 Cal. 664, 669 [226 P. 926].) Consequently, regulation of the education system by the Legislature will be held to be controlling over any inconsistent local attempts at regulation or administration of the schools. (*Hall v. City of Taft, supra,* 47 Cal.2d at p. 181; ***1525***Esberg v. Badaracco, supra,* 202 Cal. at pp. 115- 116; *Whisman v. San Francisco Unified Sch. Dist., supra,* 86 Cal.App.3d at p. 789.) And no one may obtain rights vested against state control by virtue of local provisions, ordinances or regulations. (*Whisman v. San Francisco Unified Sch. Dist., supra,* 86 Cal.App.3d at p. 789.)

The Legislature, in the exercise of its sweeping authority over education and the school system, has the power to create, abolish, divide, merge, or alter the boundaries of school districts. (*Allen v. Board of Trustees, supra,* 157 Cal. at pp. 725-726; *Pass School Dist. v. Hollywood Dist., supra,* 156 Cal. at p. 418; *Hughes v. Ewing, supra,* 93 Cal. at p. 417.) Indeed, the state is the beneficial owner of school property and local districts hold title as trustee for the state. (*Hall v. City of Taft, supra,* 47 Cal.2d at pp. 181-182; *Chico Unified Sch. Dist. v. Board of Supervisors* (1970) 3 Cal.App.3d 852, 855 [84 Cal.Rptr. 198]; *Town of Atherton v. Superior Court, supra,* 159 Cal.App.2d at p. 421.) "School moneys belong to the state, and the apportionment of funds to a school district does not give that district a proprietary right therein." (*Butler v. Compton Junior College Dist.* (1947) 77 Cal.App.2d 719, 729 [176 P.2d 417]; see also *Gridley School District v. Stout* (1901) 134 Cal. 592, 593 [66 P. 785].) It follows that the Legislature can transfer property and apportion debts between school districts as it sees fit. (*Pass School Dist. v. Hollywood Dist., supra,* 156 Cal. at pp. 418-419; *Hughes v. Ewing, supra,* 93 Cal. at p. 417; *San Carlos Sch. Dist. v. State Bd. of Education, supra,* 258 Cal.App.2d at p. 324.)

While few will deny the critical importance of education, the needs of the public education system often conflict with other desires of the electorate, especially that of minimizing the tax burden imposed upon the populace. Fewer still would deny that financing the public educational system in this state is Byzantine in its intricacy and complexity. Public education financing involves two basic, broad, and interrelated problems: public school resource production (how the funds are raised), and public school resource deployment (how the funds are spent). (See Andrews, *Serrano II: Equal Access to School Resources and Fiscal Neutrality-A View From Washington State* (1977) 4 Hast. Const.L.Q. 425, 429, fn. 18 [hereafter *Equal Access to School Resources*].) Public school financing is complicated by such matters as whether revenue should be raised through state or local taxation or some combination of both (see *Serrano v. Priest* (1976) 18 Cal.3d 728, 747 [135 Cal.Rptr. 345, 557 P.2d 929] [hereafter *Serrano II*]; and see *Equal Access to School Resources, supra,* 4 Hast. Const.L.Q. at pp. 445-446); disparate tax base to units of average daily attendance (ADA) ratios among various districts (see *Serrano v. Priest, supra,* 5 Cal.3d at p. 592 [hereafter *Serrano I*]); the willingness (or ability) of local voters to authorize increased taxes or expenditures for education (see *Serrano II, supra,* 18 Cal.3d at p. 769); the ***1526** availability of federal funding for educational programs and the sometimes inflexible qualification criteria for such funding (see Stats. 1981, ch. 100, § 1.3, pp. 653-654); the differing needs of schools and their students (see Stats. 1981, ch. 100, § 1, p. 653); and the difficulty of determining what types of services or programs should or should not be included within the educational budget (see *Equal Access to School Resources, supra,* 4 Hast. Const.L.Q. at pp. 441-442.) Although these matters are by no means exhaustive, they do illustrate the inherent complexity involved in developing an adequate formula for school support.

In the past 20 years state funding for education has been significantly influenced by several legal and political events. The changes began in 1971, a time when the major source of school revenue was derived from local real property taxes. (*Serrano I, supra,* 5 Cal.3d at p. 592.) The state then contributed aid to school districts in two forms: "basic state aid," which was a flat financial grant per pupil per year; and "equalization aid," which was based upon the assessed valuation of property per pupil within the district. (*Id.* at p. 593.) This educational status quo was challenged in *Serrano I,* a class action in which the plaintiffs maintained that the public school financing system created disparate educational opportunities based upon wealth. It was asserted that due to a substantial dependence upon local property taxes children from wealthy districts received greater educational opportunities than children from poorer districts. [FN8] In 1971, the California Supreme Court held that wealth is a suspect classification and that education constitutes a fundamental interest and thus the state plan should be subjected to strict scrutiny under equal protection principles. (*Id.* at pp. 614-615.) The high court concluded that an educational system which produces disparities of opportunity based upon district wealth would fail to meet constitutional requirements and the action was remanded for trial of the factual allegations of the complaint. (*Id.* at p. 619.)

> FN8 It has been pointed out that the wealth of a school district will not necessarily reflect the wealth of families it serves. For example, a district might have a high assessed valuation to ADA ratio because it includes areas which are heavily developed for commercial or industrial purposes, yet serve families who live near such areas because they cannot afford to move to more affluent areas. Conversely, a suburban or rural district may serve relatively affluent students yet lack a high assessed valuation to ADA ratio because it lacks any commercially developed areas within its boundaries. In *Serrano I* the Court disregarded this possibility because it was reviewing a demurrer to a complaint which alleged that there was a correlation between the wealth of a district and its residents and for the more basic reason that it did not believe that disparities in educational opportunities could be permitted simply because they reflected the wealth of the district rather than the individual. (*Id.* at pp. 600-601.)

After *Serrano I,* the Legislature modified the formula for state education aid in an effort to eliminate its objectionable features. The parties stipulated that the modified formula should be considered at trial. (***1527***Serrano II, supra,* 18 Cal.3d at pp. 736-737.) Also during the pendency of the trial court proceedings, the United States Supreme Court rendered its

opinion in *San Antonio School District v. Rodriguez* (1973) 411 U.S. 1 [36 L.Ed.2d 16, 93 S.Ct. 1278]. There, the Texas public school financing system, which was substantially similar to ours, was upheld by the federal high court. The court concluded that the Texas system did not result in a suspect classification based upon wealth and did not affect a fundamental interest and thus needed only to meet the "rational relationship" test under equal protection principles. (*Id.* at pp. 33-34, 48-55, 61-62 [36 L.Ed.2d at pp. 42-43, 51-56, 59-60].) Thereafter the *Serrano* trial court held that California's public education financing scheme violated independent state equal protection guarantees. In *Serrano II,* the California Supreme Court affirmed the judgment of the trial court which gave the state six years for bringing the public school financing system into constitutional compliance. (18 Cal.3d at pp. 749, 777.)

Meanwhile, at the June 1978 Primary Election the voters enacted Proposition 13, which added article XIII A to the California Constitution. That measure changed California's real property tax system from a current value system to an acquisition value system and limited the tax rates which could be imposed upon real property. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 220, 238 [149 Cal.Rptr. 239, 583 P.2d 1281].) In an effort to mitigate the effects of article XIII A upon local governments and schools, the Legislature enacted a bailout bill to distribute surplus state funds to local agencies. (See *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 297 [152 Cal.Rptr. 903, 591 P.2d 1].) Article XIII A also forced the state to assume a greater responsibility for financing the public school system. (§ 41060.)

In the November 1979 Special Statewide Election the voters enacted Proposition 4 to add article XIII B to the California Constitution. Article XIII B imposes limitations upon the power of all California governmental entities to appropriate funds for expenditures. (Cal. Const., art. XIII B, §§ 1, 8, subds. (a), (b).) Revenues received by any governmental entity in excess of its appropriations limit must be returned by a revision of tax rates or fee schedules within the next two fiscal years. (Cal. Const., art. XIII B, § 2.) The measure also provides that whenever the state mandates a new program or higher level of service upon local governments, it must provide a subvention of funds to reimburse local government for the added costs. (Cal. Const., art. XIII B, § 6.)

It can be seen that as a result of the events of the 1970's the already difficult task of financing public education was made even more formidable. ***1528** As a result of article XIII A, the state was forced to assume a greater share of the responsibility for funding education. Any formula for funding education would be required to meet equal protection principles as set forth in the *Serrano* decisions. And as a result of article XIII B, there was certain to be greater competition for the state revenues within the appropriations limit. It was against this background that the voters enacted Proposition 98 at the November 1988 General Election.

III Matters Not in Issue

The question presented in this appeal can best be addressed when it is narrowed to its appropriate scope by elimination of what is not involved. We are not here concerned with whether the Child Care and Development Services Act in fact completely entails an educationally related program. (4) While the Legislature is given broad authority over education, it cannot divert education funds for other purposes. (*Crosby v. Lyon* (1869) 37 Cal. 242, 245.) But plaintiffs did not and cannot reasonably contend that the child care program under attack does not at least in part serve an educational purpose. Education is a broad and comprehensive matter. (*Board of Trustees v. County of Santa Clara* (1978) 86 Cal.App.3d 79, 84 [150 Cal.Rptr. 109].) It "[c]omprehends not merely the instruction received at school or college, but the whole course of training; moral, religious, vocational, intellectual, and physical. Education may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all. [It includes the] [a]cquisition of all knowledge tending to train and develop the individual." (Black's Law Dict. (5th ed. 1979) p. 461, col. 2.) Our Constitution places a similarly broad meaning upon education when it requires the Legislature to "encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." (Cal. Const., art. IX, § 1.) [FN9] Moreover, under our Constitution the Legislature is given broad discretion in determining the types of programs and services which further the purposes of education. (*Veterans' Welfare Board v. Riley* (1922) 189 Cal. 159, 164-166 [208 P. 678, 22 A.L.R.

1531]; *University of So. California v. Robbins* (1934) 1 Cal.App.2d 523, 528 [37 P.2d 163].) It cannot be said that the Legislature has been arbitrary and unreasonable in its determination that the Child Care and Development Services Act furthers the purposes of public education.

> FN9 While "education" is sufficiently broad to include religious training, specific provisions of the state and federal Constitutions exclude religious training from governmental education programs. (U.S. Const., Amend. I; Cal. Const., art. I, § 4, art. IX, § 8.)

We are not here concerned with the question whether the Legislature's implementation of Proposition 98 is partially invalid or invalid as applied. ***1529** Plaintiffs claim that the inclusion of funding for the Child Care and Development Services Act within the Proposition 98 funding requirement is invalid in toto and on its face. They argue that Proposition 98 funds must be transferred to school districts which then have total discretion to determine how those funds should be spent. They did not present evidence or argument to establish that portions of the Child Care and Development Act lack a sufficient nexus to education to be included in education funding or that the manner in which it is carried out by the Superintendent of Public Instruction does not support and further the purpose of education. (5) "Because this is a challenge to the facial validity of the [the statute], our task is to determine whether the statute can constitutionally be applied. 'To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute. ... Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.' " (*Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 267 [5 Cal.Rptr.2d 545, 825 P.2d 438], italics in original.)

We are not here concerned with the advisability or wisdom of the Legislature's decision. [FN10] (6) Under our form of government, policymaking authority is vested in the Legislature and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation. (*City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898, 913 [120 Cal.Rptr. 707, 534 P.2d 403]; *County of Los Angeles v. Superior Court* (1975) 13 Cal.3d 721, 727 [119 Cal.Rptr. 631, 532 P.2d 495]; *Galvan v. Superior Court* (1969) 70 Cal.2d 851, 869 [76 Cal.Rptr. 642, 452 P.2d 930]; *Wilke & Holzheiser, Inc. v. Dept. of Alcoholic Bev. Control* (1966) 65 Cal.2d 349, 359 [55 Cal.Rptr. 23, 420 P.2d 735].) As a court of review our role is limited to determining whether the Legislature's choice is constitutionally prohibited. (*Ibid.*)

> FN10 For this reason we deny the request of amici curiae that we take judicial notice of certain legislative materials. The submitted documents tend to establish the value of, and the need for, funding for child care and development programs. Those are matters within the Legislature's prerogative and we may not superintend its determination.

Furthermore, we are not concerned here with statutory inconsistency. Instead, the issue relates solely to the construction of constitutional provisions. Proposition 98 added certain statutory provisions to the Education Code, Section 13 of Proposition 98 provides: "No provision of this Act may be changed except to further its purposes by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed ***1530** by the Governor." The legislation challenged by plaintiffs was enacted by the requisite two-thirds majorities and signed by the Governor. Accordingly, it is the constitutional provisions of Proposition 98 which are at issue in this case.

Finally, we are not here concerned with article XVI, section 8.5 of the Constitution, also added by Proposition 98. In that provision the voters determined that, within certain limits, state revenues in excess of the state appropriations limit should be used to improve education in the elementary and secondary schools and community colleges rather than be returned to the populace. The measure is self-executing; it requires no legislative action. Each year the Controller must transfer and allocate such excess revenues to the state school fund restricted for school districts and community colleges, and then must allocate those funds to the districts and community colleges on a per-enrollment basis. (Cal. Const., art. XVI, § 8.5, subds. (a), (c).) Those sums may be expended solely for purposes of instructional improvement and accountability. (Cal. Const., art. XVI, § 8.5, subd. (d).)

Article XVI, section 8.5 is an entirely different matter than article XVI, section 8. Section 8.5 deals with revenues which are constitutionally beyond the Legislature's spending prerogatives under article XIII B. Section 8.5 does not extend the Legislature's spending power to excess revenues; rather it imposes a self-executing, ministerial duty upon the Controller to transfer such excess revenues to a restricted portion of the school fund and thence to allocate such revenues to school districts and community college districts on a per-enrollment basis. Section 8.5 specifically restricts the purposes for which those funds may be expended. The specific provisions of section 8.5 would prohibit the Legislature from retaining and utilizing those funds for purposes of the Child Care and Development Services Act.

IV Issue on Appeal

In this case we are concerned with whether funding for the Child Care and Development Services Act is on its face beyond the educational funding requirements of article XVI, section 8, of the Constitution as enacted by Proposition 98.

Defendant Honig contends that the Legislature has plenary power to define how California's public school system operates as well as what entities constitute that system. Given that absolute authority, which remains undiminished by the enactment of Proposition 98, the Legislature was empowered to include funds for early childhood education and child development within the minimum funding guarantee established by that initiative. ***1531** He argues that the trial court, contrary to the settled and fundamental principles of constitutional adjudication, misconstrued the critical phrase "moneys to be applied by the State for the support of school districts" to be limited to funds directly allocated to school districts. In his view, "the definition of 'school districts' set forth in Proposition 98 is far from precise. Its uncertainty in fact made it necessary for the Legislature to refine and clarify which entities in the public school system were to be counted as falling within its minimum funding guarantee. This the Legislature did, three times. [¶] More importantly, nothing in Proposition 98 or any other provision of law either expressly or implicitly restricted the Legislature from including [the California Department of Education's] direct provision of child development services through contracts with private agencies within that guarantee. Since 1972, the Legislature has determined that private agencies, as well as public agencies, have been integral to the statewide provision of such services under the Child Development Act, and thereby to California's public school system. Accordingly, the Legislature's implementation of Proposition 98 in Sections 41202(f) and 8203.5(c) was not only possible and reasonable, it was consistent with its prior acts which made private agency child development services a recognized part of the public school system."

(7a) Plaintiffs counter that the plain language of Proposition 98 demonstrates that the funds must go directly to school districts and not to private entities contracting with the Department of Education. As they read the key phrase of the initiative, "monies to be applied by the State for the support of school districts" means funds "allocated to" or "appropriated for" school districts. Consequently, so their argument goes, the inclusion of non-school-district programs within the initiative's guarantee nullifies the central purpose of Proposition 98.

Real parties in interest argue alternatively that child development programs funded directly by the Department of Education are included within the phrase "school districts" but even if they are not, the Legislature has the power to amend the statutory definition of "school districts" contained in Proposition 98.

In analyzing these constitutional contentions we are bound by several fundamental principles of constitutional adjudication. (8) " 'Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. Two important consequences flow from this fact. First, the entire lawmaking authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers *which are not expressly, or by necessary implication* ***1532** *denied to it by the Constitution. ...* [¶] Secondly, all intendments favor the exercise of the Legislature's plenary authority: "If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. *Such restrictions and limitations* [*imposed by the Constitution*] *are to be construed strictly, and are not to be extended to include matters not covered by the language used.*" ' (Italics added.)"

(*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180 [172 Cal.Rptr. 487, 624 P.2d 1215], citing *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691 [97 Cal.Rptr. 1, 488 P.2d 161], citations omitted.)

(9) Another principle of constitutional adjudication requires that the constitutional provisions added by Proposition 98 be considered in light of all other relevant provisions of the Constitution, including those that contain, define, and limit the status of school districts and their relationship to the state. "The initiative amendment to the [C]onstitution itself must be interpreted in harmony with the other provisions of the organic law of this state of which it has become a part. To construe it otherwise would be to break down and destroy the barriers and limitations which the [C]onstitution, read as a whole, has cast about legislation, both state and local." (*Galvin v. Board of Supervisors* (1925) 195 Cal. 686, 692 [235 P. 450]. See also *Edler v. Hollopeter* (1931) 214 Cal. 427, 430 [6 P.2d 245].) In *Galvin v. Board of Supervisors, supra,* 195 Cal. 686, the petitioners sought to compel a county board of supervisors to submit an initiative ordinance to the local voters. The Supreme Court held that the provisions of the Constitution which reserve the initiative power to local voters must be construed in light of other provisions which contain, define, and limit the scope of permissible local legislation. (*Id.* at p. 692.) This precluded local voters from accomplishing by initiative that which was beyond the powers of the local board of supervisors. (*Id.* at p. 693. See also *Giddings v. Board of Trustees* (1913) 165 Cal. 695, 698 [133 P. 479].) That principle of construction applies here.

(7b) When we consider Proposition 98 in light of other provisions of our Constitution, ly article IX, which is devoted to education, and the long, unbroken line of authorities interpreting such provisions, we must reject an underlying premise of plaintiffs' argument. According to plaintiffs, the challenged legislation is invalid because it divests school districts of complete and total control over the funds the state is required to devote to education under Proposition 98. As plaintiffs put it: "Of course, if a school district decides to use part of its funding for child care and development programs, it is entitled to do so. It is also entitled to ignore child care and development altogether, and use its funding for other programs that it considers to be a higher priority." Nothing in Proposition 98 states or implies ***1533** that school districts are to have the autonomy claimed by plaintiffs. Article IX, section 5, of our Constitution still provides for one system of common schools, which implies a "unity of purpose as well as an entirety of operation, and the direction to the [L]egislature to provide 'a' system of common schools means *one* system which shall be applicable to all the common schools within the state." (*Kennedy v. Miller* (1893) 97 Cal. 429, 432 [32 P. 558], italics original; see also *Serrano I, supra,* 5 Cal.3d at p. 595.)

Since Proposition 98 did not alter the state's role in education, the Constitution continues to make education and the operation of the public schools a matter of statewide rather than local or municipal concern. (*Hall v. City of Taft, supra,* 47 Cal.2d at p. 179; *Esberg v. Badaracco, supra,* 202 Cal. at pp. 115-116; *Kennedy v. Miller, supra,* 97 Cal. at p. 431; *Whisman v. San Francisco Unified School Dist., supra,* 86 Cal.App.3d at p. 789.) Local school districts remain agencies of the state rather than independent, autonomous political bodies. (*Allen v. Board of Trustees, supra,* 157 Cal. at pp. 725-726.) The Legislature's control over the public education system is still plenary. (*Hall v. City of Taft, supra,* 47 Cal.2d at pp. 180-181; *Pass School Dist. v. Hollywood Dist., supra,* 156 Cal. at p. 419; *San Carlos Sch. Dist. v. State Bd. of Education, supra,* 258 Cal.App.2d at p. 324; *Town of Atherton v. Superior Court, supra,* 159 Cal.App.2d at p. 421.) The Legislature still has ultimate and nondelegable responsibility for education in this state. (*Hall v. City of Taft, supra,* 47 Cal.2d at p. 181; *Piper v. Big Pine School Dist., supra,* 193 Cal. at p. 669.) All school properties are still held in trust with the state as the beneficial owner. (*Hall v. City of Taft, supra,* 47 Cal.2d at p. 182; *Chico Unified Sch. Dist. v. Board of Supervisors, supra,* 3 Cal.App.3d at p. 855; *Town of Atherton v. Superior Court, supra,* 159 Cal.App.2d at p. 421.) And school districts still do not have a proprietary interest in moneys which are apportioned to them. (*Gridley School District v. Stout, supra,* 134 Cal. at p. 593; *Butler v. Compton Junior College Dist., supra,* 77 Cal.App.2d at p. 729.) Of course, if the electorate chose to alter our constitutional scheme for education it could do so. Education could be made a matter of local concern and school districts could be given greater autonomy. But we cannot conclude that such a major governmental restructuring was accomplished by implication in a measure dealing with public finance which spoke not at all on such matters.

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In light of the Legislature's plenary authority over education and its legal relationship with school districts, we do not find Proposition 98 to be clear and unambiguous as asserted by plaintiffs. The measure establishes a minimum sum for "the monies to be applied by the state for the support of school districts and community college districts ...." Rather than expressly divesting the state of its traditional authority over education funds, ***1534** this provision would appear to retain state control since the moneys are to be "applied by the state." The measure does not expressly restrict the Legislature's plenary authority nor does it grant to school districts exclusive control over education funds. Had such a result been intended there are any number of linguistic formulations which could have so specified with adequate clarity. As a court, we cannot impose limitations or restrictions upon the Legislature's prerogatives in the absence of language reasonably calculated to require such a result when subjected to strict construction. (*Pacific Legal Foundation v. Brown, supra,* 29 Cal.3d at p. 180.)

Given plaintiffs' facial attack, it is enough to hold, as we do, that legislative programs which advance, and hence support, the educational mission of school districts and community college districts may constitutionally be included within the funding guarantee of Proposition 98. It cannot be said that the Child Care and Development Services Act totally and on its face fails to meet this test. [FN11] This is as far as we need go in this case. The plaintiffs asserted, and the judgment holds, that only funds allocated to and administered by school districts satisfy the requirements of Proposition 98. Such a conclusion improperly grants school districts a proprietary interest in school funds and gives them a degree of political autonomy in contravention to the Legislature's long-standing and well-established plenary authority over education in this state. Since we do not find such a fundamental governmental restructuring in Proposition 98, we must reject the reasoning of the trial court and reverse its judgment.

FN11 In reaching this conclusion we reject real parties' contention that the Legislature has impliedly defined programs under the Child Care and Development Services Act as being within the definition of "school districts." Section 41302.5 defines the agencies which are included within the phrase "school district" as used in Proposition 98. In implementing Proposition 98 the Legislature referred to that section but did not see fit to amend it to include child care and development programs. (§ 41202, subd. (f).) And in section 8203.5, subdivision (c), the Legislature included Child Care and Development Services Act funding within the Proposition 98 guarantee "whether or not those funds are allocated to school districts ...." By so providing the Legislature clearly chose not to include child care and development programs within the definition of school districts.

Summary and Conclusion

In this state, education is a matter of statewide rather than local or municipal concern. Local school districts are agencies of the state subject to the Legislature's plenary authority over education. Local school districts do not have political autonomy and have no proprietary interest in the properties or moneys they hold in trust for the state. Proposition 98 set forth minimum sums to be applied by the state for the support of school districts and community colleges. This measure does not deprive the Legislature of ***1535** its plenary authority over education and does not grant school districts political autonomy or a proprietary interest in the minimum funding to be applied by the state for support of school districts and community colleges. Accordingly, we reject the assertion that all funds within the minimum funding requirements of Proposition 98 must be allocated to, and administered by, school districts. Our opinion goes no further. While the Legislature's authority over education and education funding is broad, it is not unlimited. Our conclusion that Proposition 98 did not divest the Legislature of its traditional authority over education should not be construed to foreclose specific challenges to the Legislature's decisions based upon appropriate factual and legal showings. We hold only that the decision to include funding for the Child Care and Development Services Act within the Proposition 98 minimum funding guarantees is not in toto and on its face beyond the Legislature's constitutional authority.

Disposition

The judgment is reversed. Appellant Honig shall recover his costs on appeal.

Marler, J., and Nicholson, J., concurred.

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A petition for a rehearing was denied May 27, 1992, and the petition of plaintiffs and respondents for review by the Supreme Court was denied July 30, 1992. Mosk, J., was of the opinion that the petition should be granted. ***1536**

Appendix

Proposition 98 provides in full:

Section 1. This Act shall be known as "The Classroom Instructional and Accountability Act."

Section 2. Purpose and Intent. The People of the State of California find and declare that:

(a) California schools are the fastest growing in the nation. Our schools must make room for an additional 130,000 students every year.

(b) Classes in California's schools have become so seriously overcrowded that California now has the largest classes of any state in the nation.

(c) This act will enable Californians to once again have one of the best public school systems in the nation.

(d) This act will not raise taxes.

(e) It is the intent of the People of California to ensure that our schools spend money where it is most needed. Therefore, this Act will require every local school board to prepare a School Accountability Report Card to guarantee accountability for the dollars spent.

(f) This Act will require that excess state funds be used directly for classroom instructional improvement by providing for additional instructional materials and reducing class sizes.

(g) This Act will establish a prudent state reserve to enable California to set aside funds when the economy is strong and prevent cutbacks or tax increases in times of severe need or emergency.

Section 3. Section 5.5 is hereby added to Article XIIIB as follows:

Section 5.5 Prudent State Reserve. The Legislature shall establish a prudent state reserve fund in such amount as it shall deem reasonable and necessary. Contributions to, and withdrawals from, the fund shall be subject to the provisions of Section 5 of this Article.

Section 4. Section 2 of Article XIIIB is hereby amended to read as follows:

Section 2. Revenues in Excess of Limitation. ***1537**

(a) All revenues received by the state in excess of that amount which is appropriated by the state in compliance with this Article, and which would otherwise by required, pursuant to subdivision (b) of this Section, to be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years, shall be transferred and allocated pursuant to Section 8.5 of Article XVI up to the maximum amount permitted by that section.

(b) Except as provided in subdivision (a) of this Section, revenues received by any entity of government in excess of that amount which is appropriated by such entity in compliance with this Article during the fiscal year shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

Section 5. Section 8 of Article XVI is hereby amended to read as follows:

Section 8. School Funding Priority

(a) From all state revenues there shall first be set apart the monies to be applied by the state for support of the public school system and public institutions of higher education.

(b) Commencing with the 1988-89 fiscal year, the monies to be applied by the state for the support of school districts and community college districts shall not be less than the greater of:

(1) The amount which, as a percentage of the State General Fund revenues which may be appropriated pursuant to Article XIIIB, equals the percentage of such State General Fund revenues appropriated for school districts and community college districts, re-

spectively, in fiscal year 1986-87; or

(2) The amount required to ensure that the total allocations to school districts and community college districts from the State General Fund proceeds of taxes appropriated pursuant to Article XIIIB and allocated local proceeds of taxes shall not be less than the total amount from these sources in the prior year, adjusted for increases in enrollment, and adjusted for changes in the cost of living pursuant to the provisions of Article XIIIB.

(c) The provisions of subdivision (b) of this Section may be suspended for one year by the enactment of an urgency statute pursuant to Section 8 of Article IV, provided that no urgency statute enacted under this subdivision may be made part of or included within any bill enacted pursuant to Section 12 of Article IV. ***1538**

Section 6. Section 8.5 of Article XVI is hereby added as follows:

Section 8.5. Allocations to State School Fund

(a) In addition to the amount required to be applied for the support of school districts and community colleges pursuant to Section 8(b), the Controller shall during each fiscal year transfer and allocate all revenues available pursuant to subdivision (a) of Section 2 of Article XIIIB, up to a maximum of four percent (4%) of the total amount required pursuant to Section 8(b) of this Article, to that portion of the State School Fund restricted for elementary and high school purposes, and to that portion of the State School Fund restricted for community college purposes, respectively, in proportion to the enrollment in school districts and community college districts respectively.

(1) With respect to funds allocated to that portion of the State School Fund restricted for elementary and high school purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Superintendent of Public Instruction mutually determine that current annual expenditures per student equal or exceed the average annual expenditure per student of the ten states with the highest annual expenditures per student for elementary and high schools, and that average clas [*sic*] size equals or is less than the average class size of the ten states with the lowest clas [*sic*] size for elementary and high schools.

(2) With respect to funds allocated to that portion of the State School Fund restricted for community college purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Chancellor of Community Colleges mutually determine that current annual expenditures per student for community colleges in this state equal or exceed the average annual expenditure per student of the ten states with the highest annual expenditures per student for community colleges.

(b) Notwithstanding the provisions of Article XIIIB, funds allocated pursuant to this section shall not constitute appropriations subject to limitation, but appropriation limits established in Article XIIIB shall be annually increased for any such allocations made in the prior year.

(c) From any funds transferred to the State School Fund pursuant to paragraph (a) of this Section, the Controller shall each year allocate to each school district and community college district an equal amount per enrollment in school districts from the amount in that portion of the State ***1539** School Fund restricted for elementary and high school purposes and an equal amount per enrollment in community college districts from that portion of the State School Fund restricted for community college purposes.

(d) All revenues allocated pursuant to subdivision (a) of this section, together with an amount equal to the total amount of revenues allocated pursuant to subdivision (a) of this section in all prior years, as adjusted if required by Section 8(b)(2) of Article XVI, shall be expended solely for the purposes of instructional improvement and accountability as required by law.

(e) Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school.

Section 7. Section 33126 is hereby added to Article 2 of Chapter 2 of Part 20 of Division 2 of Title 2 of the Education Code to read as follows:

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33126. School Accountability Report Card

In order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the Superintendent of Public Instruction shall by March 1, 1989, develop and present to the Board of Education for adoption a statewide model School Accountability Report Card.

(a) The model School Accountability Report Card shall include, but is not limited to, assessment of the following school conditions:

(1) Student achievement in and progress toward meeting reading, writing, arithmetic and other academic goals.

(2) Progress toward reducing drop-out rates.

(3) Estimated expenditures per student, and types of services funded.

(4) Progress toward reducing class sizes and teaching loads.

(5) Any assignment of teachers outside their subject areas of competence.

(6) Quality and currency of textbooks and other instructional materials.

(7) The availability of qualified personnel to provide counseling and other student support services. ***1540**

(8) Availability of qualified substitute teachers.

(9) Safety, cleanliness, and adequacy of school facilities.

(10) Adequacy of teacher evaluations and opportunities for professional improvement.

(11) Classroom discipline and climate for learning.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership.

(b) in developing the statewide model School Accountability Report, the Superintendent of Public Instruction shall consult with a Task Force on Instructional Improvement, to be appointed by the Superintendent, composed of practicing classroom teachers, school administrators, parents, school board members, classified employees, and educational research specialists, provided that the majority of the task force shall consist of practicing classroom teachers.

Section 8. Section 35256 is hereby added to Article 8 of Chapter 2 of Part 20 of Division 3 of Title 2 of the Education Code to read as follows:

35256. School Accountability Report Card

The governing board of each school district maintaining an elementary or secondary school shall by September 30, 1989, or the beginning of the school year develop and cause to be implemented for each school in the school district a School Accountability Report Card.

(a) The School Accountability Report Card shall include, but is not limited to, the conditions listed in Education Code Section 33126.

(b) Not less than triennially, the governing board of each school district shall compare the content of the school district's School Accountability Report Card to the model School Accountability Report Card adopted by the State Board of Education. Variances among school districts shall be permitted where necessary to account for local needs.

(c) The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request. ***1541**

Section 9. Section 41300.1 is hereby added to Article 1 of Chapter 3 of Part 24 of Division 3 of Title 2 of the Education Code to read as follows:

41300.1 Instructional Improvement and Ac-

countability.

The amount transferred to Section A of the State School Fund pursuant to Section 8.5 of Article XVI of the State Constitution shall to the maximum extent feasible be expended or encumbered during the fiscal year received and solely for the purpose of instructional improvement and accountability.

(a) For the purpose of this section, "instructional improvement and accountability" shall mean expenditures for instructional activities for school sites which directly benefit the instruction of students, and shall be limited to expenditures for the following:

(1) Lower pupil-teacher ratios until a ratio is attained of not more than 20 students per teacher providing direct instruction in any class, and until a goal is attained of total teacher loads of less than 100 total students per teacher in all secondary school classes in academic subjects as defined by the Superintendent of Public Instruction.

(2) Instructional supplies, instructional equipment, instructional materials and support services necessary to improve school conditions.

(3) Direct student services needed to ensure that each student makes academic progress necessary to be promoted to the next appropriate grade level.

(4) Staff development which improves services to students or increases the quality and effectiveness of instructional staff, designed and implemented by classroom teachers and other participating school district personnel, including the school principal, with the aid of outside personnel as necessary. Classroom teachers shall comprise the majority of any group designated to design such staff development programs for instructional personnel.

(5) Compensation of teachers.

(b) Funds transferred to each school district, pursuant to this section shall be deposited in a separate account and shall be maintained and appropriated separately from funds from all other sources. Funds appropriated pursuant to this section shall supplement other resources of each school district and shall not supplant any other funds. ***1542**

Section 10. Section 14020.1 is hereby added to Article 1 Chapter 1 of Part 9 of Division 1 of Title 1 of the Education Code to read as follows:

14020.1. Instructional Improvement and Accountability.

The amount transferred to Section B of the State School Fund pursuant to Section 8.5 of Article XVI of the State Constitution shall to the maximum extent feasible be expended or encumbered during the year received solely for the purposes of instructional improvement and accountability.

(a) For the purposes of this section, "instructional improvement and accountability" shall mean expenditures for instructional activities for college sites which directly benefit the instruction of students and shall be limited to expenditures for the following:

(1) Programs which require individual assessment and counseling of students for the purpose of designing a curriculum for each student and establishing a period of time within which to achieve the goals of that curriculum and the support services needed to achieve these goals, provided that any such program shall first have been approved by the Board of Governors of Community Colleges.

(2) Instructional supplies, instructional equipment, and instructional materials and support services necessary to improve campus conditions.

(3) Faculty development which improves instruction and increases the quality and effectiveness of instructional staff, as mutually determined by faculty and the community college district governing board.

(4) Compensation of faculty.

(b) Funds transferred to each community college district pursuant to this section shall be deposited in a separate account and shall be maintained and appropriated separately from funds from all other sources. Funds appropriated pursuant to this section shall supplement other resources of each community college district and shall not supplant funds appropriated from any other source.

Section 11. Section 14022 is added to the Education Code to read as follows:

14022. (a) For the purposes of Section 8 and Section 8.5 of Article XVI of the California Constitution, "enrollment" shall mean: ***1543**

(1) In community college districts, full-time equivalent students receiving services, and

(2) In school districts, average daily attendance when students are counted as average daily attendance and average daily attendance equivalents for services not counted in average daily attendance.

(b) Determination of enrollment shall be based upon actual data from prior years and for the next succeeding year such enrollments shall be estimated enrollments adjusted for actual data as actual data becomes available.

Section 12. Section 41302.5 is added to the Education Code to read as follows:

41302.5. For the purposes of Section 8 and Section 8.5 of Article XVI of the California Constitution, "school districts" shall include county boards of education, county superintendents of schools and direct elementary and secondary level instructional services provided by the State of California.

Section 13. No provision of this Act may be changed except to further its purposes by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed by the Governor.

Section 14. Severability

If any provision of this Act, or the application of any provision of this Act to any person or circumstance, shall be held invalid, the remainder of this Act, to the extent that it can be given effect, shall not be affected thereby, and to this end the provisions of this Act are severable.

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END OF DOCUMENT

133 Cal.App.4th 26, 34 Cal.Rptr.3d 520, 05 Cal. Daily Op. Serv. 8754, 2005 Daily Journal D.A.R. 11,938
(Cite as: 133 Cal.App.4th 26, 34 Cal.Rptr.3d 520)

Court of Appeal, Third District, California.
KAUFMAN & BROAD COMMUNITIES, INC. et al., Cross–Complainants and Respondents,
v.
PERFORMANCE PLASTERING, INC., Cross–Defendant and Appellant.

No. C049391.
Oct. 3, 2005.

Background: On appeal from decision of the Superior Court, No. 03AS03133, appellant moved for the Court of Appeal to take judicial notice of legislative history of amendment to ambiguous statute.

Holdings: The Court of Appeal, Sims, J., held that:
(1) Court would deny judicial notice of personal view of member of assembly;
(2) Court would grant judicial notice of Assembly Judiciary Committee Report and Senate Judiciary Committee Report; and
(3) Court would grant judicial notice of three enrolled bill reports.

Motion granted in part, denied in part.

Opinion, 33 Cal. Rptr.3d 362, vacated.

West Headnotes

[1] Statutes 361 217.4

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k217.4 k. Legislative History in General. Most Cited Cases

Resort to legislative history to aid in construction of a statute is appropriate only where statutory language is ambiguous.

[2] Statutes 361 217.4

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k217.4 k. Legislative History in General. Most Cited Cases

Even where statutory language is ambiguous, and resort to legislative history is appropriate, as a general rule in order to be cognizable, legislative history must shed light on the collegial view of the Legislature as a whole.

[3] Evidence 157 33

157 Evidence
157I Judicial Notice
157k27 Laws of the State
157k33 k. Legislative Proceedings and Journals. Most Cited Cases

Evidence 157 51

157 Evidence
157I Judicial Notice
157k51 k. Mode of Ascertaining Facts Required to Be Noticed; Motions and Notice of Reliance. Most Cited Cases

In order to help the Court of Appeal determine what constitutes properly cognizable legislative history, and what does not, motions for judicial notice of legislative history materials should be in the following form: (1) the motion shall identify each separate document for which judicial notice is sought as a separate exhibit; and (2) the moving party shall submit a memorandum of points and authorities citing authority why each such exhibit constitutes cognizable legislative history. Cal.Rules of Court, Rule 22(a).
See Cal. Jur. 3d, Statutes, § 118.

[4] Evidence 157 33

157 Evidence
157I Judicial Notice
157k27 Laws of the State
157k33 k. Legislative Proceedings and

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Journals. Most Cited Cases

Court of Appeal, in order to construe ambiguous statute, would not take judicial notice of document reflecting the personal views of a member of the assembly, which was apparently not made available to the Legislature as a whole, despite fact that document was found in committee files. West's Ann.Cal.Rev. & T.Code § 19719.

[5] Evidence 157 33

157 Evidence
157I Judicial Notice
157k27 Laws of the State
157k33 k. Legislative Proceedings and Journals. Most Cited Cases

Court of Appeal, in order to construe ambiguous statute, would take judicial notice of Assembly Judiciary Committee Report pertaining to assembly bill. West's Ann.Cal.Rev. & T.Code § 19719.

[6] Evidence 157 33

157 Evidence
157I Judicial Notice
157k27 Laws of the State
157k33 k. Legislative Proceedings and Journals. Most Cited Cases

Court of Appeal, in order to construe ambiguous statute, would take judicial notice of Senate Judiciary Committee Report pertaining to assembly bill. West's Ann.Cal.Rev. & T.Code § 19719.

[7] Evidence 157 33

157 Evidence
157I Judicial Notice
157k27 Laws of the State
157k33 k. Legislative Proceedings and Journals. Most Cited Cases

Court of Appeal, in order to construe ambiguous statute, would not take judicial notice of three enrolled bill reports on assembly bill, prepared by the Office of Insurance Advisor, the Department of Real Estate, and the Franchise Tax Board. West's Ann.Cal.Rev. & T.Code § 19719.

See 1 Witkin, Cal. Evidence (4th ed. 2000) Judicial Notice, § 6.

[8] Statutes 361 219(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(1) k. In General. Most Cited Cases

Enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, are generally instructive on matters of legislative intent.

[9] Statutes 361 176

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k176 k. Judicial Authority and Duty. Most Cited Cases

The determination of the meaning of statutes is a judicial function.

****522** Dee Anne Ware, Cooper White & Cooper LLP, Walnut Creek, CA, for Cross–Complainant and Respondent.

George E. Murphy, Farmer Murphy Smith & Alliston, Melissa B. Aliotti, Read & Aliotti, Sacramento, CA, for Cross–Defendant and Appellant.

OPINION ON REHEARING OF RULING ON MOTION FOR JUDICIAL NOTICE OF LEGISLATIVE HISTORY DOCUMENTS

SIMS, J.

***29** Pursuant to rule 22(a) of the California Rules of Court, appellant Performance Plastering, Inc., has moved this court to take judicial notice of various documents that, in the view of appellant, constitute cognizable legislative history of a 1998 amendment to Revenue and Taxation Code section 19719 (Assembly Bill 1950 (AB 1950)). (Stats.1998, ch. 856, § 2.)

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(Cite as: 133 Cal.App.4th 26, 34 Cal.Rptr.3d 520)

Legislative History Generally

Before turning to the specifics of appellant's request for judicial notice, we have some general comments about requests for judicial notice of legislative history received by this court.

Many attorneys apparently believe that every scrap of paper that is generated in the legislative process constitutes the proper subject of judicial notice. They are aided in this view by some professional legislative intent services. Consequently, it is not uncommon for this court to receive motions for judicial notice of documents that are tendered to the court in a form resembling a telephone book.[FN1] The various documents are not segregated and no attempt is made in a memorandum of points and authorities to justify each request for judicial notice. This must stop. And the purpose of this opinion is to help attorneys to better understand the role of legislative history and to encourage them to request judicial notice only of documents that constitute cognizable legislative history.

FN1. Appellant's motion was not one of these; rather, each document was separately tabbed.

[1] Preliminarily, we note that resort to legislative history is appropriate only where statutory language is ambiguous. As the California Supreme Court has said, "Our role in construing a statute is to ascertain the Legislature's intent so as to effectuate the purpose of the law. [Citation.] In determining intent, we look first to the words of the statute, giving the language its usual, ordinary meaning. If there is no ambiguity in the language, we presume the Legislature meant what it said, and the plain meaning of the statute governs. [Citation.]" (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000, 90 Cal.Rptr.2d 236, 987 P.2d 705, followed in *Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063, 103 Cal.Rptr.2d 751, 16 P.3d 166; accord: *Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519, 106 Cal.Rptr.2d 548, 22 P.3d 324.) Thus, "[o]nly when the language of a statute is susceptible to more than one reasonable construction ***30** is it appropriate to turn to extrinsic aids, including the legislative history of the measure, to ascertain its meaning." (*Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1055, 80 Cal.Rptr.2d 828, 968 P.2d 539; followed in *People v. Farell* (2002) 28 Cal.4th 381, 394, 121 Cal.Rptr.2d 603, 48 P.3d 1155; accord: *Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 269, 121 Cal.Rptr.2d 203, 47 P.3d 1069; ****523***Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1119–1120, 81 Cal.Rptr.2d 471, 969 P.2d 564, and authorities cited therein; *Professional Engineers in Cal. Government v. State Personnel Bd.* (2001) 90 Cal.App.4th 678, 688–689, 109 Cal.Rptr.2d 375, but see *Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 613, fn. 7, 15 Cal.Rptr.3d 793, 93 P.3d 386.)

Nonetheless, we will not require a party moving for judicial notice of legislative history materials to demonstrate the ambiguity of the subject statute at this juncture. This is so for two reasons. First, the ambiguity *vel non* of a statute will often be the central issue in a case, and parties would incur needless expense briefing the issue twice—once in a motion for judicial notice and again in a party's brief on the merits. Second, motions for judicial notice of legislative history materials are decided by writ panels of three justices who may not be the justices later adjudicating the case on the merits. The panel adjudicating the case on the merits should not be stuck with an earlier determination, by a different panel, as to the ambiguity *vel non* of a statute.

Even though we will grant motions for judicial notice of legislative history materials without a showing of statutory ambiguity, we do so with the understanding that the panel ultimately adjudicating the case may determine that the subject statute is unambiguous, so that resort to legislative history is inappropriate.

[2] Even where statutory language is ambiguous, and resort to legislative history is appropriate, as a general rule in order to be cognizable, legislative history must shed light on the collegial view of the Legislature *as a whole.* (See *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 701, 170 Cal.Rptr. 817, 621 P.2d 856.) Thus, to pick but one example, our Supreme Court has said, "We have frequently stated ... that the statements of an individual legislator, including the author of a bill, are generally not considered in construing a statute, as the court's task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation. [Citations.]" (*Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062, 48 Cal.Rptr.2d 1, 906

P.2d 1057.)

[3] ***31** In order to help this court determine what constitutes properly cognizable legislative history, and what does not, in the future motions for judicial notice of legislative history materials in this court should be in the following form: FN2

> FN2. The correct way to request judicial notice of a document is by motion. (Cal. Rules of Court, rule 22(a).)

1. The motion shall identify each separate document for which judicial notice is sought as a separate exhibit;

2. The moving party shall submit a memorandum of points and authorities citing authority why each such exhibit constitutes cognizable legislative history.

To aid counsel in this respect, we shall now set forth a list of legislative history documents that have been recognized by the California Supreme Court or this court as constituting cognizable legislative history together with a second list of documents that do *not* constitute cognizable legislative history in this court.

DOCUMENTS CONSTITUTING COGNIZABLE LEGISLATIVE HISTORY IN THE COURT OF APPEAL FOR THE THIRD APPELLATE DISTRICT

A. ***Ballot Pamphlets: Summaries and Arguments/Statement of Vote*** ****524**(*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 903, 135 Cal.Rptr.2d 30, 69 P.3d 951; *Jahr v. Casebeer* (1999) 70 Cal.App.4th 1250, 1255–1256, 1259, 83 Cal.Rptr.2d 172; *Aguimatang v. California State Lottery* (1991) 234 Cal.App.3d 769, 790–791, 286 Cal.Rptr. 57.)

B. ***Conference Committee Reports*** (*Crowl v. Commission on Professional Competence* (1990) 225 Cal.App.3d 334, 347, 275 Cal.Rptr. 86.)

C. ***Different Versions of the Bill*** (*Quintano v. Mercury Casualty Co., supra,* 11 Cal.4th at p. 1062, fn. 5, 48 Cal.Rptr.2d 1, 906 P.2d 1057; *People v. Watie* (2002) 100 Cal.App.4th 866, 884, 124 Cal.Rptr.2d 258; *San Rafael Elementary School Dist. v. State Bd. of Education* (1999) 73 Cal.App.4th 1018, 1025, fn. 8, 87 Cal.Rptr.2d 67; *People v. Patterson* (1999) 72 Cal.App.4th 438, 442–443, 84 Cal.Rptr.2d 870.)

D. ***Floor Statements*** (*Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 926, fn. 6, 12 Cal.Rptr.3d 262, 88 P.3d 1; ***32***People v. Drennan* (2000) 84 Cal.App.4th 1349, 1357–1358, 101 Cal.Rptr.2d 584; *In re Marriage of Siller* (1986) 187 Cal.App.3d 36, 46, fn. 6, 231 Cal.Rptr. 757.)

E. ***House Journals and Final Histories*** (*People v. Patterson, supra,* 72 Cal.App.4th at pp. 442–443, 84 Cal.Rptr.2d 870 [procedural history of bill from Assembly final history]; *Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501, 1509, 45 Cal.Rptr.2d 805; *Natural Resources Defense Council v. Fish & Game Com.* (1994) 28 Cal.App.4th 1104, 1117, 33 Cal.Rptr.2d 904, fn. 11 [House Conference Report]; *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754, 760, 110 Cal.Rptr. 257 [appendix to Journal of the Assembly]; *Rollins v. State of California* (1971) 14 Cal.App.3d 160, 165, fn. 8, 92 Cal.Rptr. 251 [appendix to Journal of the Senate].)

F. ***Reports of the Legislative Analyst*** (*Heavenly Valley v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1339–1340, 101 Cal.Rptr.2d 591; *People v. Patterson, supra,* 72 Cal.App.4th at p. 443, 84 Cal.Rptr.2d 870; *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1133, 61 Cal.Rptr.2d 207; *Aguimatang v. California State Lottery, supra,* 234 Cal.App.3d at p. 788, 286 Cal.Rptr. 57; *People v. Gulbrandsen* (1989) 209 Cal.App.3d 1547, 1562, 258 Cal.Rptr. 75.)

G. ***Legislative Committee Reports and Analyses*** (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7, 253 Cal.Rptr. 236, 763 P.2d 1326.)

Assembly Committee on Criminal Law and Public Safety (*People v. Baniqued* (2000) 85 Cal.App.4th 13, 27, fn. 13, 101 Cal.Rptr.2d 835.)

Assembly Committee on Finance, Insurance and Commerce (*Martin v. Wells Fargo Bank* (2001) 91 Cal.App.4th 489, 496, 110 Cal.Rptr.2d 653.)

Assembly Committee on Governmental Organization (*Aguimatang v. California State Lottery, supra,* 234 Cal.App.3d at p. 788, 286 Cal.Rptr. 57.)

Assembly Committee on Health (*Kaiser Foundation Health Plan, Inc. v. Zingale* (2002) 99 Cal.App.4th 1018, 1025, 121 Cal.Rptr.2d 741; *Khajavi v. Feather River Anesthesia Medical Group* (2000) 84 Cal.App.4th 32, 50, 100 Cal.Rptr.2d

627; *Zabetian v. Medical Board* (2000) 80 Cal.App.4th 462, 468, 94 Cal.Rptr.2d 917; *Clemente v. Amundson* (1998) 60 Cal.App.4th 1094, 1106, 70 Cal.Rptr.2d 645.)

Assembly Committee on Human vices (*Golden Day Schools, Inc. v. Department of Education* (1999) 69 Cal.App.4th 681, 692, 81 Cal.Rptr.2d 758.)

****525 *33 Assembly Committee on ance** (*Santangelo v. Allstate Ins. Co.* (1998) 65 Cal.App.4th 804, 814, fn. 8, 76 Cal.Rptr.2d 735.)

Assembly Committee on Judiciary (*Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 166, 128 Cal.Rptr.2d 65; *CalFarm Ins. Co. v. Wolf* (2001) 86 Cal.App.4th 811, 816, fn. 8, 820, 103 Cal.Rptr.2d 584, fns. 27–28; *In re Marriage of Perry* (1998) 61 Cal.App.4th 295, 309, fn. 3, 71 Cal.Rptr.2d 499; *Peltier v. McCloud River R.R. Co.* (1995) 34 Cal.App.4th 1809, 1819, fn. 5, 41 Cal.Rptr.2d 182.)

Assembly Committee on Labor, Employment and Consumer Affairs (*Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112, 138, 41 Cal.Rptr.2d 295.)

Assembly Committee on Public Employees and Retirement (*Board of Administration v. Wilson, supra,* 52 Cal.App.4th at p. 1133, 61 Cal.Rptr.2d 207.)

Assembly Committee on Public Safety (*People v. Blue Chevrolet Astro* (2000) 83 Cal.App.4th 322, 329, 99 Cal.Rptr.2d 609; *People v. Johnson* (2000) 77 Cal.App.4th 410, 419, 91 Cal.Rptr.2d 596; *People v. Sewell* (2000) 80 Cal.App.4th 690, 695, 95 Cal.Rptr.2d 600; *People v. Patterson, supra,* 72 Cal.App.4th at pp. 442–443, 84 Cal.Rptr.2d 870; *Sommerfield v. Helmick* (1997) 57 Cal.App.4th 315, 319, 67 Cal.Rptr.2d 51; *Ream v. Superior Court* (1996) 48 Cal.App.4th 1812, 1819, fn. 5, 1820–1821, 56 Cal.Rptr.2d 550 [interim hearing report and analysis of assembly bill]; *People v. Frye* (1994) 21 Cal.App.4th 1483, 1486, 27 Cal.Rptr.2d 52.)

Assembly Committee on Retirement (*Praiser v. Biggs Unified School Dist.* (2001) 87 Cal.App.4th 398, 407, fn. 16, 104 Cal.Rptr.2d 551.)

Assembly Committee on Revenue and Tax (*Sunrise Retirement Villa v. Dear* (1997) 58 Cal.App.4th 948, 959, 68 Cal.Rptr.2d 416.)

Assembly Committee on Water, Parks and Wildlife (*Natural Resources Defense Council v. Fish & Game Com., supra,* 28 Cal.App.4th at p. 1118, 33 Cal.Rptr.2d 904 [bill analysis work sheet].)

Assembly Committee on Ways and Means (*People v. Patterson, supra,* 72 Cal.App.4th at pp. 442–443, 84 Cal.Rptr.2d 870; *Clemente v. Amundson, supra,* 60 Cal.App.4th at p. 1106, 70 Cal.Rptr.2d 645.)

Assembly Interim Committee on Municipal and County Government (*Board of Trustees v. Leach* (1968) 258 Cal.App.2d 281, 286, 65 Cal.Rptr. 588.)

***34 Assembly Office of Research** (*Forty–Niner Truck Plaza, Inc. v. Union Oil Co.* (1997) 58 Cal.App.4th 1261, 1273, 68 Cal.Rptr.2d 532.

Assembly Staff Analysis (*Clemente v. Amundson, supra,* 60 Cal.App.4th at p. 1107, 70 Cal.Rptr.2d 645).

Assembly Subcommittee on Health, Education and Welfare Services (*A.H. Robins Co. v. Department of Health* (1976) 59 Cal.App.3d 903, 908–909, 130 Cal.Rptr. 901.)

Senate Committee on Appropriations Fiscal Summary of Bill (*People v. Patterson, supra,* 72 Cal.App.4th at p. 443, 84 Cal.Rptr.2d 870.)

Senate Committee on Business and Professions (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 722, 3 Cal.Rptr.3d 623, 74 P.3d 726 [Senate committee staff analysis]; *Khajavi v. Feather River Anesthesia Medical Group, supra,* 84 Cal.App.4th at p. 50, 100 Cal.Rptr.2d 627; *Forty–Niner Truck Plaza, Inc. v. Union Oil Co., supra,* 58 Cal.App.4th at p. 1273, 68 Cal.Rptr.2d 532 [bill analysis work sheet].)

****526 Senate Committee on Criminal Procedure** (*People v. Blue Chevrolet Astro, supra,* 83 Cal.App.4th at p. 329, 99 Cal.Rptr.2d 609.)

Senate Committee on Education (*Praiser v. Biggs Unified School Dist., supra,* 87 Cal.App.4th at p. 407, fn. 15, 104 Cal.Rptr.2d 551; *Golden Day Schools, Inc. v. Department of Education, supra,* 69 Cal.App.4th at p. 692, 81 Cal.Rptr.2d 758.)

Senate Committee on Health and Human Services (*In re Raymond E.* (2002) 97 Cal.App.4th 613, 617, 118 Cal.Rptr.2d 376.)

Senate Committee on Health and fare (*Zabetian v. Medical Board, supra,* 80 Cal.App.4th at p. 468, 94 Cal.Rptr.2d 917; *Clemente v. Amundson, supra,* 60 Cal.App.4th at p. 1105, 70 Cal.Rptr.2d 645 [request for approval of Senate bill].)

Senate Committee on Judiciary (*Martin v. Szeto* (2004) 32 Cal.4th 445, 450, 9 Cal.Rptr.3d 687, 84 P.3d 374 [background information]; *Boehm & Associates v. Workers' Comp. Appeals Bd.* (2003) 108 Cal.App.4th 137, 146, 133 Cal.Rptr.2d 396; *Westly v. U.S. Bancorp* (2003) 114 Cal.App.4th 577, 583, 7 Cal.Rptr.3d 838; *Wood v. County of San Joaquin* (2003) 111 Cal.App.4th 960, 970, 4 Cal.Rptr.3d 340; *People v. Robinson* (2002) 104 Cal.App.4th 902, 905, 128 Cal.Rptr.2d 619; *Guillemin v. Stein, supra,* 104 Cal.App.4th at p. 167, 128 Cal.Rptr.2d 65; *In re Michael D.* (2002) 100 Cal.App.4th 115, 122–123, 121 Cal.Rptr.2d 909; ***35***In re Raymond E., supra,* 97 Cal.App.4th at p. 617, 118 Cal.Rptr.2d 376; *People v. Patterson, supra,* 72 Cal.App.4th at p. 443, 84 Cal.Rptr.2d 870; *In re Marriage of Perry, supra,* 61 Cal.App.4th at p. 309, fn. 3, 71 Cal.Rptr.2d 499.)

Senate Committee on Revenue and tion (*Heavenly Valley v. El Dorado County Bd. of Equalization, supra,* 84 Cal.App.4th at p. 1340, 101 Cal.Rptr.2d 591; *Sacramento County Fire Protection Dist. v. Sacramento County Assessment Appeals Bd.* (1999) 75 Cal.App.4th 327, 335, 89 Cal.Rptr.2d 215; *Sunrise Retirement Villa v. Dear, supra,* 58 Cal.App.4th at p. 959, 68 Cal.Rptr.2d 416.)

Senate Rules Committee (*Guillemin v. Stein, supra,* 104 Cal.App.4th at p. 166, 128 Cal.Rptr.2d 65.)

Senate Conference Committee (*Golden Day Schools, Inc. v. Department of Education, supra,* 69 Cal.App.4th at p. 692, 81 Cal.Rptr.2d 758.)

Senate Interim Committee on Fish and Game (*California Trout, Inc. v. State Water Resources Control Bd.* (1989) 207 Cal.App.3d 585, 597, 255 Cal.Rptr. 184.)

Senate Subcommittee on Mental Health (*Clemente v. Amundson, supra,* 60 Cal.App.4th at p. 1104, fn. 10, 70 Cal.Rptr.2d 645.)

H. *Legislative Counsel's Digest* (*Pacific Gas & Electric Co. v. Department of Water Resources* (2003) 112 Cal.App.4th 477, 482–483, 5 Cal.Rptr.3d 283; *People v. Allen* (2001) 88 Cal.App.4th 986, 995, 106 Cal.Rptr.2d 253; *Heavenly Valley v. El Dorado County Bd. of Equalization, supra,* 84 Cal.App.4th at p. 1339, 101 Cal.Rptr.2d 591; *People v. Harper* (2000) 82 Cal.App.4th 1413, 1418, 98 Cal.Rptr.2d 894; *Alt v. Superior Court* (1999) 74 Cal.App.4th 950, 959, fn. 4, 88 Cal.Rptr.2d 530; *Construction Industry Force Account Council v. Amador Water Agency* (1999) 71 Cal.App.4th 810, 813, 84 Cal.Rptr.2d 139; *People v. Prothero* (1997) 57 Cal.App.4th 126, 133, fn. 7, 66 Cal.Rptr.2d 779; *Peltier v. McCloud River R.R. Co., supra,* 34 Cal.App.4th at p. 1819, fn. 5, 41 Cal.Rptr.2d 182.)

I. *Legislative Counsel's Opinions/Supplementary Reports* ****527**(*Trinkle v. California State Lottery* (2003) 105 Cal.App.4th 1401, 1410, fn. 7, 129 Cal.Rptr.2d 904; *Trinkle v. Stroh* (1997) 60 Cal.App.4th 771, 778, fn. 4, 70 Cal.Rptr.2d 661; *People v. $31,500 United States Currency* (1995) 32 Cal.App.4th 1442, 1460–1461, 38 Cal.Rptr.2d 836.)

J. *Legislative Party Floor Commentaries*

Senate Republican Floor taries (*Pacific Gas & Electric Co. v. Department of Water Resources, supra,* 112 Cal.App.4th at p. 498, 5 Cal.Rptr.3d 283.)

36 K. *Official Commission Reports and Comments

California Constitution Revision sion (*Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300, 319, fn. 18, 127 Cal.Rptr.2d 482, 58 P.3d 339 [proposed revision].)

California State Government Organization and Economy Commission (*Department of Personnel Administration v. Superior Court* (1992) 5 Cal.App.4th 155, 183, 6 Cal.Rptr.2d 714.)

California Law Revision Commission (*Estate of Dye* (2001) 92 Cal.App.4th 966, 985, 112 Cal.Rptr.2d 362; *Estate of Della Sala* (1999) 73 Cal.App.4th 463, 469, 86 Cal.Rptr.2d 569; *Estate of Reeves* (1991) 233 Cal.App.3d 651, 656, 284 Cal.Rptr. 650; *In re Marriage of Schenck* (1991) 228 Cal.App.3d 1474, 1480, fn. 2, 279 Cal.Rptr. 651.

L. ***Predecessor Bills*** (*City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1199, 75 Cal.Rptr.2d 754.)

M. ***Statements by Sponsors, Proponents and Opponents Communicated to the Legislature as a Whole***

Assembly Bill Digest by Assembly (*People v. Drennan, supra,* 84 Cal.App.4th at p. 1357, 101 Cal.Rptr.2d 584.)

Floor Statement by Sponsoring Legislator (*In re Marriage of Siller, supra,* 187 Cal.App.3d at p. 46, fn. 6, 231 Cal.Rptr. 757.)

N. ***Transcripts of Committee Hearings*** *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 376, 2 Cal.Rptr.3d 655, 73 P.3d 517; *Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519, fn. 5, 106 Cal.Rptr.2d 548, 22 P.3d 324.)

O. ***Analyses by Legislative Party Caucuses (e.g. Senate Democratic and Republican)*** (*People v. Allen, supra,* 88 Cal.App.4th at p. 995, fn. 16, 106 Cal.Rptr.2d 253; *Golden Day Schools, Inc. v. Department of Education, supra,* 69 Cal.App.4th at p. 691–692, 81 Cal.Rptr.2d 758; *Forty–Niner Truck Plaza, Inc. v. Union Oil Co., supra,* 58 Cal.App.4th at p. 1273, 68 Cal.Rptr.2d 532.)

Assembly Office of Research Report (*Crowl v. Commission on Professional Competence, supra,* 225 Cal.App.3d at pp. 346–347, 275 Cal.Rptr. 86 [staff report].)

Assembly Committee on Judiciary (*Wood v. County of San Joaquin, supra,* 111 Cal.App.4th at p. 969, 4 Cal.Rptr.3d 340; *Rieger v. Arnold* (2002) 104 Cal.App.4th 451, 463, 128 Cal.Rptr.2d 295; *Guillemin v. Stein, supra,* 104 Cal.App.4th at p. 167, 128 Cal.Rptr.2d 65.)

***37 Office of Assembly Floor Analyses** (*People v. Patterson, supra,* 72 Cal.App.4th at p. 443, 84 Cal.Rptr.2d 870.)

Office of Senate Floor Analyses (*Pacific Gas & Electric Co. v. Department of Water Resources, supra,* 112 Cal.App.4th at p. 497, 5 Cal.Rptr.3d 283; *People v. Robinson, supra,* 104 Cal.App.4th at p. 905, 128 Cal.Rptr.2d 619; *In re Raymond E., supra,* 97 Cal.App.4th at pp. 616–617, 118 Cal.Rptr.2d 376; *Khajavi v. Feather River Anesthesia Medical Group, supra,* 84 Cal.App.4th at p. 50, 100 Cal.Rptr.2d 627; *People v. Chavez* (1996) 44 Cal.App.4th 1144, 1155–1156, 52 Cal.Rptr.2d 347.)

****528 P.** ***Enrolled Bill Reports*** (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 934, fn. 19, 22 Cal.Rptr.3d 530, 102 P.3d 915.)

DOCUMENTS *NOT* CONSTITUTING LEGISLATIVE HISTORY IN THE COURT OF APPEAL FOR THE THIRD APPELLATE DISTRICT

A. ***Authoring Legislator's Files, Letters, Press Releases and Statements Not Communicated to the Legislature as a Whole***

Files (*People v. Patterson, supra,* 72 Cal.App.4th at p. 444, 84 Cal.Rptr.2d 870.)

General (*People v. Garcia* (2002) 28 Cal.4th 1166, 1176, fn. 5, 124 Cal.Rptr.2d 464, 52 P.3d 648.)

Letters from Bill's Author to Governor Without An Indication the Author's Views Were Made Known to the Legislature as a Whole (*Heavenly Valley v. El Dorado County Bd. of Equalization, supra,* 84 Cal.App.4th at p. 1340–1341, 101 Cal.Rptr.2d 591; *People v. Patterson, supra,* 72 Cal.App.4th at pp. 443–444, 84 Cal.Rptr.2d 870.)

Statements By Bill's Author About Bill's Intended Purpose (*People v. Patterson, supra,* 72 Cal.App.4th at p. 443, 84 Cal.Rptr.2d 870.)

B. ***Documents with Unknown Author and Purpose*** (*State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.* (1985) 40 Cal.3d 5, 10, fn. 3, 219 Cal.Rptr. 13, 706 P.2d 1146.)

C. ***Handwritten Document Copies, Without Author, Contained in Assemblymember's Files*** (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1263, fn. 13, 48 Cal.Rptr.2d 12, 906 P.2d 1112.)

D. ***Letter from Consultant to the State Bar Taxation Section to Governor*** (*Heavenly Valley v. El*

Dorado County Bd. of Equalization, supra, 84 Cal.App.4th at pp. 1340–1341, 101 Cal.Rptr.2d 591.)

38 E.** ***Letter from the Family Law Section of the State Bar of California to Assemblymember or Senator (*In re Marriage of Pendleton & Fireman* (2000) 24 Cal.4th 39, 47, 99 Cal.Rptr.2d 278, 5 P.3d 839.)

F. ***Letters to Governor Urging Signing of Bill*** (*California Teachers Assn. v. San Diego Community College Dist., supra,* 28 Cal.3d at p. 701, 170 Cal.Rptr. 817, 621 P.2d 856; *Heavenly Valley v. El Dorado County Bd. of Equalization, supra,* 84 Cal.App.4th at p. 1327, fn. 2, 101 Cal.Rptr.2d 591.)

G. ***Letters to Particular Legislators, Including Bill's Author*** *(Quintano v. Mercury Casualty Co., supra,* 11 Cal.4th at p. 1062, fn. 5, 48 Cal.Rptr.2d 1, 906 P.2d 1057; *Heavenly Valley v. El Dorado County Bd. of Equalization, supra,* 84 Cal.App.4th at p. 1327, fn. 2, 101 Cal.Rptr.2d 591.)

H. ***Magazine Articles*** (*Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 168, 96 Cal.Rptr.2d 518, 999 P.2d 706.)

I. ***Memorandum from a Deputy District Attorney to Proponents of Assembly Bill*** (*People v. Garcia, supra,* 28 Cal.4th at p. 1176, fn. 5, 124 Cal.Rptr.2d 464, 52 P.3d 648.)

J. ***Proposed Assembly Bill Which Was Withdrawn by Author*** (*Heavenly Valley v. El Dorado County Bd. of Equalization, supra,* 84 Cal.App.4th at p. 1342, 101 Cal.Rptr.2d 591.)

K. ***State Bar's View of the Meaning of Proposed Legislation*** (*Peltier v. McCloud River R.R. Co., supra,* 34 Cal.App.4th at p. 1820, 41 Cal.Rptr.2d 182.)

L. ***Subjective Intent Reflected by Statements of Interested Parties and Individual Legislators, Including Bill's Author, Not Communicated to Legislature as a Whole*** ****529**(*Quintano v. Mercury Casualty Co., supra,* 11 Cal.4th at p. 1062, 48 Cal.Rptr.2d 1, 906 P.2d 1057; *Collins v. Department of Transportation* (2003) 114 Cal.App.4th 859, 870, fn. 11, 8 Cal.Rptr.3d 132.)

M. ***Views of Individual Legislators, Staffers, and Other Interested Persons***

Document Related to Bill from File of Assembly Committee on Ways and Means

Material on Bill from File of Assembly Committee on Public Safety

Material on Bill from File of Assembly Republican Caucus

Material on Bill from File of Author

***39 Material on Bill from File of Office of Senate Floor Analyses**

Material on Bill from File of Senate Committee on Appropriations

Material on Bill from File of Senate Committee on the Judiciary

Postenrollment Documents Regarding Bill (*People v. Patterson, supra,* 72 Cal.App.4th at pp. 442–443, 84 Cal.Rptr.2d 870.)

II

Appellant's Specific Requests

We now turn to the documents for which judicial notice is sought.

[4] A. The first document is entitled "AB 1950 (Torlakson) Construction Defect Litigation Reform [¶] Fact Sheet." Nothing in appellant's motion suggests this document was made available to the Legislature as a whole. Rather, it appears to reflect the personal view of Assemblymember Tom Torlakson. Appellant argues that judicial notice is appropriate because the document was located in the file of a legislative committee. We acknowledge that in *James v. St. Elizabeth Community Hospital* (1994) 30 Cal.App.4th 73 at page 81, 35 Cal.Rptr.2d 372, this court considered the contents of a document simply because it was found in the files of a committee. But, upon reflection, we now conclude that this practice should not be further condoned. Many pieces of paper that are never seen by members of the committee, let alone by the Legislature as a whole, find their way into committee files. Unlike committee reports, which are routinely available to the Legislature as a whole, these random documents are not reliable indicia of legislative intent. Because there is no showing that Assemblymember Torlakson's "Fact Sheet" was communicated to the Legislature as a whole, it does not constitute cognizable legislative history, and the request for judicial notice of this document is denied. (See *Quintano v. Mercury Casualty Co., supra,* 11 Cal.4th at p. 1062, 48 Cal.Rptr.2d 1, 906 P.2d 1057; *People v. Patterson, supra,* 72 Cal.App.4th at p.

444, 84 Cal.Rptr.2d 870.)

[5] B. Next is the Assembly Judiciary Committee Report dated April 21, 1998, pertaining to AB 1950. The request for judicial notice is granted with respect to this document. (*Guillemin v. Stein, supra,* 104 Cal.App.4th at p. 166, 128 Cal.Rptr.2d 65, and authorities cited at p. 525, *ante.*)

[6] C. Next is the Senate Judiciary Committee Report pertaining to AB 1950. The request for judicial notice is granted with respect to this ment. (*Martin v. Szeto, supra,* 32 Cal.4th at p. 450, 9 Cal.Rptr.3d 687, 84 P.3d 374, and authorities cited at p. 526, *ante.*)

[7] ***40** D. Next, and finally, are three enrolled bill reports on AB 1950, prepared respectively by the Office of Insurance Advisor, the Department of Real Estate, and the Franchise Tax Board.

****530** Generally, "enrolled bill" refers to a bill that has passed both houses of the Legislature and that has been signed by the presiding officers of the two houses. (1 Sutherland, Statutes and Statutory Construction (6th ed.2002) § 15:1, p. 814.) In some states, enrollment also includes signature by the Governor (*ibid.*), but not in California.

California law provides that bills ordered enrolled by the Senate or Assembly are delivered to the clerk of the house ordering the enrollment. (Gov.Code, § 9502.) [FN3] The clerk delivers the bills to the State Printer. (§ 9503.) The State Printer shall "engross [FN4] or enroll (print) them" and return them to the clerk. (§§ 9504–9505.) "If the enrolled copy of a bill or other document is found to be correct, [it shall be presented] to the proper officers for their signatures. When the officers sign their names thereon, as required by law, *it is enrolled.*" (§ 9507, italics added.) Enrolled bills are then transmitted to the Governor for his approval. (§ 9508.) If the Governor approves it and deposits it with the Secretary of State, it becomes the official record and is given a chapter number. (§ 9510.)

FN3. Further statutory references are to the Government Code.

FN4. Traditionally, engrossing meant the process of final authentication in a single house. (Sutherland, *supra,* § 15:1, p. 814.)

Thus, an enrolled bill is one that has been passed by the Senate and Assembly but has not yet been signed by the Governor.

An "enrolled bill report" is prepared by a department or agency in the executive branch that would be affected by the legislation. Enrolled bill reports are typically forwarded to the Governor's office before the Governor decides whether to sign the enrolled bill.

In *McDowell v. Watson* (1997) 59 Cal.App.4th 1155 at pages 1161 through 1162, footnote 3 [69 Cal.Rptr.2d 692] (*McDowell*), the Fourth Appellate District opined that enrolled bill reports should not be considered for legislative intent: "[I]t is not reasonable to infer that enrolled bill reports prepared by the executive branch for the Governor were ever read by the Legislature.

"We recognize that courts have sometimes cited the latter materials as indicia of legislative intent. [Numerous citations.] However, none of those opinions address[es] the propriety of doing so. Accordingly, we decline to follow their example. 'Such a departure from past rules of statutory construction, we ***41** believe, should be effected only after full discussion and exposure of the issue.' (*California Teachers Assn. v. San Diego Community College Dist.* [(1981)] 28 Cal.3d [692] 701 [170 Cal.Rptr. 817, 621 P.2d 856].)

"We also note that *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211 at pages 218 through 219 [185 Cal.Rptr. 270, 649 P.2d 912], has been relied upon as authority for considering enrolled bill reports to determine legislative intent. [Citations.] However, that reliance is misplaced, because the Supreme Court in *Commodore* specifically noted that it had been requested to take notice of those reports and that the opposing party had not objected. [Citation.] Moreover, while *Commodore* cites authority for taking judicial notice of such executive acts, it does not address the relevance of that evidence to determining legislative intent." (*McDowell, supra,* 59 Cal.App.4th at p. 1162, fn. 3, 69 Cal.Rptr.2d 692; see also ****531***Whaley v. Sony Computer Entertainment America, Inc.* (2004) 121 Cal.App.4th 479, 487, fn. 4, 17 Cal.Rptr.3d 88 [following *McDowell*].)

This court has twice followed *McDowell, supra,* 59 Cal.App.4th 1155, 69 Cal.Rptr.2d 692, in declining judicial notice of enrolled bill reports. (See *Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 121, fn. 4, 113 Cal.Rptr.2d 90; *People v. Patterson, supra,* 72 Cal.App.4th at p. 444, 84 Cal.Rptr.2d 870.)

On the other hand, in *People v. Allen* (2001) 88 Cal.App.4th 986, 106 Cal.Rptr.2d 253, this court said, "While enrolled bill reports prepared by the executive branch for the Governor do not necessarily demonstrate the Legislature's intent [citation], they can *corroborate* the Legislature's intent, as reflected in legislative reports, by reflecting a contemporaneous common understanding shared by participants in the legislative process from both the executive and legislative branches." (*Id.* at p. 995, fn. 19, 106 Cal.Rptr.2d 253.)

And in *People v. Carmony* (2005) 127 Cal.App.4th 1066, 26 Cal.Rptr.3d 365, this court recently took judicial notice of an enrolled bill report without discussion. (*Id.* at p. 1078, 26 Cal.Rptr.3d 365.)

[8] For practical purposes, these inconsistencies have been resolved by a 2004 decision of our Supreme Court in *Elsner v. Uveges, supra,* 34 Cal.4th 915, 22 Cal.Rptr.3d 530, 102 P.3d 915. There, the court took judicial notice of an enrolled bill report prepared by the Department of Industrial Relations. (*Id.* at p. 934, 22 Cal.Rptr.3d 530, 102 P.3d 915.) The court said, "Uveges challenges Elsner's reliance on the enrolled bill report, arguing that it is irrelevant because it was prepared after passage. However, we have routinely found enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent. [Citations.]" (*Id.* at p. 934, fn. 19, 22 Cal.Rptr.3d 530, 102 P.3d 915.)

We are obligated to follow *Elsner.* (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455, 20 Cal.Rptr. 321, 369 P.2d 937.) We ***42** hereby grant appellant's motion for judicial notice of the enrolled bill reports, and we leave it to the panel deciding this case to determine the extent to which these reports may be "instructive."

[9] Nonetheless, we respectfully add that we continue to find the logic of *McDowell, supra,* 59 Cal.App.4th 1155, 69 Cal.Rptr.2d 692, unassailable. In fact, enrolled bill reports cannot reflect the intent of the Legislature because they are prepared by the executive branch, and then not until after the bill has passed the Legislature and has become "enrolled." Moreover, to permit consideration of enrolled bill reports as cognizable legislative history gives the executive branch an unwarranted opportunity to determine the meaning of statutes. That is the proper and exclusive duty of the judicial branch of government. " '[T]he determination of the meaning of statutes is a judicial function....' [Citation.]" (*People v. Franklin* (1999) 20 Cal.4th 249, 256, 84 Cal.Rptr.2d 241, 975 P.2d 30.)

But we do not write on a clean slate.

We concur: SCOTLAND, P.J., and DAVIS, J.

Cal.App. 3 Dist.,2005.
Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.
133 Cal.App.4th 26, 34 Cal.Rptr.3d 520, 05 Cal. Daily Op. Serv. 8754, 2005 Daily Journal D.A.R. 11,938

END OF DOCUMENT

154 Cal.App.4th 525, 65 Cal.Rptr.3d 205, 07 Cal. Daily Op. Serv. 10,009, 2007 Daily Journal D.A.R. 12,930
(Cite as: 154 Cal.App.4th 525, 65 Cal.Rptr.3d 205)

Court of Appeal, Second District, Division 4, California.
WRI OPPORTUNITY LOANS II LLC, Plaintiff and Respondent,
v.
Ronald COOPER et al., Defendants and Appellants.

No. B191590.
Aug. 23, 2007.

Background: Secured lender on condominium development project brought breach-of-contract action against the loan's guarantors, seeking payment of the principal and interest owed under the loan. The Superior Court, Los Angeles County, No. BC330218,Andria K. Richey, J., granted summary judgment in favor of lender. Guarantors appealed.

Holdings: The Court of Appeal, Manella, J., held that:
(1) the loan did not entitle lender to "contingent deferred interest" and, thus, was not a "shared appreciation loan" exempt from usury law, and
(2) as a matter of first impression, guarantors' written waiver of defenses was ineffective regarding their usury defense.

Reversed.

West Headnotes

[1] Appeal and Error 30 893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In general. Most Cited Cases

On appeal after a motion for summary judgment has been granted, the Court of Appeal reviews the record de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained.

[2] Appeal and Error 30 863

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k862 Extent of Review Dependent on Nature of Decision Appealed from
30k863 k. In general. Most Cited Cases

On appeal after a motion for summary judgment has been granted, the Court of Appeal applies the same three-step process required of the trial court, which consists of (1) identifying the issues framed by the complaint, (2) determining whether the moving party has made an adequate showing that negates the opponent's claim, and (3) determining whether the opposing party has raised a triable issue of fact.

[3] Judgment 228 185(2)

228 Judgment
228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185 Evidence in General
228k185(2) k. Presumptions and burden of proof. Most Cited Cases

A plaintiff moving for summary judgment does not need to disprove any defense asserted by the defendant as well as prove each element of his own cause of action; all that the plaintiff need do is to prove each element of the cause of action.

[4] Appeal and Error 30 893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In general. Most Cited Cases

154 Cal.App.4th 525, 65 Cal.Rptr.3d 205, 07 Cal. Daily Op. Serv. 10,009, 2007 Daily Journal D.A.R. 12,930
(Cite as: 154 Cal.App.4th 525, 65 Cal.Rptr.3d 205)

Interpretation of loan's provisions and its status as a shared appreciation loan exempt from usury law were questions of law that the Court of Appeal would resolve de novo, on appeal from summary judgment granted to secured lender in its breach-of-contract action against the loan's guarantors seeking payment of the loan, where neither party submitted extrinsic evidence bearing on the meaning of the loan documents, and the pertinent historical facts regarding the loan were undisputed. West's Ann.Cal. Const. Art. 15, § 1; West's Ann.Cal.Civ. Code § 1917 et seq.

[5] Judgment 228 185.3(2)

228 Judgment
228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185.3 Evidence and Affidavits in Particular Cases
228k185.3(2) k. Particular defenses. Most Cited Cases

Whether loan on condominium project was a shared appreciation loan exempt from the usury law was a legal question that was not subject to expert opinion, in lender's breach-of-contract action against the loan's guarantors to recover payment of the loan, and thus experts' summary judgment declarations that offered opinions on the undisputed facts as to whether the loan was a shared appreciation loan did not raise triable issues as to the proper characterization of the loan. West's Ann.Cal. Const. Art. 15, § 1; West's Ann.Cal.Evid.Code § 805.

[6] Evidence 157 506

157 Evidence
157XII Opinion Evidence
157XII(B) Subjects of Expert Testimony
157k506 k. Matters directly in issue. Most Cited Cases

While the Evidence Code permits expert testimony on the ultimate issue to be decided by the factfinder, this rule does not authorize an expert to testify to legal conclusions in the guise of expert opinion. West's Ann.Cal.Evid.Code § 805.

[7] Evidence 157 506

157 Evidence
157XII Opinion Evidence
157XII(B) Subjects of Expert Testimony
157k506 k. Matters directly in issue. Most Cited Cases

The manner in which the law should apply to particular facts is a legal question and is not subject to expert opinion. West's Ann.Cal.Evid.Code § 805.

[8] Usury 398 77

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k74 Effect of Usury
398k77 k. Contract or debt originally valid. Most Cited Cases

To be usurious, a contract must in its inception require a payment of usury; subsequent events do not render a legal contract usurious.

[9] Usury 398 11

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k10 Elements of Usury
398k11 k. In general. Most Cited Cases

The essential elements of a claim of usury are: (1) the transaction must be a loan or forbearance, (2) the interest to be paid must exceed the statutory maximum, (3) the loan and interest must be absolutely repayable by the borrower, and (4) the lender must have a willful intent to enter into a usurious transaction. West's Ann.Cal. Const. Art. 15, § 1.

[10] Usury 398 12

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k10 Elements of Usury
398k12 k. Intent, knowledge, and mutual assent of parties. Most Cited Cases

154 Cal.App.4th 525, 65 Cal.Rptr.3d 205, 07 Cal. Daily Op. Serv. 10,009, 2007 Daily Journal D.A.R. 12,930
(Cite as: 154 Cal.App.4th 525, 65 Cal.Rptr.3d 205)

The intent sufficient to support a judgment of usury does not require a conscious attempt, with knowledge of the law, to evade it.

[11] Usury 398 12

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k10 Elements of Usury
398k12 k. Intent, knowledge, and mutual assent of parties. Most Cited Cases

The conscious and voluntary taking of more than the legal rate of interest constitutes usury, and the only intent necessary on the part of the lender is to take the amount of interest which he receives; if that amount is more than the law allows, the offense is complete. West's Ann.Cal. Const. Art. 15, § 1.

[12] Usury 398 12

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k10 Elements of Usury
398k12 k. Intent, knowledge, and mutual assent of parties. Most Cited Cases

Usury 398 16

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k16 k. Nature and subject-matter of transaction in general. Most Cited Cases

Intent is relevant, for purposes of usury claim, in determining the true purpose of the transaction in question because the trier of fact must look to the substance of the transaction rather than to its form.

[13] Usury 398 119

398 Usury
398I Usurious Contracts and Transactions
398I(B) Rights and Remedies of Parties
398k119 k. Questions for jury. Most Cited Cases

When evaluating a claim of usury, it is for the trier of the fact to determine whether the intent of the contracting parties was that disclosed by the form adopted, or whether such form was a mere sham and subterfuge to cover up a usurious transaction.

[14] Usury 398 41

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k36 Contracts and Transactions Involving Hazard or Contingency
398k41 k. Interest subject to condition. Most Cited Cases

Interest is usurious only when it is absolutely repayable by the borrower. West's Ann.Cal. Const. Art. 15, § 1.

[15] Usury 398 41

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k36 Contracts and Transactions Involving Hazard or Contingency
398k41 k. Interest subject to condition. Most Cited Cases

Under the "interest contingency rule," a loan that will give the creditor a greater profit than the highest permissible rate of interest upon the occurrence of a condition is not usurious if the repayment promised on failure of the condition to occur is materially less than the amount of the loan with the highest permissible interest, unless a transaction is given this form as a colorable device to obtain a greater profit than is permissible. West's Ann.Cal. Const. Art. 15, § 1.

[16] Usury 398 41

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k36 Contracts and Transactions Involving Hazard or Contingency
398k41 k. Interest subject to condition. Most Cited Cases

154 Cal.App.4th 525, 65 Cal.Rptr.3d 205, 07 Cal. Daily Op. Serv. 10,009, 2007 Daily Journal D.A.R. 12,930
(Cite as: 154 Cal.App.4th 525, 65 Cal.Rptr.3d 205)

Under the "interest contingency rule," interest that exceeds the legal maximum is not usurious when its payment is subject to a contingency so that the lender's profit is wholly or partially put in hazard, provided the parties are contracting in good faith and without the intent to avoid the statute against usury; the hazard in question must be something over and above the risk which exists with all loans that the borrower will be unable to pay. West's Ann.Cal. Const. Art. 15, § 1.

[17] Usury 398 41

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k36 Contracts and Transactions Involving Hazard or Contingency
398k41 k. Interest subject to condition. Most Cited Cases

Under the interest contingency rule, under which interest that exceeds the legal maximum is not usurious when its payment is subject to a contingency so that the lender's profit is wholly or partially put in hazard, courts look to the substance rather than to the form of the transaction to determine whether the lender's profits are exposed to the requisite risk.

[18] Usury 398 41

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k36 Contracts and Transactions Involving Hazard or Contingency
398k41 k. Interest subject to condition. Most Cited Cases

Loan on condominium development project did not entitle the secured lender to "contingent deferred interest" and, thus, was not a "shared appreciation loan" exempt from usury law, though loan's interest schedule awarded additional interest based on the actual gross sales price of condominium units, where loan's interest schedule guaranteed lender additional interest regardless of whether the underlying property appreciated in value, or whether the project generated rents or profits. West's Ann.Cal. Const. Art. 15, § 1; West's Ann.Cal.Civ. Code §§ 1917, 1917.005.

[19] Usury 398 41

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k36 Contracts and Transactions Involving Hazard or Contingency
398k41 k. Interest subject to condition. Most Cited Cases

The statutory definition of a "shared appreciation loan," which is exempt from usury law, must be understood to permit a lender to obtain guaranteed interest payments up to the maximum rate permitted under the usury law, and additionally, payments of contingent deferred interest that are subject to risk. West's Ann.Cal. Const. Art. 15, § 1; West's Ann.Cal.Civ. Code §§ 1917, 1917.005.

[20] Usury 398 41

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k36 Contracts and Transactions Involving Hazard or Contingency
398k41 k. Interest subject to condition. Most Cited Cases

Under the "interest contingency rule," a lender may obtain payments on a loan that exceed the maximum interest rate set by the usury law, provided that these payments are subject to risk. West's Ann.Cal. Const. Art. 15, § 1.

[21] Usury 398 41

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k36 Contracts and Transactions Involving Hazard or Contingency
398k41 k. Interest subject to condition. Most Cited Cases

Legislature's intent in enacting the "shared appreciation loan" exemption from the usury law was to establish that if (1) a loan permits the lender to obtain

payments over and above the maximum permitted by the usury law, and (2) the loan documents disclose on their face that these payments constitute a share of appreciation, rents, or profits in a secured property, the statutory exemption will apply. West's Ann.Cal. Const. Art. 15, § 1; West's Ann.Cal.Civ. Code §§ 1917, 1917.005.

[22] Statutes 361 228

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k228 k. Provisos, exceptions, and saving clauses. Most Cited Cases

Generally, exceptions to a statute are construed narrowly to cover only situations that are within the words and reason of the exception.

[23] Contracts 95 129(1)

95 Contracts
95I Requisites and Validity
95I(F) Legality of Object and of Consideration
95k129 Obstructing or Perverting Administration of Justice
95k129(1) k. Agreements relating to actions and other proceedings in general. Most Cited Cases

Under written guaranty executed by guarantors of loan secured by real property, the guarantors' waiver of their defenses arising under statutes concerning guarantors' obligations or "by operation of law" was ineffective regarding their usury defense; if the loan was usurious, then it was void on the grounds of illegality or unlawfulness, and, under the rule against the enforcement of unlawful transactions, any usurious provisions of the loan could not be enforced against the guarantors. West's Ann.Cal. Const. Art. 15, § 1; West's Ann.Cal.Civ. Code §§ 2809, 2810, 2856(a)(1).
See 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 468; Greenwald & Asimov, Cal. Practice Guide: Real Property Transactions (The Rutter Group 2006) ¶ 6:282 et seq. (CAPROP Ch. 6-F); Cal. Jur. 3d, Consumer and Borrower Protection Laws, § 667 et seq.

[24] Appeal and Error 30 852

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k851 Theory and Grounds of Decision of Lower Court
30k852 k. Scope and theory of case. Most Cited Cases

Court of Appeal may affirm a grant of summary judgment if it is correct on any theory of law applicable to the case, including but not limited to the theory adopted by the trial court.

[25] Usury 398 76

398 Usury
398I Usurious Contracts and Transactions
398I(A) Nature and Validity
398k74 Effect of Usury
398k76 k. Validity of contract or indebtedness. Most Cited Cases

The usurious provisions of a loan are void on the grounds of illegality or unlawfulness because they violate express provisions of law. West's Ann.Cal.Civ.Code § 1667.

[26] Contracts 95 134

95 Contracts
95I Requisites and Validity
95I(F) Legality of Object and of Consideration
95k134 k. Ratification. Most Cited Cases

Contracts 95 138(4)

95 Contracts
95I Requisites and Validity
95I(F) Legality of Object and of Consideration
95k135 Effect of Illegality
95k138 Relief of Parties
95k138(4) k. Estoppel to urge illegality. Most Cited Cases

As a general rule, because an illegal contract is void, it cannot be ratified by any subsequent act, and no person can be estopped to deny its validity.

[27] Contracts 95 138(4)

95 Contracts
95I Requisites and Validity
95I(F) Legality of Object and of Consideration
95k135 Effect of Illegality
95k138 Relief of Parties
95k138(4) k. Estoppel to urge illegality. Most Cited Cases

The defense of illegality of a contract cannot be waived by stipulation in the contract.

[28] Contracts 95 129(1)

95 Contracts
95I Requisites and Validity
95I(F) Legality of Object and of Consideration
95k129 Obstructing or Perverting Administration of Justice
95k129(1) k. Agreements relating to actions and other proceedings in general. Most Cited Cases

Guaranty 195 72

195 Guaranty
195III Discharge of Guarantor
195k72 k. Waiver or estoppel of guarantor. Most Cited Cases

Usury 398 104

398 Usury
398I Usurious Contracts and Transactions
398I(B) Rights and Remedies of Parties
398k104 k. Waiver or release of usury in general. Most Cited Cases

Provision of statute governing waiver of suretyship rights and defenses, stating that any guarantor may waive "any other rights and defenses that are or may become available" to the guarantor by reasons of statutory sections concerning suretyship, does not authorize guarantors to waive a usury defense to a loan; the statute is not intended to abrogate or modify the rule against the enforcement of unlawful transactions. West's Ann.Cal.Civ. Code § 2856(a)(1).

****209** Robert A. Lisnow, Los Angeles, and Randi R. Geffner for Defendants and Appellants.

Blue & Schoor and Charles D. Schoor, Los Angeles, for Plaintiff and Respondent.

MANELLA, J.

***530** Appellants Ronald I. Cooper and Ellen M. Cooper challenge summary judgment in favor of respondent WRI Opportunity Loans II, LLC. (WRIO) in its action for payment of a loan guaranteed by appellants. We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

There are no material disputes about the following facts: In 1999, the Coopers were the sole principals in Cooper Commons, LLC. (CC), which planned to build residential townhouses and condominiums on a property in West Hollywood. [FN1] According to the budget for the project, the property was purchased for $5,979,066, and CC expected that the units, when completed, would sell for a total of $25,762,005. The senior and junior secured lenders on the project were, respectively, Comerica Bank—California (Comerica) and WRIO.

FN1. CC initially intended to build 63 units, but later decided to build 62 units.

In November 1999, WRIO loaned $2,490,000 to CC. Under the loan documents, the loan matured in March 2002, and interest on the principal balance accrued at a rate equal to 2.0 percent above a reference rate set by the Bank of America (reference rate). The loan documents also contained provisions that accorded WRIO "additional interest." These provisions entitled WRIO to 4.0 percent of the gross sales price of each unit when it was sold to third parties not affiliated with CC; in addition, they awarded WRIO sums calculated according to a fixed schedule if other contingencies were to occur. By a written agreement, the Coopers personally guaranteed the performance of CC's obligations under the loan documents.

In June and December 2001, WRIO and CC amended the loan documents. The amendments increased the principal loan amount to $3,178,000, raised the interest rate to the greater of (i) 2.0 percent

above the reference rate or (ii) 10.0 percent, and set the maturity date of the loan as June 12, 2002. In addition, the amendments increased the additional interest owed to WRIO upon sale of the units to nonaffiliated parties: WRIO's share of the gross sales price of the first 15 units to be sold was raised to 5.0 percent, and its share of the gross sales price of the remaining units was raised to 4.5 percent. The Coopers expressly approved these amendments, ****210** and agreed to guarantee CC's obligations, as amended.

On February 22, 2002, CC filed for bankruptcy under Chapter 11, and subsequently stated in that proceeding that WRIO held a secured claim for ***531** $3,178,000. No payment on WRIO's loan was made after the maturity date of June 12, 2002. In September 2002, the bankruptcy court authorized CC to obtain additional funding from Comerica to complete the construction of the project. The units in the project were completed and sold for a total of approximately $31.8 million. On March 2, 2005, WRIO demanded that the Coopers, as CC's guarantors, pay the amounts owed under the loan, but they did not respond.

On March 14, 2005, WRIO filed a complaint for breach of a written guaranty against the Coopers, and subsequently sought summary judgment, asserting that the Coopers were obliged to pay the principal and interest—including the so-called additional interest—that CC owed under the loan. When the Coopers opposed summary judgment on the ground that the loan was usurious, WRIO contended in its reply that the Coopers had waived a usury defense, and that the loan otherwise fell within an exemption to California usury law for shared appreciation loans (Civ.Code, § 1917 et seq.).[FN2] After the parties submitted additional briefing on the issues raised in WRIO's reply, the trial court granted summary judgment. On March 29, 2006, a judgment was entered awarding WRIO $6,634,300.82 plus additional accrued interest and costs.

FN2. All further statutory citations are to the Civil Code, unless otherwise indicated.

DISCUSSION

The Coopers contend the trial court erred in granting summary judgment. We agree.

A. *Standard of Review*

[1][2] "On appeal after a motion for summary judgment has been granted, we review the record de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained. [Citation.]" (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334, 100 Cal.Rptr.2d 352, 8 P.3d 1089.) We thus apply " 'the same three-step process required of the trial court. [Citation.]' " (*Bostrom v. County of San Bernardino* (1995) 35 Cal.App.4th 1654, 1662, 42 Cal.Rptr.2d 669.) The three steps are (1) identifying the issues framed by the complaint, (2) determining whether the moving party has made an adequate showing that negates the opponent's claim, and (3) determining whether the opposing party has raised a triable issue of fact. (*Ibid.*)

[3] "[S]ummary judgment law in this state no longer requires a plaintiff moving for summary judgment to disprove any defense asserted by the ***532** defendant as well as prove each element of his own cause of action.... All that the plaintiff need do is to 'prove[ ] each element of the cause of action.' [Citation.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853, 107 Cal.Rptr.2d 841, 24 P.3d 493.) Once the plaintiff makes an adequate initial showing, the burden shifts to the defendant to show a triable issue of fact "as to that cause of action or a defense thereto." (Code.Civ.Proc., § 437c, subd. (p)(1).)

Aside from challenging one item of interest valued at $19,014.45, the Coopers do not contend on appeal that WRIO failed to carry its initial burden on summary judgment. Their central contention is that there are triable issues as to their usury defense. Before the trial court, they pointed to WRIO's investment analysis for ****211** the loan, as originally made, which projected that the loan would earn $1,441,418 over its 23–month term—including $1,032,080 in so-called "additional interest"—resulting in an interest rate of 38 percent, which exceeds the rate permitted by California usury law. In this connection, they submitted evidence that the maximum interest rate allowable under the usury law during the applicable period was 11.5 percent. WRIO did not dispute the Coopers' factual showing regarding the loan's interest rate, but asserted that the provisions for additional interest in the loan rendered it a shared appreciation loan exempt from the usury law. The trial court agreed with WRIO.

[4][5][6][7] In view of the Coopers' factual showing regarding usury, we conclude they raised

triable issues regarding the existence of a usury defense unless—as the trial court determined—the defense fails as a matter of law. Because neither party submitted extrinsic evidence bearing on the meaning of the loan documents and the pertinent historical facts regarding the loan are undisputed, the interpretation of the loan's provisions and its status as a shared appreciation loan are questions of law that we resolve de novo. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865–866, 44 Cal.Rptr. 767, 402 P.2d 839 [contract interpretation]; *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 800–801, 35 Cal.Rptr.2d 418, 883 P.2d 960 [application of usury law to undisputed facts].) [FN3] We therefore begin our inquiry by examining the applicable legal principles.

FN3. In response to the trial court's request for supplemental briefing, the Coopers and WRIO submitted declarations from experts who offered conflicting opinions on the undisputed facts as to whether the loan is a shared appreciation loan. These declarations do not raise triable issues as to the proper characterization of the loan. ly, Evidence Code section 805 permits expert testimony on the ultimate issue to be decided by the factfinder. However, this rule "does not ... authorize ... an 'expert' to testify to legal conclusions in the guise of expert opinion. Such legal conclusions do not constitute substantial evidence. tion.]" (*Downer v. Bramet* (1984) 152 Cal.App.3d 837, 841, 199 Cal.Rptr. 830; see also *Elder v. Pacific Tel. & Tel. Co.* (1977) 66 Cal.App.3d 650, 664, 136 Cal.Rptr. 203.) Thus, even lawyers may not testify as to legal conclusions, or " 'state interpretations of the law, whether it be of a statute, ordinance or safety regulation promulgated pursuant to a statute [citations].' " (See *California Shoppers, Inc. v. Royal Globe Ins. Co.* (1985) 175 Cal.App.3d 1, 67, 221 Cal.Rptr. 171; *Downer v. Bramet, supra,* 152 Cal.App.3d at p. 842, 199 Cal.Rptr. 830.) As the court explained in *Downer v. Bramet,* at pages 841–842, 199 Cal.Rptr. 830: " 'The manner in which the law should apply to particular facts is a legal question and is not subject to expert opinion. [Citations.]' "

***533** B. *Usury*

1. *Elements*

[8][9] Generally, "[t]he California Constitution sets a maximum annual interest rate of seven percent on loans and forbearances, but allows parties by written contract to set the interest rate at up to 10 percent, or at the level of the Federal Reserve's discount rate plus 5 percent, on loans or forebearances involving real property. (Cal. Const., art. XV, § 1, subds. (1)-(2).)" [FN4] (*Jones v. Wells Fargo Bank* (2003) 112 Cal.App.4th 1527, 1534–1535, 5 Cal.Rptr.3d 835 (*Jones*).) To be usurious, a contract "must in its inception require a payment of usury"; subsequent events do not render a legal contract usurious. (*Sharp v. Mortgage Security Corp.* (1932) 215 Cal. 287, 290, 9 P.2d 819; ****212***Strike v. Trans–West Discount Corp.* (1979) 92 Cal.App.3d 735, 745, 155 Cal.Rptr. 132.) The essential elements of a claim of usury are: "(1) The transaction must be a loan or forbearance; (2) the interest to be paid must exceed the statutory maximum; (3) the loan and interest must be absolutely repayable by the borrower; and (4) the lender must have a willful intent to enter into a usurious transaction. [Citations.]" (*Ghirardo v. Antonioli, supra,* 8 Cal.4th at p. 798, 35 Cal.Rptr.2d 418, 883 P.2d 960.)

FN4. California's prohibition on usury is also set forth in an uncodified statute added by an initiative. (Stats. 1919, p. lxxxiii, reprinted at Deering's Ann. Uncod. Initiative Measures 1919–1 (1973 ed.) p. 35.)

[10][11][12][13] As our Supreme Court has explained, "[t]he element of intent is narrow. '[T]he intent sufficient to support the judgment [of usury] does not require a conscious attempt, with knowledge of the law, to evade it. The conscious and voluntary taking of more than the legal rate of interest constitutes usury and the only intent necessary on the part of the lender is to take the amount of interest which he receives; if that amount is more than the law allows, the offense is complete.' [Citation.] Intent is relevant, however, in determining the true purpose of the transaction in question because '... the trier of fact must look to the substance of the transaction rather than to its form.... "[I]t is for the trier of the fact to determine whether the intent of the contracting parties was that disclosed by the form adopted, or whether such form was a mere sham and subterfuge to cover up

a usurious transaction." ' [Citations.]" (*Ghirardo v. Antonioli, supra,* 8 Cal.4th at p. 798, 35 Cal.Rptr.2d 418, 883 P.2d 960.)

2. *Interest Contingency Rule*

[14] The usury law is subject to numerous exceptions and statutory exemptions. ***534**(*Southwest Concrete Products v. Gosh Construction Corp.* (1990) 51 Cal.3d 701, 705–706, 274 Cal.Rptr. 404, 798 P.2d 1247; *Jones, supra,* 112 Cal.App.4th at pp. 1534–1535, 5 Cal.Rptr.3d 835.) Because interest is usurious only when it is "absolutely repayable by the borrower" (*Ghirardo v. Antonioli, supra,* 8 Cal.4th at p. 798, 35 Cal.Rptr.2d 418, 883 P.2d 960), California courts have long accepted a common law doctrine known as the "interest contingency rule." (*D–Beam Limited Partnership v. Roller Derby Skates, Inc.* (9th Cir.2004) 366 F.3d 972, 975; *Thomassen v. Carr* (1967) 250 Cal.App.2d 341, 346–349, 58 Cal.Rptr. 297 (*Thomassen*).)

[15][16] According to this rule, a loan that will "give the creditor a greater profit than the highest permissible rate of interest upon the occurrence of a condition [ ]is not usurious if the repayment promised on failure of the condition to occur is materially less than the amount of the loan ... with the highest permissible interest, unless a transaction is given this form as a colorable device to obtain a greater profit than is permissible." (*Thomassen, supra,* 250 Cal.App.2d at p. 346, 58 Cal.Rptr. 297, quoting the Restatement of Contracts, section 527.) Thus, interest that exceeds the legal maximum is not usurious when its payment is "subject to a contingency so that the lender's profit is wholly or partially put in hazard," provided "the parties are contracting in good faith and without the intent to avoid the statute against usury." (*Lamb v. Herndon* (1929) 97 Cal.App. 193, 201, 275 P. 503.) Under the rule, the hazard in question must be "something over and above the risk which exists with all loans ... that the borrower will be unable to pay." (*Thomassen, supra,* 250 Cal.App.2d at p. 347, 58 Cal.Rptr. 297.)

Instructive applications of the rule are found in *Schiff v. Pruitt* (1956) 144 Cal.App.2d 493, 301 P.2d 446 (*Schiff*) and *Thomassen, supra,* 250 Cal.App.2d 341, 58 Cal.Rptr. 297. In *Schiff,* a lender loaned $20,000 to a developer to enable the developer to build homes on lots in a tract. (*Id.* at p. 496, 301 P.2d 446.) The loan agreement obliged the developer to repay the ****213** principal with only nominal interest, but gave the lender the option to share the appreciation arising from the homes built and sold in the tract. (*Id.* at p. 498, 301 P.2d 446.) Under the agreement, the lender was entitled to purchase the sales contracts for the homes from the developer—up to a maximum based on the face value of the contracts—by paying a sum equal to the costs that the developer had incurred in buying the underlying property and building the homes. (*Id.* at p. 496, 301 P.2d 446.) Because nothing ensured that the sales prices of the homes would exceed the price for the sales contracts fixed in the loan agreement, the court in *Schiff* concluded that the loan agreement was not usurious, reasoning that the lender's profit from the loan was contingent and "wholly at hazard." (*Id.* at pp. 498–499, 301 P.2d 446.)

In *Thomassen,* the lender agreed to loan $18,500 for an 18–month period to a developer to enable him to build an office building. (*Thomassen, supra,* 250 Cal.App.2d at pp. 343–344, 58 Cal.Rptr. 297.) In lieu of a fixed rate of interest on the principal, the developer agreed to pay the lender 30 percent of the net profit from the ***535** sale of the building and 30 percent of the building's gross income from rentals prior to its sale. (*Id.* at p. 344, 58 Cal.Rptr. 297.) The Court of Appeal concluded that the loan was not usurious, pointing to the risks undertaken by the lender in connection with its profits under the loan. (*Id.* at pp. 346–349, 58 Cal.Rptr. 297.)

[17] Under the interest contingency rule, courts "look to the substance rather than to the form" of the transaction to determine whether the lender's profits are exposed to the requisite risk. (*Thomassen, supra,* 250 Cal.App.2d at p. 347, 58 Cal.Rptr. 297.) In some cases, the absence of risk may be apparent on the face of the agreement. Thus, in *Maze v. Sycamore Homes, Inc.* (1964) 230 Cal.App.2d 746, 747–748, 41 Cal.Rptr. 338, the lenders loaned a developer $24,000 for a one-year period. Under the agreement, the developer was to repay the principal plus the sum of $4,800; these obligations were ostensibly secured by an assignment that granted the lenders the sum of $2,400 for each of 12 houses to be built by the developer, payable when the houses were sold. (*Ibid.*) Because the developer was unconditionally obliged to pay the sum of $28,800 notwithstanding the assignment, the lenders were guaranteed their profit "regardless of any profit or loss resulting from the [de-

veloper's] business or from the sale of the particular houses involved." (*Id.* at pp. 752–754, 41 Cal.Rptr. 338.) Accordingly, the court in *Maze* concluded the interest contingency rule was inapplicable, and the loan was usurious. (*Id.* at pp. 753–754, 41 Cal.Rptr. 338.)

Moreover, courts have looked beyond the face of the agreement to assess whether the lender's profits are subject to risk. In *Teichner v. Klassman* (1966) 240 Cal.App.2d 514, 516–518, 49 Cal.Rptr. 742, the lender entered into three agreements with a nightclub owner. Under the first agreement, the lender loaned $6,500, and was to receive the principal plus an option to buy an ownership share in the club; under the remaining agreements, the lender loaned $6,500, and was to receive monthly payments of $130 as long as the club was in existence. (*Ibid.*) Although there was a possibility that the club would be permanently closed due to changes in the law, the trial court declined to apply the interest contingency rule. (*Id.* at pp. 518–519, 522–523, 49 Cal.Rptr. 742.) The Court of Appeal affirmed, reasoning that the lender's risk was not great enough to support the application of the rule. (*Id.* at pp. 522–523, 49 Cal.Rptr. 742.)

****214** 3. *Shared Appreciation Loans*

Closely related to the interest contingency rule is the statutory exemption to the usury law for shared appreciation loans. (See *Jones, supra,* 112 Cal.App.4th at p. 1539, 5 Cal.Rptr.3d 835.) Absent qualifications not relevant here, a shared appreciation loan within the scope of this exemption is "any loan made upon the security of an interest in real property which additionally obligates the borrower to pay contingent deferred interest pursuant to the loan documentation," where "[c]ontingent deferred interest" is "the sum a ***536** borrower is obligated to pay ... as a share of (1) the appreciation in the value of the security property, (2) rents and profits attributable to the subject property, or (3) both." (§ 1917.) In addition, the exemption requires any deed of trust that acts as security for the loan to "indicate on the document that [it] secures a shared appreciation loan." (§ 1917.004.) Section 1917.005 states: "Lenders shall be exempt from the usury provisions of Article XV of the California Constitution with respect to shared appreciation loan transactions. This section is declaratory of existing law."

In *Jones,* this court discussed the relationship between the exemption for shared appreciation loans and the interest contingency rule. There, a partnership obtained a loan for $1.7 million to purchase real property. (*Jones, supra,* 112 Cal.App.4th at p. 1532, 5 Cal.Rptr.3d 835.) Under the terms of the loan, the partnership was obliged to repay the principal, together with 10 percent annual interest and "Excess Value Contingent Interest," that is, 50 percent of the appreciation in the value of the property upon resale or refinancing, within defined limits. (*Ibid.*) When a limited partner in the partnership brought an action against the bank, asserting the loan was usurious, the trial court sustained a demurrer to the partner's complaint without leave to amend. (*Id.* at pp. 1532–1533, 5 Cal.Rptr.3d 835.) We affirmed on the ground that the loan fell within an exemption to the usury law for specified bank loans (Fin.Code, § 1504).

In so concluding, we rejected the partner's contention that the transaction constituted a " 'sham' " shared appreciation loan because the property's rapid appreciation ensured that "the lender's profits were never at risk." (*Jones, supra,* 112 Cal.App.4th at p. 1538, 5 Cal.Rptr.3d 835.) Noting that the transaction "involve[d] a classic shared appreciation loan arrangement," we concluded that the lender's contingent interest was at risk because the lender could not force a sale or "lock in" its profits. (*Id.* at pp. 1534, 1538–1539, 5 Cal.Rptr.3d 835.) Moreover, in discussing case authority on the interest contingency rule, we explained that when a loan meets the requirements for a statutory exemption to the usury law, courts will not look beyond those requirements to determine whether the underlying transaction exposes the lender's profits to significant risk or betrays an intent to evade the usury law. We stated: "The question of whether loaned money or interest [was] at risk figured into the determination of intent to evade the usury law, and the good faith shared appreciation loan was an early common law exception to the usury law. [Citation.] These cases do not apply to loans ... covered by modern statutory exemptions that remove the need for evasion." (*Id.* at p. 1539, 5 Cal.Rptr.3d 835.)

C. *Additional Interest Provisions*

[18] In view of *Jones,* the focus of our inquiry is whether WRIO's loan meets the statutory requirements for a shared appreciation loan. We therefore ***537** examine its terms to determine the circumstances under which they accorded additional interest****215** to WRIO. Because there is no extrinsic ev-

idence bearing on these terms, we look at the plain language of the agreement, viewed as a whole. (*Eltinge & Graziadio Dev. Co. v. Childs* (1975) 49 Cal.App.3d 294, 297, 122 Cal.Rptr. 369.)

The loan agreement obliged CC to pay additional interest in connection with each proposed unit, payable upon the sale of the unit, "or in any event upon the Maturity Date." [FN5] The additional interest for each unit was calculated according to a schedule that contained provisions covering various contingencies. The schedule (as amended by the parties) assigned each unit a "Budgeted Gross Sales Price" falling in a range from $420,000 to $555,895, and addressed three key contingencies: (1) the unit, whether completed or under construction, was sold to a third party not affiliated with CC; (2) the unit, whether completed or under construction, was sold to an affiliate of CC or released due to payment of the loan; and (3) no construction of the unit had been undertaken when the loan matured or the underlying property was sold. [FN6]

FN5. Paragraph 1.6.4 of the loan agreement provides: "In addition to interest at the applicable rate, Borrower shall pay Lender additional interest (the 'Additional Interest') in connection with the release of Lender's security interest in each Unit comprising the Project. Borrower shall not take any action or make any omission that will result in a reduction of the number of Units to be constructed. The Additional Interest payable with respect to each Unit shall become due upon and shall be paid from the escrow established for the closing of the sale of such Unit, or in any event upon the Maturity Date, a full prepayment of the Loan, or a partial prepayment with respect to which a release of such Unit from the Deed of Trust is requested. Such Additional Interest shall be calculated in accordance with the Unit Schedule...."

FN6. The schedule also contains a provision concerning additional interest in connection with the sale of parking stalls and garage units.

In the case of the first contingency, WRIO was entitled to 5.0 percent of the gross sales price if the unit was among the first fifteen sold, and 4.5 percent of the gross sales price otherwise. In the case of the second contingency, WRIO was entitled to the greater of (i) 4.5 percent of the actual gross sales price or (ii) 4.5 percent of the unit's budgeted gross sales price.[FN7] Finally, in ***538** the case of the third contingency, WRIO was entitled to the difference between $1,376,290 and the sum of the additional interest WRIO received under the provisions for the other contingencies.[FN8] In effect, the provision regarding ****216** the third contingency is a "saving clause" that guaranteed WRIO additional interest even if no construction was undertaken on some or all of the units.

FN7. Regarding the first two contingencies, the schedule provides: "A.1 Units Completed or Under Construction. In the case of individual Units with respect to which construction has been commenced (whether or not the improvements are complete), Borrower shall pay Additional Interest in the following amounts: [¶] (a) For the first 15 Units being released in connection with the closing of a sale of such Units to bona fide third parties who are not an Affiliate of Borrower, 5.0 % of the gross sales price of each Unit, including any and all lot premiums and buyer-choice options and upgrades; and [¶] (b) For the remaining Units, after 15 Units have closed, being released in connection with the closing of a sale of such Unit to a bona fide third party who is not an Affiliate of Borrower, 4.5 % of the gross sales price of the Unit, including any and all lot premiums and buyer-choice options and upgrades; and [¶] (c) For any Unit being released in connection with a Loan prepayment, payment of the Loan at maturity or upon acceleration, or sale to an Affiliate of Borrower with Lender's consent, the greater of (i) 4.5 % of the gross sales price of the Unit if such Unit is subject to a 'Qualifying Sales Contract' ... on the date of such prepayment, maturity, or acceleration, or (ii) 4.5 % of the 'Budgeted Gross Sales Price' for such Unit based upon the plan type of the Unit as identified in the Plans, as follows:...."

FN8. Regarding the third contingency, the schedule provides: "Property other than Condominium or Townhouse Units or Parking Units. Additional interest shall be due

154 Cal.App.4th 525, 65 Cal.Rptr.3d 205, 07 Cal. Daily Op. Serv. 10,009, 2007 Daily Journal D.A.R. 12,930
(Cite as: 154 Cal.App.4th 525, 65 Cal.Rptr.3d 205)

> with respect to any portion of the Land that is not constructed as a condominium or townhouse Unit upon the sale of such Land or upon the Maturity Date in an amount equal to the difference between $1,376,290 and the sum of (i) the cumulative amount of Additional Interest that Lender has received prior to such time under [the other provisions for Additional Interest], plus (ii) the further amount of the Additional Interest that Lender expects to receive from closings of completed condominium or townhouse Units based on the budgeted sales prices shown in Section A.1 above."

The schedule thus ensured WRIO a significant amount of additional interest in a wide range of circumstances, regardless of the success of the project. If CC undertook *no* construction on the project, the provision for the third contingency entitled WRIO to $1,376,290 in additional interest upon the loan's maturity date; if CC began construction but failed to complete the project, the provisions for the first and second contingencies entitled WRIO to at least 4.5 percent of the actual or budgeted gross sales price, depending upon whether the buyers of the partially completed units were affiliated with CC; finally, if CC completed the project as planned, the provision for the first contingency entitled WRIO to at least 4.5 percent of the total gross income from the sales of the units. It appears that the schedule denied additional interest to WRIO in only one circumstance of any consequence, namely, that CC began construction on the units and thereafter failed to sell them to anyone.

The remaining question is whether the schedule accords WRIO "contingent deferred interest" within the meaning of the statutory scheme governing shared appreciation loans. In resolving this issue of statutory interpretation, our objective "is to ascertain and effectuate legislative intent. To accomplish that objective, courts must look first to the words of the statute, giving effect to their plain meaning. If those words are clear, we may not alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history. [Citation.]" (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437, 35 Cal.Rptr.2d 155.)

In our view, the schedule cannot be construed as entitling WRIO to "Contingent Deferred Interest," that is, "a share of (1) the appreciation in the ***539** value of the security property, (2) rents and profits attributable to the subject property, or (3) both." (§ 1917.) The provisions in the schedule, on their face, guaranteed WRIO additional interest regardless of whether the underlying property appreciated in value, or whether the project generated rents or profits. If the property did not appreciate in value from its original purchase price of approximately $6,000,000—for example, because the project collapsed during a downturn in the real estate market, or resulted in defective or otherwise unmarketable units that required demolition—the schedule accorded WRIO additional interest ranging from 4.5 percent of the gross sales price of the property to $1,376,290. For the same reasons, if the property's appreciation was modest, the additional interest to which WRIO was entitled under the schedule could exceed the appreciation. Moreover, the schedule awarded WRIO $1,376,290 in additional interest even if *no* construction was undertaken on the project.

WRIO contends that additional interest pursuant to the schedule constitutes contingent deferred interest under the statutory scheme, even though the schedule ****217** ensures payments of additional interest in the absence of appreciation. WRIO argues that "a loan provision that requires a payment not based on appreciation or that requires payment even if there is no appreciation, does not preclude [the loan] from satisfying the statutory definition of a[s]hared [a]ppreciation [l]oan, as long as the borrower is obligated to pay the lender a share of the appreciation, if there is any appreciation, as it is in the present case." WRIO thus contends that the loan in question is a shared appreciation loan because the provisions awarding additional interest based on the actual gross sales price of the units effectively provided for the sharing of appreciation. For the reasons explained below, WRIO is mistaken.

As interpreted by WRIO, the statutory definition of a shared appreciation loan encompasses *any* loan secured by real property—including a loan that *guarantees* the lender an otherwise usurious rate of interest—as long as the loan *also* contains a provision entitling the lender to a share of appreciation arising from the property. WRIO's interpretation would effectively abrogate the usury law with respect to loans secured by real property by sanctioning usurious rates of interest that were guaranteed, even in the absence of

appreciation or risk.

[19][20] WRIO's construction cannot be reconciled with the language of the statutory scheme and the Legislature's evident purpose in enacting it. The provision exempting shared appreciation loans from the usury law states that the exemption "is declaratory of existing law." (§ 1917.005.) In view of this statement, the Legislature's apparent intent in creating the exemption was to clarify the application of the interest contingency rule in a defined set of ***540** circumstances, rather than to abrogate the rule.[FN9] Under the rule, a lender may obtain payments on a loan that exceed the maximum interest rate set by the usury law, provided that these payments are subject to risk. (*Thomassen, supra,* 250 Cal.App.2d at pp. 346–349, 58 Cal.Rptr. 297.) Accordingly, the statutory definition of a shared appreciation loan must be understood to permit a lender to obtain guaranteed interest payments up to the maximum rate permitted under the usury law, and *additionally,* payments of contingent deferred interest that are *subject to risk.*

> FN9. The provision containing this statement (§ 1917.005) is derived, in part, from an earlier statutory exemption for a narrowly defined class of shared appreciation loans (see former section 1917.167, added by Stats. 1982, ch. 466, § 12, pp. 1998–2006, repealed by Stats. 1987, ch. 652, § 1, pp. 2061–2062). The prior statutory scheme concerned loans to supply funds for the construction of "owner-occupied dwelling units," and permitted lenders to obtain up to 50 percent of the "Net appreciate[ion] value" of the units (that is, their "fair market value less the sum of the borrower's cost of the property and the value of capital improvements"). (Former §§ 1917.120, subds. (c), (f), (j), 1917.130, added by Stats. 1982, ch. 466, § 12, pp. 1998–2006, repealed by Stats. 1987, ch. 652, § 1, pp. 2061–2062). In view of the broad reach of the current exemption, we conclude the Legislature's statement that it "is declaratory of existing law" manifests an intent to refer beyond the prior statutory exemption to the common law interest contingency rule.

[21] As indicated above (see pt. B.2, *ante*), the interest contingency rule permits courts to look beyond the face of a transaction to determine whether the underlying transaction exposed the lender's ostensibly contingent profits to genuine risk; as we explained in *Jones,* the function of statutory exemptions generally is to curtail this kind of inquiry into the underlying transaction (*Jones, supra,* 112 Cal.App.4th at p. 1539, 5 Cal.Rptr.3d 835). We therefore conclude that the Legislature's intent in enacting the exemption was to establish that if (1) a loan permits the ****218** lender to obtain payments over and above the maximum permitted by the usury law, and (2) the loan documents disclose on their face that these payments constitute a share of appreciation, rents, or profits in a secured property, the statutory exemption will apply.[FN10] Accordingly, we reject WRIO's contrary construction of the statutory scheme.

> FN10. We recognize that to the extent the statutory exemption obviates the need to look beyond the face of the transaction, it may be in tension with the Legislature's statement that the exemption "is declaratory of existing law" (§ 1917.005). However, such statements by the Legislature are properly assessed in light of other evidence bearing on the statute's meaning. (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244–245, 62 Cal.Rptr.2d 243, 933 P.2d 507.) Viewed in context, the statement manifests the Legislature's intent to preserve the central principles of the interest contingency rule.

We also reject WRIO's contention that the loan terms awarding additional interest based up the actual gross sales price of the units are provisions for the sharing of appreciation under the statutory scheme. WRIO argues that the project, realistically viewed, was likely to cause substantial appreciation in the property's value, and the appreciation was likely to exceed the payments ***541** to WRIO under the terms in question. WRIO thus contends that the terms effectively allocated WRIO a share of the appreciation.

[22] We find this argument to be at odds with the legislative intent underlying the exemption. As we have explained, the statutory scheme authorizes an exception to the usury law founded on the interest contingency rule. Generally, exceptions to a statute are construed narrowly to cover only situations that are "within the words and reason of the exception." (*Hayter Trucking, Inc. v. Shell Western E & P,*

Inc. (1993) 18 Cal.App.4th 1, 20, 22 Cal.Rptr.2d 229.) Under WRIO's proposal, loan terms that facially entitle the lender to a payment of interest above the legal rate not based on appreciation, rents, or profits, and which otherwise manifest an intent to avoid risks to such payment, constitute provisions for sharing appreciation under the statutory definition of contingent deferred interest. Because this proposal conflicts with the language of the statutory definition and the principles governing the interest contingency rule, we decline to adopt it. In sum, WRIO's loan does not meet the statutory requirements for a shared appreciation loan, and thus the trial court erred in concluding the loan was exempt from the usury law on this basis.[FN11]

FN11. In view of this conclusion, it is unnecessary to address the Coopers' contention that the trust deed provided insufficient notice that it secured a shared appreciation loan.

D. *Waiver*

[23][24] WRIO contends that summary judgment in its favor is properly affirmed on an alternative ground, namely, that the Coopers expressly waived their entitlement to assert a usury defense.[FN12] Pertinent to this contention are sections 2809 and 2810, which fall within Title XIII of the Civil Code (§§ 2787–2856), which abolishes the distinction between sureties and guarantors (§ 2787), and otherwise defines ****219** their obligations and liabilities. Section 2809 states that a guarantor's obligation "must be neither larger in amount nor in other respects more burdensome than that of the principal." [FN13] Section 2810 further provides that a guarantor "is not liable if ... there is no liability ***542** upon the part of the principal at the time of the execution of the contract ... unless the [guarantor] has assumed liability with knowledge of the existence of the defense." [FN14]

FN12. Although WRIO raised this contention in its reply to the Coopers' opposition to summary judgment and the parties addressed it in their supplementary briefing, the trial court did not rule on it in granting summary judgment. Nonetheless, absent a triable issue of material fact, we may affirm the grant of summary judgment "if it is correct on any theory of law applicable to the case, including but not limited to the theory adopted by the trial court. [Citations.]" *(Western Mutual Ins. Co. v. Yamamoto* (1994) 29 Cal.App.4th 1474, 1481, 35 Cal.Rptr.2d 698.)

FN13. Section 2809 provides in full: "The obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; and if in its terms it exceeds it, it is reducible in proportion to the principal obligation."

FN14. Section 2810 provides in full: "A surety is liable, notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal; but he is not liable if for any other reason there is no liability upon the part of the principal at the time of the execution of the contract, or the liability of the principal thereafter ceases, unless the surety has assumed liability with knowledge of the existence of the defense. Where the principal is not liable because of mere personal disability, recovery back by the creditor of any res which formed all or part of the consideration for the contract shall have the effect upon the liability of the surety which is attributed to the recovery back of such a res under the law of sales generally."

Here, the written guaranty executed by the Coopers states: "Guarantor ... waives any rights, claims, defense, abatements, or rights of setoff or recoupment based on or arising based on or arising out of: (1) any legal disability, discharge, or limitation of the liability of Borrower to Lender, whether consensual or arising by operation of law or any proceeding...." Moreover, it states: "Guarantor affirms its intention to waive all benefits that might otherwise be available to Guarantor or Borrower under ... Civil Code Sections 2809, 2810, ..., among others." The Coopers do not dispute that the guaranty contains these provisions.

The issue thus presented is whether the Coopers' waiver encompassed their usury defense. In *Rochester Capital Leasing Corp. v. K & L Litho Corp.* (1970) 13 Cal.App.3d 697, 700–705, 91 Cal.Rptr. 827, the court concluded that an obligation to pay usurious interest undertaken by a corporation was unenforceable against the loan's guarantors, who were the corporation's principals. (See also *Martin v. Ajax Construction Co.* (1954) 124 Cal.App.2d 425, 431, 269 P.2d

132.) However, no published case has addressed whether the guarantors of a loan may expressly waive a usury defense. We therefore examine the legal authority applicable to this question.

[25][26][27] The usurious provisions of a loan are void on the grounds of illegality or unlawfulness because they violate express provisions of law. (*Martin v. Ajax Construction Co., supra,* 124 Cal.App.2d at p. 431, 269 P.2d 132; see Civ.Code, § 1667; 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 455, pp. 497–498.) As Witkin explains, as a general rule, "[b]ecause an illegal contract is void, it cannot be ratified by any subsequent act, and no person can be estopped to deny its validity. [Citations.] [¶] Similarly, the defense of illegality cannot be waived by stipulation in the contract. [Citations.]" (1 Witkin, *supra,* Contracts, § 432, at pp. 473–474, italics omitted.)

***543** Thus, in *Hollywood State Bk. v. Wilde* (1945) 70 Cal.App.2d 103, 111–114, 160 P.2d 846, the court rejected the defendants' contention that a provision in their contracts to sell investments barred the plaintiff from introducing evidence that the contracts constituted illegal securities transactions. In so concluding, it relied on the rule that "[w]hen ... the relations of ****220** the parties to a transaction are illegal and against public policy the court will deny relief based upon their contract," and remarked that under this rule, "a party may not 'by stipulation at the time of the execution thereof or afterward, waive his right to urge the illegality in any action thereon instituted by the other party thereto.' " (*Id.* at p. 112, 160 P.2d 846, quoting *American National Bank v. A.G. Sommerville* (1923) 191 Cal. 364, 371, 216 P. 376.) The court further stated: "The contracts being void by virtue of having been executed and assigned contrary to public policy and statute, all attempts to validate and vitalize them by inserting a waiver of such defense are likewise voidable for the same reason." (*Id.* at p. 114, 160 P.2d 846.)

In *Wells v. Comstock* (1956) 46 Cal.2d 528, 297 P.2d 961, our Supreme Court applied the rule barring the enforcement of illegal contracts to a transaction involving a guarantor. There, the plaintiffs had entered into an unlawful contract to sell corporate stock; the defendants were the buyer of the stock and a party who had agreed to guarantee the buyer's performance. (*Id.* at pp. 529–530, 297 P.2d 961.) In concluding that the defendant buyer was not estopped to assert that the contract was illegal due to his knowing participation in the illegal transaction, the court stated: " '[T]he rule of public policy that forbids an action for damages for breach of [an unlawful] agreement is not based on the impropriety of compelling the defendant to pay the damages. That in itself would generally be a desirable thing. When relief is denied it is because the plaintiff is a wrongdoer, and to such a person the law denies relief.' " (Quoting the Restatement of Contracts, section 598, com. a, p. 1110.)

The court in *Wells* further held that "[s]ince the principal obligation of the contract is unenforceable because of illegality, the guaranty too is unenforceable." (*Wells v. Comstock, supra,* 46 Cal.2d at p. 533, 297 P.2d 961.) As support for this conclusion, the court relied on section 2810 and section 117 of the Restatement of Security, which addresses the availability of the defense of illegality to a surety. The comment to section 117 states: "Where the principal's promise is itself illegal in its inception, and the performance of the surety's contract is subject to the laws of the same jurisdiction as that of the principal, it is against public policy to give legal effect to the surety's obligation." (Rest., Security, § 117, com. d, p. 313.)

[28] ***544** In view of *Wells* and the other authority regarding rule against the enforcement of unlawful transactions, we conclude that the Coopers' waiver of their defenses arising under sections 2809 and 2810 or "by operation of law" was ineffective regarding their usury defense. WRIO nonetheless contends that the Legislature has authorized guarantors to waive a usury defense by enacting subdivision (a)(1) of section 2856 (subdivision (a)(1)), which provides: "(a) Any guarantor or other surety, including a guarantor of a note or other obligation secured by real property or an estate for years, may waive any or all of the following: [¶] (1) The guarantor or other surety's rights of subrogation, reimbursement, indemnification, and contribution and *any other rights and defenses that are or may become available to the guarantor or other surety by reason of Sections 2787 to 2855, inclusive.*" [FN15] (Italics added.)

FN15. Subdivision (a) of section 2856 provides in full: "(a) Any guarantor or other surety, including a guarantor of a note or other obligation secured by real property or an estate for years, may waive any or all of the following: [¶] (1) The guarantor or other

> surety's rights of subrogation, reimbursement, indemnification, and contribution and any other rights and defenses that are or may become available to the guarantor or other surety by reason of Sections 2787 to 2855, inclusive. [¶] (2) Any rights or defenses the guarantor or other surety may have in respect of his or her obligations as a guarantor or other surety by reason of any election of remedies by the creditor. [¶] (3) Any rights or defenses the guarantor or other surety may have because the principal's note or other obligation is secured by real property or an estate for years. These rights or defenses include, but are not limited to, any rights or defenses that are based upon, directly or indirectly, the application of Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure to the principal's note or other obligation."

****221** Pointing to the italicized portion of subdivision (a)(1), WRIO argues that the Coopers' usury defense is "available to [them] by reason of" sections 2809 and 2810, and thus their waiver was effective regarding this defense. We disagree. As we have explained, the usury defense rests on the rule against the enforcement of illegal transactions, which is founded on considerations of public policy that are independent of sections 2809 and 2810. Furthermore, an examination of the history of section 2856 discloses that the Legislature did not intend subdivision (a)(1) to displace or modify this rule, insofar as it applies to the waiver of defenses by guarantors.

As originally enacted in 1995, Civil Code section 2856 was the Legislature's response to *Cathay Bank v. Lee* (1993) 14 Cal.App.4th 1533, 18 Cal.Rptr.2d 420 (*Cathay Bank*), which imposed stringent requirements on a guarantor's waiver of a defense arising from the principal's rights under the antideficiency statutes (Code Civ. Proc., §§ 580a, 580b, 580d, 726). (*River Bank America v. Diller* (1995) 38 Cal.App.4th 1400, 1417–1419, 45 Cal.Rptr.2d 790.) Generally, such defenses are not predicated on a contention that the principal's contract is unlawful. (See *ibid.*; *Cathay, supra,* 14 Cal.App.4th at pp. 1535–1542, 18 Cal.Rptr.2d 420.)

***545** Subdivision (a) of the 1995 statute provided in pertinent part: "Any guarantor, including a guarantor of an obligation secured by real property or any interest therein, may waive the guarantor's rights of subrogation and reimbursement and *any other rights and defenses available to the guarantor by reason of Sections 2787 to 2855, inclusive,....*" mer Civ.Code, § 2856, added by Stats. 1994, ch. 1204, § 1, p. 1422, repealed by Stats. 1996, ch. 1013, § 2, pp. 5985–5987, italics added.) The remainder of the 1995 statute addressed the requirements for waivers, including waivers of rights and defenses arising from the antideficiency statutes. (*Ibid.*) In enacting the 1995 statute, the Legislature stated that subdivision (a) was "merely declarative of [ ] existing law." (*Ibid.*) In 1996, the Legislature enacted the current version of section 2856, which amended the 1995 statute, but preserved the italicized language upon which WRIO relies. (Stats. 1996, ch. 1013, § 2, pp. 5985–5987.)

As the court explained in *River Bank America v. Diller, supra,* 38 Cal.App.4th at page 1419, 45 Cal.Rptr.2d 790, the Legislature's declaration regarding subdivision (a) of the 1995 statute, viewed in context, manifested its intent to restore the law regarding waivers to its state prior to *Cathay Bank.* Because the portion of subdivision (a)(1) upon which WRIO relies is found in subdivision (a) of the 1995 statute, we conclude that it is not intended to abrogate or modify the rule against the enforcement of unlawful transactions, which antedates *Cathay Bank* and is not addressed in that case.[FN16] WRIO failed to ****222** establish a valid waiver of the Coopers' usury defense, and thus summary judgment cannot be affirmed on this ground.

> FN16. We recognize that in enacting the current version of section 2856, the Legislature stated: "It is the intent of the Legislature that the types of waivers described in Section 2856 ... do not violate the public policy of this state." (Stats. 1996, ch. 1013, § 3, p. 5987.) Because section 2856 does not describe the waiver of defenses based on the rule against the enforcement of unlawful transactions, and the history of the section manifests the Legislature's intent to preserve pre- *Cathay Bank* law, this statement cannot reasonably be viewed as evidence that the Legislature intended to abolish or limit the rule.

E. *Conclusion*

154 Cal.App.4th 525, 65 Cal.Rptr.3d 205, 07 Cal. Daily Op. Serv. 10,009, 2007 Daily Journal D.A.R. 12,930
(Cite as: 154 Cal.App.4th 525, 65 Cal.Rptr.3d 205)

Because WRIO's challenges to the Coopers' usury defense fail as a matter of law on the facts that were undisputed for the purpose of WRIO's motion for summary judgment, we cannot say there are no triable issues regarding that defense. Accordingly, summary judgment was improper.[FN17]

> FN17. In so concluding, we do not address the Coopers' contention that there are triable issues of fact regarding the item of interest valued at $19,014.45.

***546 DISPOSITION**

The judgment is reversed. Appellants are awarded their costs.

We concur: EPSTEIN, P.J., and WILLHITE, J.

Cal.App. 2 Dist.,2007.
WRI Opportunity Loans II LLC v. Cooper
154 Cal.App.4th 525, 65 Cal.Rptr.3d 205, 07 Cal. Daily Op. Serv. 10,009, 2007 Daily Journal D.A.R. 12,930

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192 Cal.App.4th 770, 121 Cal.Rptr.3d 696, 265 Ed. Law Rep. 347, 11 Cal. Daily Op. Serv. 1923, 2011 Daily Journal D.A.R. 2308
(Cite as: 192 Cal.App.4th 770, 121 Cal.Rptr.3d 696)

H

Court of Appeal, Fourth District, Division 1, California.
CALIFORNIA SCHOOL BOARDS ASSOCIATION et al., Plaintiffs and Appellants,
v.
STATE of California et al., Defendants and Appellants.

No. D055659.
Feb. 9, 2011.
Rehearing Denied Mar. 8, 2011.
Review Denied May 18, 2011.

Background: School districts brought action against state for declaratory, injunctive, and writ relief challenging mandates imposed on districts by California Legislature with only nominal funding, and requested reimbursement. The Superior Court, San Diego County, No. 37-2007-00082249-CU-WM-CTL,Charles R. Hayes, J., granted the requested relief, except that it refused to order reimbursement or to permit further discovery on that issue. Districts and state appealed.

Holdings: The Court of Appeal, Haller, J., held that:
(1) state's practice of only nominally funding mandates imposed on school districts did not satisfy state constitution; but
(2) adequate remedy at law precluded mandamus relief for state's failure to satisfy constitution;
(3) Legislature's funding of mandates imposed upon local agencies is discretionary;
(4) writ of mandate directing Legislature to fund mandates violated separation of powers doctrine; and
(5) denying districts' request to compel state to reimburse funds was proper.

Affirmed in part and reversed in part.

West Headnotes

[1] Schools 345 19(1)

345 Schools
345II Public Schools
345II(A) Establishment, School Lands and Funds, and Regulation in General
345k16 School Funds
345k19 Apportionment and Disposition
345k19(1) k. In general. Most Cited Cases

State's practice of appropriating only a nominal amount to fund mandates imposed on school districts and deferring the remaining payment did not satisfy the constitutional provision requiring the state to fund state mandates imposed upon local agencies, even though the state made payments on the outstanding debt, where the state did not fix a date for full payment. West's Ann.Cal. Const. Art. 13B, § 6(a).

[2] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

Purpose of constitutional provision requiring the state to fund state mandates imposed upon local agencies is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ill equipped to assume increased financial responsibilities because of the taxing and spending limitations that the state constitution imposes. West's Ann.Cal. Const. Art. 13B, § 6.

[3] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

Under the constitutional provision requiring the state to fund state mandates imposed upon local agencies, if the State wants to require local school districts to provide new programs or services, it is free to do so, but not by requiring local entities to use their own revenues to pay for the programs. West's Ann.Cal. Const. Art. 13B, § 6.

192 Cal.App.4th 770, 121 Cal.Rptr.3d 696, 265 Ed. Law Rep. 347, 11 Cal. Daily Op. Serv. 1923, 2011 Daily Journal D.A.R. 2308
(Cite as: 192 Cal.App.4th 770, 121 Cal.Rptr.3d 696)

[4] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

Purpose of constitutional provision requiring the state to fund mandates imposed upon local agencies is to require each branch of government to live within its means, and to prohibit the state from circumventing this restriction by forcing local agencies such as school districts to bear the state's costs, even for a limited time period. West's Ann.Cal. Const. Art. 13B, § 6.

[5] Statutes 361 220

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k220 k. Legislative construction. Most Cited Cases

A court should not accept later expressed legislative intent if the intent is inconsistent with the plain meaning of the prior act or its legislative history.

[6] Constitutional Law 92 2451

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)1 In General
92k2451 k. Interpretation of constitution in general. Most Cited Cases

Constitutional Law 92 2457

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)1 In General
92k2457 k. Interpretation of statutes. Most Cited Cases

The interpretation of a statute or a constitutional provision is an exercise of the judicial power the Constitution assigns to the courts.

[7] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

The statute requiring that "all" costs of state mandates imposed upon local agencies must be reimbursed by the state requires full payment once a mandate is determined by the Commission on State Mandates and any appeals process has been completed. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17561(a).

[8] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

Statute allowing State Controller to adjust payments to fund state mandates imposed upon local agencies to correct for any prior underpayments does not authorize the state to make only nominal payments for a mandate. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17561(d)(2)(C).

[9] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

The statute providing that an initial reimbursement claim for state mandates imposed upon local agencies "shall include accrued interest if the payment is being made more than 365 days after adoption of the statewide cost estimate for an initial claim" does not provide the Legislature with the authority to implement a policy under which it pays only a nominal amount of a mandated claim. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17561.5.

[10] Statutes 361 176

192 Cal.App.4th 770, 121 Cal.Rptr.3d 696, 265 Ed. Law Rep. 347, 11 Cal. Daily Op. Serv. 1923, 2011 Daily Journal D.A.R. 2308
(Cite as: 192 Cal.App.4th 770, 121 Cal.Rptr.3d 696)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k176 k. Judicial authority and duty. Most Cited Cases

The proper interpretation of a statute is a particularly appropriate subject for judicial resolution.

[11] Declaratory Judgment 118A 201

118A Declaratory Judgment
118AII Subjects of Declaratory Relief
118AII(K) Public Officers and Agencies
118Ak201 k. Officers and official acts in general. Most Cited Cases

Judicial economy strongly supports the use of declaratory relief to avoid duplicative actions to challenge an agency's statutory interpretation or alleged policies.

[12] Declaratory Judgment 118A 41

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(C) Other Remedies
118Ak41 k. Existence and effect in general. Most Cited Cases

The remedy of declarative relief is cumulative and does not restrict any other remedy.

[13] Declaratory Judgment 118A 41

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(C) Other Remedies
118Ak41 k. Existence and effect in general. Most Cited Cases

The fact that another remedy is available is an insufficient ground for refusing declaratory relief.

[14] Declaratory Judgment 118A 65

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(D) Actual or Justiciable Controversy
118Ak65 k. Moot, abstract or hypothetical questions. Most Cited Cases

Declaratory Judgment 118A 83

118A Declaratory Judgment
118AII Subjects of Declaratory Relief
118AII(A) Rights in General
118Ak83 k. Nonliability. Most Cited Cases

Declaratory relief is generally available to settle the parties' rights with respect to future actions, and not to correct conduct that occurred in the past.

[15] Declaratory Judgment 118A 210

118A Declaratory Judgment
118AII Subjects of Declaratory Relief
118AII(K) Public Officers and Agencies
118Ak210 k. Schools and school districts. Most Cited Cases

Declaratory relief was a proper remedy for school districts' dispute with state over whether state's practice of paying only a nominal amount for mandated programs while deferring the balance of the cost constituted a failure to provide a subvention of funds for the mandates as required by the state constitution, as there was an actual controversy between the parties regarding the interpretation of the state constitution and a statute, pertaining to the use of deferred mandate payments. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17561.

[16] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

If the Legislature identifies a statutory program in the Budget Act as a mandate for which no funding is provided in that fiscal year and specifically relieves school districts of the requirement that they implement the program, the remedy is self-executing in the sense that it does not require any affirmative action by the school district, i.e., if the Legislature makes this specific “nonfunding” designation, each school district is permitted to make its own determination not to im-

plement the mandate. West's Ann.Cal.Gov.Code § 17581.5 (2009).

[17] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

If the Legislature does not fund a determined mandate imposed on a local agency and does not specifically designate the mandate as one for which no funding will be provided, the local agency or school district must perform the mandate, unless it affirmatively obtains relief under the statute authorizing a local agency to file a declaratory relief action to declare an unfunded mandate unenforceable and enjoin its enforcement for that fiscal year. West's Ann.Cal.Gov.Code §§ 17581, 17612(c); § 17581.5 (2009).

[18] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

The remedy under the statute authorizing a local agency to file a declaratory relief action to declare an unfunded mandate unenforceable and enjoin its enforcement for that fiscal year is not self-executing, and requires the local entity to affirmatively seek judicial relief to be excused from the mandate. West's Ann.Cal.Gov.Code § 17612(c).

[19] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

The remedy under the statute authorizing a local agency to file a declaratory relief action to declare an unfunded mandate unenforceable and enjoin its enforcement for that fiscal year affords relief prospectively, and not as to funds previously paid out by a local agency to satisfy a state mandate. West's Ann.Cal.Gov.Code § 17612(c).

[20] Mandamus 250 3(1)

250 Mandamus
250I Nature and Grounds in General
250k3 Existence and Adequacy of Other Remedy in General
250k3(1) k. In general. Most Cited Cases

Statute authorizing a local agency such as a school district to file a declaratory relief action to declare an unfunded mandate unenforceable and enjoin its enforcement for that fiscal year provided an adequate remedy at law for state's failure to satisfy state constitution in paying only a nominal amount to school districts for mandated programs while deferring the balance of the cost, and thus mandamus relief was not appropriate. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17612(c).
See Cal. Jur. 3d, Municipalities, § 557; Cal. Jur. 3d, Schools, § 8; Cal. Jur. 3d, State of California, § 106; 7 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 148; 9 Witkin, Summary of Cal. Law (10th ed. 2005) Taxation, § 119 et seq.

[21] Constitutional Law 92 990

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In general. Most Cited Cases

A court must presume the Legislature acts consistent with the Constitution when enacting legislation, and must adopt an interpretation that upholds the statute's constitutionality, if the interpretation is consistent with the statutory language and purpose.

[22] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

Under the statute authorizing a local agency to file a declaratory relief action to declare an unfunded

mandate unenforceable and enjoin its enforcement for that fiscal year, a party is permitted to seek relief for nominal funding as well as a complete lack of funding for a determined state mandate. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17612(c).

[23] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

In the statute authorizing a local agency to file a declaratory relief action to declare an unfunded mandate unenforceable and enjoin its enforcement for that fiscal year, the word "deletes" does not refer to the physical act of entirely deleting an item from a budget bill, but refers more generally to the deletion of all or part of the administratively-determined cost from the amount required to be appropriated to the local entity. West's Ann.Cal.Gov.Code § 17612(c).

[24] Appeal and Error 30 768

30 Appeal and Error
30XII Briefs
30k768 k. Scope and effect. Most Cited Cases

A footnote of school districts' appellate brief mentioning the issue in passing was insufficient to present the argument on appeal that the requirement that local entities bring an action every year to seek relief from unfunded mandates was an unreasonable restriction on districts' rights under the constitutional provision prohibiting the Legislature from imposing unfunded mandates on local government, where districts did not cross-appeal from the portion of the trial court's order rejecting this argument. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17612(c).

[25] Appeal and Error 30 881.1

30 Appeal and Error
30XVI Review
30XVI(C) Parties Entitled to Allege Error
30k881 Estoppel to Allege Error
30k881.1 k. In general. Most Cited Cases

State's prior agreement to make future payment in full for nominally funded mandates imposed on school district, and its prior position that districts were required to comply with these mandates, would preclude state from arguing that school districts waived claims for reimbursement for prior unpaid mandates by previously failing to seek relief under the statute authorizing a local agency to file a declaratory relief action to declare an unfunded mandate unenforceable and enjoin its enforcement for that fiscal year. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Gov.Code § 17612(c).

[26] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

Under the constitutional provision stating that the state must fund mandates imposed upon local agencies, the Legislature had discretion not to fund such mandates and to require local agencies to seek relief from the mandates, and thus a writ of mandate requiring the Legislature either to fund or suspend such mandates was improperly issued because it compelled a discretionary, not a ministerial, act. West's Ann.Cal. Const. Art. 13B, § 6(a); West's Ann.Cal.Gov.Code § 17612(c); § 17581.5 (2009).

[27] Mandamus 250 12

250 Mandamus
250I Nature and Grounds in General
250k12 k. Nature of acts to be commanded. Most Cited Cases

To obtain writ relief, the petitioner must show the respondent has a clear, present, and ministerial duty to act in a particular way.

[28] Mandamus 250 12

250 Mandamus
250I Nature and Grounds in General
250k12 k. Nature of acts to be commanded. Most Cited Cases

A ministerial duty, as required for writ of mandate, is one that is required to be performed in a prescribed manner under the mandate of legal authority without the exercise of discretion or judgment.

[29] Mandamus 250 12

250 Mandamus
250I Nature and Grounds in General
250k12 k. Nature of acts to be commanded. Most Cited Cases

A writ of mandate should not compel action by the Legislature unless the duty to do the thing asked for is plain and unmixed with discretionary power or the exercise of judgment.

[30] States 360 121

360 States
360IV Fiscal Management, Public Debt, and Securities
360k121 k. Administration of finances in general. Most Cited Cases

Under the statute requiring the Legislature to place the cost of determined mandates imposed on local agencies in the annual Budget Bill, doing so was discretionary rather than ministerial, and thus a writ of mandate requiring the Legislature to do so was improperly issued, since placing items in the Budget Bill was a legislative power. West's Ann.Cal.Gov.Code § 17561(b).

[31] States 360 121

360 States
360IV Fiscal Management, Public Debt, and Securities
360k121 k. Administration of finances in general. Most Cited Cases

The formulation of a budget bill, including the items to be placed in the bill, is inherently a discretionary and a legislative power.

[32] States 360 121

360 States
360IV Fiscal Management, Public Debt, and Securities
360k121 k. Administration of finances in general. Most Cited Cases

The budget determination is limited by the Legislature's own discretion, and beyond the interference of courts.

[33] Constitutional Law 92 2525

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2499 Particular Issues and Applications
92k2525 k. Taxation and public finance. Most Cited Cases

Mandamus 250 100

250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k100 k. Appropriation or other disposition of public money. Most Cited Cases

States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

States 360 121

360 States
360IV Fiscal Management, Public Debt, and Securities
360k121 k. Administration of finances in general. Most Cited Cases

Writ of mandate directing the Legislature either to fund or suspend state mandates imposed upon local agencies, and to place the cost of determined mandates imposed on local agencies in the annual Budget Bill, violated California's separation of powers doc-

trine. West's Ann.Cal. Const. Art. 13B, § 6(a); West's Ann.Cal.Gov.Code § 17561(b).

[34] Constitutional Law 92 2525

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2499 Particular Issues and Applications
92k2525 k. Taxation and public finance. Most Cited Cases

Constitutional Law 92 2560

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)3 Encroachment on Executive
92k2542 Particular Issues and Applications
92k2560 k. Taxation and public finance. Most Cited Cases

States 360 121

360 States
360IV Fiscal Management, Public Debt, and Securities
360k121 k. Administration of finances in general. Most Cited Cases

The enactment of a budget bill is fundamentally a legislative act, entrusted to the Legislature and the Governor and not the judiciary.

[35] Constitutional Law 92 2470

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2470 k. In general. Most Cited Cases

The California Constitution's separation of powers doctrine forbids the judiciary from issuing writs that direct the Legislature to take specific action, including to appropriate funds and pass legislation.

[36] Constitutional Law 92 2525

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2499 Particular Issues and Applications
92k2525 k. Taxation and public finance. Most Cited Cases

Under separation of powers principles, a court is prohibited from using its writ power to require an appropriation even if the Legislature is statutorily required to appropriate certain funds.

[37] Constitutional Law 92 2470

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2470 k. In general. Most Cited Cases

The judicial department has no power to revise even the most arbitrary and unfair action of the legislative department, or of either house thereof, taken in pursuance of the power committed exclusively to that department by the constitution.

[38] Constitutional Law 92 2525

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2499 Particular Issues and Applications
92k2525 k. Taxation and public finance. Most Cited Cases

Under the California Constitution, the separation of powers doctrine prohibits a court from compelling the Legislature to appropriate funds or to pay funds not yet appropriated.

[39] Constitutional Law 92 2525

192 Cal.App.4th 770, 121 Cal.Rptr.3d 696, 265 Ed. Law Rep. 347, 11 Cal. Daily Op. Serv. 1923, 2011 Daily Journal D.A.R. 2308
(Cite as: 192 Cal.App.4th 770, 121 Cal.Rptr.3d 696)

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2499 Particular Issues and Applications
92k2525 k. Taxation and public finance. Most Cited Cases

States 360 130

360 States
360IV Fiscal Management, Public Debt, and Securities
360k129 Appropriations
360k130 k. Necessity. Most Cited Cases

The rule that the separation of powers doctrine prohibits a court from compelling the Legislature to appropriate funds or to pay funds not yet appropriated is subject to a narrow exception when a court orders appropriate expenditures from already existing funds and the funds are reasonably available for the expenditures in question, which means that the purposes for which those funds were appropriated are generally related to the nature of costs incurred, but this exception must be strictly construed and is inapplicable if the existing funds have been appropriated for other purposes.

[40] Mandamus 250 100

250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k100 k. Appropriation or other disposition of public money. Most Cited Cases

A trial court has broad discretion to determine whether a mandamus remedy requiring a particular payment from an existing fund is warranted under the totality of the circumstances.

[41] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

Trial court acted within its discretion in denying school districts' request to compel state to reimburse funds spent on mandates imposed by state and only nominally funded, where districts sought more than $900 million in funds from state, the state was experiencing an extreme budget crisis, districts cited only the Proposition 98 reversion fund as an account that could possibly contain funds reasonably related to the nature of costs incurred, appropriations for the budget year at issue were placed in a chartered bill following the Governor's signature on the Budget Act, and districts did not come forward with any predicate facts showing a reasonable basis to believe sufficient funds existed and that the funds would meet the criteria of the exception. West's Ann.Cal. Const. Art. 13B, § 6.

[42] States 360 111

360 States
360III Property, Contracts, and Liabilities
360k111 k. State expenses and charges and statutory liabilities. Most Cited Cases

Trial court did not abuse its discretion in declining to permit school districts to engage in a wide-ranging discovery investigation in an attempt to identify state funds to pay over $900 million for prior mandates subject to a funding requirement under state constitution, before denying districts' request for an order compelling the state to reimburse such funds, where the state was experiencing an extreme budget crisis with a budget deficit estimated to be more than $20 billion; any money a court would direct to the school districts would reduce funds available for other obligations and implicate funding priorities and policy making decisions. West's Ann.Cal. Const. Art. 13B, § 6.

[43] Evidence 157 29

157 Evidence
157I Judicial Notice
157k27 Laws of the State
157k29 k. Public statutes. Most Cited Cases

Court of Appeal would not take judicial notice of documents containing recently enacted statutes which apparently reflected additional deferred mandates, in school districts' cross-appeal challenging trial court's

denial of their request to compel state to reimburse funds spent on mandates imposed by state and only nominally funded, where the documents were not presented to the trial court. West's Ann.Cal. Const. Art. 13B, § 6.

[44] Evidence 157 33

157 Evidence
157I Judicial Notice
157k27 Laws of the State
157k33 k. Legislative proceedings and journals. Most Cited Cases

Court of Appeal would not take judicial notice of reports by the Legislature Analyst's Office prepared after the judgment was entered in the trial court, in school districts' cross-appeal challenging trial court's denial of their request to compel state to reimburse funds spent on mandates imposed by state and only nominally funded. West's Ann.Cal. Const. Art. 13B, § 6.

[45] Appeal and Error 30 837(9)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k837 Matters or Evidence Considered in Determining Question
30k837(9) k. Matters occurring after judgment. Most Cited Cases

Generally, when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered.

****701** Edmund G. Brown, Jr., and Kamala D. Harris, Attorneys General, Jonathan K. Renner, Assistant Attorney General, Zackery P. Morazzini and Ross C. Moody, Deputy Attorneys General, for Defendants and Appellants State of California, Department of Finance and State Controller's Office.

Olson, Hagel & Fishburn, Deborah B. Caplan, N. Eugene Hill and Matthew R. Cody for Plaintiffs and Appellants.

HALLER, J.

***778** When the Legislature enacts a law requiring a local school district to implement a new program or a higher level of service, the California Constitution requires the State of California (State) to pay the cost of the mandate and prohibits the State from transferring the cost to the school district. During the past decade, the Legislature has enacted numerous statutes requiring school districts to implement many ****702** new programs and services. ***779** However, because of budget difficulties, the State has not paid the full cost of these programs and services. Instead, it has sought to satisfy the constitutional requirement by paying a nominal amount for each mandate and deferring the remaining costs to an indefinite time.

In 2007, the California School Boards Association and several school districts (collectively School Districts) brought a lawsuit against the State and two of its officers, challenging this practice of deferring, rather than paying in full, the cost of the state-imposed mandates.[FN1] The School Districts sought several forms of relief, including: (1) declaratory relief that this practice was unconstitutional; (2) injunctive relief prohibiting the State from engaging in this practice in the future; and (3) an order requiring the State to reimburse the School Districts for more than $900 million in unpaid costs incurred in complying with prior mandates. The State countered that its practice was authorized under the California Constitution and implementing statutes, and the court was barred by the separation of powers doctrine and equitable principles from ordering the requested relief.

FN1. The plaintiffs are: California School Boards Association, Education Legal Alliance, San Diego County Office of Education, San Diego Unified School District, Clovis Unified School District, Riverside Unified School District, and San Jose Unified School District. The individual defendants are: Michael Genest, in his capacity as director of the California Department of Finance, and John Chiang in his capacity as State Controller. We refer to defendants collectively as State.

After reviewing the parties' documentary evidence and conducting a hearing, the trial court found the State's deferral practice violated the California Constitution and several applicable statutes. (See Cal.

Const., art. XIII B, § 6; Gov.Code, §§ 17500 et seq.) [FN2] The court further found the School Districts were entitled to declaratory and injunctive relief and issued a writ commanding the State in the future to fully fund School District mandated programs (as found by the Commission on State Mandates) or to affirmatively excuse the School Districts from these mandates under section 17581.5. However, the court declined to order the State to reimburse the School Districts for costs previously incurred to comply with prior mandates, concluding this order would violate separation of powers principles. Both sets of parties appeal.

FN2. Undesignated statutory references are to the Government Code. All article references are to the California Constitution.

On the State's appeal, we conclude the court properly granted declaratory relief interpreting the applicable constitutional and statutory provisions to mean that the State's payment of a nominal amount for a mandate imposed on a local school district, with an intention to pay the remaining cost at an unspecified time, does not comply with article XIII B, section 6 and the implementing statutes. However, we determine the court erred in ordering ***780** injunctive relief because: (1) the ordered relief was inconsistent with the statutory scheme; (2) the writ required the performance of a discretionary, rather than a ministerial, duty; and (3) equitable relief was unwarranted because the School Districts have an adequate legal remedy for future violations under section 17612, subdivision (c).

With respect to the School Districts' cross-appeal, we determine the court did not abuse its discretion in refusing to order the State to pay the almost $1 billion in previously deferred costs or to permit the School Districts to conduct further discovery on the reimbursement issue.

****703** SUMMARY OF LAW GOVERNING SCHOOL DISTRICT STATE MANDATES

Before 1978, local governments received a substantial portion of their financing through property taxes. In 1978, the voters adopted Proposition 13, adding article XIII A to the California Constitution, which imposed strict limits on the government's power to impose property taxes. The next year, the voters adopted Proposition 4, adding article XIII B, which imposed corresponding limits on governmental power to spend for public purposes. (See *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 80–81, 61 Cal.Rptr.2d 134, 931 P.2d 312; *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 905, 58 Cal.Rptr.3d 762.)

One key component of article XIII B's spending limitations is contained in section 6, which states: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service...." (Art. XIII B, § 6, subd. (a).) The intent underlying this section was to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose. [Citations.]" (*County of San Diego v. State of California, supra,* 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

In 1984, the Legislature enacted a comprehensive statutory and administrative scheme for implementing article XIII B, section 6. (§ 17500 et seq.; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331–333, 285 Cal.Rptr. 66, 814 P.2d 1308; *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 588, 79 Cal.Rptr.3d 489 (*County of San Diego*).) In so doing, the Legislature created the Commission on State Mandates (Commission) to resolve questions as to whether a statute imposes "state-mandated costs on a local agency within the meaning of section 6." ***781** (*County of San Diego v. State of California, supra,* 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312; §§ 17525, 17533 et seq.) Under this regulatory scheme, when the Legislature enacts a statute imposing obligations on a local agency or a school district without providing additional funding, the local entity may file a test claim with the Commission, which, after a public hearing, must determine whether the statute requires a new program or increased level of service. (*County of San Diego v. State of California, supra,* 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312; §§ 17551, 17555.) If the Commission determines the statute meets this criteria, the Commission must determine the cost of the mandated program or service and then notify specified legislative entities and executive officers of this decision. (§§ 17557, 17555.) A local agency or school district may chal-

lenge the Commission's findings by administrative mandate proceedings. (§ 17559; Code Civ. Proc., § 1094.5.)

Once this administrative/judicial process is exhausted and a statute is determined to impose state-mandated costs, the Legislature is required to appropriate funds to reimburse the local entity for these costs. (§§ 17561, subd. (a), 17612, subd. (a).) "If the Legislature refuses to appropriate money for [the] reimbursable mandate, the local agency [or school district] may file 'an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement' " under ****704**section 17612, subdivision (c). (*County of San Diego v. State of California, supra,* 15 Cal.4th at p. 82, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

Section 17612, subdivision (c) (formerly subdivision (b)) initially provided the exclusive method for a local entity to seek relief from an unfunded mandate. However, in 1990, the Legislature added section 17581, which provides an alternative to the judicial proceeding under section 17612. It provides that a local agency is relieved of the obligation to implement an unfunded mandate if the Legislature specifically identifies the mandate and declines to fund it in the annual Budget Act. (§ 17581, subd. (a); see *Tri–County Special Educ. Local Plan Area v. County of Tuolumne* (2004) 123 Cal.App.4th 563, 571–572, 19 Cal.Rptr.3d 884 (*Tri–County*).) The Legislature later added section 17581.5, which creates similar (but more limited) relief for certain unfunded mandates imposed on school districts.

Section 17552 declares that these statutory provisions "provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B...."

FACTUAL AND PROCEDURAL BACKGROUND

In November 2007, the School Districts filed a lawsuit in San Diego County Superior Court alleging the State has refused to comply with its ***782** obligation to provide reimbursement under article XIII B, section 6 for costs "mandated by the State" after the Commission has determined the existence and costs of the mandates. The State filed an answer denying these claims. The court set a briefing schedule and a hearing date in May 2008.

In their moving papers, the School Districts presented evidence showing that since 2002, the Legislature has engaged in a routine practice of appropriating $1,000 for each mandate imposed on the School Districts, rather than appropriating the full amount of the program costs. Specifically, for the 2007–2008 fiscal year, the Commission found 38 separate programs or services require reimbursement as unfunded mandates under article XIII B, section 6. In each case, the State did not appeal or the appeal was decided adversely to the State. The State then appropriated $1,000 for each of the 38 programs. These mandates included items such as: annual parent notification, pupil health screening, criminal background checks, AIDS prevention instruction, immunization records, teacher incentive program, and pupil promotion and retention. The School Districts presented evidence that as compared with this $38,000 appropriated funding, the total statewide cost estimates for the programs in the 2007–2008 fiscal year exceeded $160 million. Further, the $1,000 appropriation per program equates to about $1 for each California school district for the entire fiscal year.

The School Districts also presented evidence showing the State refers to this funding method as " 'deferred' " mandate payments or an "Education Credit Card," which the Legislative Analyst's Office states "means that [full] funding will be provided at some unspecified future time." Although the State acknowledges it does not provide full funding for state-mandated programs on an annual basis, the State maintains the deferral practice complied with Article XIII B, section 6, and thus the School Districts are "required to perform the mandated activities." A Legislative Analyst Office report states that the "credit card [method] represents a way the state has maintained [mandated] program[s] while cutting expenditures during slow economic times," and "represents ****705** amounts the state owes to K–14 education for costs that were not fully funded during the fiscal year in which services were provided."

The evidence showed the total amount of unpaid school mandate funding is estimated to reach $435 million (without interest) by the end of the 2007–2008 fiscal year. For example, the accumulated deficiency for the "Standardized Testing and Reporting" mandate was more than $200 million. The approximate amount of costs for incurred unreimbursed programs and services include: $30 million for the San Diego Unified

School District; $14 million for the Clovis Unified School District, and $12 million for the San Jose Unified School District. The Governor's proposed budget for the ***783** 2008–2009 fiscal year continued the deferral practice, allocating only $1,000 for each of 38 mandates instead of the estimated $180 million required to fund these mandates.

The School Districts argued the deferred funding method violates article XIII B, section 6, and the implementing statutory scheme. They requested the court to issue a writ: (1) ordering the State to comply with its statutory obligations to identify each mandate in the annual budget bill "and to either appropriate funds to cover the costs of [the] mandate or to suspend the obligation to provide the mandated service or program"; (2) ordering the State to reimburse the School Districts for all costs previously incurred in providing state-mandated programs and services from existing state accounts; and (3) declaring certain mandate statutes unconstitutional to the extent they do not require the State to pay the full cost of the State's mandated programs and services or impose an undue restriction on the enforcement of the constitutional right to reimbursement.

In opposition, the State acknowledged the existence of its deferral practice, but argued the $1,000 funding was proper because neither the California Constitution nor the applicable statutes require the mandates be paid "immediately," particularly because the State has agreed to pay interest on any delayed payments. According to the State, "[school] districts that have performed under the mandates are guaranteed to receive payment for properly submitted claims." The State additionally argued that writ relief was not appropriate because the allegations do not show the State has failed to perform a ministerial duty and the School Districts have a statutory remedy in section 17612, subdivision (c). The State also argued the separation of powers doctrine prohibited the court from entering a judgment against the State for mandate amounts owed from previous years.

After briefing and the submission of evidence was completed, this court filed its decision in *County of San Diego, supra*, 164 Cal.App.4th 580, 79 Cal.Rptr.3d 489, in which we reversed a superior court judgment requiring the State to appropriate funds over a 15–year period to pay San Diego and Orange Counties for amounts owed for their previously incurred mandate costs. (*Id.* at pp. 592, 593–597, 79 Cal.Rptr.3d 489.) We held the court's order compelling the appropriation violated the separation of powers doctrine, and the order was unnecessary because the Legislature had enacted a specific statute pertaining to outstanding mandate debt owed to counties. (*Id.* at pp. 594, 595–596, 79 Cal.Rptr.3d 489.) We additionally held the court did not abuse its discretion in refusing to order the State to pay this debt from existing fund accounts. (*Id.* at pp. 597–603, 79 Cal.Rptr.3d 489.)

The trial court then permitted the parties to file supplemental briefs on the impact****706** of *County of San Diego* on the issues before the court. After the ***784** additional briefing and a hearing, the trial court issued a written decision, finding the State's practice of deferring payment to the School Districts violated the language and intent of Article XIII B, section 6, and the statutory scheme enacted to implement the constitutional provision. The trial court found the evidence showed "virtually all" school districts had suffered "adverse effects" from the State's failure to timely provide mandate funding, and quoted from a 2006–2007 Governor's Budget Analysis showing the State estimated it owes the school districts " 'approximately $1.2 billion for unpaid mandate costs through 2005–2006.' "

The trial court additionally concluded the legal remedy contained in section 17612, subdivision (c) was not available to the School Districts to challenge the nominal funding practice because this statutory remedy applies only if the Legislature completely "deletes" the mandate funding from the Budget Act. The court found that by providing a nominal amount for each mandate, "the Legislature has effectively circumvented [School Districts] from exercising their statutory remedy" under section 17612, subdivision (c), and thus the School Districts "have no adequate available legal remedy but for this writ of mandate."

However, relying on *County of San Diego, supra*, 164 Cal.App.4th 580, 79 Cal.Rptr.3d 489, the trial court refused to order the State to pay amounts owed to the School Districts for prior mandates. As detailed below, the court found it was barred by the separation of powers doctrine from issuing this order, and that the exception for ordering payment from existing funds was inapplicable. The court also denied the School Districts' request to conduct further discovery on this

issue.

The court then issued a lengthy judgment and a writ of mandate. With respect to the ordered declaratory relief, Paragraph 7 of the judgment reads: "The Court finds that an actual controversy exists between petitioners and respondents as to the nature of the requirement imposed upon the State by article XIII B, section 6 of the California Constitution and the statutory scheme set forth at Gov.Code §§ 17500 et seq. that makes declaratory relief under Code of Civil Procedure § 1060 appropriate. The Court hereby finds and declares that the State's failure to include the full costs of all mandates as determined by the [Commission] in the Budget Act, and its practice of appropriating $1,000 and deferring the balance of the costs of those mandates, constitutes a failure to provide a subvention of funds for the mandates as required by article XIII B, section 6 and violates the constitutional rights conferred by that provision and the specific procedures set forth at Gov.Code §§ 17500 et seq."

The writ of mandate states in relevant part: "[T]he [State and its officers] *are commanded to:* [¶] 1. Ensure that the costs of each mandate determined to ***785** be reimbursable by the Commission on State Mandates, including interest, shall be included in the Governor's proposed budget as required by Government Code sections 17500 et seq. and in particular sections 17561 and 17612 unless specifically identified and suspended pursuant to Government Code [section] 17581.5. [¶] 2. [The State and its officers] are enjoined from appropriating an amount for any mandate to [the School Districts] less than the amount determined to be reimbursable by the Commission on State Mandates. Said [parties] shall not defer any balance of any mandated program and shall include the full amount determined to be reimbursable in the Governor's proposed budget unless ****707** suspended pursuant to Government Code section 17581.5." (Italics added.) The court ordered the State to file a return in the superior court certifying its compliance with the writ.

Both sets of parties appeal.

DISCUSSION

I. *Deferred Mandate Payment Is Not Equivalent to a Funded Mandate*

[1] Before addressing the parties' specific contentions raised on appeal and cross-appeal, it is necessary to resolve the fundamental legal dispute underlying each of the parties' contentions: whether the State complies with its constitutional and statutory obligations to fund a mandate imposed on the School Districts by appropriating a nominal ($1,000) amount for the mandated program, with the intention to pay the remainder with interest at an unspecified time. As explained below, we agree with the trial court's determination that a deferred appropriation is not a funded mandate within the meaning of article XIII B, section 6, and the implementing statutory provisions.

Article XIII B, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government [defined to include school districts], the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service [with exceptions not applicable here]...." (Art. XIII B, § 6, subd. (a).) Subvention means " 'a grant of financial aid or assistance, or a subsidy.' " (*County of San Diego, supra,* 164 Cal.App.4th at p. 588, fn. 4, 79 Cal.Rptr.3d 489.)

[2] This reimbursement obligation was "enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources." ***786**(*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6, 244 Cal.Rptr. 677, 750 P.2d 318; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282, 101 Cal.Rptr.2d 784.) "Section 6 recognizes that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments. [Citation.] Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, *which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.* [Citations.] With certain exceptions, section 6 '[e]ssentially' requires the state 'to pay for any new government programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.]' " (*County of San Diego v. State of California, supra,* 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312; accord *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1188–1189, 2 Cal.Rptr.3d

419; *County of Sonoma v. Commission on State Mandates, supra,* 84 Cal.App.4th at p. 1282, 101 Cal.Rptr.2d 784; *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 985, 64 Cal.Rptr.2d 270.)

The implementing statutes are consistent with this intent. Section 17561 is the primary code section that sets forth the State's duties once a mandate is determined by the Commission. Section 17561, subdivision (a) states: "The state *shall* reimburse each local agency and school district for *all* 'costs mandated by the ****708** state,' as defined in Section 17514 [[[[FN3] and for legislatively determined mandates in accordance with Section 17573 [FN4]." (Italics added.) Section 17561, subdivision (b)(1)(A) states: "For the initial fiscal year during which costs are incurred ... [¶] ... [a]ny statute mandating these costs *shall* provide an appropriation therefor." (Italics added.) Section 17561, subdivision (b)(2) states: "In subsequent fiscal years appropriations for these costs *shall* be included in the annual Governor's Budget and in the accompanying Budget bill...." (Italics added.) Section 17561, subdivision (c) provides: "The amount appropriated to reimburse local agencies and school districts for costs mandated by the state *shall* be appropriated to the Controller for disbursement." (Italics added.)

> FN3. Section 17514 defines " 'costs mandated by the state' " to "mean [ ] any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any [specified] executive order ..., which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

> FN4. Section 17573 provides for a legislative settlement process as an alternative to the more lengthy Commission process for mandate determinations.

In this case, the Commission found 38 separate school district programs or services require reimbursement as unfunded mandates under article XIII B, section 6, and in each case, the State did not appeal or the appeal was decided adversely to the State. Many of these programs were found to cost more than ***787** $1 million. However, instead of appropriating the full amount determined by the Commission to be the total cost of each program, the State appropriated $1,000 for each program, approximately $1 per school district for each mandated program.

[3] This practice violates the language and intent of the constitutional and statutory provisions. By attempting to pay for the new programs with a "credit card" with no fixed date for full payment, the State is shifting the actual costs of these mandates to the local school districts. The fact that the State takes the position (without any specific legislation to this effect) that it intends to pay the full cost with interest does not eliminate the cost burden. Unless it is excused from implementing the program, each school district will have a *current* cost for the program or increased level of service. Under article XIII B, section 6, if the State wants to require the local school districts to provide new programs or services, it is free to do so, but not by requiring the local entities to use their own revenues to pay for the programs.

[4] The State concedes the intent underlying the constitutional and statutory provisions was to prevent cost-shifting to the local governments, but argues that payment at some later, undefined time, is consistent with this intent, as long as interest is eventually paid to the School Districts. However, this argument is inconsistent with the fundamental purpose of article XIII B, section 6, which was to require each branch of government to live within its means, and to prohibit the entity having superior authority (the State) from circumventing this restriction by forcing local agencies such as School Districts to bear the State's costs, even for a limited time period. By imposing on local school districts the financial obligation to provide state-mandated programs on an indeterminate and open-ended basis, the State is requiring school districts to use their own revenues to fund programs or services imposed by the state. Under this deferral ****709** practice, the State has exercised its authority to order many new programs and services, but has declined to pay for them until some indefinite time in the future. This essentially is a compelled loan and directly contradicts the language and the intent of article XIII B, section 6, and the implementing statutes.

We reject the State's arguments in support of a contrary conclusion.

First, the State notes that article XIII B, section 6,

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as originally enacted, did not contain an express temporal requirement for mandate payments, but in 2004 voters (through Proposition 1A) adopted amendments requiring appropriations in "the full payable amount." [FN5] These amendments expressly applied ***788** only to "a city, county, city and county, or special district," and not to school districts. (Art. XIII B, § 6, subd. (b), par. (4).) The State claims that Proposition 1A was placed on the ballot as a result of a political compromise between local governments and the State arising from local government budget difficulties caused by the State's practice of deferring mandate payments to these entities. The State thus contends the "very fact that cities and counties had to go to the ballot and obtain specific limits on the timing of payments for mandates confirms that section 6 had no temporal requirement at all prior to Proposition 1A." The State further asserts that if the School Districts want the same benefits, they will need to negotiate a similar political compromise with the State.

> FN5. Under the amendments, beginning in the 2005–2006 fiscal year, the Legislature must generally appropriate the "full" amount of the mandate or suspend the operation of the mandate for the fiscal year. (Art. XIII B, § 6, subd. (b), par. (1).) The amendment further provided that for a mandate incurred prior to the 2004–2005 fiscal year, the amounts "may be paid over a term of years, as prescribed by law." (Art. XIII B, § 6, subd. (b), par. (2).) This "prescribed by law" term for repayment of amounts owed by the cities and counties is now a 15–year period, as set forth in section 17617.

These arguments are unpersuasive. There is nothing in the language of Proposition 1A, or in the ballot materials presented to the voters, showing the State did not already have the obligation to fully fund the mandates when they were imposed. The Proposition 1A compromise added several new features to the local-state mandate relationship, including a specific constitutional provision making clear that the deferral practice (with respect to cities and counties) would no longer be tolerated and adding a requirement that the Legislature provide a specific time period for the State to reimburse these local entities for the prior mandate debt. (Art. XIII B, § 6, subd. (b), pars. (1), (2).) This compromise does not mean the deferral practice was authorized under the prior law, and did not involve any type of concession that the practice was previously legally authorized.

[5][6] Moreover, even assuming there was an indication that the parties to the compromise, or the voters in adopting Proposition 1A, believed the prior law allowed the State to defer payments, this belief is not binding on a court. (See *Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 922–923, 44 Cal.Rptr.3d 223, 135 P.3d 637.) A court should not accept later expressed legislative intent if the intent is inconsistent with the plain meaning of the prior act or its legislative history. (*Id.* at p. 922, 44 Cal.Rptr.3d 223, 135 P.3d 637.) The interpretation of a statute or a constitutional provision " 'is an exercise of the judicial power the Constitution assigns to the courts.' [Citation.]" (*Ibid.*; see *Murray v. Oceanside Unified School Dist.* (2000) 79 Cal.App.4th 1338, 1348, 95 Cal.Rptr.2d 28.)

****710** [7] The State also contends the court erred in determining the deferral method was improper because the constitutional and statutory provisions do not specifically "say that the reimbursement must be made in full in a single payment, or within one year." However, the fact that a "payment in full" ***789** phrase was not used does not mean the Legislature intended to permit a deferral of funds. As discussed, article XIII B, section 6's language and underlying intent impose the timeliness requirement for the reimbursement obligation without the need to use these precise words. Likewise, section 17561, subdivision (a)'s statement that "all" costs must be reimbursed by the State is a clear statutory directive requiring full payment once a mandate is determined by the Commission (and any appeals process has been completed). An interpretation of section 17561 that would allow partial payments would render the word "all" superfluous.

[8] The State next contends that section 17561, subdivision (d)(2)(C), which allows the State Controller to adjust the mandate payments to correct for any prior underpayments, "expressly contemplates that the initial payment may not be payment in full." [FN6] However, section 17561, subdivision (d)(2)(C) pertains to the Controller's audit function, allowing the Controller to correct inaccurate fund disbursements after auditing the local entity's supporting records. This administrative power to adjust payments is not equivalent to stating that the Legislature has the authority to provide a nominal payment

for a mandate.

> FN6. Section 17561, subdivision (d)(2)(C) states: "The Controller shall adjust the payment to correct for any underpayments or overpayments that occurred in previous fiscal years."

The State also relies on the Controller's statutory authority to issue " 'prorated' " payments. Section 17567 states that the Controller must "prorate claims" if "the amount appropriated for reimbursement purposes pursuant to Section 17561 is not sufficient to pay all of the claims approved by the Controller." This code section does not provide the Legislature with the legal authority to provide insufficient funding for mandates. To the contrary, section 17567 specifically states that "[i]n the event that the Controller finds it necessary to prorate claims as provided by this section, the Controller shall *immediately* report this action to [specified executive and legislative entities and officers] *in order to assure appropriations of these funds in the Budget Act.*" (§ 17567, italics added.)

[9] We similarly reject the State's reliance on section 17561.5, which provides that an initial reimbursement claim "shall include accrued interest ... if the payment is being made more than 365 days after adoption of the statewide cost estimate for an initial claim...." This required interest payment does not provide the Legislature with the authority to implement a policy under which it pays only a nominal amount of a mandated claim. Rather it provides for interest payments where the actual costs are less than those estimated as costs during the Commission process.

We also find unconvincing the State's discussion of the fact that in the 2006–2007 fiscal year it made payments on the outstanding mandate debt and ***790** that these "payments demonstrate that the Constitutional right to reimbursement is being honored through the practice of deferred payments." As the Legislative Analyst Office noted, the State repaid *some* outstanding claims while at the same time deferring more claims in the subsequent year. A single reimbursement payment does not show the mandates are being timely funded.

****711** We thus conclude the Legislature's practice of nominal funding of state mandates with the intention to pay the mandate in full with interest at an unspecified time does not constitute a funded mandate under the applicable constitutional and statutory provisions.

II. *Parties' Appellate Challenges to Judgment and Writ*

Having determined the deferral practice is improper, we now consider the parties' specific appellate challenges to the trial court's determinations regarding the relief requested by the School Districts.

A. *Court's Grant of Declaratory Relief*

[10][11][12][13][14] "Declaratory relief is an equitable remedy, which is available to an interested person in a case 'of actual controversy relating to the legal rights and duties of the respective parties....' (Code Civ. Proc., § 1060....)" (*In re Claudia E.* (2008) 163 Cal.App.4th 627, 633, 77 Cal.Rptr.3d 722.) " 'The purpose of a declaratory judgment is to "serve some practical end in quieting or stabilizing an uncertain or disputed jural relation." ' [Citation.] 'Another purpose is to liquidate doubts with respect to uncertainties or controversies which might otherwise result in subsequent litigation [citation].' [Citation.] The proper interpretation of a statute is a particularly appropriate subject for judicial resolution. [Citations.] Additionally, judicial economy strongly supports the use of declaratory relief to avoid duplicative actions to challenge an agency's statutory interpretation or alleged policies. [Citation.] [¶] The remedy of declarative relief is cumulative and does not restrict any other remedy...." (*Ibid.*) Thus, the fact that "another remedy is available is an insufficient ground for refusing declaratory relief." (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 433, 121 Cal.Rptr.2d 844, 49 P.3d 194.) Moreover, declaratory relief is generally available to settle the parties' rights with respect to future actions, and not to correct conduct that occurred in the past.

[15] In Paragraph 7 of the judgment, the court declared that the State's practice of paying only a nominal amount for a mandated program while deferring the balance of the cost "constitutes a failure to provide a subvention of funds for the mandates as required by article XIII B, section 6 and violates the constitutional rights conferred by that provision and the specific procedures ***791** set forth at [sections] 17500 et seq." This form of declaratory relief was proper, as there was an actual controversy between the

parties regarding the interpretation of article XIII B, section 6 and section 17561, pertaining to the use of deferred mandate payments. The declaration will prevent further issues arising from the conflicting interpretations, and was an effective remedy to settle the parties' rights in the future regarding the meaning of the provisions. The State has not challenged these conclusions.

Although on appeal the State focuses primarily (if not exclusively) on challenging the injunctive relief ordered by the court, it indirectly challenges the portion of the judgment granting declaratory relief based on the State's assertions that a deferred mandate is a funded mandate that must be implemented by the School Districts. For the reasons explained above, we have rejected this argument. The State does not proffer any other basis for finding the court's granting declaratory relief (as set forth in Paragraph 7) was improper. We thus affirm the portion of the judgment providing this declaratory relief.

B. *Court's Grant of Injunctive Relief*

1. *Overview*

In the writ of mandate, the court "commanded" the State and its officers to engage****712** in several affirmative tasks relating to the budget process and prohibited these defendants from deferring any mandates unless it "identified and suspended" the mandate under section 17581.5. Specifically, the court ordered the State to "[e]nsure that the costs of each mandate determined to be reimbursable by the Commission ... *shall* be included in the Governor's proposed budget as required by ... sections 17561 and 17612 *unless specifically identified and suspended pursuant to [section] 17581.5*." (Italics added.) The court additionally "enjoined" the State "from appropriating an amount for any mandate to [the School Districts] less than the amount determined to be reimbursable by the Commission" and stated the State "shall not defer any balance of any mandated program and shall include the full amount determined to be reimbursable in the Governor's proposed budget *unless suspended pursuant to [section] 17581.5*." (Italics added.)

The State contends the court had no authority to order these forms of mandamus relief because: (1) the School Districts have an adequate remedy at law; (2) the court's order concerned discretionary, rather than ministerial, duties; and (3) the court's actions violate separation of powers principles. We agree with these arguments. Given the specific statutory procedures for addressing an unfunded mandate, the court erred in issuing the writ because the School Districts have an adequate remedy at law; the writ improperly ***792** restricts the State's discretionary authority; and the writ improperly interferes with budgetary powers committed exclusively to the legislative and executive branches.

To explain these conclusions, we first detail the existing statutory remedies applicable when the Legislature has failed or refused to fund an administratively-determined state mandate. We then describe the basis for our legal determinations that the writ was an unauthorized use of the court's mandamus powers.

2. *Statutory Remedies for Failure to Fund Determined Mandates*

Under the statutory scheme, the Commission must promptly notify specified legislative and executive bodies of its determination on a test claim (§ 17555), and must submit a biannual report to the Legislature identifying the mandates found and the cost of the mandates (§ 17600). "Upon receipt of the report submitted by the [C]ommission ..., funding *shall* be provided in the subsequent Budget Act for costs incurred in prior years." (§ 17612, subd. (a), italics added.) If the Legislature does not comply with this duty, the statutes provide two potential remedial procedures. (§§ 17612, subd. (a), 17581, 17581.5.) These remedies are directed at excusing a local school district from performing the mandate, rather than affirmatively compelling the Legislature to appropriate funds for the mandate.

[16] First, under section 17581.5, the Legislature can avoid paying the mandate costs if it identifies the statutory program in the Budget Act as a mandate for which no funding is provided in that fiscal year and specifically relieves the school district of the requirement that it implement the program. [FN7] (See also § 17581 [similar remedy applicable to local agencies].) With respect to school districts, this action is ****713** permitted only pertaining to certain categories of mandates. (§ 17581.5, subd. (c).) If this procedure is properly invoked with respect to a statutory mandate, the remedy is self-executing in the sense that it does not require any affirmative action by the school district, i.e., if the Legislature makes this specific "nonfunding" designation, each school district ***793** is "permitted to make its own determination not to im-

plement the mandate." (*Tri–County, supra,* 123 Cal.App.4th at p. 572, 19 Cal.Rptr.3d 884 [interpreting § 17581].)

> FN7. Section 17581.5, subdivision (a) provides: "A school district shall not be required to implement or give effect to the statutes, or a portion of the statutes ... during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted ... if all of the following apply: [¶] (1) The statute ... has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of school districts pursuant to Section 6 of Article XIII B.... [¶] (2) The statute ... specifically has been identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year...."

[17] Second, if the Legislature does not fund a determined mandate and does not specifically designate the mandate as one for which no funding will be provided under sections 17581 or 17851.5, the local agency or school district *must* perform the mandate, unless it *affirmatively obtains relief under section 17612, subdivision (c).* (See *Tri–County, supra,* 123 Cal.App.4th at pp. 573–574, 19 Cal.Rptr.3d 884.) Section 17612, subdivision (c) states: "If the Legislature deletes from the annual Budget Act funding for a mandate, the local agency or school district may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement for that fiscal year."

[18][19] Unlike the remedy in sections 17581 and 17581.5, the remedy under section 17612, subdivision (c) is not self-executing and requires the local entity to affirmatively seek judicial relief to be excused from the mandate. (*Tri–County, supra,* 123 Cal.App.4th at p. 573, 19 Cal.Rptr.3d 884; see *Kinlaw v. State of California, supra,* 54 Cal.3d at p. 333, 285 Cal.Rptr. 66, 814 P.2d 1308; *Berkeley Unified School Dist. v. State of California* (1995) 33 Cal.App.4th 350, 358–359, 39 Cal.Rptr.2d 326.) This remedy affords relief prospectively, and not as to funds previously paid out by a local agency to satisfy a state mandate. (See *Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d at p. 833, fn. 3, 244 Cal.Rptr. 677, 750 P.2d 318.)

Thus, "[a] Commission determination that a cost results from an unfunded state mandate does not necessarily mean the Legislature will pay for it. If the Legislature does not pay [or excuse the school district under section 17581.5], with a favorable Commission determination in hand, an entity may seek a court order [under section 17612, subdivision (c)] that it no longer has to obey the mandate...." (*Grossmont Union High School Dist. v. State Dept. of Education* (2008) 169 Cal.App.4th 869, 877, 86 Cal.Rptr.3d 890 (*Grossmont Union*).) "The intent of the Legislature ... could not be more clear: until and unless a court or the Legislature itself has relieved a local government of a statutory mandate, the local government must perform the duties imposed by the mandate [even if the mandate is not funded]." (*Tri–County, supra,* 123 Cal.App.4th at p. 573, 19 Cal.Rptr.3d 884.) In establishing this procedure by which local governments may seek relief from an unfunded program, "the Legislature has ensured an orderly procedure for resolving these issues, eschewing the local government anarchy that would result from recognizing a county's ability sua sponte to declare itself relieved of the statutory mandate." (*Ibid.*)

***794** 3. *Writ Was Improper Because School Districts Have an Adequate Remedy at Law*

[20] To warrant relief in the form of a writ of mandate requiring a party to take ****714** (or not to take) certain actions in the future, the petitioner must demonstrate there is no adequate legal remedy. (See *Transdyn/Cresci JV v. City and County of San Francisco* (1999) 72 Cal.App.4th 746, 752, 85 Cal.Rptr.2d 512.) We determine the School Districts had an adequate remedy at law under section 17612, subdivision (c) for any future attempts by the State to defer mandate payments.

The trial court found the School Districts did not have an adequate legal remedy with respect to future nominally funded mandates because section 17612, subdivision (c) applies only when the Legislature completely removes a particular mandate from a budget bill, and this judicial procedure cannot be used if the Legislature provides some (although nominal) funding. Based on this interpretation, the trial court found the State had essentially created a "Catch–22" situation for the School Districts—they could not

refuse to comply with the mandate and they could not seek to be relieved of the obligation to implement the mandate under the established statutory procedures.

On appeal, the State argues the court's statutory interpretation was erroneous. The State asserts that if the Legislature provides only nominal funding for a reimbursable mandate, the School Districts are "free to seek a declaration of that fact under section 17612, subdivision (c) and receive a judicial declaration that it need not comply with that mandate for a year." In support, the State cites to our recent *County of San Diego* decision in which we stated in footnote 28 that although "the Counties are denied the judicial remedy they seek in this case, it is important to note that the statutory scheme implementing article XIII B, section 6, does not leave local agencies remediless for the Legislature's failure to fund state mandates.... When the Legislature provides only nominal funding for a mandate, as was the case with many of the mandates at issue here, the local agency's remedy is to file an action under section 17612, subdivision (c), to declare the mandate unenforceable and to enjoin its enforcement for that fiscal year." (*County of San Diego, supra,* 164 Cal.App.4th at p. 613, fn. 28, 79 Cal.Rptr.3d 489.)

In response, the School Districts argue that these statements were "*dicta* " and urge this court to reach a different conclusion in this case. However, they do not present any evidence that a school district (or any other entity) has ever been precluded from obtaining section 17612, subdivision (c) relief from ***795** a deferred and nominally funded mandate. They also acknowledge there are no reported decisions holding that such relief is unavailable. [FN8]

> FN8. They cite only to language in *Berkeley Unified School Dist. v. State of California, supra,* 33 Cal.App.4th at page 360, 39 Cal.Rptr.2d 326, in which the court observed that the Legislature's deletion of funding from a claims bill triggers the statutory period for filing an action under section 17612, subdivision (c). Because the *Berkeley Unified* court was not addressing the issue presented here, we find the court's observations to be unhelpful to our analysis.

[21] After reexamining the statutory language, we adhere to our prior interpretation of this statute. Section 17612, subdivision (c) states: "*If* the Legislature *deletes* from the annual Budget Act funding for a mandate, the local agency or school district may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement for that fiscal year." (Italics added.) In interpreting this code section, "our primary task is to determine the intent of the Legislature so as to effectuate the purpose ****715** of the law. [Citation.] In determining legislative intent, we look first to the statutory language itself. [Citation]." (*Los Angeles Unified School District v. County of Los Angeles* (2010) 181 Cal.App.4th 414, 423, 104 Cal.Rptr.3d 590.) " ' "The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." [Citation.]' " (*Ibid.*; see *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299; *Woodland Park Management, LLC v. City of East Palo Alto Rent Stabilization Bd.* (2010) 181 Cal.App.4th 915, 923, 104 Cal.Rptr.3d 673.) Moreover, a court must presume the Legislature acts consistent with the Constitution when enacting legislation, and we must adopt an interpretation that upholds the statute's constitutionality, if the interpretation is consistent with the statutory language and purpose. (See *In re Kay* (1970) 1 Cal.3d 930, 942, 83 Cal.Rptr. 686, 464 P.2d 142; *Wilson v. State Bd. of Education* (1999) 75 Cal.App.4th 1125, 1145, 89 Cal.Rptr.2d 745.)

[22][23] Under these principles, the proper interpretation of section 17612, subdivision (c) is that a party is permitted to seek relief for nominal funding as well as a complete lack of funding for a determined state mandate. Although section 17612, subdivision (c) contains the word "deletes," when viewed in context, this term does not refer to the physical act of entirely deleting an item from a budget bill, but refers more generally to the deletion of all or part of the administratively-determined cost from the amount required to be appropriated to the local entity. After the adoption of article XIII B, the Legislature enacted comprehensive procedures for resolution of claims arising out of section 6. "The Legislature did so because the absence of a uniform procedure had resulted in inconsistent ***796** rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the

budgetary process." (*Kinlaw v. State of California, supra,* 54 Cal.3d at p. 331, 285 Cal.Rptr. 66, 814 P.2d 1308.) As part of this legislative scheme, the Legislature created an administrative process for resolving issues regarding the existence and costs of mandates, *and* a judicial process for obtaining relief from unfunded mandates. This judicial process involved a method for local entities to challenge unfunded mandates (after a determination by the Commission) by filing an action seeking a declaration in Sacramento County Superior Court that the entity was excused from implementing the mandate. The essence of this new procedure was to consolidate all such actions in one venue and place the burden on local entities to seek judicial relief if the State failed to abide by its obligations to fund a particular mandate.

It would be inconsistent with this judicial remedy and the state Constitution to interpret section 17612, subdivision (c) as providing a right to seek relief only if there is "no" funding for a mandate, as opposed to nominal funding. As noted, the $1,000 funding required the School Districts to use their own funds to provide programs mandated by the State. This is virtually the same harm as providing no funding for a particular program, and is directly contrary to the constitutional mandate contained in article XIII B, section 6. If we were to interpret the remedial provision in section 17612, subdivision (c) as limited to legislative decisions to provide zero funding, we would be concluding that the statutory scheme does not provide a remedy for a school district to avoid an ****716** unfunded mandate. This result could not have been contemplated by the drafters of the statutory scheme, who were seeking to effectuate (and not defeat) the voters' intent underlying the constitutional provision.

[24] We thus reaffirm our conclusion in *County of San Diego* that where an appropriation is the functional equivalent of deleting funding, a local entity (including a school district) has a right to seek a declaration of that fact under section 17612, subdivision (c) and receive a judicial declaration that it need not comply with the mandate for one year.[FN9] Because the School Districts have this legal remedy, it was improper for the court to issue an injunction controlling the State's future actions in these matters.

FN9. In the proceedings below, School Districts argued the requirement that an entity bring an action *every year* to seek relief under section 17612, subdivision (c) for an unfunded mandate was an unreasonable restriction on its constitutional rights der article XIII B, section 6. The court rejected this facial challenge, but stated its ruling was without prejudice to the petitioners bringing an " 'as-applied' " challenge to the annual requirement. School Districts did not cross-appeal from this portion of the order. Thus, the issue is not before us on this appeal. Although they mention the issue in passing in a footnote of their appellate brief, this footnote was insufficient to present the issue on appeal.

[25] ***797** In reaching this conclusion, we recognize that the State's prior position that it was permitted to require the School Districts to implement the State-mandated programs despite the nominal funding appears inconsistent with the State's current interpretation of section 17612, subdivision (c) that the School Districts have a right to seek a court order declaring the mandate to be unenforceable. However, this inconsistency has now been resolved. We have affirmed the trial court's grant of declaratory relief that the State violates article XIII B, section 6 and the implementing statutes by requiring a school district to implement a program under a deferred payment practice. And we have held (consistent with the State's current position) that if the State violates these provisions in the future, the School Districts will have a right to obtain relief from a required implementation of the program under section 17612, subdivision (c).[FN10]

FN10. We note the State would be precluded from arguing that the School Districts waived claims for *prior* unpaid mandates by previously failing to seek relief under section 17612, subdivision (c). The State's prior agreement to pay for these costs, and its prior position that these mandates were required, is inconsistent with a claim that the School Districts previously waived their right to reimbursement for those costs by not invoking the statutory remedy. However, in the future, if the School Districts wish to be relieved of an obligation when there is only nominal funding, they will be required to seek relief under section 17612, subdivision (c) in the Sacramento County Superior Court.

4. *Writ Interferes with Discretionary Functions and Separation of Powers Doctrine*

[26] We additionally conclude the writ was improperly issued because it compels a discretionary, not a ministerial, act.

[27][28][29] To obtain writ relief, the petitioner must show the respondent has "a clear, present, and ministerial duty to act in a particular way." (*County of San Diego, supra,* 164 Cal.App.4th at p. 593, 79 Cal.Rptr.3d 489.) "A ministerial duty is one that is required to be performed in a prescribed manner under the mandate of legal authority without the exercise of discretion or judgment." (*Ibid.*) Thus, a writ of mandate should not compel action by the Legislature unless " 'the duty to do the thing asked for is plain and *unmixed with discretionary power or the exercise of* *****717** *judgment.*' " (*Id.* at p. 596, 79 Cal.Rptr.3d 489.) On its face, the issued writ interferes directly with the Legislature's discretionary functions by requiring the Legislature to appropriate funds for certain local school district programs and services. The determination as to how and whether to spend public funds is within the Legislature's broad discretion.

The School Districts argue that the writ implicates only ministerial powers because it does not "tell[ ] the Legislature which programs it must retain or forego, nor does it order the Legislature to fund any program" and instead ***798** merely compels the state to comply with existing law and to make the choice given to it by the existing statutory scheme.

However, the writ expressly orders the Legislature to include School District mandate items in the annual Budget Bill, and then to fully fund each mandate *or* to "suspend" the mandate pursuant to section 17581.5. This choice is not mandated by the statutes or the Constitution. Under the statutory scheme, the Legislature has the discretion to choose not to fund a mandate. If this occurs, the Legislature may specifically identify the program in a Budget Act and suspend the requirement for one year. (§ 17581.5; see fn. 7, *ante.*) But the Legislature is not required to provide this relief. If the Legislature does not do so, it is then a school district's obligation to seek affirmative relief in the Sacramento County Superior Court to excuse compliance with the mandate for one year. (§ 17612, subd. (c); see *Tri–County, supra,* 123 Cal.App.4th at p. 572, 19 Cal.Rptr.3d 884.) This process is consistent with article XIII B, section 6, which prohibits the State from requiring local entities to perform unfunded state mandates, but does not compel the State to provide funding if it does not wish to require a particular program.

In issuing the writ, the court disregarded this fundamental structure of the judicial mandate relief procedures, and specifically ordered the Legislature to perform one of two acts: fully fund a mandate or affirmatively excuse compliance under section 17581.5. Because the Legislature has the statutory discretion to make other choices (not fund and require the local entity to seek affirmative relief from the mandate), the court's order pertained to a discretionary duty and thus was beyond the court's mandamus authority.

[30] The School Districts alternatively argue that we should, at a minimum, uphold the portion of the writ requiring the Legislature to place the cost of a determined mandate in the annual Budget Bill because this is expressly required by the statutes. (See § 17561, subd. (b).) The School Districts claim the identification of the mandates and their costs is essentially a ministerial task designed to provide public notice and information about mandate determinations made by the Commission.

[31][32] This argument is unavailing. There is nothing ministerial about placing items in a budget bill. The formulation of a budget bill, including the items to be placed in the bill, is inherently a discretionary and a legislative power. (See *In re Madera Irrigation District* (1891) 92 Cal. 296, 310, 28 P. 272.) The budget determination "is limited by [the Legislature's] own discretion, and beyond the interference of courts." (*Ibid.*; see *City of Sacramento v. California State Legislature* (1986) 187 Cal.App.3d 393, 398, 231 Cal.Rptr. 686.)

[33][34][35] ***799** For similar reasons, we conclude the writ also violates California's separation of powers doctrine. A court has no authority to issue a writ of mandate that interferes with powers exclusively committed to the other branches of government.*****718** (*County of San Diego, supra,* 164 Cal.App.4th at pp. 593–594, 79 Cal.Rptr.3d 489.) The enactment of a budget bill is fundamentally a legislative act, entrusted to the Legislature and the Governor and not the judiciary. (See *Grossmont Union, supra,* 169 Cal.App.4th at p. 886, 86 Cal.Rptr.3d

890; *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1214, 70 Cal.Rptr.2d 745.) The California Constitution's separation of powers doctrine forbids the judiciary from issuing writs that direct the Legislature to take specific action, including to appropriate funds and pass legislation. (*County of San Diego, supra,* 164 Cal.App.4th at pp. 593–594, 79 Cal.Rptr.3d 489; see *City of Sacramento v. California State Legislature, supra,* 187 Cal.App.3d at pp. 396–398, 231 Cal.Rptr. 686.)

[36][37] Under these principles, a court is prohibited from using its writ power to require an appropriation even if the Legislature is statutorily required to appropriate certain funds. (See *City of Sacramento v. California State Legislature, supra,* 187 Cal.App.3d at pp. 397–398, 231 Cal.Rptr. 686.) The "matter is ... one in which political power to accomplish that end is vested in the Legislature. 'Under our form of government the judicial department has no power to revise even the most arbitrary and unfair action of the legislative department, or of either house thereof, taken in pursuance of the power committed exclusively to that department by the constitution.' " (*Id.* at p. 398, 231 Cal.Rptr. 686.) Limitations on the use of judicial writ authority to control legislative action is a core purpose of the separation of powers doctrine.

C. *Cross-appeal: Court's Refusal to Order Relief for Past Unpaid Mandate Debt*

In addition to seeking an order directing the State to prospectively take certain actions, the School Districts also sought an order requiring the State to pay more than $900 million in unpaid mandate debt (including interest) for programs and services previously provided and unreimbursed by the State. The court declined to order this relief, noting the "magnitude of the funds" and the "separation of powers" principles embodied in the California Constitution. The court relied on our recent decision in *County of San Diego, supra,* 164 Cal.App.4th 580, 79 Cal.Rptr.3d 489, in which we upheld the trial court's discretion to deny monetary relief for prior mandate debt on similar grounds.

On appeal, the School Districts contend the trial court erred in reaching its conclusions without permitting them to conduct discovery on the availability of funding sources for the unpaid debt. We conclude the court acted within its discretion.

***800** 1. *Factual and Procedural Background*

In their complaint, the School Districts requested that the court enter an order compelling the State to reimburse them for $900 million in "outstanding unreimbursed costs from generally related State accounts which have been appropriated and are otherwise available for payment of the State's obligation...." This request was based on a line of cases in which the courts have recognized a narrow exception to the rule that a court has no power to compel the Legislature to appropriate funds. (See *Butt v. State of California* (1992) 4 Cal.4th 668, 697–703, 15 Cal.Rptr.2d 480, 842 P.2d 1240 (*Butt*); *Mandel v. Myers* (1981) 29 Cal.3d 531, 539–545, 174 Cal.Rptr. 841, 629 P.2d 935; *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 181, 275 Cal.Rptr. 449.) As explained in more detail below, this exception applies when funds have already been appropriated and ****719** the existing funds are related to the subject matter of the unpaid debt.

However, in their moving papers, the School Districts identified only one potential funding source for the payment of the outstanding $900 million debt: the "Proposition 98 reversion fund." (See Ed.Code, § 41207.5.) The School Districts argued that because the Legislature had previously used this account to reimburse districts for deferred mandates, it would be available to pay for some or all of the outstanding mandate debt. The State responded that the Proposition 98 reversion account does not contain funds available for this purpose, and would conflict with specific state law funding requirements.

This court then filed *County of San Diego,* in which we upheld the trial court's discretion to deny the counties' claims for reimbursement of mandate costs owed from prior budget years. (*County of San Diego, supra,* 164 Cal.App.4th at pp. 597–603, 79 Cal.Rptr.3d 489.) In supplemental briefing, the School Districts requested the court to bifurcate the matter and provide them an opportunity to conduct discovery and present evidence on the issue of the availability of existing State funds to pay the outstanding mandate debt. The State opposed this request, noting the request was untimely and that the nature and magnitude of the relief sought were inconsistent with the judiciary's role in the budgetary process and can only lead to "chaos" in the state budget.

192 Cal.App.4th 770, 121 Cal.Rptr.3d 696, 265 Ed. Law Rep. 347, 11 Cal. Daily Op. Serv. 1923, 2011 Daily Journal D.A.R. 2308
(Cite as: 192 Cal.App.4th 770, 121 Cal.Rptr.3d 696)

After a hearing, the court declined to order affirmative relief on the prior debt claim, stating: "[T]he magnitude of the funds previously deferred and owed to [School Districts], coupled with the separation of powers clause set forth in article III, section 3 ... and the appropriation powers afforded to the Legislature under article IV, section 10 and 12, and article XVI, section 7 ... preclude the Court from ordering the Legislature to reimburse petitioners from undesignated existing appropriations...." The court also ***801** denied School Districts' request to conduct discovery "[i]n light of the Court's conclusion that [the requested] relief is precluded as a matter of law...."

The School Districts appeal from this ruling.

2. *Analysis*

[38][39] Under the California Constitution, the separation of powers doctrine prohibits a court from compelling the Legislature "to appropriate funds or to pay funds not yet appropriated." (*County of San Diego, supra,* 164 Cal.App.4th at p. 598, 79 Cal.Rptr.3d 489.) A narrow exception to this rule exists "when a court orders appropriate expenditures from already existing funds" and the funds " 'are "reasonably available for the expenditures in question," ' " which means that " 'the purposes for which those funds were appropriated are "generally related to the nature of costs incurred...." [Citation.]' " (*Ibid.;* see *Butt, supra,* 4 Cal.4th at pp. 698–703, 15 Cal.Rptr.2d 480, 842 P.2d 1240.)

[40] This exception must be strictly construed and is inapplicable if the existing funds have been appropriated for other purposes. (*Butt, supra,* 4 Cal.4th at pp. 698–703, 15 Cal.Rptr.2d 480, 842 P.2d 1240; see *County of San Diego, supra,* 164 Cal.App.4th at pp. 598–599, 79 Cal.Rptr.3d 489.) Moreover, a trial court has broad discretion to determine whether a mandamus remedy requiring a particular payment from an existing fund is warranted under the totality of the circumstances. " ' " '[C]ases may ... arise where the applicant for relief has an undoubted legal right, for which *mandamus* is the appropriate remedy, but where the court may, in ****720** the exercise of a wise discretion, still refuse the relief.' " ' " (*County of San Diego, supra,* at p. 599, 79 Cal.Rptr.3d 489.)

In *County of San Diego,* the parties stipulated that the State owed San Diego County $41 million and Orange County $72 million for prior unfunded mandates, and the counties asked the court to order this debt to be repaid from budgets of more than 20 state agencies. (*County of San Diego, supra,* 164 Cal.App.4th at pp. 599–600, 606, 79 Cal.Rptr.3d 489.) During a bench trial, the parties called numerous witnesses from the various state agencies on the issue of the existence of funds to pay for the costs of the State's prior mandate debt. (*Id.* at p. 591, 79 Cal.Rptr.3d 489.) After trial, the court found the counties had not met their burden to show the availability of the funds sought or the required relationship between many of the mandates and the funds sought. (*Ibid.*)

We concluded the evidence supported the trial court's factual findings. (See *County of San Diego, supra,* 164 Cal.App.4th at pp. 597–603, 79 Cal.Rptr.3d 489.) We additionally held the court's conclusion was proper even if there was a relationship with respect to some available funds and the unpaid mandates. (*Ibid.*) We ***802** explained that under "the unique circumstances surrounding the Counties' petition for writ of mandate in this case, ... the court acted well within the bounds of judicial discretion in denying the relief the Counties sought." (*Id.* at p. 599, 79 Cal.Rptr.3d 489.) We reasoned that "the existence of a *clear, present,* ministerial duty to fully pay the Counties' subject reimbursement claims from the state budget of the single fiscal year in question was negated by the enormity of the relief the Counties sought. Given the magnitude of the Counties' reimbursement claims, the large number of mandates at issue, the large number of agencies from which the Counties sought reimbursement, and, most important, the insufficiency of the Counties' evidence to show that the purposes of the subject mandates were generally related to the various appropriations from which the Counties sought reimbursement, or that the targeted funds were reasonably available, the court acted well within its discretion in denying the Counties' request for a writ of mandate compelling prompt payment of their reimbursement claims from the state's 2005–2006 fiscal year budget." (*Id.* at p. 603, 79 Cal.Rptr.3d 489.)

[41] We reach a similar conclusion in this case. The School Districts were seeking almost $1 billion in funds from the State, but cited only a single account ("the Proposition 98 reversion fund") that could possibly contain funds to meet the reasonably related test. However, the School Districts did not present any

192 Cal.App.4th 770, 121 Cal.Rptr.3d 696, 265 Ed. Law Rep. 347, 11 Cal. Daily Op. Serv. 1923, 2011 Daily Journal D.A.R. 2308
(Cite as: 192 Cal.App.4th 770, 121 Cal.Rptr.3d 696)

specific evidence regarding the availability of funds in this account to satisfy the State's debt. Although the School Districts sought to conduct additional discovery to support their claim, they did not come forward with any predicate facts showing a reasonable basis to believe sufficient funds exist and that the funds would meet the criteria of the exception (a relationship between available funds and the subject matter of the debt). (See *Butt, supra,* 4 Cal.4th at pp. 698–702, 15 Cal.Rptr.2d 480, 842 P.2d 1240.) Because appropriations for the budget year at issue were placed in a chartered bill following the Governor's signature on the Budget Act, this evidence was available without a discovery order. In seeking to make this showing, the School Districts asserted only that the Legislature had used funds in the Proposition 98 reversion fund in the past. This claimed fact is insufficient to show that funds currently exist to pay the mandate debt.

****721** Moreover, we decline the School Districts' invitation to construe our prior *County of San Diego* holding as limited only to its unique facts or to reconsider our holding. In *County of San Diego,* we affirmed a trial court's broad discretion to refuse to compel repayment of millions of dollars from a state budget where the magnitude of the reimbursement sought, as well as the large number of specific outstanding mandates and the potential funds from which such mandates would be paid, would place the court in a situation where it was essentially acting in a budgetary and legislative, rather than a ***803** judicial, role. (See *County of San Diego, supra,* 164 Cal.App.4th at pp. 602–603, 79 Cal.Rptr.3d 489.) This same principle supports the court's refusal to apply the exception in this case.

[42] Further, the court did not abuse its discretion in declining to permit petitioners to engage in a wide-ranging discovery investigation in an attempt to identify funds to pay prior mandate costs. Currently our state is experiencing an extreme budget crisis with a budget deficit estimated to be more than $20 billion. Any money a court would direct to the School Districts would reduce funds available for other obligations and implicate funding priorities and policy making decisions. These decisions are for the Legislature. Under the particular circumstances of the case, an order requiring the State to pay its claimed $900 million mandate debt from existing funds would improperly "elevate the judiciary above its coequal brethren, upset the delicate system of checks and balances, and stand the separation of powers clause on its head." (*Butt, supra,* 4 Cal.4th at p. 703, 15 Cal.Rptr.2d 480, 842 P.2d 1240.)

III. *Request for Judicial Notice*

[43][44] School Districts request that we take judicial notice of five sets of documents, identified as Exhibits A through E. Exhibits A, B, and C contain recently enacted statutes, which apparently reflect additional deferred mandates. Exhibits D and E are reports by the Legislature Analyst's Office prepared in February 2010 and April 2010, after the judgment was entered in this case. None of these exhibits were presented to the trial court.

[45] We deny this request. Generally, " 'when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered.' [Citation.]" (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3, 58 Cal.Rptr.2d 899, 926 P.2d 1085; accord, *In re Marriage of Forrest & Eaddy* (2006) 144 Cal.App.4th 1202, 1209, 51 Cal.Rptr.3d 172.) It is a fundamental principle of appellate law that our review of the trial court's decision must be based on the evidence before the court at the time it rendered its decision. (See *Vons Companies, Inc. v. Seabest Foods, Inc., supra,* 14 Cal.4th at p. 444, fn. 3, 58 Cal.Rptr.2d 899, 926 P.2d 1085; *Kumar v. National Medical Enterprises, Inc.* (1990) 218 Cal.App.3d 1050, 1057, fn. 1, 267 Cal.Rptr. 452.) School Districts have not cited any exceptional circumstances that would justify a deviation from this rule in this appeal.

Moreover, the proffered materials would not affect our analysis in this case. The fact the State has continued the practice of mandate deferral is already part of the record on appeal. Further, the opinions expressed by the Legislative Analyst Office after the judgment was entered are not relevant to our legal determinations.

***804** DISPOSITION

We reverse the judgment insofar as it grants injunctive relief in favor of School ****722** Districts, and affirm the judgment in all other respects. We remand for the court to vacate the writ of mandate and to issue a new judgment consistent with the determinations in this opinion. Each party to bear its own costs.

192 Cal.App.4th 770, 121 Cal.Rptr.3d 696, 265 Ed. Law Rep. 347, 11 Cal. Daily Op. Serv. 1923, 2011 Daily Journal D.A.R. 2308
(Cite as: 192 Cal.App.4th 770, 121 Cal.Rptr.3d 696)

WE CONCUR: BENKE, Acting P.J., and AARON, J.

Cal.App. 4 Dist.,2011.
California School Boards Assn. v. State
192 Cal.App.4th 770, 121 Cal.Rptr.3d 696, 265 Ed. Law Rep. 347, 11 Cal. Daily Op. Serv. 1923, 2011 Daily Journal D.A.R. 2308

END OF DOCUMENT

COPY

Fagen Friedman & Fulfrost LLP

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Howard A. Friedman
Howard J. Fulfrost
Melanie A. Petersen
Laurie S. Juengert
Laurie E. Reynolds
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Christopher D. Keeler
Jan E. Tomsky
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Lenore Silverman
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Kathleen J. McKee
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Keith Yanov
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Diana McDonough
Of Counsel

January 26, 2009

Diana McDonough
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Via Overnight Courier

Stephen P. Acquisto
Supervising Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

Re: Department of Finance v. Commission on State Mandates
Sacramento County Superior Court Case No. 03CS01432 (BIPS)

Dear Mr. Acquisto:

Enclosed please find the fully executed settlement and release agreement in the above matter. As we discussed, I dated the document January 26, 2009, the date of my signature, and have attached original signature pages from each of my clients and myself. We retained the original signature page signed by Mr. Genest and you, but enclosed a copy.

Thank you very much for your cooperation. Please contact me if you have any questions.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP

Diana McDonough

DKM:LMM

Encl.: Settlement and Release Agreement

Cc: Camille Shelton, Chief Legal Counsel (via U.S.Mail)
00334.00100/116193.1

COPY

SETTLEMENT AND RELEASE AGREEMENT
BEHAVIORAL INTERVENTION PLANS [HUGHES BILL] MANDATED COST CLAIM

This settlement and release agreement ("Agreement") is entered into this 26th day of January, 2009 DKM by and between the State of California ("the STATE") on the one hand, and San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education (collectively "CLAIMANTS") on the other, who, in consideration of the promises made herein, agree as follows:

I. Nature and Status of the Dispute

Effective January 1, 1991, Education Code section 56523 was added to the Education Code. That section required the development and adoption of regulations governing positive behavioral interventions for special education students by the State Board of Education ("the SBE"). In 1993, the SBE promulgated California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 to implement Education Code section 56523. The Education Code section and its implementing regulations are referred to cumulatively as "the Hughes Bill."

The Behavioral Intervention Plans Mandated Cost Claim was initiated on September 28, 1994, when San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education filed test claim CSM-4464 with the Commission on State Mandates ("the Commission"). The Behavioral Intervention Plans Mandated Cost Claim asked the STATE to reimburse local educational agencies ("LEAs"), including school districts, county offices of education, special education local plan areas ("SELPAs"), and joint agencies composed of such organizations for the costs of implementing the Hughes Bill.

On September 28, 2000, the Commission adopted a Statement of Decision on CSM-4464 finding that the Hughes Bill imposed a reimbursable state mandate on school districts by requiring the following seven activities: SELPA plan requirements, development and implementation of behavioral intervention plans, functional analysis assessments, modifications and contingent behavioral intervention plans, development and implementation of emergency interventions, prohibited behavioral intervention plans, and due process hearings. The settlement of the Special Education Mandated Cost Claim in 2000-2001 explicitly omitted the Behavioral Intervention Plans Mandated Cost Claim (Ed. Code § 56836.156(g)).

Subsequently CLAIMANTS proposed parameters and guidelines for the CSM-4464 claiming process but various disputes arose with the STATE and a final draft was never adopted by the Commission. The parties attempted settlement without success and the matter reached a stalemate.

On September 26, 2003, the STATE's Department of Finance filed a Petition for Administrative Mandamus in the Sacramento Superior Court challenging the Commission's decision in CSM-4464. It named the Commission as Respondent, and CLAIMANTS as Real Parties in Interest (*Department of Finance v. Commission on State Mandates*, Sacramento Superior Court Case No. 03CS01432). The Petition maintained that the Hughes Bill was not a reimbursable state mandate because 1) it was required by federal law, 2) it merely implemented federal requirements, and

3) it did not exceed those requirements. The matter is still pending. CLAIMANTS have filed no responsive pleadings as yet.

On October 4, 2007, the Deputy Attorney General representing the STATE's Department of Finance in the above case wrote to CLAIMANTS stating that pending reforms in the mandate process could present a timely opportunity to continue negotiations. The Deputy Attorney General noted that the mandate reform legislation, AB 1222, included the option of the joint development of a reasonable reimbursement methodology and cost estimate. The Deputy Attorney General suggested a meeting if CLAIMANTS were interested in resolving the matter and noted that, absent successful settlement, she planned to schedule a hearing in Sacramento Superior Court in April 2008. In response, CLAIMANTS contacted the Deputy Attorney General and the parties began meeting to work on a mutually agreeable resolution.

A chief task in the settlement process was developing a statewide cost estimate for the claim. Ultimately CLAIMANTS completed surveys of more than 20 SELPAs representing more than 10% of public school students statewide. The STATE's Department of Finance staff reviewed copies of all survey returns and verified that the cumulative cost totals accurately reflected the SELPA data.

In May 2008, the Sacramento Superior Court notified the STATE that it must bring its case to trial by September 26, 2008, or be subject to dismissal under the state law which requires all matters to be brought to trial within five years ("the five-year rule"). Ultimately, the parties filed a stipulation with the court agreeing to extend the five-year period to March 27, 2009, in the hopes that agreement could be reached.

The STATE's Department of Finance continues to dispute the Commission's decision in CSM-4464 that the Hughes Bill is a reimbursable mandate. CLAIMANTS believe the Commission's decision was correct and that the Hughes Bill imposes requirements on school districts that are not mandated by federal law.

To avoid the costs and uncertainty of further litigation, to alleviate the uncertainty regarding the Hughes Bill funding, and to expedite the resolution of this long-pending mandate claim in the spirit of AB 1222, the parties have determined to compromise and settle the claims raised in Sacramento Superior Court Case No. 03CS01432 and the underlying administrative decision of the Commission on State Mandates in CSM-4464 on the terms and conditions set forth below.

II. Actions to Resolve Dispute

A. The mutual obligations and duties of the parties set forth herein are contingent upon all of the following events occurring:

1. On or before February 28, 2009, no less than 85% of all K-12 school districts, county offices of education, and SELPAs shall sign the Waiver, attached hereto as Exhibit A. In addition, the school districts and county offices signing Exhibit A must have served student populations accounting

for no less than 92% of the second principal apportionment (P-2) average daily attendance in the 2007-08 fiscal year.

2. The parties shall seek a superior court ruling that the settlement is final and binding on all LEAs, assuming implementing legislation is enacted. In the absence of such a ruling, the parties shall seek an alternative, mutually agreeable final and formal resolution of the dispute.

3. Prior to or concurrent with the enactment of the Budget Act for the 2009-10 fiscal year, legislation is enacted that contains provisions identical to or substantially similar to the language contained in Exhibit B. It is the intent of the parties that, on or before January 10, 2009, the Legislature shall be requested to enact such legislation on an urgency basis. Any modifications to the proposed legislation shall be made only with agreement of all the signatories to this settlement document.

   a. The proposed legislation shall appropriate the amount of ten million dollars ($10,000,000) payable upon enactment and allocated in accord with Section II.B. of this Agreement.

   b. The proposed legislation shall require additional funding of five-hundred and ten million dollars ($510,000,000) in total payable over a six-year period, or lesser period at the STATE's discretion, commencing July 1, 2011, and allocated in accord with Section II.B. of this Agreement.

   c. The proposed legislation shall include statutory language to revise the existing special education funding model established by Assembly Bill 602 (Chapter 854, Statutes of 1997) to provide an ongoing increase of sixty-five million dollars ($65,000,000) annually to special education programs. The proposed legislation shall appropriate the first year of funding.

   d. The combination of the above appropriations is to be considered in full satisfaction of, and is in lieu of, any reimbursable mandate claims that would have been filed as a result of CSM-4464. By providing this funding for CSM-4464, the STATE in no way concedes the existence of an unfunded reimbursable mandate for that claim.

B. For the purposes of this settlement only, to resolve any and all retrospective mandated cost claims from 1993-94 to 2008-09 arising from CSM-4464 and the Statement of Decision adopted by the Commission on State Mandates on September 28, 2000, the STATE agrees that:

1. Upon enactment of legislation prior to or concurrent with the 2009-10 Budget Act, payment in the amount of ten million dollars ($10,000,000) will be allocated to LEAs as follows:

   a. One million five hundred thousand dollars ($1,500,000) shall be allocated to county offices of education on an equal per-pupil basis. The amount of each agency's allocation shall be determined by dividing one million five hundred thousand dollars ($1,500,000) by the total statewide county special education pupil count only, as reported by county offices of education as of December 2007. The allotment for each county office of education shall be the per-pupil amount times the county's special education pupil count reported as of December 2007. The State Superintendent of Public Instruction ("the Superintendent") shall adjust the computations in such a manner as to ensure that the allotment to each county office of education is at least five thousand dollars ($5,000).

   b. Six million dollars ($6,000,000) shall be allocated to SELPAs that existed for the 2007-08 fiscal year. The amount of each agency's allocation shall be determined by dividing six million dollars ($6,000,000) by the total statewide special education pupil count as of December 2007. The allotment for each agency shall be the statewide per-pupil amount times the SELPA's special education pupil count reported as of December 2007. The State Superintendent of Public Instruction ("the Superintendent") shall adjust the computations in such a manner as to ensure that the allotment to each SELPA is at least ten thousand dollars ($10,000).

   c. Two million five hundred thousand dollars ($2,500,000) shall be paid to San Joaquin County Office of Education.

2. In accord with legislation enacted prior to or concurrent with the 2009-10 Budget Act, the State will pay an additional five hundred and ten million dollars ($510,000,000) to school districts. This amount shall be allocated in installment payments of eighty-five million dollars ($85,000,000) commencing July 1, 2011, and annually thereafter for a period of six years unless the STATE in its discretion enlarges the installment amount from time to time, thereby discharging the obligation in advance of the six year period. These payments shall be allocated to school districts on a per-pupil basis as follows:

   a. The appropriation shall be divided by the total average daily attendance, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools, for all pupils in kindergarten through grade twelve in all school districts as used by the Superintendent for the second principal apportionment for the

2007-08 fiscal year. Each school district shall receive an allocation equal to the per-pupil amount times the district's reported average daily attendance for the second principal apportionment for the 2007-08 fiscal year, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools. The amount allocated to each school district shall be the same in all subsequent fiscal years as it is in the first fiscal year unless the State enlarges the appropriation as specified in II.B.2. above.

b. In any fiscal year after 2011-12 in which the provisions of paragraph (b)(3) of Section 8 of Article XVI of the California Constitution are operative, the annual appropriation shall not be required to be made. If an appropriation is not made for a specific fiscal year or years, it shall instead be made in the fiscal year or years immediately succeeding the final payment pursuant to Section II.B.2 of this Agreement.

C. To effectuate a stay of the five-year rule and to seek court approval of the settlement which makes it final and binding on LEAs, the parties agree to the following:

1. Within ten court days after execution of this Agreement, CLAIMANTS will file a response to the Petition for Administrative Mandamus, Sacramento Superior Court Case No. 03CS01432. Concurrently or as soon thereafter as the parties deem appropriate, the STATE and CLAIMANTS shall jointly stipulate to a stay of the five-year rule, and shall file such stipulation with the court. The stipulation shall provide for and ask the court to order the following:

a. A stay of the five-year rule for the purposes of this settlement, with the understanding that the five-year rule shall be in effect within ninety (90) days if the settlement terms cannot be effectuated.

b. Notice of the stay and of the settlement terms to all LEAs.

c. A court hearing, if necessary, to consider any objections to the settlement made by LEAs or other parties of standing.

d. Entry of judgment that the settlement is the final resolution of CSM-4464 assuming implementing legislation is enacted, and that after appropriate consideration of objections, if any, it is final and binding on all LEAs.

D. In the absence of any entry of judgment as specified in Section II.C.1.d. of this Agreement, the parties shall seek an alternative mutually agreeable final and formal resolution of the dispute.

E. If the events listed in Section II.A. as preconditions to the parties' obligations do not take place, the STATE or the CLAIMANTS may request the Superior Court to lift the stay issued pursuant to Section II.C.1.a., above, and to order that the five-year rule shall take effect in ninety (90) days.

III. Known Claims

With respect to section 56523 of the California Education Code and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008, ("the Hughes Bill Statute and Regulations"), CLAIMANTS hereby knowingly and voluntarily waive the rights set forth under article XIIIB, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of Title 2 of the California Code of Regulations. By signing this Agreement, CLAIMANTS hereby acknowledge that CLAIMANTS forever relinquish their right to file any mandated cost claim regarding the Hughes Bill Statute and Regulations, and further forever relinquish their right to receive any benefit(s) from any claim(s) so filed. CLAIMANTS may file mandated cost claims concerning such statutes and regulations only to the extent that state or federal statutes or regulations are amended or added or changed in any other way after July 1, 2008. CLAIMANTS further acknowledge and concede that the amount that is required to be appropriated for the purpose of satisfying the STATE's minimum funding obligation to school districts pursuant to article XVI, section 8, of the California Constitution shall not be required to be increased, to any extent, by payment of the amounts set forth in Sections II.B.1 and II.B.2 of this agreement.

IV. Unknown Claims

A. CLAIMANTS expressly waive the application of California Civil Code section 1542 regarding mandated cost claims based on Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008.

B. CLAIMANTS certify that they have read the following provisions of California Civil Code section 1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

C. CLAIMANTS understand and acknowledge that the significance and consequence of the waiver of California Civil Code section 1542 is that:

1. They may have additional claims arising or occurring up to the date of this Agreement of which they are not now aware;

2. They may not make a further demand for any such claims;

3. They may not receive any benefit(s) from any such claims; and

4. They extend their waiver to include now unknown or later discovered claims.

V. Advice of Attorney

CLAIMANTS warrant and represent that they have been advised to seek legal advice from the attorney of their choice regarding the risks, complications, and costs of the Agreement. CLAIMANTS acknowledge and represent either that they relied upon legal advice from their attorney in executing this Agreement or that they chose not to rely upon legal advice from their attorney in executing this Agreement. They further acknowledge and represent that, in executing this Agreement, they have not relied on any inducements, promises, or representations other than those stated in this Agreement.

VI. Conditions of Execution

Each party acknowledges and warrants that the party's execution of this Agreement is free and voluntary.

VII. Execution of Other Documents

Each party to this Agreement shall cooperate fully in the execution of any and all other documents and the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

VIII. Nonadmission

Nothing contained in the Agreement constitutes an admission or concession, by any party, as to any matter of fact or law at issue in Sacramento Superior Court Case No. 03CS01432 and/or CSM-4464, and no party hereto shall deem or construe this Agreement, or any part thereof, to be any such admission or concession. Further, nothing in this Agreement may be deemed or construed to be, by any entity or person not a party hereto, as against any party hereto, or any agency thereof, any admission or concession as to any matter of fact or law at issue in Sacramento Superior Court Case No. 03CS01432 and/or CSM-4464.

IX. Entire Agreement

This Agreement and Exhibits A and B attached hereto contain the entire Agreement between the parties. A breach of any portion of this Agreement shall be considered a breach of the whole Agreement.

X. Effective Date

This Agreement shall be effective immediately upon execution by the parties. This Agreement has retroactive effect to the extent specified herein.

XII. Governing Law

This Agreement is entered into, and shall be construed and interpreted, in accordance with the laws of the State of California and the United States.
00334.00100/105941.1

XIII. Counterparts

This Agreement may be signed in counterparts, such that signatures appear on separate pages. A copy or original of this document with all signature pages appended together shall be deemed a fully executed Agreement.

For the State of California:

_____ Dated: _____
Michael C. Genest
Director, Department of Finance

_____ Dated: _____
Stephen P. Acquisto
Supervising Deputy Attorney General

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For the State of California:

Michael C. Genest
Director, Department of Finance

Dated: DEC 2 2008

Stephen P. Acquisto
Supervising Deputy Attorney General

Dated: 12/3/08

San Diego Unified School District

By _____ Dated: 1/16/09
Terry Grier, Superintendent

Butte County Office of Education

By _____ Dated: _____
Roy L. Applegate, Ed.D., SELPA Director

San Joaquin County Office of Education

By _____ Dated: _____
Sandee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Approved as to form:

Fagen Friedman & Fulfrost

_____ Dated: _____
Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

00334.00100/105941

Approved in closed session of the
Board of Education of the San Diego
Unified School District on 1/13/09
Cheryl Ward, Board Action Officer.
Board of Education

San Diego Unified School District

By _____ Dated: _____
Terry Grier, Superintendent

Butte County Office of Education

By Roy L Applegate Dated: 12-3-08
Roy L. Applegate, Ed.D./SELPA Director

San Joaquin County Office of Education

By _____ Dated: _____
Sandee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Approved as to form:

Fagen Friedman & Fulfrost

_____ Dated: _____
Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

00334.00100/105941

San Diego Unified School District

By _____ Dated: _____
Terry Grier, Superintendent

Butte County Office of Education

By _____ Dated: _____
Roy L. Applegate, Ed.D., SELPA Director

San Joaquin County Office of Education

By _____ Dated: 12/5/08
Sandee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Approved as to form:

Fagen Friedman & Fulfrost

_____ Dated: _____
Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

00334.00100/105941

San Diego Unified School District

By _____ Dated: _____
Terry Grier, Superintendent

Butte County Office of Education

By _____ Dated: _____
Roy L. Applegate, Ed.D., SELPA Director

San Joaquin County Office of Education

By _____ Dated: _____
Sandee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Approved as to form:

Fagen Friedman & Fulfrost

Diana McDonough _____ Dated: January 26, 2009
Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

00334.00100/105941

Exhibit A to Settlement Agreement
Behavioral Intervention Plans Mandated Cost Claim

WAIVER

This Waiver is entered into on _____[DATE] by _____[NAME OF LEA], hereinafter "LEA," to fulfill one of the terms of the Settlement and Release Agreement for the Behavioral Intervention Plans Mandated Cost Claim ("Agreement").

A. Known Claims

With respect to section 56523 of the California Education Code and the California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and section 3052 as those sections read on or before July 1, 2008, (collectively "the Hughes Bill Statute and Regulations"), LEA hereby knowingly and voluntarily waives the rights set forth under article XIIIB, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of Title 2 of the California Code of Regulations. By signing this Waiver, LEA hereby acknowledges that LEA forever gives up its right to file any mandated cost claim regarding the Hughes Bill Statute and Regulations, and/or to pursue any filed claim regarding that statute and regulations, and/or to benefit from such a claim, including any claim regarding the following programs and services:

1. Special education local plan area plan requirements pursuant to California Code of Regulations, title 2, sections 3001, subdivision (c), and 3052, subdivision (j), as these sections read on July 1, 2008;

2. Development and implementation of behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c), (d), (e), and (f), and 3052, subdivisions (a), (c), (d), (e), and (f), as these sections read on July 1, 2008;

3. Functional analysis assessments pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (d) and (f), and 3052, subdivisions (b), (c), and (f), as these sections read on July 1, 2008;

4. Modifications and contingent behavioral intervention plans pursuant to California Code of Regulations, title 2, section 3052, subdivisions (g) and (h), as these sections read on July 1, 2008;

5. Development and implementation of emergency interventions pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c) and (d), and 3052, subdivision (i), as these sections read on July 1, 2008;

6. Prohibited behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivision (d), and 3052, subdivision (l), as these sections read on July 1, 2008; and

7. Due process hearings pursuant to California Code of Regulations, title 2, section 3052, subdivision (m), as this section read on July 1, 2008.

LEA further acknowledges and concedes that the amount that is required to be appropriated for the purpose of satisfying the STATE's minimum funding obligation to LEAs pursuant to article XVI, section 8, of the California Constitution shall not be required to be increased, to any extent, by payment of the retrospective amounts described in Paragraph II.B. of the Agreement, and by signing this Waiver LEA forever gives up its right to contend otherwise.

B. Unknown Claims

1. LEA expressly waives the application of California Civil Code section 1542 regarding mandated cost claims under California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008.

2. LEA certifies that it has read the following provisions of California Civil Code Section 1542:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. LEA understands that it is agreeing that California Civil Code section 1542 does not apply to this Waiver. LEA understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is:

   a. LEA may have additional claims arising or occurring up to the date of this Waiver of which it is not now aware;

   b. LEA may not make a further demand for any such claims;

   c. LEA may not receive any benefit(s) from any such claims that may be filed by other claimants; and

   d. LEA extends its waiver to include now unknown and/or later discovered claims.

C. Exemptions

LEA signs this Waiver with the understanding that it does not prohibit LEAs from filing mandated cost claims to the extent that the Hughes Bill Statute and Regulations are amended or added or changed in any way after July 1, 2008.

D. Advice of Attorney

LEA warrants and represents that it has reviewed and understands the Notice to LEAs Re: Pending Settlement of the Behavioral Intervention Plans Mandated Cost Claim ("the Notice") and this Waiver, and that it has been advised to seek legal advice from the attorney of its choice regarding the Notice and this Waiver. LEA acknowledges and represents either that it relied upon legal advice from its attorney in executing this Waiver or that it chose not to rely upon legal advice from its attorney in executing this Waiver. LEA further acknowledges and represents that, in executing this Waiver, it has not relied on any inducements, promises, or representations other than those stated in the Notice and Waiver.

E. Contingency of Waiver

LEA understands that this Waiver is binding only if the preconditions to the full implementation of the Settlement Agreement are satisfied. Those preconditions are set out in Section C of the Notice and Section II.A. of the Agreement, and are, in brief: (1) at least 85% of all LEAs sign this Waiver, including school districts and county offices of education who served student populations accounting for 92% of the P-2 2007-08 ADA; (2) the parties seek a superior court ruling that the settlement is final and binding on all LEAs; and (3) legislation is enacted appropriating the necessary funding and placing ongoing funding in statute.

Dated: _____ Signed: _____

_____
Print or Type Name Above

Authorized Agent for: _____
Name of LEA

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Exhibit B to Settlement Agreement
Behavioral Intervention Plans Mandated Cost Claim

DRAFT LEGISLATION

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that it is in the State's interest that legislation be enacted immediately to provide funding for positive behavioral intervention plans for special education students (Hughes Bill) and resolve a contested state mandate issue of fourteen-year standing. The Legislature anticipates that the Governor will request the enactment of the legislation prior to the enactment of the 2009-10 Budget Act.

SECTION 2. Section _____ is added to the Education Code to read:

[section number]

(a) The Superintendent of Public Instruction shall determine the statewide total average daily attendance used for the purposes of section 56836.08 for the 2008-09 fiscal year. For the purposes of this calculation, the 2008-09 second principal average daily attendance for the court, community school, and special education programs served by the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area shall be used in lieu of the average daily attendance used for that agency for the purposes of section 56836.08.

(b) The Superintendent shall divide sixty-five million dollars ($65,000,000), by the amount determined pursuant to subdivision (a).

(c) For each special education local plan area, the Superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of section 56836.08 for the 2009-10 fiscal year by the quotient determined pursuant to subdivision (b). This increase shall be effective, beginning in the 2009-10 fiscal year.

(d) Notwithstanding subdivision (c), for the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area, the superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of section 56836.08 by the ratio of the amount determined pursuant to subdivision (b) to the statewide target per unit of average daily attendance determined pursuant to section 56836.11 for the 2008-09 fiscal year. This increase shall be effective beginning in the 2009-10 fiscal year.

(e) The Superintendent shall increase the statewide target per unit of average daily attendance determined pursuant to section 56836.11 for the 2009-10 fiscal year by the amount determined pursuant to subdivision (b).

(f) The funds provided in subdivisions (a)-(e) above are to be considered in full satisfaction of, and are in lieu of, any reimbursable mandate claims for the Behavioral Intervention Plans Mandated Cost Claim. By providing this funding, the State in no way concedes the existence of any unfunded reimbursable mandate with regard to Section 56523 and its regulations in California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections and subdivisions read on July 1, 2008. These funds shall be used exclusively for programs operated under this part and, as a first priority, for the programs and services required under Section 56523 and its regulations, California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections and subdivisions read on July 1, 2008. By virtue of these funds, Section 56523 and its regulations, California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections and subdivisions read on July 1, 2008 shall be deemed to be fully funded within the meaning of Government Code Section 17556(e).

(g) Within the meaning of Government Code section 17556(e), the funds appropriated for purposes of this section are not specifically intended to fund any state-mandated special education programs and services resulting from amendments enacted after July 1, 2008, to any of the following statutes and regulations:

(1) The Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), if such amendments result in circumstances where state law exceeds federal law;

(2) Federal regulations implementing the Individuals with Disabilities Education Act (34 C.F.R. Parts 300 and 303), if such amendments result in circumstances where state law exceeds federal law;

(3) Part 30 (commencing with section 56000); and

(4) Sections 3000 through 4671, inclusive, of Title 5 of the California Code of Regulations.

(h) State funds otherwise allocated to each special education local plan area pursuant to Chapter 7.2 (commencing with section 56836) of Part 30 and appropriated through the annual Budget Act shall supplement and not supplant these funds. These funds shall be in addition to the level of COLA provided for this program in the annual Budget Act.

SECTION 3. Section XXXXX is added to the Education Code, to read:

(a) Commencing with the 2011-12 fiscal year and each fiscal year through the 2016-17 fiscal year, the amount of eighty-five million dollars ($85,000,000), shall be appropriated, on a one-time basis each fiscal year, from the General Fund for allocation to school districts on a per-pupil basis. The Superintendent of Public Instruction shall compute the amount per pupil by dividing eighty-five million dollars ($85,000,000), by the total average daily attendance, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools, for all pupils in kindergarten through grade twelve in all school districts as used by the Superintendent of Public Instruction for the second principal apportionment for the 2007-08 fiscal year. Each school district's allocation shall equal the per-pupil amount times the district's average daily attendance as reported to the Superintendent of Public Instruction for the second principal apportionment for the 2007-08 fiscal year. The amount allocated to each school district shall be the same in all subsequent fiscal years as it is in the first fiscal year.

(1) Notwithstanding the provisions of subdivision (a) above, the State, in its discretion, may cause to be appropriated and allocated amounts in excess of eighty-five million dollars ($85,000,000) annually in the period 2011-12 through 2016-17 for the purpose of discharging the obligation in advance of the six year period, so long as the total amount appropriated and allocated under this section is five hundred ten million dollars ($510,000,000).

(2) In any fiscal year after 2011-12 in which the provisions of Article XVI, section 8, paragraph (b)(3), of the California constitution are operative, the annual appropriation shall not be required to be made.

(3) The Director of Finance shall notify, in writing, the fiscal committees of both Houses of the Legislature, the Controller, and the Superintendent of Public Instruction no later than May 14, that the appropriation for the following fiscal year is not required, pursuant to paragraph (c). If any appropriation is not made for a specific fiscal year, or years, it shall instead be made in the fiscal year, or years, immediately succeeding the final payment pursuant to paragraph (a).

(4) These funds shall be in addition to the level of COLA provided to school districts in the annual Budget Act.

(b) From the funds appropriated for purposes of this section in subdivision (b) of Section 4 of the act adding this section, the Superintendent of Public Instruction shall allocate the following:

(1) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of one million five hundred thousand dollars ($1,500,000) shall be allocated by the Superintendent to county offices of education on an equal per-pupil amount. The Superintendent shall determine the per-pupil amount by dividing one million five hundred thousand dollars ($1,500,000) by the total statewide county special education pupil count only, reported by county offices of education as of December 2007. The allotment for each county office of education shall be the per-pupil amount times the county's special education pupil count reported as of December 2007. The Superintendent shall adjust the computations in such a manner as to ensure that the minimum allotment to each county office of education is at least five thousand dollars ($5,000).

(2) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of six million dollars ($6,000,000) shall be allocated by the Superintendent to SELPAs that existed for the 2007-08 fiscal year. The Superintendent shall determine the amount of each agency's allotment by dividing the six million dollars ($6,000,000) by the statewide special education pupil count reported as of December 2007. The allotment for each agency shall be the statewide per-pupil amount times the SELPA's special education pupil count reported as of December 2007. The Superintendent shall adjust the computations in such a manner as to ensure that the minimum allotment to each SELPA is at least ten thousand dollars ($10,000).

(3) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of two million five hundred thousand dollars ($2,500,000) shall be allocated by the Superintendent to the San Joaquin County Office of Education.

(c) The amounts appropriated by subdivisions (a), (b), and (c) of Section 4 of the act adding this section are in full satisfaction and in lieu of mandate claims resulting from the Commission on State Mandates' Statement of Decision CSM 4464, "Behavioral Intervention Plans."

SECTION 4.

(a) The amount of sixty-five million dollars ($65,000,000), is hereby appropriated from the General Fund in augmentation of Item 6110-161-0001 of 2009-10 Budget Act to the Superintendent of Public Instruction

for the purposes of Section 56836.08 of the Education Code. It is the intent of the Legislature that such funding be included in the annual budget act in subsequent fiscal years.

(b)

(1) The amount of ten million dollars ($10,000,000), is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation on a one-time basis to county offices of education, and special education local plan areas (SELPAs), as specified in subdivision (b) of section _____ of the Education Code. These funds shall be in addition to the level of COLA provided for county offices of education and special education local plan areas in the annual Budget Act.

(2) For the purposes of making the computations required by article XVI, section 8, of the California Constitution, this appropriation shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (a) of section 41202 of the Education Code, for the 2007-08 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of section 41202 of the Education Code, for the 2007-08 fiscal year.

SECTION 5. This Act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety with the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting this necessity are: In order to alleviate the fiscal hardship to local educational agencies caused by the persistent shortfalls in federal funding for special education; to increase state funding for the special education program, thereby reducing encroachment; to facilitate the settlement of current litigation regarding those programs and the funding thereof; to obviate new litigation; and to resolve related school finance issues, it is necessary for this Act to take effect immediately.

00334.00100/108552.1

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March 23, 2009

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Via Hand Delivery

The Honorable Michael P. Kenny
Sacramento County Superior Court
Department 31
720 9th Street
Sacramento, CA 95814

Re: Department of Finance, Petitioner vs. Commission on State Mandates, Respondent;
San Diego Unified School District, San Joaquin County Office of Education, and Butte County Office of Education; Real Parties in Interest
Case No. 03CS01432
Hearing: March 27, 2009

Dear Judge Kenny:

I am writing to inform you that the parties have reached a settlement in the above-entitled matter. Because of the pending agreement, the parties do not plan to go forward with a hearing on the merits on March 27. However, as we have discussed with your clerk, the parties jointly would like to have a brief hearing on the settlement terms with you. Counsel for the Commission on State Mandates is unable to be present, but has endorsed the settlement.

We have filed a Joint Stipulation For Entry of Judgment and a Proposed Judgment, a copy of which is enclosed for your review. The Joint Stipulation includes a copy of the settlement agreement as Exhibit A. Our proposal is that the judgment be signed but not entered unless and until the final step in the process is completed, the enactment of legislation. Because we are seeking court endorsement of the settlement and because we recognize signing the judgment without entering it might be novel, we believe a settlement conference would be beneficial.

Thank you for your consideration of this matter.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP

Diana McDonough

Diana McDonough

DM:dm

Encs.: Joint Stipulation for Entry of Judgment and [Proposed] Judgment

cc: Stephen P. Acquisto, Supervising Deputy Attorney General
Camille Shelton, Chief Counsel, Commission on State Mandates

00334.00100/124308.1

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Attorneys for Real Parties in Interest
San Diego Unified School District,
San Joaquin County Office of Education, and
Butte County Office of Education

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

DEPARTMENT OF FINANCE, Petitioner, vs. COMMISSION ON STATE MANDATES, Respondent.	CASE NO. 03CS01432 **[PROPOSED] JUDGMENT** (No. CSM-4464) Dept: 31 Judge: Honorable Michael P. Kenny Trial Date: March 27, 2009 Action Filed: September 26, 2003
SAN DIEGO UNIFIED SCHOOL DISTRICT; SAN JOAQUIN COUNTY OFFICE OF EDUCATION; and, BUTTE COUNTY OFFICE OF EDUCATION, Real Parties in Interest.	

1. The Court has read and considered the documents filed in this case, including the stipulation for entry of judgment.

2. The Court notes the history of litigation in this matter, and that the proposed settlement has the support of 95% of all LEAs. The Court finds that the stated terms of the settlement are a just resolution of this disputed matter. The Court further agrees that the public interest is well served by the settlement agreement, which avoids the expense and uncertainty of continued litigation while providing additional funding for behavioral intervention plans and related programs/activities.

Therefore, IT IS HEREBY ORDERED AND ADJUDGED that:

1. By this judgment the Court hereby adopts and incorporates the terms of the settlement agreement which the Court finds is the full and final resolution of this matter and is binding upon each and every LEA in the State.

2. The Commission on State Mandates is permanently enjoined from taking further action regarding the Behavioral Intervention Plans Test Claim, CSM No. 4464.

3. This judgment shall be entered and filed only after the enactment of legislation into law satisfying the terms of the settlement agreement.

4. The parties shall bear their own costs and fees respecting this action.

Date: March ____, 2009

_____
Honorable MICHAEL P. KENNY
Judge of the Superior Court of California
County of Sacramento

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Sacramento, State of California. My business address is 520 Capitol Mall, Suite 400, Sacramento, CA 95814.

On March 23, 2009, I served the following document(s) described as **[PROPOSED] JUDGMENT** on the interested parties in this action as follows:

Camille Shelton
Chief Legal Counsel
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814-2719
Attorney for Respondent Comm. on State Mandates

Stephen P. Acquisto
Supervising Deputy Attorney General
State of California
Department of Justice
1300 I Street, Suite 125
Sacramento, CA 94244
Attorneys for Petitioner Department of Finance

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Fagen Friedman & Fulfrost's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 23, 2009, at Oakland, California.

Sherri Lee Caplette, CCLS

00334.00100/124390.1

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Butte County Office of Education

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

DEPARTMENT OF FINANCE, Petitioner, vs. COMMISSION ON STATE MANDATES, Respondent.	CASE NO. 03CS01432 **JOINT STIPULATION FOR ENTRY OF JUDGMENT; JUDGMENT** (No. CSM-4464)
SAN DIEGO UNIFIED SCHOOL DISTRICT; SAN JOAQUIN COUNTY OFFICE OF EDUCATION; and, BUTTE COUNTY OFFICE OF EDUCATION, Real Parties in Interest.	Dept: 31 Judge: Honorable Michael P. Kenny Trial Date: March 27, 2009 Action Filed: September 26, 2003

It is hereby stipulated and requested by and between Petitioner Department of Finance of the State of California; Respondent Commission on State Mandates of the State of California ("Commission"); and Real Parties in Interest San Diego Unified School District, San Joaquin County Office of Education, and Butte County Office of Education, individually and through their respective counsel, that judgment be entered as set forth below upon enactment into law of legislation satisfying the requirements of the settlement agreement, more fully described herein, said judgment being based upon the facts set forth herein.

1. This is an action commenced by the Department of Finance to obtain a writ of administrative mandate directing the Commission on State Mandates to vacate and annul its Statement of Decision in the Behavioral Intervention Plans Test Claim, CSM No. 4464, and to issue a new decision denying the claim in its entirety.

2. The Behavioral Intervention Plans Test Claim, CSM No. 4464, which was initiated by Real Parties in Interest on September 28, 1994, seeks reimbursement for costs associated with behavioral intervention plans, as set forth principally in California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008 ("the Hughes Bill Statute and Regulations"). On September 28, 2000, the Commission issued its decision finding that the Hughes Bill Statute and Regulations imposed a reimbursable state mandated program upon school districts. Because the test claim process is similar to a class action, eligible claimants under the Commission's decision consist of all school districts, county offices of education ("COEs"), special education local plan areas ("SELPAs"), and any joint agency comprised of such organizations, a total of 1,147 local educational agencies ("LEAs"). The claim at issue involves costs related to the following activities/programs required by the Hughes Bill Statute and Regulations: SELPA plan requirements, development and implementation of behavioral intervention plans, functional analysis assessments, modifications and contingent behavioral intervention plans, development and implementation of emergency interventions, prohibited behavioral intervention plans, and due process hearings. The estimated potential value of past claims is $ 1 billion, and for ongoing claims is $70 million annually.

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3. On September 26, 2003, the Department of Finance filed this action, seeking to overturn the Commission's decision. On May 19, 2008, based on the parties' stipulation, this Court postponed the proceedings and extended the five year limit for bringing the matter to trial to allow the parties to attempt to negotiate a settlement. Currently the matter is set for hearing on March 27, 2009 by agreement of the parties and order of this Court.

4. Because the Real Parties in Interest hoped for settlement, they did not pursue other administrative processes with the Commission necessary to finalize the claiming procedures, and accordingly, school districts filed no claims. The Real Parties in Interest advised the Commission that settlement was pending. The Commission, however, continues to have statutory duties outstanding with respect to the claim.

5. This matter has now been settled by Petitioner Department of Finance and Real Parties in Interest San Diego Unified School District, San Joaquin County Office of Education, and Butte County Office of Education, with the support of Respondent Commission. Under the terms of that settlement, the State will pay retroactive reimbursement to: (1) school districts in the amount of $510 million, to be paid in $85 million annual installments over six years starting in 2011-12 and ending in 2016-17, (2) COEs in the amount of $1.5 million in 2009-10, and (3) SELPAs in the amount of $6.0 million in 2009-2010. The State will also permanently increase the ongoing special education statutory funding formula by $65 million annually, beginning in 2009-10. In exchange, the LEAs will waive their rights to file Hughes Bill Statute and Regulations reimbursement claims. A summary of the settlement and a full copy of the settlement agreement are attached to this document as Exhibit A.

6. The settlement is contingent on the following: (1) by February 28, 2009, formal waivers being submitted by at least 85% of LEAs representing at least 92% of student average daily attendance statewide; (2) the parties seeking a superior court ruling that the settlement is final and binding on all LEAs; and (3) legislation providing the necessary funds being enacted prior to or as part of the 2009-2010 budget process.

7. As of February 28, 2009, 95% of all LEAs, representing 99% of student average daily attendance statewide, had signed the required waiver. Further, Assembly Member Tom

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Torlakson has agreed to sponsor the necessary funding legislation, and the Legislative Counsel has released its initial draft of the bill (AB 661) to the settling parties. (See Declaration of Richard L. Hamilton, attached to this document as Exhibit B).

8. In light of the circumstances set forth in paragraph 1 through 7 of this document; to avoid the costs, delay, and uncertainty of further litigation; to avoid the necessity of resolving disputed issues of fact and law; and to alleviate the uncertainty regarding state funding of behavioral intervention programs and services in California's public schools, the parties have agreed to compromise and settle this matter in accord with the settlement document attached hereto as Exhibit A.

9. The parties now turn to this Court and by this stipulation seek a judgment that the settlement is the final resolution of this lawsuit as well as CSM No. 4464 and that all LEAs in the state are bound thereby, thus fulfilling the second condition specified in the settlement agreement, said judgment not to be entered or filed until legislation has been enacted into law satisfying the terms of the settlement agreement.

JUDGMENT PRAYED FOR

10. Therefore, the parties pray that judgment be entered in accord with the terms of the settlement agreement and respectfully request that the Court find that the settlement is the full and final resolution of this matter and that its terms, conditions, and restrictions are binding upon all LEAs in the State. Further, the parties request that the Commission on State Mandates be permanently enjoined from taking further action regarding the Behavioral Intervention Plans Test Claim, CSM No. 4464. Judgment shall be entered and filed only upon legislation being enacted into law satisfying the terms of the settlement agreement.

Respectfully submitted,

March 19, 2009

By: _____
Stephen P. Acquisto
Supervising Deputy Attorney General
Attorneys for Petitioner
DEPARTMENT OF FINANCE

///

///

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March 23, 2009

By: Paula Higashi

Paula Higashi (SBN 166398)
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March 23, 2009

By: Camille Shelton

Camille Shelton (SBN 166945)
Chief Legal Counsel
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COMMISSION ON STATE MANDATES
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March 23, 2009

By: Diana McDonough

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JUDGMENT

1. The Court has read and considered the documents filed in this case, including the stipulation for entry of judgment above.

2. The Court notes the history of litigation in this matter, and that the proposed settlement has the support of 95% of all LEAs. The Court finds that the stated terms of the settlement are a just resolution of this disputed matter. The Court further agrees that the public interest is well served by the settlement agreement, which avoids the expense and uncertainty of continued litigation while providing additional funding for behavioral intervention plans and related programs/activities.

Therefore, IT IS HEREBY ORDERED AND ADJUDGED that:

1. By this judgment the Court hereby adopts and incorporates the terms of the settlement agreement which the Court finds is the full and final resolution of this matter and is binding upon each and every LEA in the State.

2. The Commission on State Mandates is permanently enjoined from taking further action regarding the Behavioral Intervention Plans Test Claim, CSM No. 4464.

3. This judgment shall be entered and filed only after the enactment of legislation into law satisfying the terms of the settlement agreement.

4. The parties shall bear their own costs and fees respecting this action.

Date: March ____, 2009

_____

Honorable MICHAEL P. KENNY
Judge of the Superior Court of California
County of Sacramento

00334.00100/114878.1

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SUMMARY

Settlement and Release Agreement
Behavioral Intervention Plan (Hughes Bill) Mandated Cost Claim

The State and school test claimants San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education have reached a settlement in the Behavioral Intervention Plans ("BIP") (Hughes Bill) Mandated Cost Claim and lawsuit, a claim dating from 1994. The settlement provides for an ongoing increase to special education funding and retroactive reimbursement to school districts, county offices of education, and special education local plan areas ("SELPAs") (collectively "LEAs") for general fund use, contingent on LEA approval.

In addition to test claimants San Diego USD, Butte COE, and San Joaquin COE who pursued this matter for 14 years, thanks go to many hard-working SELPAs for providing essential cost information, and to the California School Boards Association's ("CSBA") Education Legal Alliance for encouraging this settlement, ultimately funding the services of Fagen Friedman & Fulfrost, Diana McDonough, Of Counsel, to reach this agreement.

The settlement provides for the following funding:

> $510 million payable to school districts as general fund reimbursement, in $85 million installments over 6 years, from 2011-12 through 2016-17, based on 2007-08 P2 ADA.
>
> $10 million payable as general fund reimbursement in 2009-10 as follows:
> --- $ 1.5 million to county offices based on Dec. 2007 county special education pupil count
> ---- $ 6.0 million to SELPAs based on Dec. 2007 special education pupil count
> --- $ 2.5 million to claimants and others for administrative costs incurred in pursuing the claim.
>
> $65 million added in 2009-10 as a **permanent increase** to the AB 602 special education funding base. Commencing in 2010-11, this amount will be subject to COLA and growth to the extent it is added to AB 602 generally.

The settlement is contingent on the following:

1. By February 28, 2009, 85% of all LEAs (school districts, county offices, and SELPAs) must sign a waiver document; the signatory school districts and county offices must represent at least 92% of statewide ADA. In the document, LEAs waive their rights to contest the settlement and to file any BIP/Hughes Bill mandated cost claims.

2. The parties will seek a superior court ruling that the settlement is final and binding on all LEAs in March 2009.

3. Legislation must be enacted appropriating the necessary funds and placing the ongoing funding in statute. This will be requested early in 2009.

While none of the above triggers is assumed, the first one is most critical. Without immediate school district, county, and SELPA support, this settlement will not take place. If any of the above does not happen, the matter will revert to Sacramento Superior Court.

December 1, 2008

SETTLEMENT AND RELEASE AGREEMENT
BEHAVIORAL INTERVENTION PLANS [HUGHES BILL] MANDATED COST CLAIM

This settlement and release agreement ("Agreement") is entered into this 26th day of ~~2008~~ January, 2009 by DKM and between the State of California ("the STATE") on the one hand, and San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education (collectively "CLAIMANTS") on the other, who, in consideration of the promises made herein, agree as follows:

I. Nature and Status of the Dispute

Effective January 1, 1991, Education Code section 56523 was added to the Education Code. That section required the development and adoption of regulations governing positive behavioral interventions for special education students by the State Board of Education ("the SBE"). In 1993, the SBE promulgated California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 to implement Education Code section 56523. The Education Code section and its implementing regulations are referred to cumulatively as "the Hughes Bill."

The Behavioral Intervention Plans Mandated Cost Claim was initiated on September 28, 1994, when San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education filed test claim CSM-4464 with the Commission on State Mandates ("the Commission"). The Behavioral Intervention Plans Mandated Cost Claim asked the STATE to reimburse local educational agencies ("LEAs"), including school districts, county offices of education, special education local plan areas ("SELPAs"), and joint agencies composed of such organizations for the costs of implementing the Hughes Bill.

On September 28, 2000, the Commission adopted a Statement of Decision on CSM-4464 finding that the Hughes Bill imposed a reimbursable state mandate on school districts by requiring the following seven activities: SELPA plan requirements, development and implementation of behavioral intervention plans, functional analysis assessments, modifications and contingent behavioral intervention plans, development and implementation of emergency interventions, prohibited behavioral intervention plans, and due process hearings. The settlement of the Special Education Mandated Cost Claim in 2000-2001 explicitly omitted the Behavioral Intervention Plans Mandated Cost Claim (Ed. Code § 56836.156(g)).

Subsequently CLAIMANTS proposed parameters and guidelines for the CSM-4464 claiming process but various disputes arose with the STATE and a final draft was never adopted by the Commission. The parties attempted settlement without success and the matter reached a stalemate.

On September 26, 2003, the STATE's Department of Finance filed a Petition for Administrative Mandamus in the Sacramento Superior Court challenging the Commission's decision in CSM-4464. It named the Commission as Respondent, and CLAIMANTS as Real Parties in Interest (*Department of Finance v. Commission on State Mandates*, Sacramento Superior Court Case No. 03CS01432). The Petition maintained that the Hughes Bill was not a reimbursable state mandate because 1) it was required by federal law, 2) it merely implemented federal requirements, and

3) it did not exceed those requirements. The matter is still pending. CLAIMANTS have filed no responsive pleadings as yet.

On October 4, 2007, the Deputy Attorney General representing the STATE's Department of Finance in the above case wrote to CLAIMANTS stating that pending reforms in the mandate process could present a timely opportunity to continue negotiations. The Deputy Attorney General noted that the mandate reform legislation, AB 1222, included the option of the joint development of a reasonable reimbursement methodology and cost estimate. The Deputy Attorney General suggested a meeting if CLAIMANTS were interested in resolving the matter and noted that, absent successful settlement, she planned to schedule a hearing in Sacramento Superior Court in April 2008. In response, CLAIMANTS contacted the Deputy Attorney General and the parties began meeting to work on a mutually agreeable resolution.

A chief task in the settlement process was developing a statewide cost estimate for the claim. Ultimately CLAIMANTS completed surveys of more than 20 SELPAs representing more than 10% of public school students statewide. The STATE's Department of Finance staff reviewed copies of all survey returns and verified that the cumulative cost totals accurately reflected the SELPA data.

In May 2008, the Sacramento Superior Court notified the STATE that it must bring its case to trial by September 26, 2008, or be subject to dismissal under the state law which requires all matters to be brought to trial within five years ("the five-year rule"). Ultimately, the parties filed a stipulation with the court agreeing to extend the five-year period to March 27, 2009, in the hopes that agreement could be reached.

The STATE's Department of Finance continues to dispute the Commission's decision in CSM-4464 that the Hughes Bill is a reimbursable mandate. CLAIMANTS believe the Commission's decision was correct and that the Hughes Bill imposes requirements on school districts that are not mandated by federal law.

To avoid the costs and uncertainty of further litigation, to alleviate the uncertainty regarding the Hughes Bill funding, and to expedite the resolution of this long-pending mandate claim in the spirit of AB 1222, the parties have determined to compromise and settle the claims raised in Sacramento Superior Court Case No. 03CS01432 and the underlying administrative decision of the Commission on State Mandates in CSM-4464 on the terms and conditions set forth below.

II. Actions to Resolve Dispute

A. The mutual obligations and duties of the parties set forth herein are contingent upon all of the following events occurring:

1. On or before February 28, 2009, no less than 85% of all K-12 school districts, county offices of education, and SELPAs shall sign the Waiver, attached hereto as Exhibit A. In addition, the school districts and county offices signing Exhibit A must have served student populations accounting

for no less than 92% of the second principal apportionment (P-2) average daily attendance in the 2007-08 fiscal year.

2. The parties shall seek a superior court ruling that the settlement is final and binding on all LEAs, assuming implementing legislation is enacted. In the absence of such a ruling, the parties shall seek an alternative, mutually agreeable final and formal resolution of the dispute.

3. Prior to or concurrent with the enactment of the Budget Act for the 2009-10 fiscal year, legislation is enacted that contains provisions identical to or substantially similar to the language contained in Exhibit B. It is the intent of the parties that, on or before January 10, 2009, the Legislature shall be requested to enact such legislation on an urgency basis. Any modifications to the proposed legislation shall be made only with agreement of all the signatories to this settlement document.

   a. The proposed legislation shall appropriate the amount of ten million dollars ($10,000,000) payable upon enactment and allocated in accord with Section II.B. of this Agreement.

   b. The proposed legislation shall require additional funding of five-hundred and ten million dollars ($510,000,000) in total payable over a six-year period, or lesser period at the STATE's discretion, commencing July 1, 2011, and allocated in accord with Section II.B. of this Agreement.

   c. The proposed legislation shall include statutory language to revise the existing special education funding model established by Assembly Bill 602 (Chapter 854, Statutes of 1997) to provide an ongoing increase of sixty-five million dollars ($65,000,000) annually to special education programs. The proposed legislation shall appropriate the first year of funding.

   d. The combination of the above appropriations is to be considered in full satisfaction of, and is in lieu of, any reimbursable mandate claims that would have been filed as a result of CSM-4464. By providing this funding for CSM-4464, the STATE in no way concedes the existence of an unfunded reimbursable mandate for that claim.

B. For the purposes of this settlement only, to resolve any and all retrospective mandated cost claims from 1993-94 to 2008-09 arising from CSM-4464 and the Statement of Decision adopted by the Commission on State Mandates on September 28, 2000, the STATE agrees that:

1. Upon enactment of legislation prior to or concurrent with the 2009-10 Budget Act, payment in the amount of ten million dollars ($10,000,000) will be allocated to LEAs as follows:

   a. One million five hundred thousand dollars ($1,500,000) shall be allocated to county offices of education on an equal per-pupil basis. The amount of each agency's allocation shall be determined by dividing one million five hundred thousand dollars ($1,500,000) by the total statewide county special education pupil count only, as reported by county offices of education as of December 2007. The allotment for each county office of education shall be the per-pupil amount times the county's special education pupil count reported as of December 2007. The State Superintendent of Public Instruction ("the Superintendent") shall adjust the computations in such a manner as to ensure that the allotment to each county office of education is at least five thousand dollars ($5,000).

   b. Six million dollars ($6,000,000) shall be allocated to SELPAs that existed for the 2007-08 fiscal year. The amount of each agency's allocation shall be determined by dividing six million dollars ($6,000,000) by the total statewide special education pupil count as of December 2007. The allotment for each agency shall be the statewide per-pupil amount times the SELPA's special education pupil count reported as of December 2007. The State Superintendent of Public Instruction ("the Superintendent") shall adjust the computations in such a manner as to ensure that the allotment to each SELPA is at least ten thousand dollars ($10,000).

   c. Two million five hundred thousand dollars ($2,500,000) shall be paid to San Joaquin County Office of Education.

2. In accord with legislation enacted prior to or concurrent with the 2009-10 Budget Act, the State will pay an additional five hundred and ten million dollars ($510,000,000) to school districts. This amount shall be allocated in installment payments of eighty-five million dollars ($85,000,000) commencing July 1, 2011, and annually thereafter for a period of six years unless the STATE in its discretion enlarges the installment amount from time to time, thereby discharging the obligation in advance of the six year period. These payments shall be allocated to school districts on a per-pupil basis as follows:

   a. The appropriation shall be divided by the total average daily attendance, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools, for all pupils in kindergarten through grade twelve in all school districts as used by the Superintendent for the second principal apportionment for the

2007-08 fiscal year. Each school district shall receive an allocation equal to the per-pupil amount times the district's reported average daily attendance for the second principal apportionment for the 2007-08 fiscal year, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools. The amount allocated to each school district shall be the same in all subsequent fiscal years as it is in the first fiscal year unless the State enlarges the appropriation as specified in II.B.2. above.

b. In any fiscal year after 2011-12 in which the provisions of paragraph (b)(3) of Section 8 of Article XVI of the California Constitution are operative, the annual appropriation shall not be required to be made. If an appropriation is not made for a specific fiscal year or years, it shall instead be made in the fiscal year or years immediately succeeding the final payment pursuant to Section II.B.2 of this Agreement.

C. To effectuate a stay of the five-year rule and to seek court approval of the settlement which makes it final and binding on LEAs, the parties agree to the following:

1. Within ten court days after execution of this Agreement, CLAIMANTS will file a response to the Petition for Administrative Mandamus, Sacramento Superior Court Case No. 03CS01432. Concurrently or as soon thereafter as the parties deem appropriate, the STATE and CLAIMANTS shall jointly stipulate to a stay of the five-year rule, and shall file such stipulation with the court. The stipulation shall provide for and ask the court to order the following:

a. A stay of the five-year rule for the purposes of this settlement, with the understanding that the five-year rule shall be in effect within ninety (90) days if the settlement terms cannot be effectuated.

b. Notice of the stay and of the settlement terms to all LEAs.

c. A court hearing, if necessary, to consider any objections to the settlement made by LEAs or other parties of standing.

d. Entry of judgment that the settlement is the final resolution of CSM-4464 assuming implementing legislation is enacted, and that after appropriate consideration of objections, if any, it is final and binding on all LEAs.

D. In the absence of any entry of judgment as specified in Section II.C.1.d. of this Agreement, the parties shall seek an alternative mutually agreeable final and formal resolution of the dispute.

E. If the events listed in Section II.A. as preconditions to the parties' obligations do not take place, the STATE or the CLAIMANTS may request the Superior Court to lift the stay issued pursuant to Section II.C.1.a., above, and to order that the five-year rule shall take effect in ninety (90) days.

III. Known Claims

With respect to section 56523 of the California Education Code and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008, ("the Hughes Bill Statute and Regulations"), CLAIMANTS hereby knowingly and voluntarily waive the rights set forth under article XIIIB, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of Title 2 of the California Code of Regulations. By signing this Agreement, CLAIMANTS hereby acknowledge that CLAIMANTS forever relinquish their right to file any mandated cost claim regarding the Hughes Bill Statute and Regulations, and further forever relinquish their right to receive any benefit(s) from any claim(s) so filed. CLAIMANTS may file mandated cost claims concerning such statutes and regulations only to the extent that state or federal statutes or regulations are amended or added or changed in any other way after July 1, 2008. CLAIMANTS further acknowledge and concede that the amount that is required to be appropriated for the purpose of satisfying the STATE's minimum funding obligation to school districts pursuant to article XVI, section 8, of the California Constitution shall not be required to be increased, to any extent, by payment of the amounts set forth in Sections II.B.1 and II.B.2 of this agreement.

IV. Unknown Claims

A. CLAIMANTS expressly waive the application of California Civil Code section 1542 regarding mandated cost claims based on Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008.

B. CLAIMANTS certify that they have read the following provisions of California Civil Code section 1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

C. CLAIMANTS understand and acknowledge that the significance and consequence of the waiver of California Civil Code section 1542 is that:

1. They may have additional claims arising or occurring up to the date of this Agreement of which they are not now aware;

2. They may not make a further demand for any such claims;

3. They may not receive any benefit(s) from any such claims; and

4. They extend their waiver to include now unknown or later discovered claims.

V. Advice of Attorney

CLAIMANTS warrant and represent that they have been advised to seek legal advice from the attorney of their choice regarding the risks, complications, and costs of the Agreement. CLAIMANTS acknowledge and represent either that they relied upon legal advice from their attorney in executing this Agreement or that they chose not to rely upon legal advice from their attorney in executing this Agreement. They further acknowledge and represent that, in executing this Agreement, they have not relied on any inducements, promises, or representations other than those stated in this Agreement.

VI. Conditions of Execution

Each party acknowledges and warrants that the party's execution of this Agreement is free and voluntary.

VII. Execution of Other Documents

Each party to this Agreement shall cooperate fully in the execution of any and all other documents and the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

VIII. Nonadmission

Nothing contained in the Agreement constitutes an admission or concession, by any party, as to any matter of fact or law at issue in Sacramento Superior Court Case No. 03CS01432 and/or CSM-4464, and no party hereto shall deem or construe this Agreement, or any part thereof, to be any such admission or concession. Further, nothing in this Agreement may be deemed or construed to be, by any entity or person not a party hereto, as against any party hereto, or any agency thereof, any admission or concession as to any matter of fact or law at issue in Sacramento Superior Court Case No. 03CS01432 and/or CSM-4464.

IX. Entire Agreement

This Agreement and Exhibits A and B attached hereto contain the entire Agreement between the parties. A breach of any portion of this Agreement shall be considered a breach of the whole Agreement.

X. Effective Date

This Agreement shall be effective immediately upon execution by the parties. This Agreement has retroactive effect to the extent specified herein.

XII. Governing Law

This Agreement is entered into, and shall be construed and interpreted, in accordance with the laws of the State of California and the United States.
00334.00100/105941.1

XIII. Counterparts

This Agreement may be signed in counterparts, such that signatures appear on separate pages. A copy or original of this document with all signature pages appended together shall be deemed a fully executed Agreement.

For the State of California:

Michael C. Genest
Director, Department of Finance

Dated: DEC 8 2008

Stephen P. Acquisto
Supervising Deputy Attorney General

Dated: 12/3/08

San Diego Unified School District

By _____ Dated: 1/16/09
Terry Grier, Superintendent

Butte County Office of Education

By _____ Dated: _____
Roy L. Applegate, Ed.D., SELPA Director

San Joaquin County Office of Education

By _____ Dated: _____
Sandee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Approved as to form:

Fagen Friedman & Fulfrost

_____ Dated: _____
Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

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Approved in closed session of the
Board of Education of the San Diego
Unified School District on 1/13/09
Cheryl Ward
Cheryl Ward, Board Action Officer.
Board of Education

San Diego Unified School District

By _____ Dated: _____
Terry Grier, Superintendent

Butte County Office of Education

By _____ Dated: 12-3-08
Roy L. Applegate, Ed.D., SELPA Director

San Joaquin County Office of Education

By _____ Dated: _____
Sandee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Approved as to form:

Fagen Friedman & Fulfrost

_____ Dated: _____
Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

00334.00100/105941

San Diego Unified School District

By _____ Dated: _____
Terry Grier, Superintendent

Butte County Office of Education

By _____ Dated: _____
Roy L. Applegate, Ed.D., SELPA Director

San Joaquin County Office of Education

By _____ Dated: 12/5/08
Sandee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Approved as to form:

Fagen Friedman & Fulfrost

_____ Dated: _____
Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

00334.00100/105941

San Diego Unified School District

By _____ Dated: _____
Terry Grier, Superintendent

Butte County Office of Education

By _____ Dated: _____
Roy L. Applegate, Ed.D., SELPA Director

San Joaquin County Office of Education

By _____ Dated: _____
Sandee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Approved as to form:

Fagen Friedman & Fulfrost

Diana McDonough _____ Dated: Jan 26, 2009
Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

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Exhibit A to Settlement Agreement
Behavioral Intervention Plans Mandated Cost Claim

WAIVER

This Waiver is entered into on _____[DATE] by _____[NAME OF LEA], hereinafter "LEA," to fulfill one of the terms of the Settlement and Release Agreement for the Behavioral Intervention Plans Mandated Cost Claim ("Agreement").

A. Known Claims

With respect to section 56523 of the California Education Code and the California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and section 3052 as those sections read on or before July 1, 2008, (collectively "the Hughes Bill Statute and Regulations"), LEA hereby knowingly and voluntarily waives the rights set forth under article XIIIB, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of Title 2 of the California Code of Regulations. By signing this Waiver, LEA hereby acknowledges that LEA forever gives up its right to file any mandated cost claim regarding the Hughes Bill Statute and Regulations, and/or to pursue any filed claim regarding that statute and regulations, and/or to benefit from such a claim, including any claim regarding the following programs and services:

1. Special education local plan area plan requirements pursuant to California Code of Regulations, title 2, sections 3001, subdivision (c), and 3052, subdivision (j), as these sections read on July 1, 2008;

2. Development and implementation of behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c), (d), (e), and (f), and 3052, subdivisions (a), (c), (d), (e), and (f), as these sections read on July 1, 2008;

3. Functional analysis assessments pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (d) and (f), and 3052, subdivisions (b), (c), and (f), as these sections read on July 1, 2008;

4. Modifications and contingent behavioral intervention plans pursuant to California Code of Regulations, title 2, section 3052, subdivisions (g) and (h), as these sections read on July 1, 2008;

5. Development and implementation of emergency interventions pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c) and (d), and 3052, subdivision (i), as these sections read on July 1, 2008;

6. Prohibited behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivision (d), and 3052, subdivision (l), as these sections read on July 1, 2008; and

7. Due process hearings pursuant to California Code of Regulations, title 2, section 3052, subdivision (m), as this section read on July 1, 2008.

LEA further acknowledges and concedes that the amount that is required to be appropriated for the purpose of satisfying the STATE's minimum funding obligation to LEAs pursuant to article XVI, section 8, of the California Constitution shall not be required to be increased, to any extent, by payment of the retrospective amounts described in Paragraph II.B. of the Agreement, and by signing this Waiver LEA forever gives up its right to contend otherwise.

B. Unknown Claims

1. LEA expressly waives the application of California Civil Code section 1542 regarding mandated cost claims under California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008.

2. LEA certifies that it has read the following provisions of California Civil Code Section 1542:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. LEA understands that it is agreeing that California Civil Code section 1542 does not apply to this Waiver. LEA understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is:

   a. LEA may have additional claims arising or occurring up to the date of this Waiver of which it is not now aware;

   b. LEA may not make a further demand for any such claims;

   c. LEA may not receive any benefit(s) from any such claims that may be filed by other claimants; and

   d. LEA extends its waiver to include now unknown and/or later discovered claims.

C. Exemptions

LEA signs this Waiver with the understanding that it does not prohibit LEAs from filing mandated cost claims to the extent that the Hughes Bill Statute and Regulations are amended or added or changed in any way after July 1, 2008.

D. Advice of Attorney

LEA warrants and represents that it has reviewed and understands the Notice to LEAs Re: Pending Settlement of the Behavioral Intervention Plans Mandated Cost Claim ("the Notice") and this Waiver, and that it has been advised to seek legal advice from the attorney of its choice regarding the Notice and this Waiver. LEA acknowledges and represents either that it relied upon legal advice from its attorney in executing this Waiver or that it chose not to rely upon legal advice from its attorney in executing this Waiver. LEA further acknowledges and represents that, in executing this Waiver, it has not relied on any inducements, promises, or representations other than those stated in the Notice and Waiver.

E. Contingency of Waiver

LEA understands that this Waiver is binding only if the preconditions to the full implementation of the Settlement Agreement are satisfied. Those preconditions are set out in Section C of the Notice and Section II.A. of the Agreement, and are, in brief: (1) at least 85% of all LEAs sign this Waiver, including school districts and county offices of education who served student populations accounting for 92% of the P-2 2007-08 ADA; (2) the parties seek a superior court ruling that the settlement is final and binding on all LEAs; and (3) legislation is enacted appropriating the necessary funding and placing ongoing funding in statute.

Dated: _____ Signed: _____

_____
Print or Type Name Above

Authorized Agent for: _____
Name of LEA

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Exhibit B to Settlement Agreement
Behavioral Intervention Plans Mandated Cost Claim

DRAFT LEGISLATION

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that it is in the State's interest that legislation be enacted immediately to provide funding for positive behavioral intervention plans for special education students (Hughes Bill) and resolve a contested state mandate issue of fourteen-year standing. The Legislature anticipates that the Governor will request the enactment of the legislation prior to the enactment of the 2009-10 Budget Act.

SECTION 2. Section _____ is added to the Education Code to read:

[section number]

(a) The Superintendent of Public Instruction shall determine the statewide total average daily attendance used for the purposes of section 56836.08 for the 2008-09 fiscal year. For the purposes of this calculation, the 2008-09 second principal average daily attendance for the court, community school, and special education programs served by the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area shall be used in lieu of the average daily attendance used for that agency for the purposes of section 56836.08.

(b) The Superintendent shall divide sixty-five million dollars ($65,000,000), by the amount determined pursuant to subdivision (a).

(c) For each special education local plan area, the Superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of section 56836.08 for the 2009-10 fiscal year by the quotient determined pursuant to subdivision (b). This increase shall be effective, beginning in the 2009-10 fiscal year.

(d) Notwithstanding subdivision (c), for the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area, the superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of section 56836.08 by the ratio of the amount determined pursuant to subdivision (b) to the statewide target per unit of average daily attendance determined pursuant to section 56836.11 for the 2008-09 fiscal year. This increase shall be effective beginning in the 2009-10 fiscal year.

(e) The Superintendent shall increase the statewide target per unit of average daily attendance determined pursuant to section 56836.11 for the 2009-10 fiscal year by the amount determined pursuant to subdivision (b).

(f) The funds provided in subdivisions (a)-(e) above are to be considered in full satisfaction of, and are in lieu of, any reimbursable mandate claims for the Behavioral Intervention Plans Mandated Cost Claim. By providing this funding, the State in no way concedes the existence of any unfunded reimbursable mandate with regard to Section 56523 and its regulations in California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections and subdivisions read on July 1, 2008. These funds shall be used exclusively for programs operated under this part and, as a first priority, for the programs and services required under Section 56523 and its regulations, California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections and subdivisions read on July 1, 2008. By virtue of these funds, Section 56523 and its regulations, California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections and subdivisions read on July 1, 2008 shall be deemed to be fully funded within the meaning of Government Code Section 17556(e).

(g) Within the meaning of Government Code section 17556(e), the funds appropriated for purposes of this section are not specifically intended to fund any state-mandated special education programs and services resulting from amendments enacted after July 1, 2008, to any of the following statutes and regulations:

(1) The Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), if such amendments result in circumstances where state law exceeds federal law;

(2) Federal regulations implementing the Individuals with Disabilities Education Act (34 C.F.R. Parts 300 and 303), if such amendments result in circumstances where state law exceeds federal law;

(3) Part 30 (commencing with section 56000); and

(4) Sections 3000 through 4671, inclusive, of Title 5 of the California Code of Regulations.

(h) State funds otherwise allocated to each special education local plan area pursuant to Chapter 7.2 (commencing with section 56836) of Part 30 and appropriated through the annual Budget Act shall supplement and not supplant these funds. These funds shall be in addition to the level of COLA provided for this program in the annual Budget Act.

SECTION 3. Section XXXXX is added to the Education Code, to read:

(a) Commencing with the 2011-12 fiscal year and each fiscal year through the 2016-17 fiscal year, the amount of eighty-five million dollars ($85,000,000), shall be appropriated, on a one-time basis each fiscal year, from the General Fund for allocation to school districts on a per-pupil basis. The Superintendent of Public Instruction shall compute the amount per pupil by dividing eighty-five million dollars ($85,000,000), by the total average daily attendance, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools, for all pupils in kindergarten through grade twelve in all school districts as used by the Superintendent of Public Instruction for the second principal apportionment for the 2007-08 fiscal year. Each school district's allocation shall equal the per-pupil amount times the district's average daily attendance as reported to the Superintendent of Public Instruction for the second principal apportionment for the 2007-08 fiscal year. The amount allocated to each school district shall be the same in all subsequent fiscal years as it is in the first fiscal year.

(1) Notwithstanding the provisions of subdivision (a) above, the State, in its discretion, may cause to be appropriated and allocated amounts in excess of eighty-five million dollars ($85,000,000) annually in the period 2011-12 through 2016-17 for the purpose of discharging the obligation in advance of the six year period, so long as the total amount appropriated and allocated under this section is five hundred ten million dollars ($510,000,000).

(2) In any fiscal year after 2011-12 in which the provisions of Article XVI, section 8, paragraph (b)(3), of the California constitution are operative, the annual appropriation shall not be required to be made.

(3) The Director of Finance shall notify, in writing, the fiscal committees of both Houses of the Legislature, the Controller, and the Superintendent of Public Instruction no later than May 14, that the appropriation for the following fiscal year is not required, pursuant to paragraph (c). If any appropriation is not made for a specific fiscal year, or years, it shall instead be made in the fiscal year, or years, immediately succeeding the final payment pursuant to paragraph (a).

(4) These funds shall be in addition to the level of COLA provided to school districts in the annual Budget Act.

(b) From the funds appropriated for purposes of this section in subdivision (b) of Section 4 of the act adding this section, the Superintendent of Public Instruction shall allocate the following:

(1) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of one million five hundred thousand dollars ($1,500,000) shall be allocated by the Superintendent to county offices of education on an equal per-pupil amount. The Superintendent shall determine the per-pupil amount by dividing one million five hundred thousand dollars ($1,500,000) by the total statewide county special education pupil count only, reported by county offices of education as of December 2007. The allotment for each county office of education shall be the per-pupil amount times the county's special education pupil count reported as of December 2007. The Superintendent shall adjust the computations in such a manner as to ensure that the minimum allotment to each county office of education is at least five thousand dollars ($5,000).

(2) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of six million dollars ($6,000,000) shall be allocated by the Superintendent to SELPAs that existed for the 2007-08 fiscal year. The Superintendent shall determine the amount of each agency's allotment by dividing the six million dollars ($6,000,000) by the statewide special education pupil count reported as of December 2007. The allotment for each agency shall be the statewide per-pupil amount times the SELPA's special education pupil count reported as of December 2007. The Superintendent shall adjust the computations in such a manner as to ensure that the minimum allotment to each SELPA is at least ten thousand dollars ($10,000).

(3) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of two million five hundred thousand dollars ($2,500,000) shall be allocated by the Superintendent to the San Joaquin County Office of Education.

(c) The amounts appropriated by subdivisions (a), (b), and (c) of Section 4 of the act adding this section are in full satisfaction and in lieu of mandate claims resulting from the Commission on State Mandates' Statement of Decision CSM 4464, "Behavioral Intervention Plans."

SECTION 4.

(a) The amount of sixty-five million dollars ($65,000,000), is hereby appropriated from the General Fund in augmentation of Item 6110-161-0001 of 2009-10 Budget Act to the Superintendent of Public Instruction

for the purposes of Section 56836.08 of the Education Code. It is the intent of the Legislature that such funding be included in the annual budget act in subsequent fiscal years.

(b)

(1) The amount of ten million dollars ($10,000,000), is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation on a one-time basis to county offices of education, and special education local plan areas (SELPAs), as specified in subdivision (b) of section _____ of the Education Code. These funds shall be in addition to the level of COLA provided for county offices of education and special education local plan areas in the annual Budget Act.

(2) For the purposes of making the computations required by article XVI, section 8, of the California Constitution, this appropriation shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (a) of section 41202 of the Education Code, for the 2007-08 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of section 41202 of the Education Code, for the 2007-08 fiscal year.

SECTION 5. This Act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety with the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting this necessity are: In order to alleviate the fiscal hardship to local educational agencies caused by the persistent shortfalls in federal funding for special education; to increase state funding for the special education program, thereby reducing encroachment; to facilitate the settlement of current litigation regarding those programs and the funding thereof; to obviate new litigation; and to resolve related school finance issues, it is necessary for this Act to take effect immediately.

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Attorneys for Real Parties in Interest

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

DEPARTMENT OF FINANCE,

Petitioner,

vs.

COMMISSION ON STATE MANDATES,

Respondent.

SAN DIEGO UNIFIED SCHOOL DISTRICT; SAN JOAQUIN COUNTY OFFICE OF EDUCATION; and, BUTTE COUNTY OFFICE OF EDUCATION,

Real Parties in Interest.

CASE NO. 03CS01432

DECLARATION OF RICHARD L. HAMILTON IN SUPPORT OF JOINT STIPULATION FOR ENTRY OF JUDGMENT

(No. CSM-4464)

I, Richard L. Hamilton, make the following declaration and statement:

1. I have personal knowledge of the facts stated in this declaration and, if called as a witness, I would and could competently testify to them under oath.

2. Since 1998 I have worked for the California School Boards Association ("CSBA") as Associate General Counsel and Director of the Education Legal Alliance. For the twenty years prior to joining CSBA, I was an attorney in private practice representing school districts. I became a member of the California Bar in January, 1966 and I am still in active status. My State

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Bar number is 037495.

3. CSBA is composed of nearly 1000 K-12 school districts, county offices of education, and regional occupation centers/programs. CSBA's Education Legal Alliance is an arm of CSBA supported by the dues of just under 800 CSBA members. It initiates and supports litigation in cases of statewide importance to California schools. As Director of the Education Legal Alliance, I oversee the implementation of the legal strategy of CSBA and its Education Legal Alliance in the statewide cases and issues in which we are involved. I follow matters before the Commission on State Mandates which concern schools. I was involved with the settlement of the special education mandated cost lawsuit in 2000, which was confirmed by Judge John Ford of this court in 2001.

4. Shortly after the Commission on State Mandates issued its decision CSM No. 4464 on Behavioral Intervention Plans on September 28, 2000, I worked with the test claimants San Diego Unified School District, San Joaquin County Office of Education and Butte County Office of Education to see if we could reach a settlement with the Department of Finance. We were unable to reach agreement and ultimately the Department filed this Petition. In October 2007, the Department contacted me and the test claimants regarding whether we would like to reenter settlement negotiations. I worked with the test claimants, now Real Parties in Interest in this matter, to retain Fagen Friedman and Fulfrost, Diana McDonough, Of Counsel, to represent them in further negotiations and I was part of the settlement negotiation process.

5. When we reached agreement, I offered CSBA's assistance in mailing the settlement packet and waiver to all local education agencies ("LEAs"). The packet included all the settlement documents, as well as a cover letter and a Notice to LEAs describing the rights they were waiving if they signed the waiver. Under my direction, CSBA staff sent this settlement packet to all 1,147 K-12 LEAs in the state of California, consisting of 971 school districts, 58 county offices of education, and 118 special education local plan areas ("SELPAs").

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6. I have received waivers signed on or before February 28, 2009 from 95% of the LEAs (1099 of 1147), representing 99% of the statewide average daily attendance ("ADA") according to the 2007-08 second reporting period (2007-08 P2 ADA). As of March 20, 2009, I had received waivers signed after February 28, 2009 from an additional 7 school districts. As a result, as of March 20, 2009, 96% of all LEAs (1106 of 1147) representing 99% of the 2007-08 P2 ADA had submitted waivers.

7. Assembly Member Tom Torlakson has agreed to carry the proposed legislation and Legislative Counsel has received a copy of the bill and provided its initial redraft to the parties for review, numbered AB 661.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 23, 2009 in Sacramento California.

RICHARD L. HAMILTON

00334.00100/124328.1

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Sacramento, State of California. My business address is 520 Capitol Mall, Suite 400, Sacramento, CA 95814.

On March 23, 2009, I served the following document(s) described as **JOINT STIPULATION FOR ENTRY OF JUDGMENT** on the interested parties in this action as follows:

Camille Shelton
Chief Legal Counsel
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814-2719
Attorney for Respondent Comm. on State Mandates

Stephen P. Acquisto
Supervising Deputy Attorney General
State of California
Department of Justice
1300 I Street, Suite 125
Sacramento, CA 94244
Attorneys for Petitioner Department of Finance

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Fagen Friedman & Fulfrost's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 23, 2009, at Oakland, California.

Sherri Lee Caplette, CCLS

00334.00100/124390.1

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

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March 19, 2009

Via Golden State Overnight - 106064143

Camille Shelton
Chief Legal Counsel
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814-2719

RE: *Department of Finance v. Commission on State Mandates*
Sacramento County Superior Court Case No. 03CS01432 (BIPS)

Dear Ms. Shelton:

Please find enclosed the original Joint Stipulation for Entry of Judgment; Judgment for signature by you and Paula Higashi regarding the above-referenced matter.

Should you have any questions or concerns regarding the foregoing, please contact Stephen P. Acquisto at (916) 324-1456.

Sincerely,

Rowena A.R. Aquino, Legal Secretary to
STEPHEN P. ACQUISTO
Supervising Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

:rara

Enclosure: Original Joint Stipulation for Entry of Judgment; Judgment

30698069.wpd

EDMUND G. BROWN JR.
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Attorneys for Real Parties in Interest
San Diego Unified School District,
San Joaquin County Office of Education, and
Butte County Office of Education

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

DEPARTMENT OF FINANCE,

Petitioner,

vs.

COMMISSION ON STATE MANDATES,

Respondent.

SAN DIEGO UNIFIED SCHOOL DISTRICT; SAN JOAQUIN COUNTY OFFICE OF EDUCATION; and, BUTTE COUNTY OFFICE OF EDUCATION,

Real Parties in Interest.

CASE NO. 03CS01432

JOINT STIPULATION FOR ENTRY OF JUDGMENT; JUDGMENT

(No. CSM-4464)

Dept: 31
Judge: Honorable Michael P. Kenny

Trial Date: March 27, 2009
Action Filed: September 26, 2003

It is hereby stipulated and requested by and between Petitioner Department of Finance of the State of California; Respondent Commission on State Mandates of the State of California ("Commission"); and Real Parties in Interest San Diego Unified School District, San Joaquin County Office of Education, and Butte County Office of Education, individually and through their respective counsel, that judgment be entered as set forth below upon enactment into law of legislation satisfying the requirements of the settlement agreement, more fully described herein, said judgment being based upon the facts set forth herein.

1. This is an action commenced by the Department of Finance to obtain a writ of administrative mandate directing the Commission on State Mandates to vacate and annul its Statement of Decision in the Behavioral Intervention Plans Test Claim, CSM No. 4464, and to issue a new decision denying the claim in its entirety.

2. The Behavioral Intervention Plans Test Claim, CSM No. 4464, which was initiated by Real Parties in Interest on September 28, 1994, seeks reimbursement for costs associated with behavioral intervention plans, as set forth principally in California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008 ("the Hughes Bill Statute and Regulations"). On September 28, 2000, the Commission issued its decision finding that the Hughes Bill Statute and Regulations imposed a reimbursable state mandated program upon school districts. Because the test claim process is similar to a class action, eligible claimants under the Commission's decision consist of all school districts, county offices of education ("COEs"), special education local plan areas ("SELPAs"), and any joint agency comprised of such organizations, a total of 1,147 local educational agencies ("LEAs"). The claim at issue involves costs related to the following activities/programs required by the Hughes Bill Statute and Regulations: SELPA plan requirements, development and implementation of behavioral intervention plans, functional analysis assessments, modifications and contingent behavioral intervention plans, development and implementation of emergency interventions, prohibited behavioral intervention plans, and due process hearings. The estimated potential value of past claims is $ 1 billion, and for ongoing claims is $70 million annually.

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3. On September 26, 2003, the Department of Finance filed this action, seeking to overturn the Commission's decision. On May 19, 2008, based on the parties' stipulation, this Court postponed the proceedings and extended the five year limit for bringing the matter to trial to allow the parties to attempt to negotiate a settlement. Currently the matter is set for hearing on March 27, 2009 by agreement of the parties and order of this Court.

4. Because the Real Parties in Interest hoped for settlement, they did not pursue other administrative processes with the Commission necessary to finalize the claiming procedures, and accordingly, school districts filed no claims. The Real Parties in Interest advised the Commission that settlement was pending. The Commission, however, continues to have statutory duties outstanding with respect to the claim.

5. This matter has now been settled by Petitioner Department of Finance and Real Parties in Interest San Diego Unified School District, San Joaquin County Office of Education, and Butte County Office of Education, with the support of Respondent Commission. Under the terms of that settlement, the State will pay retroactive reimbursement to: (1) school districts in the amount of $510 million, to be paid in $85 million annual installments over six years starting in 2011-12 and ending in 2016-17, (2) COEs in the amount of $1.5 million in 2009-10, and (3) SELPAs in the amount of $6.0 million in 2009-2010. The State will also permanently increase the ongoing special education statutory funding formula by $65 million annually, beginning in 2009-10. In exchange, the LEAs will waive their rights to file Hughes Bill Statute and Regulations reimbursement claims. A summary of the settlement and a full copy of the settlement agreement are attached to this document as Exhibit A.

6. The settlement is contingent on the following: (1) by February 28, 2009, formal waivers being submitted by at least 85% of LEAs representing at least 92% of student average daily attendance statewide; (2) the parties seeking a superior court ruling that the settlement is final and binding on all LEAs; and (3) legislation providing the necessary funds being enacted prior to or as part of the 2009-2010 budget process.

7. As of February 28, 2009, 95% of all LEAs, representing 99% of student average daily attendance statewide, had signed the required waiver. Further, Assembly Member Tom

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Torlakson has agreed to sponsor the necessary funding legislation, and the Legislative Counsel has released its initial draft of the bill (AB 661) to the settling parties. (See Declaration of Richard L. Hamilton, attached to this document as Exhibit B).

8. In light of the circumstances set forth in paragraph 1 through 7 of this document; to avoid the costs, delay, and uncertainty of further litigation; to avoid the necessity of resolving disputed issues of fact and law; and to alleviate the uncertainty regarding state funding of behavioral intervention programs and services in California's public schools, the parties have agreed to compromise and settle this matter in accord with the settlement document attached hereto as Exhibit A.

9. The parties now turn to this Court and by this stipulation seek a judgment that the settlement is the final resolution of this lawsuit as well as CSM No. 4464 and that all LEAs in the state are bound thereby, thus fulfilling the second condition specified in the settlement agreement, said judgment not to be entered or filed until legislation has been enacted into law satisfying the terms of the settlement agreement.

JUDGMENT PRAYED FOR

10. Therefore, the parties pray that judgment be entered in accord with the terms of the settlement agreement and respectfully request that the Court find that the settlement is the full and final resolution of this matter and that its terms, conditions, and restrictions are binding upon all LEAs in the State. Further, the parties request that the Commission on State Mandates be permanently enjoined from taking further action regarding the Behavioral Intervention Plans Test Claim, CSM No. 4464. Judgment shall be entered and filed only upon legislation being enacted into law satisfying the terms of the settlement agreement.

Respectfully submitted,

March 19, 2009

By: _____
Stephen P. Acquisto
Supervising Deputy Attorney General
Attorneys for Petitioner
DEPARTMENT OF FINANCE

///

///

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March 23, 2009

By: Paula Higashi

Paula Higashi (SBN 164398)
Executive Director
Respondent
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March 23, 2009

By: Camille Shelton

Camille Shelton (SBN 166945)
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March 23, 2009

By: Diana McDonough

Diana McDonough (SBN 82898)
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JUDGMENT

1. The Court has read and considered the documents filed in this case, including the stipulation for entry of judgment above.

2. The Court notes the history of litigation in this matter, and that the proposed settlement has the support of 95% of all LEAs. The Court finds that the stated terms of the settlement are a just resolution of this disputed matter. The Court further agrees that the public interest is well served by the settlement agreement, which avoids the expense and uncertainty of continued litigation while providing additional funding for behavioral intervention plans and related programs/activities.

Therefore, IT IS HEREBY ORDERED AND ADJUDGED that:

1. By this judgment the Court hereby adopts and incorporates the terms of the settlement agreement which the Court finds is the full and final resolution of this matter and is binding upon each and every LEA in the State.

2. The Commission on State Mandates is permanently enjoined from taking further action regarding the Behavioral Intervention Plans Test Claim, CSM No. 4464.

3. This judgment shall be entered and filed only after the enactment of legislation into law satisfying the terms of the settlement agreement.

4. The parties shall bear their own costs and fees respecting this action.

Date: March ____, 2009

_____

Honorable MICHAEL P. KENNY
Judge of the Superior Court of California
County of Sacramento

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Diana McDonough
Of Counsel

March 23, 2009

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Via Hand Delivery

The Honorable Michael P. Kenny
Sacramento County Superior Court
Department 31
720 9th Street
Sacramento, CA 95814

Re: Department of Finance, Petitioner vs. Commission on State Mandates, Respondent;
San Diego Unified School District, San Joaquin County Office of Education, and Butte County Office of Education; Real Parties in Interest
Case No. 03CS01432
Hearing: March 27, 2009

Dear Judge Kenny:

I am writing to inform you that the parties have reached a settlement in the above-entitled matter. Because of the pending agreement, the parties do not plan to go forward with a hearing on the merits on March 27. However, as we have discussed with your clerk, the parties jointly would like to have a brief hearing on the settlement terms with you. Counsel for the Commission on State Mandates is unable to be present, but has endorsed the settlement.

We have filed a Joint Stipulation For Entry of Judgment and a Proposed Judgment, a copy of which is enclosed for your review. The Joint Stipulation includes a copy of the settlement agreement as Exhibit A. Our proposal is that the judgment be signed but not entered unless and until the final step in the process is completed, the enactment of legislation. Because we are seeking court endorsement of the settlement and because we recognize signing the judgment without entering it might be novel, we believe a settlement conference would be beneficial.

Thank you for your consideration of this matter.

Sincerely,

FAGEN FRIEDMAN & FULFROST, LLP

Diana McDonough

DM:dm

Encs.: Joint Stipulation for Entry of Judgment and [Proposed] Judgment

cc: Stephen P. Acquisto, Supervising Deputy Attorney General
Camille Shelton, Chief Counsel, Commission on State Mandates

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Attorneys for Real Parties in Interest

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

DEPARTMENT OF FINANCE, Petitioner, vs. COMMISSION ON STATE MANDATES, Respondent.	CASE NO. 03CS01432 **DECLARATION OF RICHARD L. HAMILTON IN SUPPORT OF JOINT STIPULATION FOR ENTRY OF JUDGMENT** (No. CSM-4464)
SAN DIEGO UNIFIED SCHOOL DISTRICT; SAN JOAQUIN COUNTY OFFICE OF EDUCATION; and, BUTTE COUNTY OFFICE OF EDUCATION, Real Parties in Interest.	

I, Richard L. Hamilton, make the following declaration and statement:

1. I have personal knowledge of the facts stated in this declaration and, if called as a witness, I would and could competently testify to them under oath.

2. Since 1998 I have worked for the California School Boards Association ("CSBA") as Associate General Counsel and Director of the Education Legal Alliance. For the twenty years prior to joining CSBA, I was an attorney in private practice representing school districts. I became a member of the California Bar in January, 1966 and I am still in active status. My State

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Main: 510-550-8200 • Fax: 510-550-8211

Bar number is 037495.

3. CSBA is composed of nearly 1000 K-12 school districts, county offices of education, and regional occupation centers/programs. CSBA's Education Legal Alliance is an arm of CSBA supported by the dues of just under 800 CSBA members. It initiates and supports litigation in cases of statewide importance to California schools. As Director of the Education Legal Alliance, I oversee the implementation of the legal strategy of CSBA and its Education Legal Alliance in the statewide cases and issues in which we are involved. I follow matters before the Commission on State Mandates which concern schools. I was involved with the settlement of the special education mandated cost lawsuit in 2000, which was confirmed by Judge John Ford of this court in 2001.

4. Shortly after the Commission on State Mandates issued its decision CSM No. 4464 on Behavioral Intervention Plans on September 28, 2000, I worked with the test claimants San Diego Unified School District, San Joaquin County Office of Education and Butte County Office of Education to see if we could reach a settlement with the Department of Finance. We were unable to reach agreement and ultimately the Department filed this Petition. In October 2007, the Department contacted me and the test claimants regarding whether we would like to reenter settlement negotiations. I worked with the test claimants, now Real Parties in Interest in this matter, to retain Fagen Friedman and Fulfrost, Diana McDonough, Of Counsel, to represent them in further negotiations and I was part of the settlement negotiation process.

5. When we reached agreement, I offered CSBA's assistance in mailing the settlement packet and waiver to all local education agencies ("LEAs"). The packet included all the settlement documents, as well as a cover letter and a Notice to LEAs describing the rights they were waiving if they signed the waiver. Under my direction, CSBA staff sent this settlement packet to all 1,147 K-12 LEAs in the state of California, consisting of 971 school districts, 58 county offices of education, and 118 special education local plan areas ("SELPAs").

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6. I have received waivers signed on or before February 28, 2009 from 95% of the LEAs (1096 of 1147), representing 99% of the statewide average daily attendance ("ADA") according to the 2007-08 second reporting period (2007-08 P2 ADA). As of March 18, 2009, I had received waivers signed after February 28, 2009 from an additional 7 school districts. As a result, as of March 18, 2009, 96% of all LEAs (1103 of 1147) representing 99% of the 2007-08 P2 ADA had submitted waivers.

7. Assembly Member Tom Torlakson has agreed to carry the proposed legislation and Legislative Counsel has received a copy of the bill and provided its initial redraft to the parties for review, numbered AB 661.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March ___, 2009 in Sacramento, California.

RICHARD L. HAMILTON

00334.00100/124328.1

Fagen Friedman & Fulfrost, LLP
70 Washington Street, Suite 205
Oakland, California 94607
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SUMMARY

Settlement and Release Agreement
Behavioral Intervention Plan (Hughes Bill) Mandated Cost Claim

The State and school test claimants San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education have reached a settlement in the Behavioral Intervention Plans ("BIP") (Hughes Bill) Mandated Cost Claim and lawsuit, a claim dating from 1994. The settlement provides for an ongoing increase to special education funding and retroactive reimbursement to school districts, county offices of education, and special education local plan areas ("SELPAs") (collectively "LEAs") for general fund use, contingent on LEA approval.

In addition to test claimants San Diego USD, Butte COE, and San Joaquin COE who pursued this matter for 14 years, thanks go to many hard-working SELPAs for providing essential cost information, and to the California School Boards Association's ("CSBA") Education Legal Alliance for encouraging this settlement, ultimately funding the services of Fagen Friedman & Fulfrost, Diana McDonough, Of Counsel, to reach this agreement.

The settlement provides for the following funding:

> $510 million payable to school districts as general fund reimbursement, in $85 million installments over 6 years, from 2011-12 through 2016-17, based on 2007-08 P2 ADA.
>
> $10 million payable as general fund reimbursement in 2009-10 as follows:
> --- $ 1.5 million to county offices based on Dec. 2007 county special education pupil count
> ---- $ 6.0 million to SELPAs based on Dec. 2007 special education pupil count
> --- $ 2.5 million to claimants and others for administrative costs incurred in pursuing the claim.
>
> $65 million added in 2009-10 as a **permanent increase** to the AB 602 special education funding base. Commencing in 2010-11, this amount will be subject to COLA and growth to the extent it is added to AB 602 generally.

The settlement is contingent on the following:

1. By February 28, 2009, 85% of all LEAs (school districts, county offices, and SELPAs) must sign a waiver document; the signatory school districts and county offices must represent at least 92% of statewide ADA. In the document, LEAs waive their rights to contest the settlement and to file any BIP/Hughes Bill mandated cost claims.

2. The parties will seek a superior court ruling that the settlement is final and binding on all LEAs in March 2009.

3. Legislation must be enacted appropriating the necessary funds and placing the ongoing funding in statute. This will be requested early in 2009.

While none of the above triggers is assumed, the first one is most critical. Without immediate school district, county, and SELPA support, this settlement will not take place. If any of the above does not happen, the matter will revert to Sacramento Superior Court.

December 1, 2008

SETTLEMENT AND RELEASE AGREEMENT
BEHAVIORAL INTERVENTION PLANS [HUGHES BILL] MANDATED COST CLAIM

This settlement and release agreement ("Agreement") is entered into this 26th day of ~~2008~~ January, 2009 by and between the State of California ("the STATE") on the one hand, and San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education (collectively "CLAIMANTS") on the other, who, in consideration of the promises made herein, agree as follows: DKM

I. Nature and Status of the Dispute

Effective January 1, 1991, Education Code section 56523 was added to the Education Code. That section required the development and adoption of regulations governing positive behavioral interventions for special education students by the State Board of Education ("the SBE"). In 1993, the SBE promulgated California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 to implement Education Code section 56523. The Education Code section and its implementing regulations are referred to cumulatively as "the Hughes Bill."

The Behavioral Intervention Plans Mandated Cost Claim was initiated on September 28, 1994, when San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education filed test claim CSM-4464 with the Commission on State Mandates ("the Commission"). The Behavioral Intervention Plans Mandated Cost Claim asked the STATE to reimburse local educational agencies ("LEAs"), including school districts, county offices of education, special education local plan areas ("SELPAs"), and joint agencies composed of such organizations for the costs of implementing the Hughes Bill.

On September 28, 2000, the Commission adopted a Statement of Decision on CSM-4464 finding that the Hughes Bill imposed a reimbursable state mandate on school districts by requiring the following seven activities: SELPA plan requirements, development and implementation of behavioral intervention plans, functional analysis assessments, modifications and contingent behavioral intervention plans, development and implementation of emergency interventions, prohibited behavioral intervention plans, and due process hearings. The settlement of the Special Education Mandated Cost Claim in 2000-2001 explicitly omitted the Behavioral Intervention Plans Mandated Cost Claim (Ed. Code § 56836.156(g)).

Subsequently CLAIMANTS proposed parameters and guidelines for the CSM-4464 claiming process but various disputes arose with the STATE and a final draft was never adopted by the Commission. The parties attempted settlement without success and the matter reached a stalemate.

On September 26, 2003, the STATE's Department of Finance filed a Petition for Administrative Mandamus in the Sacramento Superior Court challenging the Commission's decision in CSM-4464. It named the Commission as Respondent, and CLAIMANTS as Real Parties in Interest (*Department of Finance v. Commission on State Mandates*, Sacramento Superior Court Case No. 03CS01432). The Petition maintained that the Hughes Bill was not a reimbursable state mandate because 1) it was required by federal law, 2) it merely implemented federal requirements, and

3) it did not exceed those requirements. The matter is still pending. CLAIMANTS have filed no responsive pleadings as yet.

On October 4, 2007, the Deputy Attorney General representing the STATE's Department of Finance in the above case wrote to CLAIMANTS stating that pending reforms in the mandate process could present a timely opportunity to continue negotiations. The Deputy Attorney General noted that the mandate reform legislation, AB 1222, included the option of the joint development of a reasonable reimbursement methodology and cost estimate. The Deputy Attorney General suggested a meeting if CLAIMANTS were interested in resolving the matter and noted that, absent successful settlement, she planned to schedule a hearing in Sacramento Superior Court in April 2008. In response, CLAIMANTS contacted the Deputy Attorney General and the parties began meeting to work on a mutually agreeable resolution.

A chief task in the settlement process was developing a statewide cost estimate for the claim. Ultimately CLAIMANTS completed surveys of more than 20 SELPAs representing more than 10% of public school students statewide. The STATE's Department of Finance staff reviewed copies of all survey returns and verified that the cumulative cost totals accurately reflected the SELPA data.

In May 2008, the Sacramento Superior Court notified the STATE that it must bring its case to trial by September 26, 2008, or be subject to dismissal under the state law which requires all matters to be brought to trial within five years ("the five-year rule"). Ultimately, the parties filed a stipulation with the court agreeing to extend the five-year period to March 27, 2009, in the hopes that agreement could be reached.

The STATE's Department of Finance continues to dispute the Commission's decision in CSM-4464 that the Hughes Bill is a reimbursable mandate. CLAIMANTS believe the Commission's decision was correct and that the Hughes Bill imposes requirements on school districts that are not mandated by federal law.

To avoid the costs and uncertainty of further litigation, to alleviate the uncertainty regarding the Hughes Bill funding, and to expedite the resolution of this long-pending mandate claim in the spirit of AB 1222, the parties have determined to compromise and settle the claims raised in Sacramento Superior Court Case No. 03CS01432 and the underlying administrative decision of the Commission on State Mandates in CSM-4464 on the terms and conditions set forth below.

II. Actions to Resolve Dispute

A. The mutual obligations and duties of the parties set forth herein are contingent upon all of the following events occurring:

1. On or before February 28, 2009, no less than 85% of all K-12 school districts, county offices of education, and SELPAs shall sign the Waiver, attached hereto as Exhibit A. In addition, the school districts and county offices signing Exhibit A must have served student populations accounting

for no less than 92% of the second principal apportionment (P-2) average daily attendance in the 2007-08 fiscal year.

2. The parties shall seek a superior court ruling that the settlement is final and binding on all LEAs, assuming implementing legislation is enacted. In the absence of such a ruling, the parties shall seek an alternative, mutually agreeable final and formal resolution of the dispute.

3. Prior to or concurrent with the enactment of the Budget Act for the 2009-10 fiscal year, legislation is enacted that contains provisions identical to or substantially similar to the language contained in Exhibit B. It is the intent of the parties that, on or before January 10, 2009, the Legislature shall be requested to enact such legislation on an urgency basis. Any modifications to the proposed legislation shall be made only with agreement of all the signatories to this settlement document.

   a. The proposed legislation shall appropriate the amount of ten million dollars ($10,000,000) payable upon enactment and allocated in accord with Section II.B. of this Agreement.

   b. The proposed legislation shall require additional funding of five-hundred and ten million dollars ($510,000,000) in total payable over a six-year period, or lesser period at the STATE's discretion, commencing July 1, 2011, and allocated in accord with Section II.B. of this Agreement.

   c. The proposed legislation shall include statutory language to revise the existing special education funding model established by Assembly Bill 602 (Chapter 854, Statutes of 1997) to provide an ongoing increase of sixty-five million dollars ($65,000,000) annually to special education programs. The proposed legislation shall appropriate the first year of funding.

   d. The combination of the above appropriations is to be considered in full satisfaction of, and is in lieu of, any reimbursable mandate claims that would have been filed as a result of CSM-4464. By providing this funding for CSM-4464, the STATE in no way concedes the existence of an unfunded reimbursable mandate for that claim.

B. For the purposes of this settlement only, to resolve any and all retrospective mandated cost claims from 1993-94 to 2008-09 arising from CSM-4464 and the Statement of Decision adopted by the Commission on State Mandates on September 28, 2000, the STATE agrees that:

1. Upon enactment of legislation prior to or concurrent with the 2009-10 Budget Act, payment in the amount of ten million dollars ($10,000,000) will be allocated to LEAs as follows:

   a. One million five hundred thousand dollars ($1,500,000) shall be allocated to county offices of education on an equal per-pupil basis. The amount of each agency's allocation shall be determined by dividing one million five hundred thousand dollars ($1,500,000) by the total statewide county special education pupil count only, as reported by county offices of education as of December 2007. The allotment for each county office of education shall be the per-pupil amount times the county's special education pupil count reported as of December 2007. The State Superintendent of Public Instruction ("the Superintendent") shall adjust the computations in such a manner as to ensure that the allotment to each county office of education is at least five thousand dollars ($5,000).

   b. Six million dollars ($6,000,000) shall be allocated to SELPAs that existed for the 2007-08 fiscal year. The amount of each agency's allocation shall be determined by dividing six million dollars ($6,000,000) by the total statewide special education pupil count as of December 2007. The allotment for each agency shall be the statewide per-pupil amount times the SELPA's special education pupil count reported as of December 2007. The State Superintendent of Public Instruction ("the Superintendent") shall adjust the computations in such a manner as to ensure that the allotment to each SELPA is at least ten thousand dollars ($10,000).

   c. Two million five hundred thousand dollars ($2,500,000) shall be paid to San Joaquin County Office of Education.

2. In accord with legislation enacted prior to or concurrent with the 2009-10 Budget Act, the State will pay an additional five hundred and ten million dollars ($510,000,000) to school districts. This amount shall be allocated in installment payments of eighty-five million dollars ($85,000,000) commencing July 1, 2011, and annually thereafter for a period of six years unless the STATE in its discretion enlarges the installment amount from time to time, thereby discharging the obligation in advance of the six year period. These payments shall be allocated to school districts on a per-pupil basis as follows:

   a. The appropriation shall be divided by the total average daily attendance, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools, for all pupils in kindergarten through grade twelve in all school districts as used by the Superintendent for the second principal apportionment for the

2007-08 fiscal year. Each school district shall receive an allocation equal to the per-pupil amount times the district's reported average daily attendance for the second principal apportionment for the 2007-08 fiscal year, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools. The amount allocated to each school district shall be the same in all subsequent fiscal years as it is in the first fiscal year unless the State enlarges the appropriation as specified in II.B.2. above.

b. In any fiscal year after 2011-12 in which the provisions of paragraph (b)(3) of Section 8 of Article XVI of the California Constitution are operative, the annual appropriation shall not be required to be made. If an appropriation is not made for a specific fiscal year or years, it shall instead be made in the fiscal year or years immediately succeeding the final payment pursuant to Section II.B.2 of this Agreement.

C. To effectuate a stay of the five-year rule and to seek court approval of the settlement which makes it final and binding on LEAs, the parties agree to the following:

1. Within ten court days after execution of this Agreement, CLAIMANTS will file a response to the Petition for Administrative Mandamus, Sacramento Superior Court Case No. 03CS01432. Concurrently or as soon thereafter as the parties deem appropriate, the STATE and CLAIMANTS shall jointly stipulate to a stay of the five-year rule, and shall file such stipulation with the court. The stipulation shall provide for and ask the court to order the following:

a. A stay of the five-year rule for the purposes of this settlement, with the understanding that the five-year rule shall be in effect within ninety (90) days if the settlement terms cannot be effectuated.

b. Notice of the stay and of the settlement terms to all LEAs.

c. A court hearing, if necessary, to consider any objections to the settlement made by LEAs or other parties of standing.

d. Entry of judgment that the settlement is the final resolution of CSM-4464 assuming implementing legislation is enacted, and that after appropriate consideration of objections, if any, it is final and binding on all LEAs.

D. In the absence of any entry of judgment as specified in Section II.C.1.d. of this Agreement, the parties shall seek an alternative mutually agreeable final and formal resolution of the dispute.

E. If the events listed in Section II.A. as preconditions to the parties' obligations do not take place, the STATE or the CLAIMANTS may request the Superior Court to lift the stay issued pursuant to Section II.C.1.a., above, and to order that the five-year rule shall take effect in ninety (90) days.

III. Known Claims

With respect to section 56523 of the California Education Code and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008, ("the Hughes Bill Statute and Regulations"), CLAIMANTS hereby knowingly and voluntarily waive the rights set forth under article XIIIB, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of Title 2 of the California Code of Regulations. By signing this Agreement, CLAIMANTS hereby acknowledge that CLAIMANTS forever relinquish their right to file any mandated cost claim regarding the Hughes Bill Statute and Regulations, and further forever relinquish their right to receive any benefit(s) from any claim(s) so filed. CLAIMANTS may file mandated cost claims concerning such statutes and regulations only to the extent that state or federal statutes or regulations are amended or added or changed in any other way after July 1, 2008. CLAIMANTS further acknowledge and concede that the amount that is required to be appropriated for the purpose of satisfying the STATE's minimum funding obligation to school districts pursuant to article XVI, section 8, of the California Constitution shall not be required to be increased, to any extent, by payment of the amounts set forth in Sections II.B.1 and II.B.2 of this agreement.

IV. Unknown Claims

A. CLAIMANTS expressly waive the application of California Civil Code section 1542 regarding mandated cost claims based on Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008.

B. CLAIMANTS certify that they have read the following provisions of California Civil Code section 1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

C. CLAIMANTS understand and acknowledge that the significance and consequence of the waiver of California Civil Code section 1542 is that:

1. They may have additional claims arising or occurring up to the date of this Agreement of which they are not now aware;

2. They may not make a further demand for any such claims;

3. They may not receive any benefit(s) from any such claims; and

4. They extend their waiver to include now unknown or later discovered claims.

V. Advice of Attorney

CLAIMANTS warrant and represent that they have been advised to seek legal advice from the attorney of their choice regarding the risks, complications, and costs of the Agreement. CLAIMANTS acknowledge and represent either that they relied upon legal advice from their attorney in executing this Agreement or that they chose not to rely upon legal advice from their attorney in executing this Agreement. They further acknowledge and represent that, in executing this Agreement, they have not relied on any inducements, promises, or representations other than those stated in this Agreement.

VI. Conditions of Execution

Each party acknowledges and warrants that the party's execution of this Agreement is free and voluntary.

VII. Execution of Other Documents

Each party to this Agreement shall cooperate fully in the execution of any and all other documents and the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

VIII. Nonadmission

Nothing contained in the Agreement constitutes an admission or concession, by any party, as to any matter of fact or law at issue in Sacramento Superior Court Case No. 03CS01432 and/or CSM-4464, and no party hereto shall deem or construe this Agreement, or any part thereof, to be any such admission or concession. Further, nothing in this Agreement may be deemed or construed to be, by any entity or person not a party hereto, as against any party hereto, or any agency thereof, any admission or concession as to any matter of fact or law at issue in Sacramento Superior Court Case No. 03CS01432 and/or CSM-4464.

IX. Entire Agreement

This Agreement and Exhibits A and B attached hereto contain the entire Agreement between the parties. A breach of any portion of this Agreement shall be considered a breach of the whole Agreement.

X. Effective Date

This Agreement shall be effective immediately upon execution by the parties. This Agreement has retroactive effect to the extent specified herein.

XII. Governing Law

This Agreement is entered into, and shall be construed and interpreted, in accordance with the laws of the State of California and the United States.
00334.00100/105941.1

XIII. Counterparts

This Agreement may be signed in counterparts, such that signatures appear on separate pages. A copy or original of this document with all signature pages appended together shall be deemed a fully executed Agreement.

For the State of California:

Michael C. Genest
Director, Department of Finance

Dated: DEC 2 2008

Stephen P. Acquisto
Supervising Deputy Attorney General

Dated: 12/3/08

San Diego Unified School District

By _____ Dated: 1/16/09
Terry Grier, Superintendent

Butte County Office of Education

By _____ Dated: _____
Roy L. Applegate, Ed.D., SELPA Director

San Joaquin County Office of Education

By _____ Dated: _____
Sandee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Approved as to form:

Fagen Friedman & Fulfrost

_____ Dated: _____
Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

00334.00100/105941

Approved in closed session of the
Board of Education of the San Diego
Unified School District on 1/13/09
Cheryl Ward, Board Action Officer,
Board of Education

San Diego Unified School District

By _____ Dated: _____
Terry Grier, Superintendent

Butte County Office of Education

By _____ Dated: 12-3-08
Roy L. Applegate, Ed.D., SELPA Director

San Joaquin County Office of Education

By _____ Dated: _____
Sandee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Approved as to form:

Fagen Friedman & Fulfrost

_____ Dated: _____
Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

00334.00100/105941

San Diego Unified School District

By _____ Dated: _____
Terry Grier, Superintendent

Butte County Office of Education

By _____ Dated: _____
Roy L. Applegate, Ed.D., SELPA Director

San Joaquin County Office of Education

By _____ Dated: 12/5/08
Sandee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Approved as to form:

Fagen Friedman & Fulfrost

_____ Dated: _____
Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

00334.00100/105941

San Diego Unified School District

By _____ Dated: _____
Terry Grier, Superintendent

Butte County Office of Education

By _____ Dated: _____
Roy L. Applegate, Ed.D., SELPA Director

San Joaquin County Office of Education

By _____ Dated: _____
Sandee Kludt, Ed.D., Assistant Superintendent of
Special Education/SELPA Director

Approved as to form:

Fagen Friedman & Fulfrost

Diana McDonough Dated: Jan 26, 2009
Diana McDonough, Of Counsel
Attorneys for San Diego Unified School District,
Butte County Office of Education, San Joaquin County
Office of Education and Interested Party
CSBA's Education Legal Alliance

00334.00100/105941

Exhibit A to Settlement Agreement
Behavioral Intervention Plans Mandated Cost Claim

WAIVER

This Waiver is entered into on _____[DATE] by _____[NAME OF LEA], hereinafter "LEA," to fulfill one of the terms of the Settlement and Release Agreement for the Behavioral Intervention Plans Mandated Cost Claim ("Agreement").

A. Known Claims

With respect to section 56523 of the California Education Code and the California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and section 3052 as those sections read on or before July 1, 2008, (collectively "the Hughes Bill Statute and Regulations"), LEA hereby knowingly and voluntarily waives the rights set forth under article XIIIB, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of Title 2 of the California Code of Regulations. By signing this Waiver, LEA hereby acknowledges that LEA forever gives up its right to file any mandated cost claim regarding the Hughes Bill Statute and Regulations, and/or to pursue any filed claim regarding that statute and regulations, and/or to benefit from such a claim, including any claim regarding the following programs and services:

1. Special education local plan area plan requirements pursuant to California Code of Regulations, title 2, sections 3001, subdivision (c), and 3052, subdivision (j), as these sections read on July 1, 2008;

2. Development and implementation of behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c), (d), (e), and (f), and 3052, subdivisions (a), (c), (d), (e), and (f), as these sections read on July 1, 2008;

3. Functional analysis assessments pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (d) and (f), and 3052, subdivisions (b), (c), and (f), as these sections read on July 1, 2008;

4. Modifications and contingent behavioral intervention plans pursuant to California Code of Regulations, title 2, section 3052, subdivisions (g) and (h), as these sections read on July 1, 2008;

5. Development and implementation of emergency interventions pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c) and (d), and 3052, subdivision (i), as these sections read on July 1, 2008;

6. Prohibited behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivision (d), and 3052, subdivision (l), as these sections read on July 1, 2008; and

7. Due process hearings pursuant to California Code of Regulations, title 2, section 3052, subdivision (m), as this section read on July 1, 2008.

LEA further acknowledges and concedes that the amount that is required to be appropriated for the purpose of satisfying the STATE's minimum funding obligation to LEAs pursuant to article XVI, section 8, of the California Constitution shall not be required to be increased, to any extent, by payment of the retrospective amounts described in Paragraph II.B. of the Agreement, and by signing this Waiver LEA forever gives up its right to contend otherwise.

B. Unknown Claims

1. LEA expressly waives the application of California Civil Code section 1542 regarding mandated cost claims under California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008.

2. LEA certifies that it has read the following provisions of California Civil Code Section 1542:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. LEA understands that it is agreeing that California Civil Code section 1542 does not apply to this Waiver. LEA understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is:

   a. LEA may have additional claims arising or occurring up to the date of this Waiver of which it is not now aware;

   b. LEA may not make a further demand for any such claims;

   c. LEA may not receive any benefit(s) from any such claims that may be filed by other claimants; and

   d. LEA extends its waiver to include now unknown and/or later discovered claims.

C. Exemptions

LEA signs this Waiver with the understanding that it does not prohibit LEAs from filing mandated cost claims to the extent that the Hughes Bill Statute and Regulations are amended or added or changed in any way after July 1, 2008.

D. Advice of Attorney

LEA warrants and represents that it has reviewed and understands the Notice to LEAs Re: Pending Settlement of the Behavioral Intervention Plans Mandated Cost Claim ("the Notice") and this Waiver, and that it has been advised to seek legal advice from the attorney of its choice regarding the Notice and this Waiver. LEA acknowledges and represents either that it relied upon legal advice from its attorney in executing this Waiver or that it chose not to rely upon legal advice from its attorney in executing this Waiver. LEA further acknowledges and represents that, in executing this Waiver, it has not relied on any inducements, promises, or representations other than those stated in the Notice and Waiver.

E. Contingency of Waiver

LEA understands that this Waiver is binding only if the preconditions to the full implementation of the Settlement Agreement are satisfied. Those preconditions are set out in Section C of the Notice and Section II.A. of the Agreement, and are, in brief: (1) at least 85% of all LEAs sign this Waiver, including school districts and county offices of education who served student populations accounting for 92% of the P-2 2007-08 ADA; (2) the parties seek a superior court ruling that the settlement is final and binding on all LEAs; and (3) legislation is enacted appropriating the necessary funding and placing ongoing funding in statute.

Dated: _____ Signed: _____

_____
Print or Type Name Above

Authorized Agent for: _____
Name of LEA

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Exhibit B to Settlement Agreement
Behavioral Intervention Plans Mandated Cost Claim

DRAFT LEGISLATION

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that it is in the State's interest that legislation be enacted immediately to provide funding for positive behavioral intervention plans for special education students (Hughes Bill) and resolve a contested state mandate issue of fourteen-year standing. The Legislature anticipates that the Governor will request the enactment of the legislation prior to the enactment of the 2009-10 Budget Act.

SECTION 2. Section _____ is added to the Education Code to read:

[section number]

(a) The Superintendent of Public Instruction shall determine the statewide total average daily attendance used for the purposes of section 56836.08 for the 2008-09 fiscal year. For the purposes of this calculation, the 2008-09 second principal average daily attendance for the court, community school, and special education programs served by the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area shall be used in lieu of the average daily attendance used for that agency for the purposes of section 56836.08.

(b) The Superintendent shall divide sixty-five million dollars ($65,000,000), by the amount determined pursuant to subdivision (a).

(c) For each special education local plan area, the Superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of section 56836.08 for the 2009-10 fiscal year by the quotient determined pursuant to subdivision (b). This increase shall be effective, beginning in the 2009-10 fiscal year.

(d) Notwithstanding subdivision (c), for the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area, the superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of section 56836.08 by the ratio of the amount determined pursuant to subdivision (b) to the statewide target per unit of average daily attendance determined pursuant to section 56836.11 for the 2008-09 fiscal year. This increase shall be effective beginning in the 2009-10 fiscal year.

(e) The Superintendent shall increase the statewide target per unit of average daily attendance determined pursuant to section 56836.11 for the 2009-10 fiscal year by the amount determined pursuant to subdivision (b).

(f) The funds provided in subdivisions (a)-(e) above are to be considered in full satisfaction of, and are in lieu of, any reimbursable mandate claims for the Behavioral Intervention Plans Mandated Cost Claim. By providing this funding, the State in no way concedes the existence of any unfunded reimbursable mandate with regard to Section 56523 and its regulations in California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections and subdivisions read on July 1, 2008. These funds shall be used exclusively for programs operated under this part and, as a first priority, for the programs and services required under Section 56523 and its regulations, California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections and subdivisions read on July 1, 2008. By virtue of these funds, Section 56523 and its regulations, California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections and subdivisions read on July 1, 2008 shall be deemed to be fully funded within the meaning of Government Code Section 17556(e).

(g) Within the meaning of Government Code section 17556(e), the funds appropriated for purposes of this section are not specifically intended to fund any state-mandated special education programs and services resulting from amendments enacted after July 1, 2008, to any of the following statutes and regulations:

(1) The Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), if such amendments result in circumstances where state law exceeds federal law;

(2) Federal regulations implementing the Individuals with Disabilities Education Act (34 C.F.R. Parts 300 and 303), if such amendments result in circumstances where state law exceeds federal law;

(3) Part 30 (commencing with section 56000); and

(4) Sections 3000 through 4671, inclusive, of Title 5 of the California Code of Regulations.

(h) State funds otherwise allocated to each special education local plan area pursuant to Chapter 7.2 (commencing with section 56836) of Part 30 and appropriated through the annual Budget Act shall supplement and not supplant these funds. These funds shall be in addition to the level of COLA provided for this program in the annual Budget Act.

SECTION 3. Section XXXXX is added to the Education Code, to read:

(a) Commencing with the 2011-12 fiscal year and each fiscal year through the 2016-17 fiscal year, the amount of eighty-five million dollars ($85,000,000), shall be appropriated, on a one-time basis each fiscal year, from the General Fund for allocation to school districts on a per-pupil basis. The Superintendent of Public Instruction shall compute the amount per pupil by dividing eighty-five million dollars ($85,000,000), by the total average daily attendance, excluding attendance for regional occupation centers and programs, adult education, and programs operated by the county superintendents of schools, for all pupils in kindergarten through grade twelve in all school districts as used by the Superintendent of Public Instruction for the second principal apportionment for the 2007-08 fiscal year. Each school district's allocation shall equal the per-pupil amount times the district's average daily attendance as reported to the Superintendent of Public Instruction for the second principal apportionment for the 2007-08 fiscal year. The amount allocated to each school district shall be the same in all subsequent fiscal years as it is in the first fiscal year.

(1) Notwithstanding the provisions of subdivision (a) above, the State, in its discretion, may cause to be appropriated and allocated amounts in excess of eighty-five million dollars ($85,000,000) annually in the period 2011-12 through 2016-17 for the purpose of discharging the obligation in advance of the six year period, so long as the total amount appropriated and allocated under this section is five hundred ten million dollars ($510,000,000).

(2) In any fiscal year after 2011-12 in which the provisions of Article XVI, section 8, paragraph (b)(3), of the California constitution are operative, the annual appropriation shall not be required to be made.

(3) The Director of Finance shall notify, in writing, the fiscal committees of both Houses of the Legislature, the Controller, and the Superintendent of Public Instruction no later than May 14, that the appropriation for the following fiscal year is not required, pursuant to paragraph (c). If any appropriation is not made for a specific fiscal year, or years, it shall instead be made in the fiscal year, or years, immediately succeeding the final payment pursuant to paragraph (a).

(4) These funds shall be in addition to the level of COLA provided to school districts in the annual Budget Act.

(b) From the funds appropriated for purposes of this section in subdivision (b) of Section 4 of the act adding this section, the Superintendent of Public Instruction shall allocate the following:

(1) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of one million five hundred thousand dollars ($1,500,000) shall be allocated by the Superintendent to county offices of education on an equal per-pupil amount. The Superintendent shall determine the per-pupil amount by dividing one million five hundred thousand dollars ($1,500,000) by the total statewide county special education pupil count only, reported by county offices of education as of December 2007. The allotment for each county office of education shall be the per-pupil amount times the county's special education pupil count reported as of December 2007. The Superintendent shall adjust the computations in such a manner as to ensure that the minimum allotment to each county office of education is at least five thousand dollars ($5,000).

(2) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of six million dollars ($6,000,000) shall be allocated by the Superintendent to SELPAs that existed for the 2007-08 fiscal year. The Superintendent shall determine the amount of each agency's allotment by dividing the six million dollars ($6,000,000) by the statewide special education pupil count reported as of December 2007. The allotment for each agency shall be the statewide per-pupil amount times the SELPA's special education pupil count reported as of December 2007. The Superintendent shall adjust the computations in such a manner as to ensure that the minimum allotment to each SELPA is at least ten thousand dollars ($10,000).

(3) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of two million five hundred thousand dollars ($2,500,000) shall be allocated by the Superintendent to the San Joaquin County Office of Education.

(c) The amounts appropriated by subdivisions (a), (b), and (c) of Section 4 of the act adding this section are in full satisfaction and in lieu of mandate claims resulting from the Commission on State Mandates' Statement of Decision CSM 4464, "Behavioral Intervention Plans."

SECTION 4.

(a) The amount of sixty-five million dollars ($65,000,000), is hereby appropriated from the General Fund in augmentation of Item 6110-161-0001 of 2009-10 Budget Act to the Superintendent of Public Instruction

for the purposes of Section 56836.08 of the Education Code. It is the intent of the Legislature that such funding be included in the annual budget act in subsequent fiscal years.

(b)

(1) The amount of ten million dollars ($10,000,000), is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation on a one-time basis to county offices of education, and special education local plan areas (SELPAs), as specified in subdivision (b) of section _____ of the Education Code. These funds shall be in addition to the level of COLA provided for county offices of education and special education local plan areas in the annual Budget Act.

(2) For the purposes of making the computations required by article XVI, section 8, of the California Constitution, this appropriation shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (a) of section 41202 of the Education Code, for the 2007-08 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of section 41202 of the Education Code, for the 2007-08 fiscal year.

SECTION 5. This Act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety with the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting this necessity are: In order to alleviate the fiscal hardship to local educational agencies caused by the persistent shortfalls in federal funding for special education; to increase state funding for the special education program, thereby reducing encroachment; to facilitate the settlement of current litigation regarding those programs and the funding thereof; to obviate new litigation; and to resolve related school finance issues, it is necessary for this Act to take effect immediately.

00334.00100/108552.1

Case Name: Department of Finance v. CSM

Case No. 03CS01432
CSM #03-L-02

Court Superior

Volume No. 1

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LAO
65 YEARS OF SERVICE

June 21, 2007

State-Local Working Group Proposal to Improve the Mandate Process

LEGISLATIVE ANALYST'S OFFICE

4077

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65 YEARS OF SERVICE

Concerns With Mandate Process

☑ Process takes a long time, posing difficulties for state and local governments.

- Currently takes over five years from local government "test claim" filing to final action by Commission on State Mandates.
- During this time, local governments do not receive reimbursements and state liabilities mount.
- Length of process also complicates state policy review because the Legislature receives a mandate's cost information years after the debate regarding its imposition has concluded.

☑ Claiming reimbursement is exceedingly complicated.

- Most mandates are not complete programs, but impose increased
requirements on ongoing local programs. Measuring the cost to carry out these marginal changes is complex.
- Instead of relying on unit costs or other approximations of local costs, reimbursement methodologies (or "parameters and guidelines") typically require local governments to document their actual costs to carry out each element of the mandate.
- The documentation required makes it difficult for local governments to file claims and leads to disputes with the State Controller's Office.
- Because the commission bases its estimate of a mandate's costs on initial claims submitted by local governments, the commission's estimates typically are inaccurate. Over time, local governments increase their ability to comply with the reimbursement methodology and claims increase substantially.

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Working Group Proposal Overview

☑ Goals and focus:

- Simplify and expedite the mandate determination process.
- Procedural reform, focusing on period between imposition of a mandate and the report of the mandate to the Legislature.
- Avoid "tilting the scales" to favor state or local interests, or giving greater authority to the administration, Legislature, or local governments.

☑ Includes three alternatives—use of any alternative would require the consent of the local government claimant and Department of Finance.

☑ Proposal is in the form of amendments to AB 1222 (Laird).

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First Change: Amend the Reasonable Reimbursement Methodology Statute

☑ Expand the use of unit-based and other simple claiming methodologies by clarifying the type of easy-to-administer methodologies that the Legislature envisioned when it enacted this statute.

☑ Greater reliance on simple claiming methodologies would reduce:

- Local costs to file claims.
- State costs to process and audit claims.
- Disputes regarding mandate claims and appeals to the commission regarding State Controller claim reductions. Reducing commission work to hear appeals would give it more time to focus on mandate determinations.

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Second Change: Allow Reimbursement Methodologies to Be Developed Through Negotiations

☑ Create a process whereby local governments and the department jointly develop a mandate's reimbursement methodology and estimate its costs.

☑ Department of Finance and claimant responsibilities:

- Propose a negotiations work plan. Plan must ensure that costs from a representative sample of local claimants are considered.
- Jointly review local cost data.
- Develop a reasonable reimbursement methodology. Assess local support. Modify methodology to secure local support. Specify a date when the department and test claimant will reconsider methodology to ensure that it remains useful over time.
- Use the methodology to provide the Legislature an estimate of its statewide costs.

☑ Commission on State Mandates responsibilities.

- Review methodology to ensure that parties considered costs from a representative sample of local governments and that the methodology is supported by a wide range of local governments.
- Review the methodology for general consistency with the underlying Statement of Decision.
- Adopt the methodology and report statewide costs.

☑ Advantages of negotiated process.

- Realizes all of the benefits of the reasonable reimbursement methodology approach previously described.
- Trims at least a year from the current five-year mandate process.

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Third Change: Authorize Fast Track Legislative Mandate Determinations

☑ Create a process whereby local governments and the department may jointly propose that a state requirement be declared a "legislatively determined mandate" and propose a reimbursement methodology. The commission would not play a role in this alternative.

☑ Joint Department of Finance and claimant responsibilities:

- Identify state requirements to propose for legislatively determined mandate.
- Propose a reimbursement methodology and estimate of statewide costs.
- Provide Legislature evidence of local support for reimbursement methodology.

☑ Legislature's alternatives:

- May adopt proposal, or amend and adopt proposal. Enact a statute declaring the state requirement to be a legislatively determined mandate and specifying the reimbursement methodology. Appropriate required funding.
- May reject proposal.
- May repeal, suspend, or modify the mandate.

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Third Change: Authorize Fast Track Legislative Mandate Determinations *(Continued)*

☑ Local government options:

- May accept funding provided for mandate. Such an action signifies that the local government accepts the methodology as reimbursement for the funding period (say, five years). During this time, the local government may not file a test claim or accept other reimbursement for this mandate, unless the state does not provide the funding specified in statute. At the end of the funding period, works with the department to update the reimbursement methodology.
- May reject funding and file a test claim with the commission.

☑ Advantages of process.

- Realizes all of the benefits of the reasonable reimbursement methodology approach previously described.
- Resolves mandate claims in about a year, four years less than current process.
- Reduces the commission's caseload, freeing up time for it to focus on other claims.

California Jurisprudence 3d
Database updated November 2012

Evidence
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XII. Opinion Testimony
A. In General

Topic Summary Correlation Table References

§ 613. Opinion rule

West's Key Number Digest

West's Key Number Digest, Witnesses k250

As a general rule, witnesses must testify to facts and not to their opinions. Inferences or deductions from particular facts may be drawn only by the jury or by the court acting without a jury and not by witnesses. When the inquiry relates to a subject the nature of which is not such as to require any peculiar knowledge in order to qualify one to understand it or when the facts on which an opinion is founded can be ascertained and made intelligible to court or jury, then under what is sometimes termed the "opinion rule," the opinion of a witness may not be received in evidence.[1] In other words, if the relation between the facts and their probable results can be determined on the basis of common experience, without any special skill or training, and may be understood by the jury, the facts themselves must be given in evidence, and the conclusions or inferences must be drawn by the jury and not by the witness.[2] The opinion rule requires that witnesses express themselves at the lowest possible level of abstraction and, whenever feasible, "concluding" should be left to the jury.[3] For example, the ultimate fact of negligence is an inference to be drawn by the jury and is not to be established by the opinions of witnesses.[4] Likewise, a witness may not express an opinion as to the probative effect of a fact.[5] Neither may the witness, except in an action for libel or slander,[6] state his or her understanding of what another person meant in making an obscure statement[7] or in employing a commonly used expression.[8]

The rule excluding opinion evidence is applicable to testimony given by affidavit as well as to oral testimony. In addition, an affiant's general expression of an opinion or belief, without the facts on which it is founded, is in no sense legal evidence.[9]

While opinion evidence is thus, as a general rule, inadmissible, the testimony of a witness is not always to be excluded merely because it is a statement of such opinion or conclusion. The Evidence Code permits the admission of opinion evidence if given by experts within certain limits relating to subject matter and basis of the opinion.[10] In addition, the Code permits a lay witness to give testimony in the form of an opinion but limits this form of testimony to such an opinion as is permitted by law, including but not limited to an opinion that is both rationally based on the perception of the witness and helpful to a clear understanding of his or her testimony.[11] Thus, for example, a defendant may introduce opinion evidence of his or her character to show a nondisposition to commit an offense.[12]

The Code provisions thus give expression to the judicially established exceptions to the general rule excluding opinion evidence.[13]

A trial judge has wide discretion to admit or reject opinion evidence pursuant to these exceptions, and an appellate court has no power to interfere with the ruling unless there is an obvious and pronounced abuse of discretion.[14]

Observation:

An appellate court may not disturb the trial court's ruling on the admissibility of opinion evidence absent an abuse of discretion.[15]

[FN1] Murphy v. Davids, 181 Cal. 706, 186 P. 143 (1919); Northern California Power Co. v. Waller, 174 Cal. 377, 163 P. 214 (1917); Parkin v. Grayson-Owen Co., 157 Cal. 41, 106 P. 210 (1909); Hogan v. Miller, 153 Cal. App. 2d 107, 314 P.2d 230 (2d Dist. 1957).

[FN2] Redfield v. Oakland Consol. St. Ry. Co., 112 Cal. 220, 43 P. 1117 (1896); Sappenfield v. Main St. & A.P.R. Co., 91 Cal. 48, 27 P. 590 (1891).

[FN3] Bartlett v. State of California, 199 Cal. App. 3d 392, 245 Cal. Rptr. 32 (2d Dist. 1988), opinion modified, (Mar. 8, 1988); Angelus Chevrolet v. State of California, 115 Cal. App. 3d 995, 171 Cal. Rptr. 801 (2d Dist. 1981); People v. Hurlic, 14 Cal. App. 3d 122, 92 Cal. Rptr. 55 (2d Dist. 1971).

[FN4] Sampson v. Hughes, 147 Cal. 62, 81 P. 292 (1905); Largan v. Central R. Co., 40 Cal. 272, 1870 WL 904 (1870); Albrecht v. Broughton, 6 Cal. App. 3d 173, 85 Cal. Rptr. 659 (1st Dist. 1970).

[FN5] Burlingame v. Rowland, 77 Cal. 315, 19 P. 526 (1888).

[FN6] Russell v. Kelly, 44 Cal. 641, 1872 WL 1341 (1872).

[FN7] Robinson v. Robinson, 159 Cal. 203, 113 P. 155 (1911); People v. Moan, 65 Cal. 532, 4 P. 545 (1884).

[FN8] Patton v. Royal Industries, Inc., 263 Cal. App. 2d 760, 70 Cal. Rptr. 44 (2d Dist. 1968) (the meaning to the average reader of a statement in a letter that former employees "had been terminated" was not a question for the opinion of an expert in the English language).

[FN9] In re Hancock's Estate, 156 Cal. 804, 106 P. 58 (1909).

[FN10] §§ 619 to 653.

[FN11] §§ 616 to 618.

[FN12] People v. Guerra, 37 Cal. 4th 1067, 40 Cal. Rptr. 3d 118, 129 P.3d 321 (2006).

[FN13] Dyas v. Southern Pac. Co., 140 Cal. 296, 73 P. 972 (1903); Silveira v. Iversen, 128 Cal. 187, 60 P. 687 (1900) (disapproved of on other grounds by, Lane v. Pacific Greyhound Lines, 26 Cal. 2d 575, 160 P.2d 21 (1945)); Holland v. Zollner, 102 Cal. 633, 36 P. 930 (1894), aff'd, 102 Cal. 633, 37 P. 231 (1894).

[FN14] People v. Clark, 6 Cal. App. 3d 658, 86 Cal. Rptr. 106 (5th Dist. 1970).

For discussion of the scope of review as to matters within the trial court's discretion, see Cal. Jur. 3d, Appellate Review § 302.

[FN15] Caloroso v. Hathaway, 122 Cal. App. 4th 922, 19 Cal. Rptr. 3d 254 (2d Dist. 2004).

CAJUR EVIDENCE § 613

END OF DOCUMENT

report card *n* : a report on a student that is periodically submitted by a school to the student's parents or guardian

re·port·ed·ly \-ˈȯdlē, -li\ *adv* : according to report : REPUTEDLY ⟨has ~ made many anonymous benefactions to hospitals —*Current Biog.*⟩

re·port·er \-ˈȯ(r)\ *n* -s [alter. (influenced by *-er*) of ME *reportour*, fr. MF *reporteur*, fr. *reporter* to report + *-eur* -or] **:** one that reports ⟨a ~ of spiritual and physical reality —H.S. Canby⟩ ⟨ask him to continue being a ~ and judge of what is new in the arts —Malcolm Cowley⟩: as **a :** an officer or person who makes authorized statements of law proceedings and decisions or of legislative debates **b :** one who makes a shorthand record of a speech or proceeding; *specif* : COURT REPORTER **c** (1) **:** one who is employed by a newspaper or magazine to gather and write news for publication ⟨a sports ~⟩ ⟨a financial ~⟩ ⟨a society ~⟩ (2) **:** one who reports news events on a radio or television program : COMMENTATOR **d** *archaic* : PISTOL

reporting pay *n* : a payment made to a worker who reports for work without having previously been told that no work is available — called also *call-in pay*

re·por·to·ri·al \ˌrepə(r)ˈtōrēəl, -tȯr- *also* ˌrēp- *or* -ˌpōr- *or* -ˌpȯr-\ *adj* [irreg. (influenced by *-or*) fr. *reporter* + *-ial*] **1 :** of, relating to, or characteristic of a reporter ⟨a long ~ career⟩ ⟨~ curiosity⟩ ⟨~ skills⟩ **2 :** of, resembling, or characteristic of a report ⟨a ~ book⟩ ⟨~ prose⟩ ⟨it is too topical, too transitory, too ~ —C.P.Aiken⟩ — **re·por·to·ri·al·ly** \-ēəlē, -li\ *adv*

report out *vt, of a legislative committee* : to return (a bill) after consideration and often with revisions to a legislative body for debate and vote ⟨on the fifteen-man body there are eight sure votes for *reporting* the measure *out* —*Newsweek*⟩

reports *pl of* REPORT, *pres 3d sing of* REPORT

report stage *n* : the stage in the British legislative process that occurs prior to the third reading and that involves the receipt by the legislative body of the report of the committee to which the bill has been assigned, consideration of amendments made in committee, and usu. discussion esp. of details and amendment — compare LEGISLATION 1

reposal *n* -s *obs* : the act of reposing ⟨the ~ of any trust, virtue, or worth in thee —Shak.⟩

[1]**re·pose** \rəˈpōz, rēˈp-\ *vt* -ED/-ING/-S [ME *reposen* to replace, put back, irreg. (influenced by such verbs as ME *deposen* to depose) fr. L *reponere* (perfect stem *repos-*) — more at REPOSIT] **1** *archaic* : to put away or set down : DEPOSIT **2 :** to place (as confidence or trust) : SET — usu. used with *in* ⟨~ full confidence in their leader —T.B.Macaulay⟩ ⟨the complete trust *reposed* in him and his policies —*Newsweek*⟩ **3 :** to place for control, management, or use ⟨~s the judicial power in a supreme court —*Amer. Guide Series: La.*⟩

[2]**repose** \"\ *vb* -ED/-ING/-S [ME *reposen*, fr. MF *reposer*, fr. OF, fr. LL *repausare*, fr. L *re-* + LL *pausare* to stop, rest — more at PAUSE] *vt* **1 a :** to lay at rest : place in a restful or resting position : REST ⟨upon that cottage bench *reposed* his limbs —William Wordsworth⟩ **b :** to give rest to : refresh by rest ⟨enter in the castle and there ~ you for the night —Shak.⟩ **2 :** to cause to be calm or quiet : COMPOSE ⟨extraordinarily difficult to ~ a man whose leg troubled him, whose war troubled him, whose bank troubled him and whose wife troubled him —Francis Hackett⟩ ~ *vi* **1 a :** to lie at rest ⟨during the hot afternoon, the entire town ~s⟩ **b :** to lie dead ⟨*reposing* in state⟩ **c :** to remain still or concealed : lie quiet or hidden ⟨under the soil . . . there ~ vastly greater quantities of raw materials —F.C.James⟩ ⟨the existence of similar sunken lands now *reposing* on the bottom of the Pacific —J.F. McComas⟩ **2 :** to take rest : cease from activity, exertion, or movement ⟨she did not ~; she could not . . . she sat thinking —Arnold Bennett⟩ **3** *archaic* : to rest in confidence : RELY ⟨upon whose faith and honor I ~ —Shak.⟩ **4 :** to rest for support : LIE — usu. used with *on* or *upon* ⟨cutting generous portions with a huge knife from the loaf *reposing* on a round wooden base —Sidney Lovett⟩ ⟨medieval justice *reposed* so greatly on the system of fines —G.G.Coulton⟩

[3]**repose** \"\ *n* -s [MF *repos*, fr. OF, fr. *reposer*, v.] **1 a :** a state of resting after exertion or strain : temporary mental or physical inactivity used to restore vigor; *esp* : rest in sleep ⟨a little feast that would make other men heavy and desirous of ~ —Willa Cather⟩ ⟨earned one's night's ~ —H.A.Overstreet⟩ **b :** relief from excitement, danger, or difficulty : restful change : RELAXATION ⟨where at last he could find warmth and the brief, treacherous ~ of dissipation —J.T.Soby⟩ **2 a :** a place or state of rest; *esp* : eternal or heavenly rest ⟨to pray for the ~ of a soul⟩ **b :** freedom from something that disturbs or excites : CALM, PEACE, TRANQUILLITY ⟨the unfailing ~ of the bayou —*Christian Science Monitor*⟩ ⟨induce a sense of ~ and contentment —S.P.B.Mais⟩ **c :** a harmony in the disposition of parts and colors that is restful to the eye ⟨his painting was criticized as lacking ~⟩ **3 a :** QUIESCENCE ⟨the volcano was in ~⟩ **b :** cessation or absence of activity, movement, or animation ⟨his face in ~ is grave and thoughtful —R.C.Doty⟩ ⟨~ again freezes the burning features of his face —C.L.Sulzberger⟩ **4 :** composure of manner : quiet dignity : EASINESS, POISE **syn** see REST

re·pose·ful \-fəl\ *adj* : full of repose : QUIET, RESTFUL ⟨a graveled alley vaulted with fine straight green oaks, which seemed marvellously cool and ~ —Edmund Wilson⟩ **syn** see COMFORTABLE

re·pose·ful·ly \-fəlē, -li\ *adv* : in a reposeful manner : RESTFULLY

re·pose·ful·ness \-fəlnəs\ *n* -ES : the quality or state of being reposeful : RESTFULNESS

reposing room *n* : a room (as in a funeral home) used for the viewing of the deceased by mourners

re·pos·it \rəˈpäzət, rēˈp-\ *vt* [L *repositus*, past part. of *reponere* to replace, put back, fr. *re-* + *ponere* to put, place — more at POSITION] **1 :** to lay away : DEPOSIT, STORE ⟨buried sedimentary rocks which have entrapped the water in which the rocks were originally ~*ed* —*Westralian Farmers Co-op Gazette*⟩ **2 :** to put back in place : REPLACE ⟨he ~*ed* the stomach in the abdomen —John Kobler⟩

[1]**repo·si·tion** \ˌrēpəˈzishən, ˌrep-\ *n* [LL *reposition-*, *repositio*, fr. L *repositus* (past part. of *reponere*) + *-ion-*, *-io* -ion] **1 :** the act of repositing or the state of being reposited **2** *Scot* **:** restoration to a position, possession, or office : REINSTATEMENT

[2]**re·po·si·tion** \ˌrēpəˈzishən\ *vt* [*re-* + *position*] : to change the position of ⟨a malposition of the lower jaw . . . may be assumed and the jaw temporarily ~*ed* —H.G.Armstrong⟩ ⟨advise the receiver pilot to ~ his craft —*Ethyl News*⟩

[1]**re·pos·i·to·ry** \rəˈpäzəˌtōrē, rēˈp-, -tȯr-, -ri\ *n* -ES [L *repositorium*, fr. *repositus* (past part. of *reponere*) + *-orium* -ory] **1 :** a place, room, or container where something is deposited or stored : DEPOSITORY ⟨the child's desk . . . as a ~ for his music papers and other oddments —Marcia Davenport⟩: as **a :** a building or room for the exhibition of a collection (as of works of art) : MUSEUM ⟨a single museum serves not only as local ~ for cultural monuments but also as a community center —Lincoln Kirstein⟩ **b :** a burial vault **c :** a place where something is kept or shown for sale : a warehouse, store, or showroom ⟨now had an office and a clerk and they had a ~ . . . for their finished work —Ben Riker⟩ **d :** a side altar or niche in a Roman Catholic church where the consecrated Host is deposited from Maundy Thursday until Good Friday — called also *altar of repose* **2 :** one that contains or stores something nonmaterial : STOREHOUSE ⟨although well written and attractively printed, is little more than a ~ of linguistic superstitions —R.A.Hall b.1911⟩ ⟨theoretically the mob is the ~ of all political wisdom and virtue —H.L.Mencken⟩ **3 :** a place or region richly supplied with some natural resource ⟨the ~ of fabulous oil resources —A.E.Stevenson b.1900⟩ **4 :** a person to whom something is confided or entrusted ⟨he had been an entranced ~ of many secrets —John Buchan⟩

in the lodge —Sir Walter Scott⟩ **3 :** to restore to possession **:** put in possession again ⟨theology has ~*ed* itself of a good conscience and a sense of authority —A.N.Wilder⟩ — **repossessor** \"+\ *n*

re·possession \"+\ *n* : the act or state of possessing again : RECOVERY; *specif* : the act of resuming possession of property when the purchaser fails to keep up payments on it

repost *var of* RIPOSTE

re·pot \(ˈ)rē+\ *vt* [*re-* + *pot*] : to transfer a plant from one pot to another usu. with the addition of fresh soil

re·pous·sage \rəˌpüˈsäzh\ *n* -s [F, fr. *repousser* + *-age*] **1 :** the art or process of hammering out or pressing thin metal from the reverse side **2 :** the hammering out of an etching and photoengraving plate from behind to level up any part that has been worked into a depression

[1]**re·pous·sé** \-ˈsā\ *adj* [F, past part. of *repousser* to press back, thrust back, fr. ME, fr. *re-* + *pousser* to push, thrust, fr. OF *poulser* — more at PUSH] **1** *of metal work* **a :** shaped or ornamented with patterns in relief made by hammering or pressing on the reverse side ⟨~ work⟩ ⟨a silver dish with a ~ rim⟩ **b :** formed in relief ⟨a ~ pattern⟩ **2 :** resembling or giving the effect of repoussé work ⟨an elongated box bag of crushed silver or gold kid stitched in a ~ design —Marion Miller⟩

[2]**repoussé** \"\ *n* -s : repoussé work

repp *var of* REP

rep·pe chemistry \ˈrepə-\ *n, usu cap R* [after Walter *Reppe* b1892 Ger. chemist] : a branch esp. of industrial chemistry that is based on reactions of acetylene under pressure and also of the products so obtained and that includes vinylation, ethynylation, polymerization to cyclic compounds, and carbonylation

repped \ˈrept\ *adj* [[3]*rep* + *-ed*] : resembling rep : having a ribbed surface ⟨~ paper⟩

repping *pres part of* REP

rep·ple dep·ple \ˌrepəlˈdepəl\ *n* [by shortening & alter.] *slang* : REPLACEMENT DEPOT

repr *abbr* **1** repair **2** represent; representative; represented; representing **3** reprint; reprinted

rep·re·hend \ˌrepriˈhend, -prē-\ *vt* -ED/-ING/-S [ME *reprehenden*, fr. L *reprehendere* to hold back, seize, reprehend, fr. *re-* + *prehendere* to grasp, seize — more at PREHENSILE] : to voice disapproval of esp. after judgment : find fault with usu. with sternness and as a rebuke : BLAME, CENSURE, CHIDE, REPRIMAND, REPROVE ⟨~ not the imperfection of others —George Washington⟩ ⟨I severely ~*ed* him on this occasion —Samuel Richardson⟩ **syn** see CRITICIZE

reprehender *n* -s *obs* : one that voices disapproval

rep·re·hen·si·bil·i·ty \ˌrepriˌhen(t)səˈbilədē\ *n* -ES : the quality or state of being reprehensible

rep·re·hen·si·ble \-en(t)səbəl\ *adj* [ME, fr. LL *reprehensibilis*, fr. L *reprehensus* (past part. of *reprehendere*) + *-ibilis* -able] : worthy of or deserving reprehension : BLAMABLE, CENSURABLE, CULPABLE, REPROVABLE ⟨to capitalize on his ignorance is morally ~ —Nicholas Samstag⟩ ⟨it is my ~ nature to welcome excitement —Carl Van Doren⟩ ⟨when a work of art excites . . . ~ passions —Samuel Alexander⟩

rep·re·hen·si·bly \-blē, -bli\ *adv* : in a reprehensible manner or degree ⟨those laws . . . were in his judgment ~ lenient —T.B.Macaulay⟩

rep·re·hen·sion \ˌˈhenchən\ *n* -s [ME *reprehensioun*, fr. MF or L; MF *reprehension*, fr. L *reprehension-*, *reprehensio*, fr. *reprehensus* (past part. of *reprehendere*) + *-ion-*, *-io* -ion] **1 :** the act of reprehending : REPROOF ⟨if they are corrupt, they merit . . . blame and ~ —Edmund Burke⟩ ⟨lifted no voice in ~ of his corrupt deals —S.H.Adams⟩ **2** *archaic* : an instance of reprehending ⟨his writings contained . . . severe ~s —Thomas Brown⟩

rep·re·hen·sive \ˈhen(t)siv, -sēv *also* -səv\ *adj* [fr. *reprehension*, after such pairs as E *apprehension: apprehensive*] : serving to reprehend : conveying reprehension or reproof ⟨~ aspects and unfortunate results of unwarranted charges —*New Republic*⟩ — **rep·re·hen·sive·ly** \-səvlē, -li\ *adv*

rep·re·hen·so·ry \-n(t)s(ə)rē\ *adj* [fr. *reprehension*, after such pairs as E *commendation: commendatory*] *archaic* : REPREHENSIVE ⟨no reason for making any ~ complaint —Samuel Johnson⟩

rep·re·sent \ˌrepriˈzent, -prēˈz-, *in rapid speech often* ÷ -pəˈz, *chiefly in substand speech* -pərˈz-\ *vb* -ED/-ING/-S [ME *representen*, fr. MF *representer*, fr. L *repraesentare*, fr. *re-* + *praesentare* to present — more at PRESENT] *vt* **1 :** to bring clearly before the mind : cause to be known, felt, or apprehended : present esp. by description **2 :** to serve as a sign or symbol of **3 :** to portray by pictorial, plastic, or musical art : DELINEATE, DEPICT **4** *archaic* : to make manifest : DISPLAY, EXHIBIT, SHOW **5 :** to exhibit by delineation, depiction, or portrayal — used esp. of a work of art **6 :** to present by means of something standing in the place of : serve as the counterpart or image of : TYPIFY **7 :** to exhibit dramatically: **a :** to produce on the stage **b :** to act the part or role of : personate in acting or on the stage **8 a :** to supply the place, perform the duties, exercise the rights, or receive the share of : take the place of in some respect : fill the place of for some purpose : substitute in some capacity for : act the part of, in the place of, or for (as another person) usu. by legal right **b :** to serve (as in a legislative body) by delegated or deputed authority usu. resulting from election ⟨the state was ~*ed* in Congress by two Republicans⟩ **9 :** to describe as having a specified character or quality **10 :** to set forth or place before someone (as by statement, account, or discourse) : exhibit (a fact) to another mind in language : give one's own impressions and judgment of : state with advocacy or with the design of affecting action or judgment : point out by way of protest or remonstrance **11 :** to serve as a specimen, example, or instance of **12 a :** to form an image or representation of in the mind **b** (1) **:** to apprehend (an object) by means of an idea (2) **:** to recall in memory (an object of previous experience) **13 :** to correspond to in kind ~ *vi* **:** to make representations against something : present objections : PROTEST

syn REPRESENT, DEPICT, PORTRAY, DELINEATE, PICTURE, and LIMN can mean to present an image or lifelike imitation of, as in art. REPRESENT implies a placing before the mind as if real or as if living, as by a picture, description, or piece of sculpture ⟨the statue *represented* the great man as even more heroic than he was in fact⟩ ⟨the stage setting *represents* a hotel lobby⟩ ⟨seemed to think that music could *represent* physical objects and literary or historical events —*New Republic*⟩ DEPICT suggests specifically a graphic representation ⟨*depicted* hill-country scenes in woodcuts and etchings —*Amer. Guide Series: Ark.*⟩ ⟨miniature tapestries that *depict* quaint eighteenth-century scenes —Horace Sutton⟩ ⟨action can tell a story, display all the most vivid relations between men, and *depict* every kind of human emotion, without the aid of a word —O.W. Holmes †1935⟩ PORTRAY suggests specifically a detailed representation as of a character by means of a portrait ⟨a picture vividly *portraying* the passion of Joan of Arc⟩ ⟨in literature are portrayed all human passions, desires, and aspirations —C.W.Eliot⟩ DELINEATE, suggesting a line drawing, stresses a care for accuracy of detail and fullness of outline ⟨his brush did its work with a steady and sure stroke that indicated command of his materials. He could *delineate* whatever he elected with technical skill —Richard Jefferies⟩ ⟨various clinical studies which fairly well *delineated* the usefulness of this drug —R.R.Tompsett & Walsh McDermott⟩ ⟨those who perform on the screen have to *delineate* character and to display the emotions —P.W.Tell⟩ PICTURE suggests perhaps more pictorial quality or definiteness of representation ⟨on the walls were *pictured* buffalo and reindeer⟩ ⟨the writer is a master of vivid illustrations from natural history, of rhythmical period or terse antithesis, of emotional appeal and concrete *picturing* of facts —*Encyc. Americana*⟩ ⟨*picture* things as they were in the golden thirteenth century —G.G.Coulton⟩ LIMN is chiefly a

rep·re·sen·ta·men \ˌreprəˌzenˈtāmən, -prē-, -zən-\ *n, pl* **represen·tam·i·na** \-tamənə\ [fr. *representation*, after such pairs as L *putation-*, *putatio* act of pruning (fr. *putatus* — past part. of *putare* to cut, prune — + *-ion-*, *-io* -ion): *putamen* that which falls off in pruning — more at PUTAMEN] : the product as distinguished from the act of philosophical representation — compare REPRESENTATION 1e

rep·re·sent·ant \ˌrepriˈzentᵊnt, -prē-, -zentənt\ *n* -s [F *représentant*, fr. MF *representant*, fr. *representant*, pres. part. of *representer* to represent] : one that represents another : REPRESENTATIVE ⟨the greatest literary ~ of the revolution —*Nineteenth Century & After*⟩

rep·re·sen·ta·tion \ˌreprəˌzenˈtāshən, -prēˌz-, -zən-, *in rapid speech often* ÷ -pə(ˌ)z-, *chiefly in substand speech* -pər(ˌ)z-\ *n* -s [ME *representacion*, fr. MF *representation*, fr. L *repraesentation-*, *repraesentatio*, fr. *repraesentatus* (past part. of *repraesentare* to represent) + *-ion-*, *-io* -ion] **1 :** one that represents or is represented: as **a :** a likeness, picture, model, or other reproduction ⟨~s in pottery of frogs and turtles —*Times Lit. Supp.*⟩ ⟨an allegorical ~ . . . decorates the main pediment —*Amer. Guide Series: Mich.*⟩ **b** (1) **:** a statement or account esp. made to convey a particular view or impression of something with the intention of influencing opinion or action ⟨his ~s . . . influenced the president to investigate —*Amer. Guide Series: Minn.*⟩ ⟨make no false ~s to me —Thomas Hardy⟩ ⟨defendant's ~s that said automobile was new —*Southeastern Reporter*⟩ (2) **:** a statement of fact incidental or collateral to a contract made orally or in writing and on the faith of which the contract is entered into — compare [1]AFFIRMATIVE 3b, PROMISSORY, WARRANTY ⟨written ~s obtained from officials of the client —R.S.Johns⟩ ⟨the contract of sale contains a ~ by the purchaser —*U.S.Code*⟩ **c :** a dramatic production or performance ⟨a theatrical ~⟩ **d** (1) **:** a usu. formal and serious statement (as of facts, reasons, or arguments) made against something or to effect a change ⟨the colonial secretary made ~s on behalf of the Uitlanders —Ethel Drus⟩ (2) **:** a usu. formal protest : EXPOSTULATION, REMONSTRANCE ⟨the tenants had decided not to pay the increase until they had made ~s to the Native Affairs Department —H.S.Warner⟩ **e** (1) **:** an image or idea formed by the mind (2) **:** an idea that is the direct object of thought and the mental counterpart or transcript of the object known by means of it **2 :** the act or action of representing or the state of being represented: as **a :** the action of representing (as by portrayal or delineation) in a visible image or form ⟨a strict ~ of nature would require that it curve —Hunter Mead⟩ ⟨entrance of light rays into the eye and their final ~ in the brain —F.A.Geldard⟩ ⟨an exponent of ~ rather than abstraction in art⟩ **b :** the action of setting forth or placing before another (as by a statement, account, or discourse) esp. with a view to affecting action ⟨the ~ of student opinion to the administration —*Seton Hall Univ. Bull.*⟩ ⟨yielding to the artful ~ of ambitious hypocrites —Sir Walter Scott⟩ **c** (1) **:** the action or fact of one person standing for another so as to have to a greater or less extent the rights and obligations of the person represented; *specif* : the relation of an heir to his predecessor when both the rights and obligations of the predecessor devolve upon the heir (as in Roman and Scots law) (2) **:** the substitution of an individual or class of individuals in place of a person (as when a child or children take the share of an estate that would have fallen to a deceased parent) **d** (1) **:** the action of representing or the fact of being represented in a legislative body ⟨~ of territory . . . rather than of population —G.A.Graham⟩ ⟨raise the issue of Chinese ~ —*New Statesman & Nation*⟩ ⟨the ancient world knew nothing of the device of ~ —Woodrow Wilson⟩ (2) **:** the action or fact of being represented in some other grouping, body, or aggregation ⟨in . . . such universities and colleges there is no ~ of any non-West European culture —*Amer. Council of Learned Soc. Newsletter*⟩ ⟨~ of classic issues in the collection⟩ **e** (1) **:** the action or process by which the mind forms an image or idea of an object (2) **:** recurrent as opposed to simple presentation **3 :** the whole body of persons representing a constituency ⟨when vacancies happen in the ~ of any state in the Senate —*U. S. Constitution*⟩ ⟨chosen head of the U. S. ~ —*Current Biog.*⟩ ⟨small ~s from the Baltic states —Henry Giniger⟩

re-presentation \(ˈ)rē + *pronunc at* PRESENTATION\ *n* [*re-present* + *-ation*] : a presentation again or anew ⟨the revision and *re-presentation* of established favorite titles —Louise S. Bechtel⟩ ⟨a *re-presentation* of facts previously stated⟩

rep·re·sen·ta·tion·al \ˌˈ(ˌ) *as in* REPRESENTATION + ˈtāshənᵊl *or* -shnəl\ *adj* **1 :** of, based upon, or of the nature of representation ⟨~ art⟩ ⟨~ powers⟩ ⟨~ office⟩ **2 :** of, relating to, or supporting representationalism ⟨~ school⟩ ⟨~ theory⟩

rep·re·sen·ta·tion·al·ism \ˌ(ˌ)ˈtāshənᵊlˌizəm, -shnəˌli-\ *n* -s **1** *also* **rep·re·sen·ta·tion·ism** \-shəˌnizəm\ **:** the philosophical doctrine asserting that the immediate or direct object of knowledge is an idea in the mind distinct from the external or independent object which is the occasion of perception and holding sometimes that the idea is a mental counterpart or true copy of the external object and sometimes that the idea is a modification of the consciousness determined in part by the nature of the independent object and in part by the nature or limitations of the mind **2 :** REPRESENTATIVE ART ⟨unorthodox ~ in his work —J.J.Sweeney⟩ ⟨~ is better left to the action film —Delmore Schwartz⟩

rep·re·sen·ta·tion·al·ist \-shənᵊləst, -shnəl-\ *n* -s : one that practices or advocates representative art — compare ABSTRACTIONIST 2

rep·re·sen·ta·tion·ist \-sh(ə)nəst\ *n* -s : an adherent of philosophical representationism

[1]**rep·re·sent·a·tive** \ˌrepriˈzentəd·iv, -prēˈz-, -tətiv, *in rapid speech often* ÷ -pəˈz-, *chiefly in substand speech* -pərˈz-\ *adj* [ME, fr. MF or ML; MF *representatif*, fr. ML *repraesentativus*, fr. L *repraesentatus* (past part. of *repraesentare* to represent) + *-ivus* -ive] **1 :** serving to represent, portray, or typify : characterized by representation ⟨a painting ~ of a battle⟩ **2 :** standing for or in the place of another : acting for another or others : constituting the agent for another esp. through delegated authority **3 :** of, based upon, or constituting a form of government in which the many are represented by persons chosen from among them usu. by election ⟨~ government⟩ ⟨~ democracy⟩ ⟨development of the ~ system⟩ **4 :** serving as a characteristic example : illustrative of a class : conveying an idea of others of the kind : TYPICAL ⟨a ~ modern play⟩ ⟨a ~ romantic poem⟩ **5 a :** having the character of a mental representation — compare REPRESENTATION 1e **b :** of or relating to the doctrine of representationalism ⟨the ~ theory of knowledge⟩

[2]**representative** \"\ *n* -s **1 a :** one that stands for a number or class (as of persons or things) : one that in some way corresponds to, replaces, or is equivalent to someone or something else : SAMPLE, SPECIMEN ⟨many ~s of the Protozoa —R.B.Coker⟩ ⟨the student body includes ~s of 36 states —*Amer. Guide Series: N.C.*⟩ ⟨where distinctly different biological ~s are found —*Amer. Guide Series: Minn.*⟩ **b :** a typical embodiment of some quality or abstract concept : TYPE ⟨the most authoritative ~ . . . of the ideal of priestly stewardship —V.L.Parrington⟩ ⟨of the Semitic family Arabic is the chief living ~ —A.L.Kroeber⟩ ⟨the sole ~ . . . of the feelings and the knowledge of the middle ages —H.T.Buckle⟩ **2** *obs* **:** a representative body or assembly ⟨debate in the grand ~ of the kingdom —Nathaniel Bacon⟩ **3 :** one that represents another or others in a special capacity: as **a** (1) **:** one that represents a constituency as a member of a legislative or other governing body ⟨the people exercises this sovereignty . . . through the votes of its ~s —D.W.S.Lidderdale⟩ ⟨committee . . . to which no ~ of an Arab state had been named —*U.N. Bull.*⟩ ⟨summoned ~s of the shires and the boroughs to parliament⟩ (2) **:** a member of the House of Representatives of the U.S. Congress (3) **:** a member of a house of representatives in a state legislature **b** (1) **:** one that represents another as

agent, deputy, substitute, or delegate usu. being invested with the authority of the principal (2) : one appointed to represent a sovereign or government abroad ⟨the permanent ~ of Canada to the North Atlantic Council —*Current Biog.*⟩ ⟨served as ~ of the president of the U.S. in conferences with the allies⟩ **c** : one who legally represents or stands in the place of a deceased person : LEGAL REPRESENTATIVE a, PERSONAL REPRESENTATIVE **d** : one that in some respect stands for or in the place of another ⟨money is only a commodious ~ of the commodities which may be purchased with it —Joseph Priestley⟩ **e** : one that represents a business organization : SALESMAN ⟨local ~ of an insurance company⟩ **f** : one that represents another as successor or heir : one representing a line or tradition ⟨the last ~ of one of the founding families⟩ ⟨do not know if his large family has left any ~*s* today —*Notes & Queries*⟩

representative art *n* : art that is concerned with the representation of reality and esp. the characteristic or verisimilar representation of nature or life ⟨the earliest works of art from the caves of Europe are not only realistic, but meritoriously *representative art* —Clark Wissler⟩

representative-at-large *n, pl* **representatives-at-large** \ˌ==-ˌ====ˌ=\ : CONGRESSMAN-AT-LARGE

representative democracy *n* : DEMOCRACY 1b(2)

representative firm *n* : a model firm not necessarily in existence which as an abstract construction is used to illustrate the operations of a market as a whole

representative fraction *n* : a map scale in which figures representing units (as centimeters, inches, or feet) are expressed in the form of the fraction $1/x$ (as 1/250,000) or of the ratio $1{:}x$ to indicate that one unit on the map represents x units (as 250,000 centimeters) on the earth's surface

representative legislature *n* : a British colonial legislature in which at least one half of the members are elected by the people of the colony — compare LEGISLATIVE COUNCIL 2

rep·re·sent·a·tive·ly \-əvlē, -li\ *adv* [ME *representatyfliche*, fr. *representatyf*, *representative* representative + *-liche* -ly] : in a representative manner

representative money *n* : paper money backed by an equal amount of gold or silver coin or bullion held by a government

rep·re·sent·a·tive·ness \-ivnəs\ *n* -ES **1** : the quality or state of being representative ⟨his ~ as an American⟩ **2** : the characteristic of a specific scientific experiment that makes it an adequate sample of the general case

representative peer *n* : a peer chosen to represent other peers in the House of Lords: **a** : one of 16 Scottish peers elected as their representatives for the duration of a single parliament by persons holding Scottish peerages only **b** : one of 28 Irish peers elected as their representatives for life by persons holding Irish peerages only

representative sampling *n* : sampling in which the relative sizes of sub-population samples are chosen equal to the relative sizes of the sub-populations

representative theory *n* : REPRESENTATIONALISM 1

representative town meeting *n* : a town meeting in which a usu. small number of representatives previously elected by the townspeople vote and transact business although other residents may attend and often are allowed to speak

representator *n* -S [LL *repraesentator*, fr. L *repraesentatus* (past part. of *repraesentare* to represent) + *-or*] *obs* : REPRESENTER

represented *past of* REPRESENT

representee *n, obs* : a parliamentary representative

rep·re·sent·er \ˌ==ˌzentə(r)\ *n* -S : one that represents (as by exhibition, acting, or presentation)

representing *pres part of* REPRESENT

rep·re·sent·ment \ˌ==ˈzentmənt\ *n, archaic* : REPRESENTATION ⟨the presentments of sense or the ~*s* of memory —E.R. Conder⟩ ⟨expect to prevail . . . by a bare ~ of the unreasonableness of their actions —Henry Dodwell⟩

representor *n* -S *obs* : REPRESENTATIVE

represents *pres 3d sing of* REPRESENT

[1]**re·press** \rəˈpres, rēˈp-\ *vb* -ED/-ING/-ES [ME *repressen*, fr. L *repressus*, past part. of *reprimere* to check, repress — more at REPRIMAND] *vt* **1** : to check by or as if by pressure : keep or hold in check : restrain from spreading, increasing, or doing harm : CONTROL, CURB ⟨obstruction of justice . . . is sternly ~*ed* —Edward Jenks⟩ ⟨developed psychic interests . . . but then these were ~*ed* by her parents —A.G.N.Flew⟩ ⟨law tended to foster rather than ~ grammar —H.O.Taylor⟩ ⟨~ bleeding⟩ **2** : to keep down or under by self-control : restrain oneself from expression (as by showing, feeling, or uttering) of : keep under control ⟨could not ~ a smile at the comical figure —Ellen Glasgow⟩ ⟨~*ed* the temptation to talk about it —Kathleen Freeman⟩ ⟨a remarkable ability to ~ his home worries while on the job —W.H.Whyte⟩ **3 a** : to reduce to subjection or quietness : put down by force : SUBDUE ⟨a hopeless undertaking . . . to try to ~ such powerful subjects —H.T.Buckle⟩ **b** : to suppress by exercising force : put down : QUELL ⟨the royal commissioners sent to ~ the tumult —J.R.Green⟩ **4** : to prevent the natural or normal expression, activity, or development of : cause repression of or in ⟨chill penury ~*ed* their noble rage —Thomas Gray⟩ ⟨natural instinct ~*ed* by a perpetual stern control —Havelock Ellis⟩ **5** : to exclude from consciousness : subject to repression ⟨new experiential material . . . ~*ed* in the personality to the level of the unconscious —H.W.Dunham⟩ ⟨~ conflicts⟩ ~ *vi* : to cause or bring about repression : take repressive action ⟨the dominant minority's will to ~ —A.J.Toynbee⟩ ⟨taboos against the gentler emotion force him to ~ —Howard Griffin⟩

[2]**re·press** \ˈrē,pres\ *n* : a machine for re-pressing brick

re–press \(ˈ)rēˈpres\ *vt* [*re-* + *press*] : to press again ⟨~ bricks in a mold after coming from the brick machine and before burning in kiln⟩ ⟨was ~*ed* into government service —Whitney Balliett⟩ ⟨~ a record⟩

repressed *adj* **1 a** : subjected to repression ⟨a ~ child⟩ ⟨~ ambition⟩ **b** : characterized by restraint ⟨the ~ delicacy of its general design —*Amer. Guide Series: Conn.*⟩ **2** : affected by repression ⟨infantile anxiety based on ~ phantasies —Christine Olden⟩ ⟨~ hostilities and guilt reactions —Louise Heathers⟩

repressed inflation *n* : a condition in which direct economic controls (as price and wage controls and rationing) are utilized to prevent inflation without removing the underlying inflationary pressures

re·press·er \rəˈpresə(r), rēˈp-\ *n* -S [ME, fr. *repressen* to repress + *-er*] : one that represses

repressing *n* -S [*re-press* + *-ing*] : a phonograph record by one other than the original manufacturer or under a different label than that originally used when first released ⟨concertos . . . now available in domestic ~*s* —C.M.Smith⟩

re·pres·sion \rəˈpreshən, rēˈp-\ *n* -S [ME *repressioun* ability to repress, fr. ML *repression-*, *repressio*, fr. LL, suppression, fr. L *repressus* (past part. of *reprimere* to check, repress) + *-ion-*, *-io* -ion] **1 a** : the action of repressing or the state of being repressed ⟨relentless ~ of all Christian sects —R.H. Jackson⟩ ⟨auxiliary units dealing with vice ~ —F.A.Ogg & P.O.Ray⟩ ⟨~ of unpopular opinions⟩ **b** : an instance of repressing ⟨religious wars and the ~*s* which followed —G.C. Sellery⟩ ⟨racial ~*s* are more harmful to well-being —Charles Abrams⟩ **2 a** : a process or mechanism of ego defense whereby wishes or impulses that are incapable of fulfillment are kept from or made inaccessible to consciousness except in disguised form (as conversion in neurosis or sublimation or symbolization in normality) **b** : an idea, memory, or experience that has been extruded from consciousness into the unconscious — contrasted with *suppression;* compare MECHANISM OF DEFENSE

re·pres·sive \-esiv,-esēv *also* -esəv\ *adj* [ML *repressivus*, fr. L *repressus* (past part. of *reprimere* to check, repress) + *-ivus* -ive] : having power or tending to repress : causing or in-

re·price \(ˈ)rē+\ *vt* [*re-* + *price*] : to give a new price to : fix a new price schedule for ⟨stock that does not move may be *repriced* —*Dry Goods Economist*⟩ ⟨give the government authority to ~ any orders —Helen Fuller⟩

re·priev·al \rəˈprēvəl, rēˈp-\ *n* -S *archaic* : REPRIEVE ⟨~*s* and prolongings of this present life —Robert Leighton⟩ ⟨brought no ~ from anguish —Robert Southey⟩

[1]**re·prieve** \rəˈprēv, rēˈp-\ *vt* -ED/-ING/-S [alter. (perh. influenced by obs. E *repreve* to reprove, fr. ME *repreven*) of earlier *repry*, perh. fr. MF *repris*, past part. of *reprendre* to take back — more at REPRISE, REPROVE] **1** *obs* : to put off (as something evil) : DELAY, POSTPONE ⟨since we cannot death ~ —Katherine Philips⟩ **2** : to delay the punishment of (as a condemned prisoner) : suspend the execution of sentence on : RESPITE **3** : to give relief or deliverance to for a time : preserve temporarily ⟨whose hard hand *reprieved* the empire from its fate —Robert Browning⟩

[2]**reprieve** \"\ *n* -S **1 a** : the act of reprieving or the state of being reprieved **b** : a formal temporary suspension of the execution of a sentence ⟨the president . . . shall have power to grant ~*s* and pardons for offenses against the United States —*U.S. Constitution*⟩; *esp* : a remission or commutation of a capital sentence **c** : something resembling such a formal suspension : a respite from a decision or penalty ⟨unless there is an eleventh-hour ~ the . . . elevated will cease operating at midnight —*N.Y. Times*⟩ **2** : an order or warrant for a formal suspension (as of a capital sentence) ⟨a messenger was dispatched with a ~ —*Amer. Guide Series: Conn.*⟩ **3** : a respite or temporary escape (as from death, pain, or trouble) ⟨the first relief over the ~ from a railway strike —*Blackwood's*⟩

[1]**rep·ri·mand** \ˈreprə,mand, -maa(ə)nd, -mȧnd\ *n* -S [F *réprimande*, alter. of MF *reprimende*, fr. L *reprimenda*, fem. of *reprimendus* that is to be checked or repressed, gerundive of *reprimere* to check, repress, fr. *re-* + *-primere* (fr. *premere* to press) — more at PRESS] : a severe or formal reproof : a sharp rebuke : CENSURE; *esp* : one given with authority

[2]**reprimand** \", ,==ˈ=\ *vt* -ED/-ING/-S [F *réprimander*, fr. *réprimande*, n.] : to reprove severely : chide for a fault : censure formally and esp. with authority : REPREHEND ⟨had done something naughty and knew that she was going to be ~*ed* —I.V.Morris⟩ ⟨this member was found guilty . . . and voted by the House to be ~*ed* —D.G.Hitchner⟩ ⟨the court can ~ them . . . in the event of negligence —F.W.Crofts⟩ **syn** see REPROVE

[1]**re·print** \(ˈ)rē+\ *vt* [*re-* + *print*] : to print again : make a reprint of

[2]**re·print** \ˈrē+,- *also* =ˈ=\ *n* **1 a** (1) : a subsequent printing of a book already published having the identical text of the previous printing (2) : such a printing with cheaper paper and binding and put out by a different publisher **b** : a second or new impression of printed matter **c** : an article or extract issued separately after being first published as part of a collection or in a periodical : OFFPRINT **d** : printed text used as copy for something to be typeset **e** (1) : matter (as in a periodical) that has appeared in print before (2) : a later printing of material published in more than one edition of the same newspaper; *esp* : matter in one day's early edition printed in a late edition of the previous day **2 a** : a government or private reprinting of a postage stamp no longer current usu. on different paper or in a different color or perforation from the first printing and esp. for other than postal use — compare REISSUE **b** : a stamp so reprinted **3** : REPRESSING

re·printer \(ˈ)rē+\ *n* : one that publishes a reprint

re·pri·sal \rəˈprīzəl, rēˈp-\ *n* -S [ME *reprisail*, fr. MF *reprisaille*, modif. (influenced by MF *repris*, past part. of *reprendre* to take back) of OIt *ripresaglia*, fr. *ripreso* (past part. of *riprendere* to take back, recapture, fr. L *reprehendere* to hold back, seize, reprehend, recover) + *-aglia* -al (fr. L *-alia*, neut. pl. of *-alis* -al)] **1 a** : the act or practice in international law of resorting to force short of war (as by embargo, sequestration, forcible seizure, retortion, or retaliatory acts of the nature of those complained of) to procure redress of grievances **b** : an instance of such action **2** *obs* : PRIZE ⟨this rich ~ is so nigh and yet not ours —Shak.⟩ **3** : the regaining of something (as by recapture) **4** : something (as an amount or sum of money) given or paid in restitution : COMPENSATION — usu. used in pl. **5** : an action of retaliation (as for injury or attack)

[1]**re·prise** \rəˈprīz, rēˈp-, *in senses 5 & 6* rəˈprēz\ *n* -S [ME, fr. MF, reprise, action of taking back, fr. OF, action of taking back, fr. fem. of *repris*, past part. of *reprendre* to take back, fr. L *reprehendere* to hold back, seize, reprehend, recover — more at REPREHEND] **1** : a deduction or charge (as rent charge, rent seck, pensions, or annuities) to be made yearly out of a manor or estate — usu. used in pl. ⟨the clear yearly value above all ~*s* of the rectory —*Stat. 1 & 2 William IV*⟩ **2** *archit* : a return in an internal angle **3** *archaic* : REPRISAL **4** ⟨by exchanging an apartment . . . he might well have got a ~ of several million francs —Carleton Lake⟩ **4** *obs* : a retaliatory act : REPRISAL **5 a** : a recurrence, renewal, or resumption of an action : a separate or repeated occurrence ⟨were plunged . . . not once or twice but in frequent ~*s* —George MacKenzie⟩ **b** : a renewal of attack following a return to guard in fencing **6 a** : the second section of pieces in binary form in 17th century French music **b** : a musical repetition: (1) : the repetition of the exposition preceding the development (2) : RECAPITULATION **c** : something resembling or held to resemble a reprise in a musical score : a subsequent and identical performance : REPETITION

[2]**re·prise** \-īz, *in sense 3* -ēz\ *vt* -ED/-ING/-S [ME *reprisen* to begin again, fr. MF *repris*, past part. of *reprendre* to take back] **1** *archaic* : to take back; *esp* : to recover by force ⟨might ~ the arms . . . forfeited —George Chapman⟩ **2** *archaic* : COMPENSATE **3** : to repeat the performance of ⟨~ a song⟩

re·pris·ti·nate \(ˈ)rēˈpristə,nāt\ *vt* -ED/-ING/-S [*re-* + *pristine* + *-ate*] : to restore to an original state or condition : REVIVE ⟨~ the cosmic order as of before the Fall —H.M.Rosenthal⟩

re·pris·ti·na·tion \(ˌ)rē,pristəˈnāshən\ *n* -S : the act or action of restoring to a pristine state or condition : renewal of purity : RESTORATION ⟨~ of the American Idea as a fighting faith in freedom —H.M.Kallen⟩

re·privatization \(ˌ)rē+\ *n* -S [*re-* + *private* + *-ization*] : the act or action of privatizing again : restoration to private ownership or control (as after nationalization) ⟨the ~ of the subways is . . . to be desired —Henry Hazlitt⟩

[1]**re·proach** \rəˈprōch, rēˈp-\ *n* -ES [ME *reproche*, fr. MF, fr. OF, fr. *reprochier*, v.] **1 a** : a source of disgrace or shame : a cause of blame or censure : an occasion of discredit : something (as a fact, matter, feature, or quality) producing disgrace or blame ⟨make us see in our whole prison system a ~ —B.N. Cardozo⟩ ⟨made their calling a ~ and a hissing —A.M. Young⟩ **b** : the quality or state (as disgrace, shame, blame, discredit, or opprobrium) so incurred ⟨these rare exceptions did not take away the ~ which lay on the whole body —T.B. Macaulay⟩ **2** : the act or action of reproaching sometimes sternly or abusively and sometimes mildly and gently as an upbraiding ⟨a term of ~⟩ ⟨was above ~⟩ ⟨turned a look of keen ~ on him —George Eliot⟩ ⟨the abstainers are not regarded with ~ —Freeman Lincoln⟩ **3** : an expression of censure, disapproval, or rebuke ⟨raged at . . . him with contradictory ~*es* —Joseph Conrad⟩ ⟨answer . . . letters sadly and patiently and with no ~*es* —Margaret Deland⟩ ⟨her greeting was a playful ~ —Willa Cather⟩ **4** *obs* : one subjected to censure or scorn : an object of contempt ⟨we are become a ~ to our neighbors —Ps 79:4 (AV)⟩ **5 reproaches** *pl, usu cap* : a series of antiphons that are made up of sentences represented as addressed by Christ to his people to remind them of his services to mankind and their ingratitude and are individually followed by the Trisagion sung as a respond and that constitute a service or part of a service on Good Friday in the Roman Catholic and some Anglican churches

[2]**reproach** . . .

ment or chagrin : rebuke strongly or sternly : SCOLD ⟨I should like to . . . ~ her for being false —George Meredith⟩ **b** : to chide gently or in a friendly spirit often in an appeal for amendment : reprove constructively and helpfully : express disappointment and disapproval to ⟨she was very glad to see me and ~*ed* me for giving her no notice of my coming —Jane Austen⟩ **3** : to bring into discredit : constitute a cause of reproach to ⟨you might ~ your life —Shak.⟩ **4** : to cast reproach, blame, or discredit on ⟨the triviality with which we often ~ the remarks of the chorus —Matthew Arnold⟩ **syn** see REPROVE

re·proach·able \-chəbəl\ *adj* [ME *reprochable*, fr. OF, fr. *reprochier* + *-able*] *archaic* : deserving reproach : CENSURABLE ⟨conduct . . . in the highest degree ~ —George Keate⟩

re·proach·er \-chə(r)\ *n* -S : one that reproaches

re·proach·ful \-chfəl\ *adj* **1** : full of reproach or reproaches : expressing censure or rebuke ⟨~ words⟩ ⟨a ~ glance⟩ **2** *archaic* : involving or incurring reproach, shame, or censure : BLAMEWORTHY, DISGRACEFUL, SHAMEFUL ⟨a most ~ death —Samuel Parker †1688⟩

re·proach·ful·ly \-fəlē, -li\ *adv* **1** : in a reproachful manner ⟨my hostess was annoyed . . . and looked at me ~ —Maude Hutchins⟩ **2** *obs* : in a shameful or disgraceful manner ⟨publicly and ~ executed —Edward Hyde⟩

re·proach·ful·ness \-fəlnəs\ *n* -ES : the quality or state of being reproachful

re·proach·ing·ly *adv* : REPROACHFULLY ⟨seemed to look at him ~ —Charlotte Smith⟩

rep·ro·ba·cy \ˈreprəbəsē\ *n* -ES [[2]*reprobate* + *-cy*] : the quality or state of being reprobate ⟨committed defiantly, in open ~ —J.A.Symonds⟩

rep·ro·bance \-bən(t)s\ *n* -S [[2]*reprobate* + *-ance*] *archaic* : REPROBATION ⟨fallen to ~ —A.C.Swinburne⟩

[1]**rep·ro·bate** \-,bāt, *usu* -ād·+V\ *vt* -ED/-ING/-S [ME *reprobaten*, fr. LL *reprobatus*, past part. of *reprobare* to disapprove, condemn — more at REPROVE] **1** : to disapprove of : reject as unworthy or evil : censure strongly and forcefully : CONDEMN, DISCOUNTENANCE ⟨*reprobated* the decoration of churches with images —G.G.Coulton⟩ ⟨such sentiments . . . are now severely *reprobated* —Walter Moberly⟩ ⟨she genuinely *reprobated* . . . disorderliness —Margery Sharp⟩ **2** : to reject from Himself : foreordain to damnation : EXCLUDE — used of God **3** : to refuse to accept : REJECT ⟨every scheme . . . recommended by one of them was *reprobated* by the other —T.B.Macaulay⟩ **4** : to reject (as an instrument or deed) as not binding on account of forgery, perjury, or reliance upon incompetent evidence : take exception to : put away : DISALLOW — compare APPROBATE 1b **syn** see CRITICIZE

[2]**rep·ro·bate** \" *sometimes* -,bət *or* +V -bəd·\ *adj* [LL *reprobatus*, past part. of *reprobare*] **1** *archaic* : rejected as not enduring proof or trial : inferior in purity or fineness when compared to a standard : CONDEMNED, WORTHLESS **2 a** : condemned or rejected by God's decree : lost in sin **b** : morally abandoned : lost to all sense of religious or moral obligation : DEPRAVED, UNPRINCIPLED **3** : expressing or involving reprobation ⟨the ~ sense of a word⟩ **4** : of, relating to, or having the characteristics of a reprobate : CORRUPT ⟨~ conduct⟩

[3]**reprobate** \"\ *n* -S **1** : one rejected or foreordained to condemnation by God : one not of the elect : one fallen from grace : a lost soul **2 a** : a depraved, vicious, or unprincipled person : one whose character is utterly bad : SCOUNDREL **b** : one held to resemble such a scoundrel : SCAMP

rep·ro·ba·tion \,reprəˈbāshən\ *n* -S [ME *reprobacion* action of raising objections, fr. LL *reprobation-*, *reprobatio* rejection by God's decree, fr. *reprobatus* (past part. of *reprobare*) + L *-ion-*, *-io* -ion] : the act of reprobating or the state of being reprobated: as **a** : the act of raising legal exceptions or objections — compare REPROBATOR **b** : rejection by God's decree : predestination or foreordination to eternal damnation ⟨the election, ~, and fatality of Calvinism are rejected —F.S.Mead⟩ — compare ELECTION 1d, PRETERITION 3 **c** *archaic* : rejection as inferior or spurious : condemnation as worthless ⟨a brand of ~ on clipped poetry and false coin —John Dryden⟩ **d** : severe disapproval : CENSURE, REPROOF ⟨the result of this almost universal ~ . . . was his ruin —G.C.Sellery⟩ ⟨first to fix a mark of ~ upon the African slave trade —R.B.Taney⟩ ⟨the shaken head of moral ~ —S.H.Adams⟩

rep·ro·ba·tive \ˈreprə,bād·iv\ *adj* [[1]*reprobate* + *-ive*] : expressing or conveying reprobation ⟨employed language more stern and ~ —Isaac Taylor⟩ ⟨the curious ~ force . . . acquired by the term —R.M.Weaver⟩

rep·ro·ba·tor \-ād·ə(r)\ *n* [[1]*reprobate* + *-or*] : a onetime proceeding in Scots law to disqualify or reject a witness

rep·ro·ba·to·ry \ˈreprəbə,tōrē\ *adj* [[1]*reprobate* + *-ory*] : REPROBATIVE ⟨wagged a ~ head —Marguerite Steen⟩

re·processed \(ˈ)rē+\ *adj* [*re-* + *processed* (past part. of *process*)] *of wool fibers* : obtained from finished but unused wool products (as mill ends and clippings from wholesale clothing manufacture) and remade into merchandise — compare REUSED

re·pro·duce \ˌrēprəˈd(y)üs *sometimes* ˌrep-\ *vb* [*re-* + *produce*] *vt* : to produce again: as **a** : to produce (new individuals of the same kind) by a sexual or an asexual process : cause the existence of (something of the same class, kind, or nature as another thing) ⟨~ a rose⟩ ⟨an animal which can ~ a lost part⟩ **b** : to cause to exist again or anew ⟨~ water from steam⟩ **c** : to cause to be or seem to be repeated : bring about again : REPEAT ⟨actors *reproduced* the sound of running horses by pounding . . . pillows —*Amer. Guide Series: N.Y.*⟩ **d** : to bring forward, present, or exhibit again ⟨letter from which I ~ a few characteristic passages —Havelock Ellis⟩ ⟨~ a play⟩ **e** (1) : to make an image, copy, or other representation of : PORTRAY ⟨~ a face on canvas⟩ (2) : to copy by a different process or method than that orig. employed ⟨~ an oil painting by color lithography⟩ **f** : to cause to exist in the mind or imagination : create again mentally : represent clearly to the mind **g** : to revive mentally : have a mental image of : REMEMBER **h** : to translate (a recording) into sound or into an electrical voltage ~ *vi* **1** : to turn out in a specified way in reproduction ⟨the original will ~ clearly in a . . . photocopy —*Dun's Rev.*⟩ **2** : to produce offspring ⟨the young couples did not ~ freely —Willa Cather⟩

re·pro·duc·er \-sə(r)\ *n* : one that reproduces: as **a** : a device (as a record player, magnetic-recorder playback, or a photoelectric amplifier for cinema sound tracks) for utilizing recordings to produce an electrical voltage that may be amplified and usu. reproduced as sound ⟨disc ~⟩ ⟨film ~⟩ ⟨tape ~⟩ **b** : a device in a manograph for reproducing the engine stroke on a reduced scale

re·pro·duc·ibil·i·ty \ˌ==ˌd(y)üsəˈbiləd·ē, -lətē, -i\ *n* -ES : capability of being reproduced ⟨a product giving excellent ~ on the spectrograph —*Economic Geology*⟩ ⟨~ of results in successive tests —F.A.Geldard⟩

re·pro·duc·ible \ˌ==ˈd(y)üsəbəl\ *adj* : capable of being reproduced : permitting reproduction ⟨astonishingly ~ results can be obtained —S.E.Luria⟩

reproducing characteristic *n* : a relation between system amplification change and frequency in tape, disc, or film record reproduction necessary to compensate for record and recording characteristics

reproducing head *n* : a device for utilizing a tape or disc recording to produce an electrical voltage that is usu. amplified and used to produce sound

reproducing tube *or* **reproduction tube** *n* : the cathode ray tube in which the image is reproduced in television

re·pro·duc·tion \ˌ==ˈdəkshən\ *n* -S [fr. *reproduce*, after E *produce: production*] **1** : the act or process of reproducing: as **a** : the act of forming, creating, or bringing into existence again ⟨the squire interposed his authority towards the ~ of

shield of the Samnites

[1]**sa·mo·an** \sə'mōən\ *adj, usu cap* [*Samoa*, group of islands in southwest central Pacific ocean + E *-an*] **:** of or relating to Samoa or the Samoans

[2]**samoan** \"\ *n* -s *cap* **1 :** a native or inhabitant of Samoa **2 :** the Polynesian language of the Samoan people

sam·o·gi·tian \,samə'gishən, -mə'ji-\ *n* -s *cap* **1 :** a Lithuanian of the lowlands in the western part of the Kaunas district **2 :** the language of the Samogitian people constituting one of the two linguistic divisions of Lithuanian

sa·mo·gon \'sämə,gōn\ *also* **sa·mo·gon·ka** \-ōŋkə\ *n* -s [Russ, prob. fr. *samo-* self (akin to OE *same*) + *peregon*, *peregonka* distillation] **:** illicitly distilled Russian vodka **:** HOME BREW

sa·mo·hu \sə'mō(,)hü\ *n* -s [native name in So. America] **1 :** FLOSS-SILK TREE **2 :** the ashy gray light soft lumber of the floss-silk tree

sam·o·lus \'samələs\ *n, cap* [NL, fr. L, a plant growing in wet places, of Gaulish origin] **:** a small genus of mainly tropical herbs (family Primulaceae) having small white flowers with a perigynous corolla including five stamens and five staminodia — see BROOKWEED

sa·mos·a·te·nian \sə,mäsə'tēnēən\ *n* -s *usu cap* [LL Paulus *Samosatenus* Paul of Samosata (fr. Gk *samosatēnos* of Samosata, fr. *Samosata*, city of ancient Syria) + E *-ian*] **:** PAULIANIST

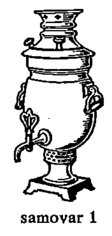
sam·o·there \'samə,thi(ə)r\ *n* -s [NL *Samotherium*] **:** an ungulate or fossil of the genus *Samotherium*

sam·o·the·ri·um \,samə'thirēəm\ *n, cap* [NL, fr. *Samos*, island in the Aegean sea + *-therium*] **:** a genus of extinct ungulates of the Miocene of Greece related to the giraffe but having a shorter neck and no median frontal knob

[1]**sam·o·thra·cian** \,samə'thrāshən\ *n* -s *cap* [L *samothracius* of Samothrace (fr. Gk *samothrakios*, fr. *Samothrakē* Samothrace, island in the Aegean sea) + E *-an*] **:** a native or inhabitant of the Greek island of Samothrace in the Aegean sea

[2]**samothracian** \ˌ==ˈ==\ *adj, usu cap* [L *samothracius*] **:** of, relating to, or constituting the religious cult centering around the Cabiri of ancient Greece

sam·o·var \'samə,vär, -vä(r *sometimes* ,==ˈ=\ *n* -s [Russ, fr. *samo-* self (akin to OE *same*) + *varit'* to boil, cook] **1 :** a usu. copper urn with a spigot at its base and a central tube for live charcoal used esp. in Russia to boil water for tea **2 :** a similar urn of metal or china with an alcohol lamp or other device for heating the contents



samovar 1

[1]**sam·o·yed** *also* **sam·o·yede** \'samə,yed, 'sa,mȯi(y)ed, sə'mȯi(y)əd\ *n* [Russ *samoed*] **1** *pl* **samoyed** *or* **samoyeds** *cap* **a :** a Finno-Asian people of the Nenets district of the Arkhangelsk region of the U.S.S.R. scattered along the coasts and islands from the White sea to the Taimyr peninsula — called also *Nentsi* **b :** a member of such people **2** *also* **sam·o·yed·ic** \,samə'yedik, ,sa,mȯi'(y)e-\ *n* -s *cap* **a :** a group of Uralic languages spoken by the Samoyed people — see URALIC LANGUAGES table **b :** one of these languages **3 a** *usu cap* **:** a Siberian breed of medium-sized deep-chested white or cream-colored arctic dogs in coat and proportions much resembling the chow chow and long used by the Samoyeds for herding reindeer and pulling sleds **b** -s *often cap* **:** a dog of this breed

[2]**samoyed** \"\ *or* **samoyede** \"\ *also* **samoyedic** \ˌ==ˈ==\ *adj, usu cap* **:** of or relating to the Samoyeds or their language

samp \'samp\ *n* -s [Narraganset *nasaump* corn mush, soup] **:** coarse hominy or a boiled cereal made from it

sam·pa·gui·ta \,sampə'gēd·ə\ *n* -s [PhilSp, fr. Tag *sampaga* Arabian jasmine + Sp *-ita* dim. suffix] *Philippines* **:** ARABIAN JASMINE

sam·pa·loc \'sampə,läk\ *n* -s [Tag *sampalok*] *Philippines* **:** TAMARIND

sam·pan *also* **san·pan** \'sam,pan, 'saam,paa(ə)n\ *n* -s [Chin (Pek) *san*¹ *pan*³, fr. *san*¹ three + *pan*³ board, plank] **1 a :** a flat-bottomed wedge-shaped Chinese skiff with low transom bow and rising transom stern with a pronounced rake, usu. having a mat roofing over the cabin, sometimes equipped with a sail but usu. propelled by two short oars in oarlocks consisting of twisted rattan, and used principally for river and harbor traffic **b :** a small open Chinese boat **2 :** a Japanese boat with a broad flat keel, a long raking sharp bow and vertical square stern propelled by a single scull or a group of sculls, by square sails on one to three masts, or by an engine **3** *Hawaii* **:** a boat built on oriental lines, propelled by a diesel motor, and widely used in Hawaiian fishery

sam·phire \'sam,fī(ə)r\ *n* -s [alter. (perh. influenced by *camphire*) of earlier *sampere*, *sampiere*, fr. MF (*herbe de*) *Saint Pierre*, lit., St. Peter's herb] **1 :** a fleshy European seacoast plant (*Crithmum maritimum*) of the family Umbelliferae that is sometimes pickled **2 :** a common glasswort (*Salicornia europaea*) that is sometimes pickled **3 :** SEA OXEYE **4 :** a tropical American fleshy herb (*Philoxerus vermicularis*) of the family Amaranthaceae with dense heads of white flowers that is common along beaches

[1]**sam·ple** \'sampəl, 'saam-,'saim-, 'sȧm-\ *n* -s [ME, fr. MF *essample* — more at EXAMPLE] **1** *obs* **:** one that is worthy of imitation **:** EXAMPLE ⟨liv'd in court . . . most prais'd, most lov'd, a ~ to the youngest —Shak.⟩ **2 a :** a representative portion of a whole **:** a small segment or quantity taken as evidence of the quality or character of the entire group or lot ⟨the ~ of the . . . Nordic race with which he identifies himself —Ruth Benedict⟩ ⟨knowledge of the deep ocean floor comes from . . . bottom ~s —F.P.Shepard⟩ **b :** one displaying characteristics typical of its kind **:** SPECIMEN ⟨the collection of ~s for museum displays —R.W.Murray⟩ ⟨molded caps over the windows and the original broad porch make it an excellent ~ of its period — *Amer. Guide Series: Conn.*⟩ **c** (1) **:** a trial package of a product distributed without cost to potential consumers (2) **:** a unit of merchandise used for demonstration or display ⟨floor ~⟩ **3 :** one that serves to illustrate the full range or scope **:** INDICATION, INSTANCE ⟨offering listeners ~s from the whole tradition of world drama —Leslie Rees⟩ ⟨contrasting ~s of church-state policy —Paul Blanshard⟩ **4 a :** a part (as of a population) used for purposes of investigating and comparing properties ⟨poll a national ~ as a means of predicting elections⟩ **b :** SAMPLING ⟨results of the ~ . . . must be translated and interpreted —W.B.Deming⟩ **syn** see INSTANCE

[2]**sample** \"\ *vt* **sampled; sampled; sampling** \-p(ə)liŋ\ **samples 1** *obs* **a :** to make comparable to **:** find a counterpart for **:** MATCH ⟨she seemed to be *sampled* for him —Henry Lord⟩ ⟨this notion . . . nowhere else *sampled* in any Greek author —Joseph Mede⟩ **b :** SYMBOLIZE ⟨some way ~ that, which no way we can express —Henry Montagu⟩ **c :** COPY ⟨a model . . . must be *sampled* in Jerusalem —Joseph Hall⟩ **2 a :** to take a sample of **:** assess by examining a small portion **:** TEST ⟨inspectors . . . ~ a year's output of fifty million parts — Bryan Morgan⟩ ⟨achievement tests . . . each *sampling* a different area —*Univ. of State of N.Y. Bull.*⟩ **b :** to yield in sample ⟨good ore, two feet of which ~s more than . . . 30 ounces of silver —*N.Y.Sun*⟩ **c :** to become acquainted with through personal experiment **:** try out **:** EXPERIENCE ⟨rail fans will . . . adjust their itineraries this summer to ~ the shiny new equipment —P.J.C.Friedlander⟩ ⟨~ the pleasures of the simple life —Thomas Cadett⟩ **d :** to dip into **:** glance through **:** SKIM ⟨~ the literature of social science⟩ ⟨surrounds himself with books . . . and ~s them as a dowager might a box of chocolates — *Time*⟩ **3 :** to give an impression or show an example of statistical sample ⟨was courteous enough to check his attendances for us during a random ~ week —Ernest & Pearl Beaglehole⟩

sam·ple·ite \-pə,līt\ *n* -s [Mat *Sample* 20th cent. Am. mine superintendent in Chile + *-ite*] **:** a mineral $NaCaCu_5(PO_4)_4Cl.5H_2O$ consisting of hydrous phosphate and chloride of sodium, calcium, and copper

sam·ple·man \'=pəlmən, -,man\ *n, pl* **samplemen** [[1]*sample* + *man*] **:** a maker, distributor, or tester of samples **:** SAMPLER

sample post *n* [[1]*sample*] **:** a postal service for international mail provided by Universal Postal Union regulations and allowing special rates on trade samples

[1]**sam·pler** \-plə(r)\ *n* -s [ME, fr. OF *essamplaire*, fr. LL *exemplarium* — more at EXEMPLAR] **1** *obs* **:** an original model or characteristic sample **:** ARCHETYPE, EXAMPLE ⟨Christ's baptism was the perfect ~ and pattern of ours —Daniel Featley⟩ **2 a :** a practical example of needlework patterns; *esp* **:** a piece of cloth with rows of different embroidery stitches worked across it **b :** a decorative square or rectangular piece of needlework typically having the alphabet, numbers, family names and dates, and a motto embroidered on it in various stitches as an example of skill

[2]**sam·pler** \-p(ə)lə(r)\ *n* -s [[2]*sample* + *-er*] **1 :** one that collects or examines samples: as **a** (1) **:** one that determines the quality of a product by testing samples taken from it ⟨cotton ~⟩ ⟨grain ~⟩ (2) **:** one that prepares samples ⟨the ~ extracts olives from the barrels for the inspector⟩ **b :** a customs inspector who compares samples of merchandise with discharge permits and endorses the permits if there are no discrepancies **c :** a mechanical device for obtaining a small quantity of something for testing or analysis ⟨grab ~s . . . are designed to take a surface sample of the bottom —J.D. Isaacs⟩ **2 a :** one that contains representative specimens or selections ⟨a fiction ~ from the work of a notable . . . writer — Harvey Breit⟩ ⟨cities became . . . ~s of the past styles of every country but our own —*Amer. Guide Series: Va.*⟩ **b :** a trial package or assortment intended to introduce a product to potential customers ⟨a connoisseur's ~ containing small packets of six choice teas⟩ ⟨each preparation has its . . . niche in the ~ —*Phoenix Flame*⟩ **3 :** one engaged in statistical sampling ⟨a ~ of public opinion⟩

sample room *n* [[1]*sample*] **:** a room in which samples are displayed; *esp* **:** a hotel room in which salesmen display merchandise for the inspection of buyers for retail stores

sampling *n* -s *often attrib* [fr. gerund of [2]*sample*] **1 a :** an act or instance of obtaining a sample ⟨improved technic . . . for blood ~ —*advt*⟩ ⟨the purpose of ~ is to determine the average mineral values in the deposit —J.D.Forrester⟩ **b :** assessment of the quality or character of a whole by examination of a sample **:** TESTING ⟨periodic ~ of the stored grain is necessary to be sure it is not molding⟩ **c :** personal investigation **:** TRIAL ⟨experimental ~, as with edibles, . . . played a part in the transformation of our material environment —Lewis Mumford⟩ **2 :** SAMPLE ⟨those who would like to find out what the French do in commerce and industry can get complete ~s at the . . . fair —*N.Y.Times*⟩ ⟨this inventory is far from complete, but it is an adequate ~ —Abram Kardiner⟩ ⟨ask a ~ of people why they didn't buy one client's product — Vance Packard⟩ **3 :** the introduction of a product or promotion of its sale by distributing at no cost or at a reduced price a trial package in regular or specially designed smaller size **4 :** the act, process, or technique of determining traits or attitudes of a whole population by collecting and analyzing data from a representative segment of it **:** SURVEY ⟨after allowance has been made for the quantitative and qualitative bias of the ~, series of generalizations are drawn —Sidney Hook⟩

sampling error *n* **:** the chance difference of a statistic from the corresponding population constant of which it is an estimate

sampling shovel *n* **:** SPLIT SHOVEL

sampogna *var of* ZAMPOGNA

samps *pl of* SAMP

samp·sae·an \sam(p)'sēən\ *n* -s *usu cap* [LGk *sampsaios* + E *-an*] **:** a member of a branch of the Elkesaites

samp·son fish \'sa|m(p)sən-, 'saa|, 'sai|\ *n, usu cap S* [fr. the name *Sampson*] **:** an Australian fish (*Seriola hippos*) of the family Carangidae

sampson fox *or* **samson fox** \"-\ *n, usu cap S* [prob. after *Samson*, judge of Israel; fr. his tying torches to the tails of foxes to set fire to the grain of the Philistines, Judg 15:4–5] **:** a red fox having a coat in which the guard hairs are lacking and the under fur is woolly and scorched looking due to genetic variation

sampson snakeroot *or* **sampson's snakeroot** *also* **samson snakeroot** *n, usu cap 1st S* [fr. the name *Sampson* or *Samson*] **1 :** an aromatic herb (*Psoralea psoralioides*) of the southeastern U.S. with a root having tonic properties — called also *babroot*, *Congo root* **2 :** any of several American gentians of the genus *Dasystephana*

sams *pl of* SAM, *pres 3d sing of* SAM

sam·sa·ra \səm'särə\ *also* **sansara** \sən'-\ *n* -s [Skt *saṁsāra*, lit., passing through, fr. *sam* together, completely + *sarati* it runs, flows — more at SAME, SERUM] **1** *Hinduism & Buddhism* **:** the indefinitely repeated cycles of birth, misery, and death caused by karma **:** TRANSMIGRATION **2** *Hinduism & Buddhism* **:** ever-changing finite temporal existence **:** life in society — contrasted with *Nirvana*

sam scratch \'samz'krach, -m'sk-\ *n, usu cap both Ss* **:** OLD NICK

sam·shu \'sam|shü, -|syü\ *n* -s [perh. fr. Chin (Pek) *shao*¹ *chiu*³ spirits that will burn, samshu, fr. *shao*¹ to burn + *chiu*³ wine, spirits] **:** an alcoholic liquor distilled in China usu. from rice or large millet

samsien *var of* SAMISEN

sam·ska·ra \səm'skärə, -m'sk-\ *n* -s [Skt *saṁskāra*, lit., putting together, making perfect, purifying, fr. *sam* together + *karoti* he makes, does — more at SAME, KARMA] **1 :** a purificatory Hindu ceremony **2** *Hinduism & Buddhism* **:** a mental conformation or latent karmic tendency shaping one's present life

sam·skrit *or* **sam·skrt** \'samz,krit, -m,sk-\ *n* -s *cap* [Skt *saṁskṛta* — more at SANSKRIT] **:** SANSKRIT

sam-sodden \'sam,säd°n\ *adj* [fr. (assumed) ME *sam-soden*, fr. OE, fr. *sam-* + *soden*, past part. of *sēothan* to boil — more at SEETHE] *dial Eng* **:** half cooked

sam·son \'sam(p)sən, 'saam-,'saim-\ *n* -s [after *Samson*, judge of Israel famed for his strength, Judg 13:24–16:31] **1** *usu cap* **:** a mighty man ⟨we proclaimed him a *Samson* who might pull down the pillars of our temple —R.H.Jackson⟩ **2 :** SAMSON POST

sam·so·ni·an \(')=ˈsōnēən\ *also* **sam·son·ic** \(')=ˈsänik\ *adj, usu cap* [*Samson*, judge of Israel + E *-ian*, *-ic*] **:** of heroic strength or proportions **:** MIGHTY ⟨a *Samsonian* attempt to demolish the gigantic structure —Douglas Watt⟩

sam·son·ite \'=sə,nīt\ *n* -s [G *samsonit*, fr. the *Samson* mine, Sankt Andreasberg, Harz Mts., Germany + G *-it* -ite] **:** a mineral $Ag_4MnSb_2S_6$ consisting of a silver manganese antimony sulfide and occurring in steel-black monoclinic prismatic crystals

samson post *n, often cap S* [after *Samson*, judge of Israel; prob. fr. his pulling down the pillars of the palace of the Philistines, Judg 16:25–30] **1 a :** a post resting on the keelson and supporting a deck beam of a ship **b :** a post for use in securing a cable (as the anchor cable) **c :** KING POST 2 **2 :** an upright post that supports the walking beam in an oil derrick **3 :** a heavy timber with a chain and hook used for moving logs

numerical notation to represent the numeral 900

[2]**san** \'sän\ *n pl, usu cap* [Hottentot (Nama dial.)] **:** ...

[3]**san** \'san\ *n* -s [by shortening] **:** SANATORIUM

san *abbr* sanitary; sanitation

sa·n'a \(')sä'nä\ *adj, usu cap* [fr. *San'a*, city in central ...] **:** of or from San'a, the capital of Yemen **:** of the kind prevalent in San'a

sanable *adj* [L *sanabilis*, fr. *sanare* to cure + *-abilis* -able] **:** capable of being healed or cured **:** susceptible of remedy

san·ad *also* **sun·nud** \'sə,nəd\ *n* -s [Ar *sanad*] **1 :** an Indian government charter, warrant, diploma, patent, or deed **2 :** a letter having the force of an edict or ordinance in India

san an·to·ni·an \,sanən·'tōnēən, -nan-, -naan-\ *n* -s *cap S&A* [*San Antonio*, Texas + E *-an*] **:** a native or resident of San Antonio, Texas

san an·to·nio \ˌ==ˈtōnē,ō *sometimes* -ˈtōn\ *adj, usu cap* [fr. *San Antonio*, city in So. central Texas] **:** of or from the city of San Antonio, Texas **:** of the kind or style prevalent in San Antonio ⟨the *San Antonio* climate⟩

san·a·tar·i·um \,sanə'ta(a)rēəm, -'ter-, -'tar-\ *n, pl* ... **tariums** \-mz\ *or* **sanatar·ia** \-ēə\ [NL, alter. (influenced by *sanitarium*) of *sanatorium*] **:** SANATORIUM

sanation *n* -s [ME *sanacioun*, fr. L *sanation-*, *sanatio*, fr. *sanatus* (past part. of *sanare* to cure) + *-ion-*, *-io* -ion] **:** the act or process of healing

san·a·tive \'sanəd·iv\ *adj* [ME *sanatif*, fr. MF, fr. ML *sanativus*, fr. L *sanatus* (past part. of *sanare* to cure) + *-ivus* -ive] **:** having the power to cure or heal **:** BENEFICIAL, RESTORATIVE ⟨flooded with the bright ~ light of day —C.I.Glicksberg⟩ ⟨a little of the ~ calmness of conservatism —Raymond ...⟩

san·a·to·ri·um \,sanə'tōrēəm, -'tȯr-\ *n, pl* **sanatoriums** \-mz\ *or* **sanato·ria** \-ēə\ [NL, fr. LL, neut. of *sanatorius* sanatory] **1 :** an establishment that provides therapy combining physical agents (as hydrotherapy, light therapy) ... with diet, exercise, and other measures for treatment or rehabilitation **2 a :** an institution for rest and recuperation (as for invalids and convalescents **b :** an establishment for the treatment of the sick esp. if suffering from chronic diseases (as alcoholism, tuberculosis, nervous or mental diseases) requiring protracted care

san·a·to·ry \'sanə,tōrē\ *adj* [LL *sanatorius*, fr. L *sanatus* (past part. of *sanare* to cure, fr. *sanus* healthy) + *-orius* -ory] **:** conducive to health **:** tending to cure **:** CURATIVE ⟨... mineral baths at a spa⟩

san·be·ni·to \,sanbə'nēd·(,)ō\ *n* -s [Sp *sambenito*, fr. *San Benito* St. Benedict †ab543 founder of monasticism in western Europe; fr. its resemblance to the scapular believed to have been introduced by St. Benedict] **1 :** a sackcloth coat worn by penitents on being reconciled to the church **2 :** a Spanish Inquisition garment resembling a scapular and either yellow with red crosses for the penitent or of black with painted devils and flames for the impenitent condemned to an auto-da-fé

san blas \san'blas\ *n, pl* **san blas** *usu cap S&B* [fr. *San Blas* islands, archipelago off the north coast of Panama] **1 a :** a Cunan people of the islands off the north coast of Panama **b :** a member of such people **2 :** a Chibchan language of the San Blas people

san·born·ite \'sanbə(r),nīt\ *n* -s [Frank *Sanborn* ... mineralogist + E *-ite*] **:** a mineral $BaSi_2O_5$ consisting of a rare triclinic barium silicate

san car·los \san'kär,lōs\ *n, pl* **san carlos** *usu cap S&C* [fr. *San Carlos* Reservation, eastern Arizona] **1 a** (1) **:** a division of the Apache including the Cibecue, the Tonto, and the White Mountain Apaches (2) **:** a group of Apache including the Pinal **b :** a member of such subdivision or group **2 :** the language of the San Carlos people

[1]**san·cho** \'saŋ(,)kō\ *n* -s [of African origin; akin to ... *saṅgku*³ stringed instrument, guitar, Twi *ō̃saŋkū* guitar] **:** a primitive guitar with fiber strings played by both African and American negroes

[2]**san·cho** \'san(,)chō\ *n* -s [Sp *Sancho*, proper name] **:** the nine of trumps in sancho pedro

san·cho pan·za \,san(,)chō'panzə, 'sän . . . 'pänzə\ *n* ... *S&P* [fr. *Sancho Panza*, commonsensical peasant squire of Don Quixote in the satiric novel *Don Quixote de la Mancha* (1605, 1615) by Miguel de Cervantes Saavedra †1616 Spanish novelist] **:** one that occupies a position analogous to the role of Don Quixote ⟨his realistic colleagues, the *Sancho Panzas* of jurisprudence —M.R.Cohen⟩

sancho pedro *n* **:** pedro in which the 9 and 5 of trumps are counted at face value and the 10 of trumps counts game — called also *pedro sancho*

san·cord \'san,kȯrd\ *n* -s [Afrik] **:** a small reddish ... scorpaenid fish (*Helicolenus maculatus*) of southern Africa

sancta *pl of* SANCTUM

sanc·ti·fi·ca·tion \,saŋ(k)təfə'kāshən, ,saiŋ-\ *n* ... [LL *sanctification-*, *sanctificatio*, fr. *sanctificatus* (past part. of *sanctificare* to make holy) + *-ion-*, *-io* -ion] **1 a :** an act of sanctifying or of being sanctified; *specif* **:** an act or process of growth in God's grace by which men are set free from the bondage of sin and exalted to a supreme love of God and service to his Kingdom under the inspiration of the Holy Spirit **b :** the state of thus being purified **:** HOLINESS **2 :** development of or increasing adherence to a body of normative rules and standards — contrasted with *secularization*

sanc·ti·fied \'saŋ(k)tə,fīd, 'saiŋ-\ *adj* [ME, fr. past part. of *sanctifien* to sanctify] **1 a :** made holy **:** made free of sin **:** free from the bondage of sin **b :** set apart to sacred or religious use **2 :** made to have the air of sanctity **:** SANCTIMONIOUS

sanc·ti·fi·er \-ī(ə)r, -īə\ *n* -s [*sanctify* + *-er*] **1 :** one that sanctifies **2 :** HOLY SPIRIT

sanc·ti·fy \-,fī\ *vt* -ED/-ING/-ES [ME *sanctifien*, *seintifien*, fr. MF *sanctifier*, *saintifier*, fr. LL *sanctificare*, fr. L *sanctus* holy + *-ficare* -fy — more at SAINT] **1 :** to make sacred or holy **:** set apart to a sacred purpose or to religious use **:** CONSECRATE, HALLOW ⟨God blessed the seventh day and *sanctified* it —Gen 2:3 (AV)⟩ **2 :** to make free from sin **:** cleanse from moral corruption and pollution **:** PURIFY **3 :** to impart or impute sacredness, inviolability, title to reverence, or respectability, or respect to **:** give sanction to ⟨what mankind has *sanctified* with usage —R.M.Weaver⟩ **4 :** to make efficient as the means of holiness **:** make productive of holiness or piety ⟨observe the day of the sabbath, to ~ it —Deut 5:12 (DV)⟩

sanc·ti·mo·ni·al \,saŋ(k)tə'mōnēəl\ *n* -s [LL *sanctimonialis* holy, pious, fr. L *sanctimonia* sanctimony + *-alis* -al] **:** NUN

sanc·ti·mo·ni·ous \ˌsaŋ(k)tə;mōnēəs, ,saiŋ-, -nyəs\ *adj* [L *sanctimonia* sanctimony + E *-ous*] **1 :** affecting piety **:** hypocritically devout **:** displaying high-mindedness with intent to impress ⟨easy to be ~ about loyalty —C.P.Curtis⟩ ⟨a woman who was religious without being ~ —G.S.Stokes⟩ **2** *archaic* **:** possessing sanctity **:** HOLY, SACRED **syn** see DEVOUT

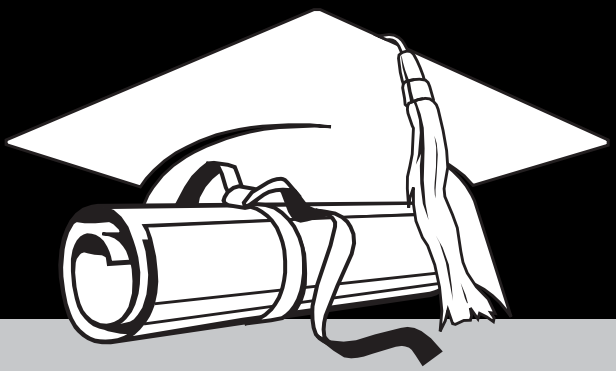
sanc·ti·mo·ni·ous·ly *adv* **:** in a sanctimonious manner ⟨... criticizing the situation —Chester Bowles⟩

sanc·ti·mo·ni·ous·ness *n* -ES **:** the quality or state of being sanctimonious ⟨almost reek of ~ —Kenneth Roberts⟩

sanc·ti·mo·ny \'saŋ(k)tə,mōnē, 'saiŋ-, -ni\ *n* -ES [MF *sanctimonie*, fr. L *sanctimonia*, fr. *sanctus* holy] **1** *obs* **:** devoutness of intent **:** HOLINESS **2** *obs* **:** SACREDNESS **3 :** outward or artificial saintliness **:** assumed or pretended holiness or piety **:** critical devoutness ⟨its religiousness is . . . free of pomposity —*Time*⟩

[1]**sanc·tion** \'saŋ(k)shən, 'saiŋ-\ *n* -s [MF or L; MF *sanction*, fr. L *sanction-*, *sanctio*, fr. *sanctus* (past part. of *sancire* to decree, make sacred) + *-ion-*, *-io* -ion — more at SACRED]

EDUCATION



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MAJOR ISSUES

Education

☑ **Proposition 98—Governor Proposes $2.9 Billion Increase**

- The budget proposes to leave 2004-05 Proposition 98 appropriations at roughly the level provided in the *2004-05 Budget Act*. This proposal would create $2.3 billion in General Fund savings over the two years. While the Governor's 2005-06 spending plan for K-14 grows by $2.9 billion, it does not include funding to cover all K-14 operating expenses that districts would incur under the budget proposal.
- We recommend the Legislature build a base budget for 2005-06 that fully funds the current K-14 education program (see page E-13).

☑ **State Teachers' Retirement System (STRS) Proposal Lacks Benefits**

- The Governor proposes to shift financial responsibility from the state to K-14 education for $469 million in annual contributions to STRS. The proposal, however, may not achieve the intended short-term goal of budgetary savings and does not resolve the longer-term issues with the current plan (see page E-28).

☑ **Some School Districts Face Difficult Fiscal Conditions**

- Some school districts face huge fiscal liabilities to pay for retiree health benefits. It will be difficult for districts to deal with these obligations without a long-term strategy. We recommend the Legislature take various actions to start addressing this problem (see page E-47).

- Around 40 percent of school districts face declining enrollment. The state continues to have inequities in revenue limit (general purpose) funding across school districts. We recommend an approach to address both of the problems, allowing declining enrollment districts to increase their per pupil revenue limit until they reach the equalization target (see page E-53).

☑ **Legislature Should Reject "Autopilot" Budgeting in Higher Education**

- The Governor's budget for the University of California (UC) and the California State University (CSU) follows his "compact" that establishes annual funding targets for the segments through 2010-11. By mapping out these funding choices six years ahead of time, the Governor's compact would put these budgets on autopilot.

- We recommend the Legislature disregard the compact, and instead consider its various funding choices annually based on what is needed to achieve the state's higher education goals as expressed in the Master Plan (see page E-149).

- The Governor's budget does not account for anticipated revenue from planned fee increases at UC and CSU. We recommend the Legislature include this revenue in its budget plan. This approach would allow for budgets that fully fund anticipated growth and inflation-driven cost increases while freeing up some General Fund monies relative to the Governor's proposal (see page E-178).

☑ **Set Community College Fees to Maximize Federal Funding**

- We also recommend the Legislature increase community college fees from $26 per unit to $33 per unit. This would raise about $100 million in new fee revenue that could fund legislative priorities. It would also leverage about $50 million in federal funds to reimburse middle-income families for the higher fees. Financially needy students are exempt from paying fees at community colleges (see page E-195).

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OVERVIEW

Education

The Governor's budget includes a total of $58 billion in operational funding from state, local, and federal sources for K-12 schools for 2005-06. This is an increase of $1.6 billion, or 2.9 percent, from estimated appropriations in the current year. The budget also includes a total of $34.6 billion in state, local, and federal sources for higher education. This is an increase of $1.3 billion, or 4 percent, from estimated expenditures in the current year.

Figure 1 shows support for K-12 and higher education for three years. It shows that spending on education will reach almost $93 billion in 2005-06 from all sources (not including capital outlay-related spending).

Figure 1

K-12 and Higher Education Funding

(Dollars in Millions)

	Actual 2003-04	Estimated 2004-05	Proposed 2005-06	Change From 2004-05	
				Amount	Percent
K-12[a]	$54,673	$56,470	$58,123	$1,653	2.9%
Higher education[b]	32,016	33,232	34,567	1,335	4.0
Totals	**$86,688**	**$89,701**	**$92,689**	**$2,988**	**3.3%**

[a] Includes state, local, and federal funds. Excludes debt service for general obligation bonds and local debt service.

[b] Includes state, local, and federal funds and student fee revenue. Excludes debt service for general obligation bonds.

FUNDING PER STUDENT

The Proposition 98 request for K-12 in 2005-06 represents $7,377 per student, as measured by average daily attendance (ADA). Proposed spending from all funding sources (excluding capital outlay and debt service) totals about $9,586 per ADA.

The Proposition 98 budget request for California Community Colleges (CCC) represents about $4,370 per full-time equivalent (FTE) student. When other state funds and student fee revenue are also considered, CCC will receive about $5,000 per FTE student. This compares to proposed total funding (General Fund and student fees) of $23,000 for each FTE student at the University of California (UC) and $11,500 for each FTE student at the California State University (CSU).

PROPOSITION 98

California voters enacted Proposition 98 in 1988 as an amendment to the State Constitution. The measure, which was later amended by Proposition 111, establishes a minimum funding level for K-12 schools and CCC. A small amount of annual Proposition 98 funding provides support for direct educational services provided by other agencies, such as the state's schools for deaf and blind individuals and the California Youth Authority. Proposition 98 funding constitutes over 70 percent of total K-12 funding and about two-thirds of total CCC funding.

The minimum funding levels are determined by one of three specific formulas. Figure 2 briefly explains the workings of Proposition 98, its "tests," and other major funding provisions. The five major factors involved in the calculation of each of the Proposition 98 tests are: (1) General Fund revenues, (2) state population, (3) personal income, (4) local property taxes, and (5) K-12 ADA.

Proposition 98 Allocations

Figure 3 (see page E-10) displays the budget's proposed allocations of Proposition 98 funding for K-12 schools and CCC. The budget proposes only technical adjustments to the current-year spending level of $47.1 billion, and increases funding to $50 billion for Proposition 98 in 2005-06 (an increase of $2.9 billion). The Governor does not provide the additional $1.1 billion in 2004-05 and $1.2 billion in 2005-06 that would have been needed to meet the funding target established in Chapter 213, Statutes of 2004 (SB 1101, Budget and Fiscal Review Committee). Under the Governor's budget, the General Fund cost of Proposition 98 is $2.4 billion more than

the current year, but a portion of this higher cost ($675 million) is to backfill local property tax revenues that the state transferred to local government. Proposition 98 funding issues are discussed in more detail in the "Proposition 98 Budget Priorities" section of this chapter.

Figure 2

Proposition 98 Basics

✓ ***Over time, K-14 funding increases to account for growth in K-12 attendance and growth in the economy.***

✓ ***There Are Three Formulas ("Tests") That Determine K-14 Funding.*** The test used to determine overall funding in a given budget year depends on how the economy and General Fund revenues grow from year to year.

- ***Test 1—Share of General Fund.*** Provides 39 percent of General Fund revenues. This test has not been used since 1988-89.
- ***Test 2—Growth in Per Capita Personal Income.*** Increases prior-year funding by growth in attendance and *per capita personal income*. Generally, this test is operative in years with normal to strong General Fund revenue growth.
- ***Test 3—Growth in General Fund Revenues.*** Increases prior-year funding by growth in attendance and *per capita General Fund revenues*. Generally, this test is operative when General Fund revenues fall or grow slowly.

✓ ***Legislature Can Suspend Proposition 98.*** With a two-thirds vote, the Legislature can suspend the guarantee for one year and provide any level of K-14 funding.

ENROLLMENT FUNDING

The Governor's budget makes changes to enrollment funding levels for K-12 and higher education. The budget fully funds a 0.79 percent increase in K-12 enrollment, a level which is considerably lower than annual enrollment growth during the 1990s. The K-12 enrollment is expected to grow even more slowly in coming years, as the children of the baby boomers move out of their K-12 years. Community college enrollment is funded for 3 percent growth in 2005-06, which is about one and one-half times the expected rate of growth in the adult population. Consistent with the Governor's "compacts" with the public universities, the Governor's budget funds enrollment increases of 2.5 percent at UC and CSU.

Figure 3

Governor's Proposed Proposition 98 Funding

(Dollars in Millions)

	2004-05		2005-06	Change From 2004-05 Revised	
	Budget Act	Revised[a]	Proposed	Amount	Percent
K-12 Proposition 98					
General Fund	$30,874	$30,992	$33,117	$2,125	6.9%
Local property tax revenue	11,214	11,192	11,593	401	3.6
Subtotals[b]	($42,087)	($42,183)	($44,710)	($2,527)	(6.0%)
CCC Proposition 98					
General Fund	$3,035	$3,036	$3,321	$285	9.4%
Local property tax revenue	1,772	1,750	1,827	77	4.2
Subtotals[b]	($4,807)	($4,787)	($5,148)	($361)	(7.5%)
Total Proposition 98[c]					
General Fund	$34,003	$34,124	$36,532	$2,410	7.1%
Local property tax revenue	12,986	12,941	13,420	479	3.7
Totals[b]	**$46,989**	**$47,065**	**$49,953**	**$2,888**	**6.1%**

a These dollar amounts reflect appropriations made to date or proposed by the Governor in the current year. The revised spending level reflects a $3.1 billion suspension of the minimum guarantee.

b May not add due to rounding.

c Total Proposition 98 also includes around $95 million in funding that goes to other state agencies for educational purposes.

SETTING EDUCATION PRIORITIES FOR 2005-06

In this chapter, we evaluate the proposed budget for K-12 and higher education, including proposed funding increases and reductions, budget/policy reforms, fund shifts and fee increases, and projected enrollment levels. The difficult fiscal environment that the state faces in 2005-06 makes it all the more important for the Legislature to reassess the effectiveness of current education policies and finance mechanisms. In both K-12 and higher education, we provide the Legislature with alternative approaches to the budget's proposal.

K-14 Priorities. An overriding issue for the Legislature in crafting the 2005-06 budget for K-12 education and CCC (both funded largely through Proposition 98 funds) is whether to maintain current-year spending at the level appropriated in the *2004-05 Budget Act*, augment current-year appropriations to the Chapter 213 target level ($2.3 billion more over the two years), or provide some funding level in between. In developing its 2005-06 Proposition 98 budget, we recommend the Legislature use a "current services" budget approach that fully funds the existing K-14 program. We identify some key areas of the K-14 budget where we recommend a different approach than that taken in the Governor's budget. These include State Teachers' Retirement System funding, mental health costs for special education students, and several of the Governor's other reform proposals. We also raise concerns about the current fiscal condition of school districts and the impact on districts of declining student enrollment.

Higher Education Priorities. For UC and CSU, the Governor's budget proposal largely follows the compacts he developed with the segments in spring 2004. Notwithstanding the compacts, the Governor's proposal offers little rationale for the proposed fee increases and growth funding for UC and CSU. We offer our own analysis of UC and CSU's funding needs, including recommendations with regard to student fees and enrollment growth.

For CCC, the Governor proposes a substantial increase for enrollment growth, but no new funding to advance the effort, begun in 2004-05, to equalize per student funding among community college districts. In the "California Community Colleges" section of this chapter, we assess the Governor's enrollment growth funding and accountability proposals. We also recommend increasing student fees at CCC to $33 per unit, which could increase total state funding on education by about $100 million, while leveraging about $50 million in federal financial aid. At the same time, it would add almost no new net costs for students with family incomes up to about $100,000.

CROSSCUTTING ISSUES

Education

PROPOSITION 98 BUDGET PRIORITIES

The Governor's budget proposes to leave 2004-05 Proposition 98 appropriations at roughly the level provided in the* 2004-05 Budget Act.** ***The proposal would create $2.3 billion in General Fund savings over two years. While the Governor's 2005-06 spending plan for K-14 grows by $2.9 billion, it does not include funding to cover all K-14 operating expenses that districts would incur under the budget proposal.

GOVERNOR'S MAJOR PROPOSALS

The Governor's budget proposes an increase in the Proposition 98 guarantee of $2.9 billion in 2005-06 compared to the revised 2004-05 spending level. This increase is sufficient to provide adjustments for K-14 growth in the student populations and the cost of living, a $329 million increase to K-12 school district revenue limits that partially restores reductions made during 2003-04, and $51 million for additional community college growth above the level suggested by demographic growth.

Budget Creates Costs Without Identifying Funding

The Governor's budget for K-14 education also includes several major policy issues that affect schools and community colleges. The budget, however, does not reflect the financial impact of these policy initiatives. Most importantly, the 2005-06 budget proposes to shift from the state to school districts and community colleges $469 million in annual State Teachers'

Retirement System (STRS) costs. The state has contributed this amount of non-Proposition 98 funds each year to pay for a portion of the system's costs. Beginning in 2005-06, the Governor's budget proposes that school and community college districts assume responsibility for these costs. No additional funds are proposed in the budget to help school districts pay for these new retirement costs.

The Governor also proposes to shift to school districts fiscal responsibility for mental health services needed by special education students. Under current law, these services are provided by county mental health agencies under a reimbursable state-mandated local program. Based on the most recent county claims, costs of this program totaled $143 million (non-Proposition 98 funds). By shifting responsibility for these services to school districts, the budget would also shift the cost of these mental health services to local education agencies. The special education budget includes $100 million that could be used to pay for these costs. No additional funds are proposed to cover the remaining $43 million of services.

Two other important proposals follow this same pattern. First, the budget includes a major vocational education initiative, requesting $20 million in one-time funds for the community colleges in support of the proposed reforms. Given the Governor's goal—to bring a "renewed emphasis" on vocational education in high school—it seems probable that the long-term cost of the plan would be much larger than the $20 million included in the proposal. Second, a pilot program is proposed to assess the impact of greater school-level control over the use of funding. No support, however, is requested for additional district costs associated with schoolsite budgeting or for the costs of an evaluation to determine whether the reforms increase student achievement.

Proposed Constitutional Amendments Affect K-14

The Governor also called a special session of the Legislature to address four major changes to the State Constitution that would affect school districts or community colleges. Specifically, the proposals:

- ***Proposition 98.*** Revamp the constitutional spending requirements of Proposition 98 as part of a larger reform of the state budget process. The measure would eliminate options for the state to reduce Proposition 98 funding levels during difficult budgetary times (Test 3 and suspension). Funding for K-14, however, would be subject to "across-the-board" reductions to the state budget that could occur under certain circumstances.
- ***Retirement.*** Prohibit all public agencies in California, including K-12 and community college districts, from enrolling new em-

ployees in a retirement plan that guarantees a specific benefit level upon retirement (known as a "defined benefit" plan). Instead, public agencies could only offer new employees (beginning July 1, 2007) "defined contribution" plans. These plans do not guarantee specific retirement benefits, but offer employers and employees certain other advantages.

- ***Merit Pay and Tenure.*** Alter existing regulation of local school district employee practices. The proposal would require districts to base employment decisions only on employee performance and the needs of the district and its students. The proposal also would extend from two years to ten years the amount of time teachers must perform satisfactorily before receiving employment protections known as "tenure."
- ***School Budget Reports.*** Require school districts to annually report to the public each school's revenues and expenditures.

CURRENT-YEAR GUARANTEE LEVEL IS PIVOTAL

A central issue facing the Legislature in developing the 2005-06 budget is the amount of Proposition 98 spending that ultimately is approved for 2004-05. As part of the *2004-05 Budget Act*, the state suspended the minimum Proposition 98 guarantee and set a target appropriation level that was $2 billion lower than the amount called for by the guarantee. The legislation authorizing the suspension—Chapter 213, Statutes of 2004 (SB 1101, Committee on Budget and Fiscal Review)—establishes a target funding level for K-14 education. The target suggests that higher General Fund revenues in 2004-05 would result in an increased funding level and lower revenues would reduce it.

The Governor's budget assumes that General Fund revenues in 2004-05 will be $2.2 billion higher than previously assumed. This would translate into an increase in the minimum guarantee of $1.1 billion in 2004-05. This higher current-year base also results in an increase in the guarantee of $1.2 billion in 2005-06. The budget, however, does not propose to appropriate these funds to schools and community colleges, only making technical adjustments to the current-year funding level. By leaving the level of Proposition 98 spending at roughly the level included in the *2004-05 Budget Act*, the Governor's budget frees about $2.3 billion over the two years to help address the state's budget problem.

What Level of Appropriation Is Required in 2004-05? Under the State Constitution, a suspension overrides all other Proposition 98 formulas (or tests) and establishes a new minimum guarantee based on the *amount*

appropriated for K-14 education in that year. Suspension means that any changes to the economy or student population have no impact on the required level of spending. Instead, the guarantee for that year is defined by the amount actually appropriated for schools and community colleges. Because the requirements of Proposition 98 are suspended in 2004-05, the $2.2 billion increase in General Fund revenues has no direct impact on the amount the state must spend.

While Chapter 213 signals the intent of the Legislature to appropriate additional Proposition 98 funding if revenues increased, the statute does not contain appropriation authority. Because the statute does not provide this authority, we believe the Legislature would have to take positive action in the future to do so. Absent such action, the minimum guarantee would "default" to the current level of appropriations. Thus, in our view the Legislature could achieve the $2.3 billion savings simply by not making additional Proposition 98 appropriations in the current year. For transparency, however, we would suggest that the Legislature amend Chapter 213 to clarify that the suspension level for 2004-05 should depend on the amount appropriated, and not a specified amount below the Proposition 98 minimum guarantee. This would eliminate any ambiguity.

LAO Forecast—Higher Revenues, Lower Guarantee

Our updated economic and revenue forecasts indicate that General Fund revenues will be significantly higher in 2004-05 and modestly higher in 2005-06 compared to the administration's revenue forecast. While this is good news for the state's overall fiscal picture, our projected increases would actually result in a lower estimate of the minimum guarantee under Proposition 98 in 2005-06.

Cost of Reaching Chapter 213 Target Would Increase to $4 Billion. Specifically, our forecast projects General Fund revenues will be $1.4 billion higher in 2004-05 and $765 million higher in 2005-06 compared to the amounts assumed in the Governor's budget. Figure 1 shows the impact that these revenues would have on the Proposition 98 obligations relative to the Governor's proposal. First, in the current year, the higher revenues would have no impact on Proposition 98 obligations if the Legislature concurs with the Governor's plan to remain at the current-year funding level ($47.1 billion). If however, the Legislature wanted to meet the target of Chapter 213, the Legislature would need to provide an additional $1.9 billion in the current year (using our revenue estimates). This would lead to an increase in budget-year obligations of $2.1 billion, for a two-year impact of $4 billion in additional costs.

Figure 1

Proposition 98 Spending Under Different Revenue Scenarios

(In Billions)

	2004-05	2005-06	Change
Governor's Budget Revenues			
Chapter 213 target	$48.2	$51.2	$3.0
Revised 2004-05 budget	47.1	50.0	2.9
Additional cost to reach Chapter 213 target	$1.1	$1.2	$0.1
Two-Year Totals		**$2.3**	
LAO Revenues			
Chapter 213 target	$49.0	$51.7	$2.7
Revised 2004-05 budget	47.1	49.6	2.5
Additional cost to reach Chapter 213 target	$1.9	$2.1	$0.2
Two-Year Totals		**$4.0**	

More Revenues But Lower 2005-06 Guarantee? Our Proposition 98 forecast provides an unintuitive outcome. While we forecast *higher* revenues in both years, the growth rate in revenues between years actually generates a *lower* guarantee level in 2005-06 than assumed in the Governor's budget. As stated above, we project $1.4 billion higher revenues in 2004-05 and only $765 million in additional revenues in 2005-06. Thus, approximately one-half of the higher revenues are one-time in nature. Since Proposition 98 drives off of year-to-year growth in General Fund revenues, the one-time revenues in 2004-05 actually decrease the year-to-year growth in General Fund revenues between 2004-05 and 2005-06. As a result, the year-to-year growth in Proposition 98 is actually less under our revenue forecast compared to the Governor. Under our forecast, Proposition 98 would grow by $2.5 billion in 2005-06, roughly $420 million less than the Governor.

BALANCE STATE AND LOCAL FISCAL NEEDS

We recommend the Legislature base the 2005-06 Proposition 98 spending level on the amount schools and community colleges need to continue current programs.

Our recommendation on the appropriate level of Proposition 98 spending in both the current and budget years reflects our view that the state needs to resolve its structural budget problem by bringing revenues and expenditures into alignment. The Governor's proposal to leave the 2004-05 appropriation level essentially unchanged is a critical component of the budget's plan for closing the budget gap over the next two years. As a result, moderating increases in the minimum guarantee will greatly assist the Legislature in addressing the state's structural budget problem.

We are reluctant, however, to recommend that the Legislature reduce 2005-06 Proposition 98 spending consistent with our revenue forecast (that is, $420 million below the Governor's proposed level). Our lower estimate is an artifact of the Proposition 98 formulas and not caused by a worsening in the state's revenue situation. The May Revision will provide updated information on the overall General Fund condition and amount required under the minimum guarantee for the budget year. That will give the Legislature another opportunity to balance its spending priorities—including K-14 education—with the need to address the state's budget problem as it completes work on the 2005-06 budget.

To develop its Proposition 98 spending plan, we recommend the Legislature develop a budget for schools and community colleges that provides for adjustments in workload and other anticipated costs for 2005-06. This approach has a couple of advantages for the Legislature. First, it helps the Legislature create a funding base that would allow schools and community colleges to continue current programs under most circumstances. Second, developing a workload budget helps ensure that the spending plan adequately funds the workload and costs the budget would impose on schools and colleges.

A workload budget also would provide a base the Legislature could build on if it decides to appropriate a higher level of funds for Proposition 98. If the Legislature wants to follow this path, we recommend using any additional funds to begin reducing the education "credit card" debt—state obligations to schools and community colleges the state has failed to pay in past years. We discuss the credit card debt later in this section.

Building a Base Budget for 2005-06

Figure 2 displays the elements of a current services budget for K-14 in 2005-06. We made the following workload adjustments:

- ***Growth and Cost-of-Living Adjustments (COLAs).*** Updating the 2004-05 base for changes in K-14 enrollment and the cost of living adds $2.4 billion. Our estimate of the COLA is slightly higher than the figure used in the Governor's budget—4.1 percent com-

pared to 3.93 percent—and adds $80 million in additional costs to the K-14 budget. Our higher estimate is based on data that were not available at the time the Governor's budget was developed.

- ***Ongoing Mandate Costs.*** We added $315 million to our workload budget for the ongoing cost of school district and community college mandates. The last time the state budget included ongoing funding for this constitutional obligation was 2001-02. The Governor's budget would continue the recent practice of deferring all Proposition 98 mandate costs in 2005-06—in effect, borrowing the funds from school districts. We recommend instead the Legislature include ongoing funding for this important state obligation.
- ***One-Time Funds.*** Another $185 million was added to restore to the ongoing budget program funding that was supported with one-time funds in 2004-05.

Figure 2

A Proposition 98 K-14 "Current Services" Budget

2005-06
(In Billions)

2004-05 base	$47.1
Growth	0.5
Cost of living	1.9
Restore base (one-time funds)	0.2
Ongoing cost of mandates	0.3
Total	**$50.0**
Amount above Governor's budget	—[a]
Amount above LAO guarantee	$0.5

[a] Less than $50 million.

Our current services budget exceeds slightly the amount of the minimum guarantee projected in the Governor's budget and in our alternate estimate of the minimum spending level. Specifically, the current services budget is $43 million higher than the level proposed in the Governor's

budget for 2005-06 and $463 million higher than our estimate of the guarantee under our revenue assumptions.

Align Budget With Workload Priorities

We recommend the Legislature delete $382 million for revenue limit deficit reduction and higher community college growth because the proposals represent increases that are not needed to maintain existing programs. In addition, we recommend the Legislature add $315 million for K-14 mandates.

Our current services budget highlights the fact that the proposed budget provides approximately the amount of funds needed to fund a current services budget. The budget contains two main proposals that exceed a current services level of funding—$329 million to restore cuts in K-12 revenue limits and $51 million for "excess growth" in community colleges (that is, above growth in adult population). The savings our budget achieves by excluding these discretionary increases are more than offset by increases for mandate costs and our higher COLA.

Our workload budget also shows that the proposed budget does not fully fund all K-14 costs it would create. Most significantly, the Governor's budget does not fund the ongoing costs of K-14 mandates. In our view, providing a funding source for ongoing K-14 mandates in the base budget constitutes a higher priority than discretionary increases for revenue limits or community college growth.

Therefore, we recommend the Legislature align the budget bill with the spending priorities of our K-14 workload budget. This would require the following specific changes:

- Delete $381 million in discretionary increases—$329 million for deficit factor reduction and $51 million for excess growth in community colleges.
- Restore annual ongoing funding for K-14 mandates ($315 million).

STRS Proposal Lacks Benefits

The Governor's budget also proposes to shift financial responsibility from the state to K-14 education for $469 million in annual contributions to STRS. Later in this section, we discuss this proposal and conclude that the Governor's plan fails to create short- or long-term benefits for the state. In the short run, the proposed shift is intended to save $469 million by requiring K-14 education to absorb these retirement costs. In our view, the proposal may not save the state any funds because we believe the Legislature could have to "rebench" the Proposition 98 guarantee and

appropriate the $469 million to schools and community colleges to pay for the increased local retirement contributions.

In the long run, the Governor's proposal does not offer the state, districts, or local employees any significant advantages. For the state, the proposal misses an opportunity to clarify the state's responsibility for long-term retirement fund liabilities. For districts and local employees, the proposal fails to offer additional flexibility over retirement benefits. For these reasons, we conclude that there is no strong rationale to support the STRS proposal. (Please see our discussion of the proposal in the "Crosscutting Issues" section of this chapter.)

K-14 Priorities Under a Higher Guarantee

If the Legislature chooses to provide a higher level of funding than suggested by our workload budget, additional funds would help the Legislature address a number of borrowing issues that have resulted from the lingering budget crisis. We have referred to this as the education credit card to reflect the amounts the state has borrowed from schools and community colleges. Figure 3 displays the "charges" on the education credit card.

Figure 3
Status of the Education Credit Card Debt

(In Millions)

One-time (Through 2004-05)		Ongoing (2005-06)	
Unpaid K-12 mandate payments	$1,400[a]	Ongoing K-14 mandate payments to budget	$315[a]
CCC and K-12 deferrals	1,271	Revenue limit reductions made in 2003-04	646
Total	**$2,667**	**Total**	**$961**
Grand Total		**$3,628**	

[a] Includes funding for the Standardized Testing and Reporting mandate, which is under review by the Commission on State Mandates.

The figure shows that our estimate of the credit card debt totals $3.6 billion. The largest charge results from unpaid school district claims for the cost of state-mandated local programs. Funding for mandates in the annual budget act ceased after 2001-02. We estimate that the ongoing cost of

mandated programs totals $315 million in 2005-06. The backlog in payments through 2004-05 totals $1.4 billion.

The second largest major contributor to the credit card is $1.3 billion in program deferrals. The deferrals created one-time savings by shifting costs from one fiscal year to the next. For instance, the budget shifts the June payment for school district general purpose funds (revenue limits) to July 1, thereby paying this obligation with funds from the succeeding year's Proposition 98 funds. Until the state pays the $1.3 billion one-time cost to retire this "loan," the state will need to extend this deferral each year if it does not want to negatively impact education programs.

The third element of the credit card is $646 million in revenue limit "deficit factor"—funds saved each year by the state resulting from past reductions in general purpose funding. While past-year savings from these cuts do not have to be repaid, restoring them would build these additional costs into the K-12 base budget. Repaying deficit factor, therefore, requires the Legislature to use ongoing funds. The 2005-06 budget proposes to spend $329 million to partially restore school district and county office revenue limits. If the Legislature wants to provide additional funding to K-14 education in either the current or budget years, we would suggest that it dedicate funds to reduce the outstanding obligations on the education credit card.

GOVERNOR'S VOCATIONAL EDUCATION REFORM

The 2005-06 budget proposes $20 million in support of a broad-based reform of vocational education in K-12 education. We believe the Governor's proposal addresses a significant problem, but lacks the level of detail necessary for the Legislature to fully evaluate it. We therefore recommend the Legislature direct the Department of Finance to provide to the budget subcommittees prior to budget hearings (1) the details of the proposed plan and (2) responses to our initial concerns about the proposal.

The *2005-06 Governor's Budget* proposes to strengthen vocational education in high schools to ensure "that all students have educational opportunities that lead to successful employment." According to the administration, the proposal builds on successful programs that are currently in place to create a "renewed emphasis" on vocational education in high schools.

The administration's reform package has two key elements. First, the proposal would dedicate $20 million in one-time Proposition 98 Reversion Account funds to encourage high schools to work with local California Community Colleges (CCC) to expand and improve vocational courses available to high school students. The plan seeks to build on successful "2+2" programs, in which students take two years of high school vocational courses that lead into a two-year CCC vocational credential or diploma program. Funds could be used for a wide variety of local activities, including curriculum development and equipment purchases.

Second, the plan calls for all middle school students to take a new vocational awareness class. The administration proposes to mandate middle school introductory vocational courses to (1) help students consider their long-term career goals and (2) provide information about available vocational options. According to the administration, the new course would replace an existing elective course.

The reform plan includes several other supporting changes, including:

- ***Increasing K-12 Accountability.*** The proposal would add to the existing School Accountability Report Card (SARC) new indicators that measure the success of schools in offering vocational courses and in helping students who take vocational education courses.
- ***Supporting Local Efforts to Expand Options.*** The reform proposal also would (1) revise K-12 and teacher credential requirements to help schools and colleges hire teachers who are familiar with the current skill needs of business and (2) allow CCC to increase the proportion of part-time faculty (above the existing 25 percent target) as needed to meet demand for vocational education courses.

Proposal Addresses an Important Problem

We think the Governor's budget has identified an important problem. In a forthcoming report (expected later this year), we discuss how a strong secondary vocational education system can mitigate several major problems in high schools.

May Help Reduce Dropouts. By giving students a greater range of choices in high school, improving vocational education could help address the state's high dropout rates. About 30 percent of students who begin ninth grade drop out before finishing high school. Low academic achievement is a major factor in dropping out. Convinced that academic success is unlikely, many low-performing students see little reason to stay in school. A range of academic and vocational choices could help keep students in school by giving them greater control over what they study and help them use high school to achieve their postgraduation goals.

Increase Financial Returns to Students. Successfully restructuring vocational programs into sequences of high-level courses would increase the value of these courses to students. Research suggests that most existing high school vocational courses deliver students few benefits (such as higher wages or higher rates of employment). This is because the courses taken by students do not build on each other. Research shows that sequences of high-level secondary or community college courses lead to higher-level occupational skills, which in turn can generate significant payoffs for students.

Create Better Alternatives to a College Diploma. Vocational sequences that prepare students for high-level jobs may encourage students to pursue more realistic postgraduation goals. Perhaps because high school vocational programs have low returns, high school students see college as virtually the only road to success. Surveys show that 56 percent of California's tenth graders want to attend a four-year university and 22 percent plan on

attending a two-year college after graduating from high school. Only about 10 percent of students plan on going directly into the workforce.

Data show a disconnect between these aspirations and actual experience. Less than one-half of those tenth graders attend university or college in the two years after graduating, and fewer than one in five earn a university or college degree. Most students who go to CCC drop out before receiving a diploma or transferring to a four-year institution.

When students fail to complete a rigorous academic or vocational program in high school or college, they enter the labor market with fewer saleable occupational skills. Strong secondary vocational programs expand the number of attractive options available to high school students. This can help students enter the labor market as adults with skills that improve their long-term job prospects.

Proposal Not Fully Developed

At the time this analysis was prepared, few details on the proposed changes were available. From the information that was available, the plan appears to address many of the critical areas that we see as problems for vocational education in high schools. The proposal, for instance, promotes an early focus on careers and the options available to high school students who are interested in specific occupation areas. The eighth grade "exploratory" class would help students (and their parents) develop a plan for taking the courses needed to achieve the students' postgraduation goals. We also think increasing the number of students involved in CCC vocational programs is a worthy goal—research shows very high wage returns to students who graduate from community college vocational programs. Finally, by adding data on the quality of school vocational programs into SARC, the proposal addresses the need to increase local accountability.

In concept, therefore, we think the proposed plan is headed in the right direction. We have several areas of concern with the reform plan, however, that warrant further legislative discussion.

The Eighth Grade Career Exploratory Course Would Create a Reimbursable State-Mandated Local Program. The Governor's plan would require districts to provide a middle school vocational course, which likely would result in a new state-mandated local program. In general, we advise against creating new programs through state mandates for two reasons. First, under the state mandate reimbursement process, it takes several years before the state begins to reimburse district costs. Second, the state has little control over the cost of new mandates, and our review of district mandate claims shows that local per pupil costs vary tremendously.

In addition, the Governor's proposal does not include an estimate of the likely costs of the new middle school course. An existing mandate that accomplished a similar goal—altering the courses needed to graduate from high school—costs about $13.5 million annually. There also may be additional one-time district costs to create a syllabus for the new exploratory course, obtain needed materials or textbooks, and train teachers.

We think the Legislature needs additional information on why the administration proposes to implement the middle school exploratory course through a state-mandated local program. In addition, the Legislature needs better information on the projected costs—one-time and ongoing—of the new course requirement.

Uses for CCC Funding Should Be Specified. As noted earlier, the Governor's proposal would provide $20 million to CCC for aligning vocational curricula between K-12 schools and community colleges' economic development programs. While we recognize the need for better alignment between vocational offerings in these two systems, we cannot determine the extent to which this funding would advance that goal. The administration could not provide us with many specifics about what kinds of activities would be funded with this money, on what basis it would be distributed, and what accountability provisions, if any, would be implemented. As a result, the administration could not explain why $20 million is the correct amount of funding to provide at this time.

The administration also proposes budget bill language that would make the allocation of the $20 million by CCC dependent on the submission of an expenditure plan that would be approved by the Department of Finance (DOF). In other the words, the Governor is asking the Legislature to approve the $20 million without knowing how the money will be spent. From our perspective, the budget process should allow the Legislature to review the administration's expenditure plan and include its own priorities for the use of the state's money. We believe a sufficiently detailed expenditure plan can be developed and reviewed within normal budget process timeframes.

The Legislature needs the details of how the $20 million fits into the overall reform plan. Without an expenditure plan that includes details on the proposed uses of the new funds, we would recommend the Legislature delete the $20 million appropriation.

Regional Occupational Programs and Centers (ROC/Ps) Have No Explicit Role in the Reform Program. About 40 percent of vocational courses taken by high school students are provided through ROC/Ps. These agencies provide regional support for vocational education. Most ROC/Ps are operated by county offices of education.

The Governor's proposal makes no mention of the role of ROC/Ps. From our perspective, ROC/Ps would contribute significantly to a strengthened system of secondary vocational education. Several changes to the mission of these agencies may be necessary, however. Switching the focus of ROC/Ps from administering individual low-level training classes to participating in sequences that result in two- and four-year skill certificates would align the goals of these regional agencies with the proposed reforms.

Reducing the number of adults served by ROC/Ps also would increase the amount of vocational resources available to high schools. In 2002-03, about one-third of ROC/P students were adults. Bringing all ROC/P resources to support vocational options for high school students would strengthen the proposed reform plan significantly. For these reasons, we think the Legislature needs more information on the role of ROC/Ps in the Governor's reform plan.

Students Need Better Information About the Likelihood of Success in College. As noted above, most high school students see college as virtually the only road to success in life. Research shows many high school graduates enroll in CCC without the academic skills needed to do college-level work. These students assume they are ready for college because they received reasonably good grades in high school. When they arrive at college, however, many students are required to retake courses they took in high school. Not surprisingly, perhaps, these students are less likely to earn a CCC degree or transfer to a four-year institution.

These findings indicate that students need early and ongoing information about whether they are "on track" for gaining the academic skills needed for college. Students and parents need data *other than grades* (which follow no statewide standard) with which to evaluate a student's likelihood of success in an academic college or university program. In addition, the information would help students and parents assess the academic requirements of the different vocational choices available at a high school.

Legislature Needs Details

While we think the broad outlines of the proposal hold promise, key details of the plan are unavailable. Therefore, we recommend the Legislature direct DOF to provide prior to budget hearings the specifics of the proposals contained in the proposed reform package, including responses to the specific concerns raised in this analysis.

STATE TEACHERS' RETIREMENT SYSTEM (1920)

The Governor's budget proposes shifting the state's contribution for basic teacher retirement to schools. (This includes K-12 school districts, county offices of education, and community colleges.) The budget assumes $469 million in General Fund savings from this reduction in state contributions to the State Teachers' Retirement System (STRS).

In this piece, we:

- Describe the retirement plan for teachers, its funding, and its unfunded liability.
- Lay out criteria for increasing local control, flexibility, and responsibility for a teacher retirement system.
- Describe and evaluate the Governor's proposal to shift contributions to school districts in the context of these goals.

BACKGROUND

The Basics of the STRS Plan

Defined Benefit Pays 2 Percent at 60. All K-12 and community college teachers in public schools who work at least half-time are required to participate in the state-sponsored retirement plan administered by STRS. This is a "defined benefit" program, which guarantees a certain lifetime monthly pension benefit based on salary, age, and years of service at retirement. The basic defined benefit pension for retired teachers pays 2 percent of salary for each year of service at age 60.

Recent Benefit Enhancements. Beginning in the late 1990s, when STRS investment returns had resulted in full plan funding, the state approved a series of benefit enhancements. Effective in 1999, the state approved higher

percent-of-salary formulas to calculate pension benefits for teachers who are above 60 years of age and/or have 30 years of service.

Effective in 2001, the state again enhanced benefits as investments continued to surge. These changes instituted the following:

- Highest one-year salary (rather than the standard three-year period) to calculate pensions for teachers with 25 or more years of service.
- Additional dollar amounts per month for teachers who retire by the end of 2010 with 30 or more years of service.
- Diversion of 25 percent of teacher contributions—2 percent of the total 8 percent—to a new defined benefit supplement (DBS) program. This program includes individual accounts designed to provide extra retirement income above the defined benefit pension. This diversion is in effect through 2010.
- The STRS payment of Medicare Part A (hospitalization insurance) premiums for retiring teachers who did not pay Medicare taxes (hired before April 1986) and must, therefore, pay the full Part A premium to participate in the federal program.

In addition, the state also approved:

- Allowing retirement credit for accumulated sick leave.
- Increasing the inflation protection benefit from 75 percent up to 80 percent. This benefit increases retirees' pensions when inflation erodes their initial allowances to below 80 percent of their original purchasing power.

Three Contribution Sources Finance Benefits. Contributions to STRS are fixed in statute. Teachers contribute 8 percent of salary to STRS, while school districts contribute 8.25 percent. Figure 1 (see next page) compares employee and employer contribution rates for STRS and related or comparable Public Employees' Retirement System (PERS) plans.

In addition to the teacher and school contributions, the state contributes 4.517 percent of teacher payroll to STRS (calculated on payroll data from two fiscal years ago). The state contribution includes:

- 2.017 percent for the enhanced defined benefit program. This payment would be $469 million in 2005-06, if not for the Governor's proposal to shift the payment to school districts.
- 2.5 percent to finance purchasing power protection at 80 percent. This payment will contribute $581 million in 2005-06.

Figure 1

STRS Retirement Contributions Less Than Average PERS Contributions

	STRS	PERS Miscellaneous Tier 1	PERS School Employees
Employees			
Pension	8.0%	5.0%[a]	7.0%
Social Security	—	6.2	6.2
Totals	**8.0%**	**11.2%**	**13.2%**
Employers			
Pension	8.25%	12.4%[b]	7.6%[b]
Social Security	—	6.2	6.2
Totals	**8.25%**	**18.6%**	**13.8%**

[a] On amount of monthly salary in excess of $513.

[b] Varies annually for State Miscellaneous Tier 1 and noncertificated school employees. Amount shown is the 25-year average contribution rate.

Unlike typical defined benefit programs such as those administered by PERS, neither the STRS employer nor the state contribution rate varies annually to make up funding shortfalls or assess credits for actuarial surpluses.

Surcharge Triggered for First Time. The state also pays a surcharge when the teacher and school district contributions noted above are not sufficient to fully fund the pre-enhancement benefits within a 30-year period. Because of the downturn in the stock market, an actuarial valuation as of June 30, 2003 showed a $118 million shortfall in these baseline benefits—one-tenth of 1 percent of accrued liability. Consequently, this surcharge kicked in for the first time in the current year at 0.524 percent for three quarterly payments. This amounts to an additional $92 million from the General Fund in 2004-05.

The Governor's budget assumes this surcharge is discontinued in 2005-06 based on greater-than-assumed investment returns for 2003-04. It will not be known, however, whether the surcharge will continue until a new valuation becomes available in the spring. If it does continue, the 2005-06 General Fund cost for a full year would be between an estimated $120 million and $170 million.

Actuarial Valuation Finds Funding Shortfall

In addition to the small shortfall in pre-enhancement benefits (triggering the current-year surcharge), the recent valuation also showed a substantial $23 billion unfunded liability for the entire system, including enhanced benefits. That is, existing contributions from teachers, school districts, and the state are not sufficient to fully fund retirement benefits. As a result, STRS has just 82 percent of the assets necessary to pay accrued benefits.

As noted above, the pre-enhancement benefit structure has just a fractional shortfall. Consequently, the large systemwide unfunded liability results from the recent benefit enhancements. As described in the nearby box, STRS is currently reviewing options to address this shortfall.

Local Program Has No Local Control or Responsibility

System Problems

We believe there are three main problems with the current method of providing teacher retirement benefits.

Passive State Role in Teacher Compensation, Except for Retirement. As described above, the state is extensively involved in providing teacher retirement benefits and designating funding for this local program. This active role is contrary to the state's passive role in other forms of teacher compensation. The most significant form of compensation—teacher salaries—is left to local school districts and their employees to determine through collective bargaining. Moreover, because the state contributes to the retirement system, local districts do not bear the full costs of retirement plans, unlike teacher salaries.

No Plan Flexibility. In addition, the state-run system limits the choices of both school districts and teachers. With a single benefit structure and required contributions spelled out in statute, districts and teachers have no choices about how best to meet their pension needs. For example, some districts might prefer to use retirement contributions to finance other pension plans that better meet their overall funding needs. Similarly, teacher retirement needs may vary dramatically. Some teachers may prefer to weight their compensation toward present needs. Other teachers may want to forego some current salary for an even more generous retirement allowance than that provided through the STRS program.

State Viewed as Funder of Last Resort. As noted above, all contributing parties—teachers, school districts, and the state—have fixed contributions in statute. Thus, there is no designated responsibility for long-term fund-

ing shortfalls, such as the current $23 billion gap. In fact, because the state requires school district participation and designates the rates paid by teachers and school districts, the Legislature may feel compelled to pick up some or all of the unfunded liability despite the local nature of the program. In this way, the current system prevents funding decisions from being viewed as a local responsibility.

Long-Term Solutions

In our view, the long-term solution to these issues is to put decision making and responsibility for school retirement (including nonteaching or noncertificated employees) at the local level with employers (school districts) and employees (teachers). In other words, treat teacher retirement the same as other local government retirement programs. This would include:

- Having all costs borne by school districts and/or teachers, rather than the state being responsible for some share of costs.

Larger State Teachers' Retirement System (STRS) Funding Issue Looms

Shortfall Amounts to an Extra $1 Billion in Annual Contributions. The Governor's cost-shift proposal comes at a time when STRS faces another significant funding issue—the $23 billion unfunded liability noted in the main text. The STRS estimates that the retirement fund needs the equivalent of an additional 4.438 percent of salary over a 30-year period to retire the unfunded liability. This amounts to additional contributions exceeding $1 billion annually.

Options for Closing the Gap. The STRS has developed a dozen options for the board to consider to address the identified shortfall. Most of these options would require legislative action. The options can be grouped into three categories:

- ***Rescinding Recent Benefit Increases.*** The majority of the options would roll back benefits provided to teachers in recent years. In most cases, these changes could only be implemented for teachers who begin working after the new changes take effect. (Courts have considered pension plans to be part of the employment contract. Once a teacher begins working, therefore, the pension is not changeable without some offsetting benefit.)

Continued

- Allowing local flexibility for schools to choose different retirement plans—for teachers and noncertificated staff—that best meet local needs. This could be through STRS, PERS, or other venues such as joint powers authorities.
- Assuring fiscal soundness in that all potential costs are designated to be covered by employers and employees without the necessity of future statutory changes.

It is these criteria that we use to evaluate the long-term impact of the Governor's proposal for teacher retirement. In addition, there are short-term issues the proposal raises as a 2005-06 budget balancing solution.

GOVERNOR PROPOSES COST SHIFT TO SCHOOL DISTRICTS

Proposal

The budget proposes shifting the state's benefits contribution to school districts. (The state would continue annually paying 2.5 percent of payroll

- ***Additional Contributions.*** The state could increase contributions for teachers, school districts, and/or the state to cover the liability. As with reductions in benefits, the state generally would not be able to increase current teachers' contribution rates.
- ***Refinancing the Unfunded Liability.*** The STRS typically amortizes unfunded liabilities over a 30-year period. One refinancing option developed by STRS would stretch these payments over 40 years. (This time period would exceed the bounds of what is allowed for private pensions and is outside the norm for the state's practice.) Another option would be the issuance of a pension obligation bond. By issuing a bond at a lower interest rate than STRS' assumed rate of return (currently 8 percent), the state could reduce its interest payments over time. The Legislature would have to determine who is responsible for providing the resources to pay off the bond.

STRS Board Will Weigh Options This Spring. The STRS board has asked constituent groups for their comments, preferences, and recommendations on these options. The board has also requested an updated actuarial valuation as of June 30, 2004, which will be available in the spring. After this process, the board plans to bring proposals to the Legislature to address the unfunded liability.

to the inflation protection account.) The proposal would increase districts' contributions by 2 percent of payroll, resulting in a total district payment of 10.25 percent. (The state's contribution of 2.017 percent of payroll from two years ago is equivalent to a district payment of 2 percent at current payroll.) This amounts to roughly $500 million in additional contributions. The Governor's proposal would allow school districts to pass through to employees this additional contribution through collective bargaining. Consequently, teachers could contribute as much as 10 percent of their wages toward retirement.

To maintain take-home pay, however, teachers would also have the option of ending the equivalent diversion—2 percent—of the employee contribution to DBS (described previously). This component of the Governor's proposal is not contingent on school districts passing through the shifted responsibility for the 2 percent benefits contribution. Teachers could elect to stop contributing to DBS and receive that compensation in take-home pay regardless of whether districts or teachers pay the benefits contribution.

The administration proposal to shift the state's benefits contribution to school districts also includes eliminating the statutory provision for the surcharge when there is an unfunded liability in the pre-enhancement benefits.

Administration Asserts State Commitment Fulfilled. The administration asserts that the state fulfilled its 1971 promise—included in Chapter 1305, Statutes of 1971 (AB 543, Barnes)—to contribute a fixed dollar amount to the system for 30 years. This period would have ended in 2001-02, four years after the STRS program reached 100 percent funding.

Short Term: Does the Governor's Proposal Work As a 2005-06 Budget Solution?

We find that the Governor's proposal to shift the state benefits contribution to school districts likely would not achieve the intended savings under current law.

The Governor's proposed budget solution assumes the shift of STRS costs would provide ongoing General Fund relief. As we discuss below, however, these savings may not be achievable.

Shift Could Require Proposition 98 "Rebenching." Retirement contributions for school teachers and administrators are an operating cost schools face, like salaries and other benefits. When the state was implementing Proposition 98, however, it decided which programs to include within the minimum guarantee. At that time, the state decided to keep its STRS contri-

butions outside of the guarantee. While the state can move a funding responsibility from outside of Proposition 98 into the guarantee, state law requires that the minimum guarantee be rebenched to reflect this added responsibility. Thus, the Governor's proposal would likely require a $469 million upward rebenching of the minimum guarantee. If so, the proposal would not result in any General Fund savings.

Long Term: Does the Proposal Move Toward the Goals of Local Control and Responsibility?

The Governor's proposal would not fundamentally reform the State Teachers' Retirement System. To move towards a retirement system that emphasizes local control and responsibility, the Legislature would need to focus on a new approach for new teachers.

Shortcomings in System Would Remain. On a long-term basis, the Governor's proposal would not bring the state significantly closer to a teachers' retirement system which reflects local control and responsibility.

- ***Local Control.*** The Governor's proposal would shift the costs of a local program to the local level. Yet, the proposal would not fundamentally change the state's role with regard to STRS. First, the state would continue to have an active role in the costs of the program—by contributing to the purchasing protection program. Second, the state would remain actively involved in determining future benefit changes.
- ***Local Flexibility.*** The Governor's proposal also would not increase flexibility for school districts or teachers. Every school district would continue to offer the same retirement plan for teachers, regardless of local circumstances.
- ***Designated Funding Responsibility.*** Finally, the proposal would not designate which entity would be responsible for any financial shortfalls. Consequently, the state could continue to be viewed as the funder of last resort, reducing local responsibility for the program.

Limitations on Changing System for Existing Teachers. For these reasons, the Governor's proposed cost shift would not fundamentally reform the existing STRS system. For existing teachers, the Legislature may find it difficult to reach the long-term goals of local control, flexibility, and designated funding responsibility with any proposal. Once in place, retirement systems are difficult to alter. By viewing a retirement program as part of the employer-employee contract, the courts have placed significant limits on the types of changes that can be made to a current employee's retirement

program. Additionally, the state will be required to designate a source of funding to pay off the current STRS unfunded liability.

Proposals Regarding New Teachers. For new teachers, however, the Legislature would have significantly more flexibility in designing a system that focused on local control and responsibility. The Governor, for example, has proposed requiring all new state, local government, and school employees in California to participate in defined contribution retirement plans. We discuss his proposal in detail—as well as alternatives—in "Part V" of *The 2005-06 Budget: Perspectives and Issues*.

INTRODUCTION

K-12 Education

The budget proposes to provide a $2.5 billion (6 percent) increase in K-12 Proposition 98 funding from the 2004-05 level. Most of the new funding is used to fully fund attendance growth, and provide a cost-of-living adjustment (COLA) plus an additional $329 million to restore part of a prior-year COLA. Adjusting for deferrals funding, schools would receive $7,377 per pupil, or 5.2 percent, more than revised per pupil expenditures in the current year. The Governor proposes not to fund a $1.1 billion increase in funding in the current year that would be needed to meet the targeted funding level in the bill suspending Proposition 98 for 2004-05. The two-year savings from this proposal is $2.3 billion. The Governor proposes to transfer from the state to school districts and community colleges a $469 million State Teachers' Retirement System cost obligation (the K-12 share is $433 million).

Overview of K-12 Education Spending

Figure 1(see next page) displays all significant sources for K-12 education for the budget year and two previous years. As the figure shows, Proposition 98 funding constitutes over 70 percent of overall K-12 funding. Proposition 98 funding for K-12 increases $2.5 billion (6 percent) from the 2004-05 level. However, other funding for K-12 falls by a combined $723 million (see Figure 1).

Local Government Deals Require Higher General Fund Support for Proposition 98. The $2.5 billion increase in K-12 Proposition 98 funding is supported mainly by the General Fund ($2.1 billion). Since 2003-04 the K-12 share of Proposition 98 supported by the General Fund has increased from 67 percent in 2003-04 to 74 percent in the proposed budget. The main cause of the increased General Fund share of Proposition 98 is transfers of local property tax revenues from schools to local government to meet the requirements of the vehicle license fee (VLF) "swap" and the "triple flip" payment mechanism for the deficit reduction bond passed by the voters in March 2004. The Department of Finance (DOF) forecasted that underlying local property tax revenues would grow by 9 percent, which would have provided almost $1.1 billion in year-to-year growth. However, technical

adjustments to the VLF swap and triple flip amounts require an additional $675 million to be transferred from schools to local government. Thus, the growth in local property tax revenues in 2005-06 is only $401 million (3.6 percent).

Figure 1

K-12 Education Budget Summary

(Dollars in Millions)

	Actual 2003-04	Revised 2004-05	Proposed 2005-06	Change From 2004-05 Amount	Change From 2004-05 Percent
K-12 Proposition 98					
State General Fund	$28,154	$30,992	$33,117	$2,125	6.9%
Local property tax revenue	13,656	11,192	11,593	401	3.6
Subtotals, Proposition 98	($41,810)	($42,183)	($44,710)	($2,527)	(6.0%)
Other Funds					
General Fund					
Teacher retirement	$469	$1,050	$502	-$549	-$52.3%
Bond payments	890	1,674	1,825	151	9.0
Other programs	254	720	441	-280	-38.8
State lottery funds	873	810	810	—	—
Other state programs	112	110	105	-5	-4.5
Federal funds	7,154	7,584	7,533	-51	-0.7
Other local funds	5,195	5,206	5,217	10	0.2
Subtotals, other funds	($14,948)	($17,155)	($16,433)	(-$723)	(-4.2%)
Totals	**$56,758**	**$59,339**	**$61,143**	**$1,804**	**3.0%**
K-12 Proposition 98					
Average daily attendance (ADA)	5,958,356	6,015,984	6,063,491	47,507	0.8%
Budgeted amount per ADA	$7,017	$7,012	$7,374	$362	5.2

Totals may not add due to rounding.

Proposed Reductions in Non-Proposition 98 Spending. The budget proposes to decrease non-Proposition 98 funding for K-12 by a net of $723 million in 2005-06. The key changes include:

- ***Shifting the Responsibility for the State Teachers' Retirement System (STRS) Contributions From State to School Districts—Decrease of $433 Million.*** The state's General Fund currently contributes roughly 2 percent of teacher payroll annually for the STRS base

program. The budget proposes to shift this payment to school districts and/or teachers. This would result in 2005-06 General Fund savings of $469 million ($433 million of this is costs shifted to school districts and the remainder is shifted to the community colleges).

- ***One-Time STRS Surcharge Triggers Off—Decrease of $94 Million.*** In the current year, a funding shortfall in the STRS base program triggered a 0.524 percent General Fund surcharge for three-quarters of the year. This amounts to $94 million. The administration assumes that this surcharge will not continue in 2005-06 (at a full year cost of at least $122 million) because greater-than-assumed investment returns in 2003-04 may have erased the small shortfall that triggered the surcharge. It is our understanding that the statutory provision for a surcharge would be eliminated as part of the administration's proposed benefits funding shift.

- ***School Bond Debt Service—Increase of $151 Million.*** The budget's increase in debt service on school bonds reflects recent investments the state has made in school construction and renovation through Proposition 1A (1998) and Proposition 47 (2002).

- ***Proposition 98 Reversion Account Reductions—Decrease of $203 Million.*** Most of the decrease in "General Fund—Other programs" in Figure 1 results from a $203 million reduction in funds available in the Proposition 98 Reversion Account. The Reversion Account reappropriates funds that were appropriated to Proposition 98 in the past, but were not used. The Reversion Account balances are projected to be less for 2005-06 largely because the state has reduced funding for many of the programs that have historically generated reversion funding. Starting in 2005-06, one-half of the funds in the Reversion Account are transferred to an emergency fund for facilities as part of the *Williams v. California* lawsuit settlement.

- ***Federal Funding Reductions Reflect Conservative Estimate—Decrease of $51 Million.*** The Governor's budget makes conservative assumptions about the availability of federal funding in 2005-06 because the federal budget was passed too late to incorporate into the budget. We now have early estimates of the year-to-year change in federal funding. The federal Department of Education estimates that federal funding for California education will increase around $75 million in 2005-06. Thus, the Governor has underbudgeted federal funds by around $125 million. The DOF informs us that they will reflect additional federal funds in the May Revision.

Per Pupil Spending Grows by $362 in 2005-06

The Governor's budget provides an additional $362 per pupil, a 5.2 percent increase from the current year. Figure 2 shows per pupil spending in actual dollars over the last decade. The figure shows two distinct trends—a fast growth period in the late 1990s, and a slow growth period between 2000-01 and 2004-05. Spending per pupil increased in each year of this period. However, these spending levels do not take into account the effects of inflation. Figure 3 adjusts per pupil spending for inflation. K-12 spending since 2000-01 has not kept pace with rising costs, declining 1.3 percent per year, on average, between 2000-01 and 2004-05. Looking at changes over the last decade, spending (in inflation-adjusted terms) has increased by approximately $930 per pupil (14 percent). The Governor's proposal would end the recent trend of reduction, growing per pupil spending 2.3 percent after adjusting for the effect of inflation.

Figure 2

K-12 Per Pupil Spending

(Nominal Dollars)

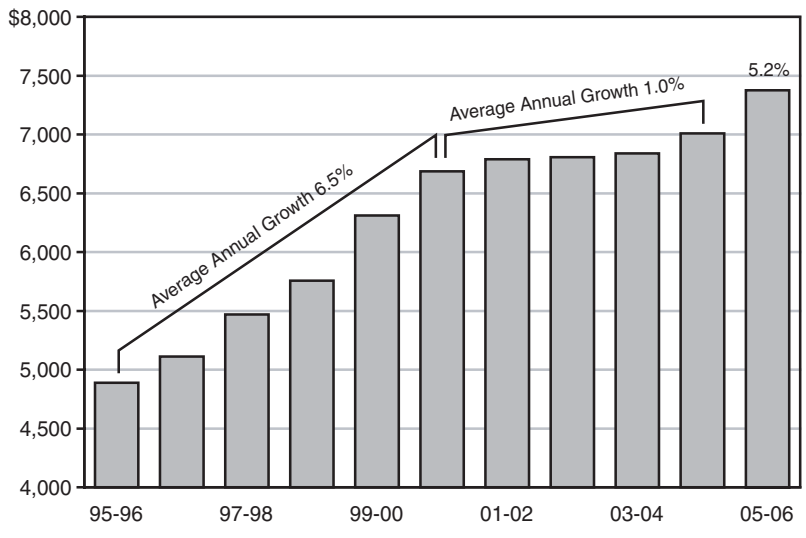
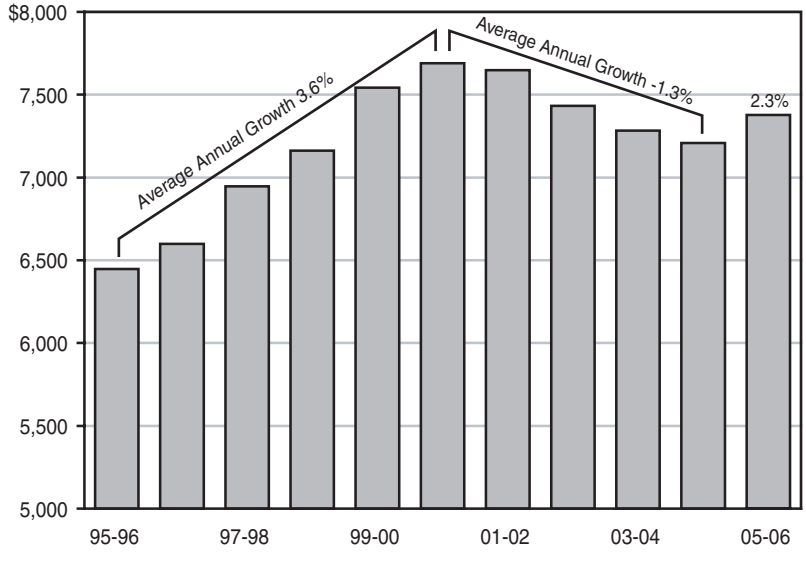


Figure 3

K-12 Per Pupil Spending Adusted for Inflation



Major K-12 Funding Changes

Figure 4 (see next page) displays the major K-12 funding changes from the *2004-05 Budget Act*. In the current year, the Governor's budget reflects a net $89 million increase resulting mainly from higher-than-expected attendance. In 2005-06, the Governor's budget proposes about $2.5 billion in new K-12 expenditures for the following purposes.

- ***Revenue Limit Growth and COLAs—$1.5 Billion.*** The Governor fully funds 0.79 percent growth in revenue limits ($234.7 million), and a 3.93 percent COLA ($1.2 billion).
- ***Deficit Factor Reduction—$329 Million.*** In 2003-04, the state did not provide a COLA (1.8 percent), and reduced revenue limits by 1.2 percent. At that time, the state created an obligation to restore the reductions at some point in the future. That obligation is referred to as the "deficit factor." The budget provides $329 million to reduce the deficit factor from around 2.1 percent to 1.1 percent.
- ***Categorical Growth and COLAs—$588 Million.*** The Governor fully funds growth and COLAs for categorical programs including $427.6 million for COLAs and $160 million for growth.

- ***Restoration of Categorical Funding.*** To help balance the 2004-05 budget, the state used one-time funds to support ongoing education programs. The Governor provides ongoing funding for these programs starting in 2005-06.

Figure 4

Major K-12 Proposition 98 Changes

(In Millions)	
2004-05 Budget Act	**$42,087.3**
Additional K-12 revenue limit	$93.2
Other	-4.7
2004-05 Revised K-12 Spending Level	**$42,183.3**
Revenue Limit	
Cost-of-living adjustments (COLAs)	$1,222.1
Growth	234.7
Deficit factor reduction	329.3
Subtotal	($1,786.1)
Categorical Programs	
COLAs	$427.6
Growth	160.0
Restore categoricals funded with one-time funds	146.5
Other	6.5
Subtotal	($740.6)
Total Changes	**$2,526.7**
2005-06 Proposed	**$44,710.0**
Change From Revised 2004-05	
Amount	$2,526.7
Percent	6%

Proposition 98 Spending by Major Program

Figure 5 shows Proposition 98 spending for major K-12 programs adjusted for funding deferrals. The budget provides almost $33 billion for revenue limits, $3.2 billion for special education, and almost $1.7 billion for K-3 class size reduction (CSR).

Figure 5

Major K-12 Education Programs Funded by Proposition 98

(Dollars in Millions)

	Revised 2004-05[a]	Proposed 2005-06[a]	Change Amount	Change Percent
Revenue Limits				
General Fund	$19,513.2	$20,912.8	$1,399.7	7.2%
Local property tax	10,859.1	11,245.3	386.2	3.6
Subtotals	($30,372.3)	($32,158.2)	($1,785.8)	(5.9%)
Categorical Programs				
Special education[b]	$3,051.2	$3,239.2	$188.0	6.2%
K-3 class size reduction	1,651.8	1,671.6	19.8	1.2
Child development and care	1,097.4	1,177.9	80.5	7.3
Targeted Instructional Improvement Block Grant[c]	930.2	974.4	44.2	4.8
Adult education	606.5	646.1	39.6	6.5
Economic Impact Aid	536.2	585.2	48.9	9.1
Regional Occupation Centers and Programs	393.3	419.5	26.2	6.7
Instructional Materials Block Grant	363.0	380.2	17.2	4.8
Public School Accountability Act	249.2	249.2	—	—
Deferred maintenance	250.4	267.4	17.0	6.8
Home-to-school transportation	541.9	567.7	25.8	4.8
School and Library Improvement Block Grant[c]	402.5	421.6	19.1	4.8
Professional Development Block Grant[c]	239.1	248.6	9.5	4.0
Pupil Retention Block Grant[c]	164.3	174.1	9.8	6.0
Mandated supplemental instruction (summer school)	281.3	293.5	12.2	4.3
Other	1,161.7	1,255.0	93.3	7.9
Deferrals and other adjustments	-111.2	-19.3	91.9	-82.6
Subtotals	($11,810.7)	($12,551.9)	($741.2)	(6.3%)
Totals	**$42,183.0**	**$44,710.1**	**$2,527.0**	**6.0%**

a Amounts adjusted for deferrals. We count funds toward the fiscal year in which school districts programmatically commit the resources. The deferrals mean, however, that the districts technically do not receive the funds until the beginning of the next fiscal year.

b Special education includes both General Fund and local property tax revenues.

c Chapter 871, Statutes of 2004 (AB 825, Firebaugh), created these new categorical block grants. The 2004-05 amounts include funding provided for the predecessor programs.

Enrollment Trends

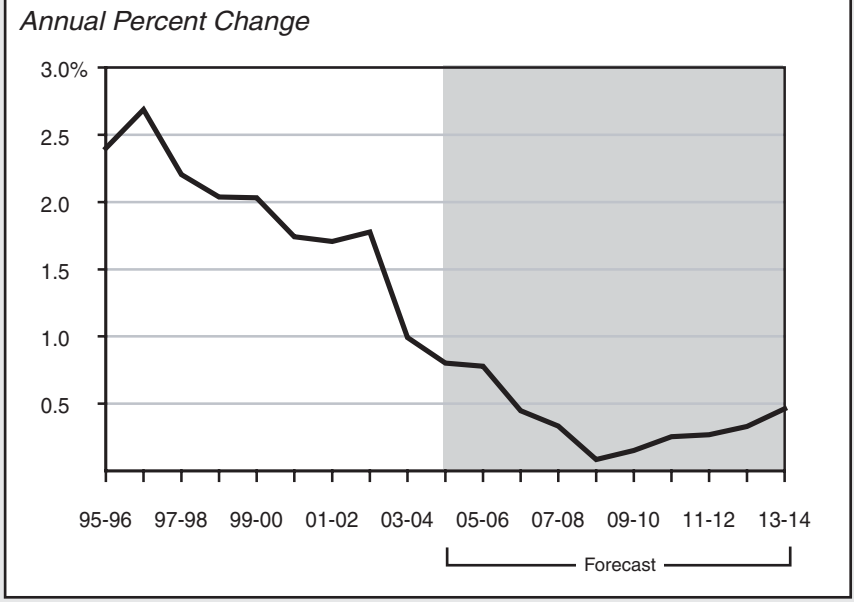
Enrollment growth significantly shapes the Legislature's annual K-12 budget and policy decisions. When enrollment grows slowly, for example, fewer resources are needed to meet statutory funding obligations for revenue limits and K-12 education categorical programs. This leaves more General Fund resources available for other budget priorities both within K-12 education and outside it. Conversely, when enrollment grows rapidly (as it did in the 1990s), the state must dedicate a larger share of the budget to education. In light of the important implications of enrollment growth, we describe below two major trends in the K-12 student population.

The enrollment numbers used in this section are from DOF's Demographic Research Unit and reflect aggregate, statewide enrollment. While the enrollment trends described here will likely differ from those in any given school district, they reflect the overall patterns the state is likely to see in the near future.

K-12 Enrollment Growth to Slow Significantly. K-12 enrollment is projected to increase by about 0.8 percent in 2005-06, bringing total enrollment to about 6.3 million students. Figure 6 shows how enrollment growth has steadily slowed since the mid-1990s. The figure also indicates that K-12 enrollment growth will continue to slow until 2008-09, when it will turn upward.

Figure 6

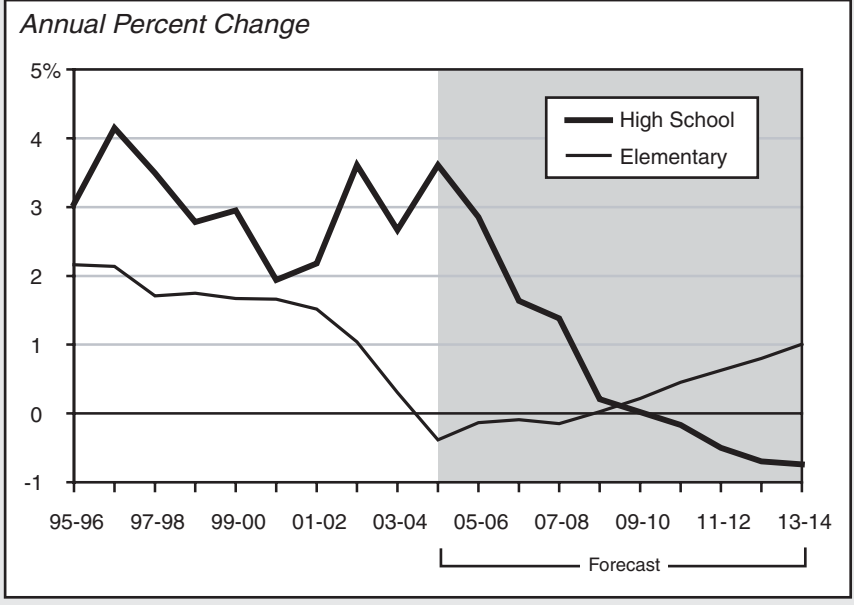
K-12 Enrollment Growth



Divergent Trends in Elementary and High School Enrollment. Figure 7 shows that the steady decline in K-12 enrollment growth masks two distinct trends in elementary (grades K-8) and high school (grades 9 through 12) enrollment. Elementary school enrollment growth has gradually slowed since 1995-96. This enrollment is expected to decline annually between 2004-05 and 2008-09. In contrast, high school enrollment growth has been growing rapidly, with a 3.6 percent increase in 2004-05. Beginning in the budget year, growth is expected to slow sharply, becoming negative in 2010-11. Expected growth from the current year to 2007-08 is approximately 115,000 pupils (6 percent). Between 2007-08 and 2013-14, however, enrollment will fall by almost 40,000 students.

Figure 7

Elementary and High School Enrollment Growth



Budget and Policy Implications. These enrollment trends have significant budgetary and policy implications for issues such as CSR, teacher demand, and facilities investment. A few of the major implications include:

- A 1 percent increase in K-12 enrollment requires an increase of approximately $450 million to maintain annual K-12 expenditures per pupil.

- As enrollment growth slows, a smaller share of the state's new revenues will be consumed by costs associated with funding additional pupils. The Legislature will then have the option of devoting these revenues to increasing per pupil spending or to other budget priorities.
- In the near term, programs aimed at elementary grades (such as K-3 CSR) will face reduced cost pressures related to enrollment. Programs aimed at high school grades will face increased cost pressures. This could present cost challenges for many unified school districts because per pupil costs of educating high school students tend to be higher than for elementary school students.
- Because of declining enrollment provisions in state law, more school districts—especially elementary school districts—will benefit from the one-year hold harmless provision in current law, increasing state costs per pupil.
- Despite the general downward trend in enrollment growth, significant variation is expected to occur across counties. For example, between 2004-05 and 2013-14, Los Angeles' enrollment is expected to decline almost 120,000 students (a 7 percent decline), whereas Riverside's enrollment is expected to increase by over 90,000 students (a 25 percent increase).
- The percent of Hispanic students will continue to increase. In 1995-96, 39 percent of students were Hispanic. By 2013-14, 54 percent will be Hispanic. The state will need to increase its focus on the language development skills of the state's English learner population.

BUDGET ISSUES

K-12 Education

SCHOOL DISTRICT FINANCIAL CONDITION

School districts face a number of difficult financial challenges in 2005-06 and beyond, including falling revenues due to declining enrollment and long-term costs for retiree benefits.

School districts have not been immune to budget cuts during this current fiscal crisis. Midyear cuts reduced funding for categorical programs and mandates in 2002-03. In 2003-04, no cost-of-living adjustments (COLAs) were provided and the state actually reduced district general purpose funding by a small amount. In 2004-05, schools received a COLA and a partial repayment of the cut in general purpose funds. The 2005-06 proposed budget promises another COLA and partial general purpose funding restoration.

During this time, a significant number of districts also began losing students due to demographic changes in the K-12 population. As enrollment fell several years in a row, so did state funding for these districts. Recent data suggest that 40 percent of districts statewide experienced declining enrollment for both 2002-03 and 2003-04. The decline in district enrollments combined with modest increases in state funding over this period translated into flat or declining revenues for many districts.

Looking to 2005-06, school districts face a number of revenue and cost pressures (see Figure 1, next page). Declining enrollment will continue to affect many districts. In fact, our projection of K-12 enrollments shows very little growth during the next five years. These losses reduce district revenues, requiring budget cuts at the local level.

The figure also lists three other types of financial pressures facing districts. Districts must restore, beginning in 2005-06, unrestricted reserves and maintenance spending to levels required by the state. As part of the 2003-04 budget plan, the state allowed districts to reduce general purpose reserve levels, cut spending on maintenance, and transfer available categorical fund balances at the end of 2002-03 into the districts' general fund. In 2005-06, districts must restore reserve levels and maintenance spending to the state-required levels. For districts that used the full flexibility afforded by the state, the cost of restoring reserves and maintenance spending equals about 2.5 percent of local budgets.

Figure 1

Financial Pressures Facing School Districts

2005-06

✓ **Adjust to Lower Revenues From Declining Enrollment**

✓ **Restore State-Required Funding Levels**
- Unrestricted reserves.
- Long-term maintenance.

✓ **Restore Operating Budget Balance**
- Borrowing from self-insurance reserves.
- Using one-time funds for ongoing expenses.

✓ **Absorb Higher Costs**
- Liability for retiree health benefits.
- Health insurance premiums.
- Employee wage increases.

Based on our discussions with district and county fiscal officers, districts also are under pressure to get their operating budgets back in balance. In many cases, they have taken one-time actions to help finance spending that is above ongoing revenues. The figure shows some of the more common practices, including borrowing from other district funds (such as self-insurance funds) and using one-time funds for ongoing expenses. All of these practices can be justified as reasonable short-term actions if they are accompanied by a plan for ending the practice. Failure to end them—

that is, by aligning ongoing revenues and expenditures and repaying internal borrowing—often results in a bigger problem as time goes on.

Districts also face several significant cost increases in the budget year. Health insurance costs have been increasing at annual rates above 10 percent over the past several years, affecting the cost of current employees and retirees whose health benefits are covered by districts. Salary costs are also a concern; since employee salaries comprise the largest component of local budgets, any increase in wages has a major impact on district finances.

Districts With Financial Problems Increasing. Preliminary information for 2004-05 suggests an increasing number of districts need to take steps to remain financially healthy. The state maintains a fiscal oversight process (known as the AB 1200 process) that makes county offices of education (COEs) responsible for reviewing school district budgets and assisting districts that are experiencing financial difficulties. Twice each year, COEs certify the fiscal condition of districts—that is, they report the likelihood that each district will be able to meet its financial obligations over the next three fiscal years. The first 2004-05 reports were due to the State Department of Education (SDE) on December 15, 2004.

While these first 2004-05 reports were not available at the time this analysis was written, the Fiscal Crisis and Management Assistance Team (FCMAT) projects an increase in the number of districts given a "qualified" or "negative" certification. This team is established in state law to provide fiscal and management assistance to school districts and COEs. A qualified rating means the district may not be able to meet its financial obligations. A negative certification means the district will not be able to meet its obligations in the current or subsequent fiscal year. A negative or qualified certification initiates the development of a plan for addressing the causes of the district's financial instability.

The FCMAT projects the number of negative or qualified districts will increase in 2004-05. It expects 11 districts to receive a negative certification, up from 9 last spring. In addition, it expects 44 districts to receive a qualified certification, an increase from 36 in spring 2004. In addition to these districts, we know of several districts that made midyear reductions in order to avoid a negative or qualified certification. While the number of districts with a negative or qualified certification is still relatively small, the increase reflects the fiscal pressures districts face. We think the pressure is likely to mount in spring 2005, when districts begin their budget planning for next year in earnest.

In the following sections, we recommend the Legislature address two financial pressures faced by districts. The first is the problem of long-term retiree health benefits. Many districts face large liabilities for future retiree health care costs. We think the state needs to begin a process for recogniz-

ing these costs and requiring districts to develop plans for addressing long-term liabilities for these benefits.

The second issue is declining enrollment. Because statewide growth in the K-12 population is likely to be stagnant for the next five years, declining enrollment is likely to affect the majority of districts in the state. We suggest the Legislature consider an alternate declining enrollment funding formula that would give districts more time to adjust to the financial impact of fewer students.

RETIREE BENEFITS POSE LONG-TERM CHALLENGE

We recommend the Legislature require county offices of education and school districts to take steps addressing districts' long-term retiree health benefit liabilities.

In 2004, the Governmental Accounting Standards Board (GASB) issued a new policy describing how state and local governments (including schools and community colleges) must account for nonpension retirement benefits such as health insurance. For K-12 and community college districts, the GASB policy requires each district to include its long-term liabilities for post-retirement benefits in its annual financial statement. One component of this new liability statement is an identification of the amount that, if paid on an ongoing basis, would provide sufficient funds to pay for benefits as they come due.

In other words, GASB requires districts to account for health and other retirement benefits similarly to the way they account for pension costs. For retirement, an amount is contributed to a fund each year for each employee. Over the years, these payments are set at a level sufficient to pay for the full cost of retirement benefits for the average employee. In effect, the retirement benefits are "prefunded"—that is, their costs are provided for over the working life of the employee. (Also, contributions are set aside in a special "trust" fund so they cannot be used for any other purpose.) The new GASB policy encourages districts to pay for retiree health benefits in the same way, thereby avoiding the accumulation of large unfunded liabilities for future benefits. The GASB policy, however, does not require such annual payments or public agencies to act on any past liabilities—it only requires the reporting of such liabilities. We are not aware of any school district that has prefunded its retiree health benefits. Instead, these costs are paid out of districts' operating budgets as they are incurred by retirees.

Some District Liabilities Are Huge

The liabilities some districts face are very large—so large they potentially threaten the district's ability to operate in the future. For instance, Los Angeles Unified School District (LAUSD) estimates its current "actuarial liability" for retiree health benefits at $5 billion. This figure is the amount the district would need to place in an interest-bearing account in 2005 to pay for these benefits over time. To provide a sense of the size of this liability, the $5 billion estimate for LAUSD is the equivalent of about 80 percent of the district's general purpose annual operating budget. Other districts face a similar problem. Fresno Unified estimates its liability at $1.1 billion—almost twice its annual budget. The cost for both districts is very high because each provides lifetime health benefits to retirees.

While these costs are not yet at a stage that will seriously erode the district's ability to function, both districts are experiencing rapidly increasing annual costs for these benefits. In Los Angeles, for instance, the district budget includes about $170 million for retiree health benefits in 2004-05. The district estimates the annual cost of these benefits will grow to about $265 million by 2010 and $360 million by 2015. The district would have to add $500 million to the budget—about 8 percent of its overall budget—starting next year and continuing for the next 30 years to pay off its unfunded liabilities and prefund future retiree health benefits.

Weak District Incentives to Face Liabilities. Districts do not have much incentive to address this problem. In the short run, the need to set aside funds for this obligation would only complicate budgeting as it would reduce funding available for other local priorities. Furthermore, any financial crisis resulting from these liabilities may be years or decades away. For these reasons—and especially given the number of financial pressures districts currently face—districts will be reluctant to take the needed steps to address this problem. There is one way, however, that the new GASB policy may prod districts to address these liabilities. Large liabilities could affect a district's bond rating and increase the costs of borrowing. Pressure from credit agencies, therefore, represents one of the few short-term incentives for addressing retiree costs that will result from the new policy.

Liabilities Could Be Even Larger. Districts may also have an incentive to understate their actual liabilities. The GASB policy left many details of the actuarial calculation of liabilities to local agencies. While this makes sense given the range of state and local agencies affected by this policy, it also allows local agencies the ability to make assumptions that minimize their apparent liability. Small changes in the underlying assumptions used in these studies have a major impact on the results. For instance, the LAUSD's actuarial study determined a $5 billion actuarial liability using "best estimate" assumptions. This figure increased to $7 billion if all cur-

rent and retired employees were included in the calculation instead of retirees plus those employees whose health retirement benefits are vested. Moreover, the figure grew to $11 billion if the long-term interest rate the district would earn on its annual contributions was reduced from 6 percent to 4 percent. Thus, we think it is in the state's interest to ensure districts use reasonable assumptions in their actuarial studies.

Require District Plans for Addressing Liabilities

The size of retiree health benefit liabilities is so large that unless steps are soon taken to address the issue, it seems likely that districts will eventually seek financial assistance from the state. As a first step, we think the Legislature needs to establish a process for ensuring that districts identify and address the liabilities created by post-retirement benefits. Currently, there is no state or local process for collecting information on the financial liabilities districts presently face or whether districts have a plan for addressing these liabilities. In addition, the long-term liabilities of retiree benefits are not part of the AB 1200 district fiscal review process. As a result, COEs are not always aware of which districts provide retiree benefits or the magnitude of the costs for those benefits.

About 150 districts present the most serious problem. Of these, 70 districts provide lifetime health benefits to retirees and represent the districts that probably have the most serious fiscal problem. Another 80 districts provide health benefits from the time an employee retirees to a specific age—most commonly age 70. These districts also may face significant fiscal challenges.

To address this problem we recommend the Legislature enact legislation to achieve the following:

Require districts to provide COEs by October 1, 2005, with a copy of any actuarial study of its retiree benefits liability. Until the GASB issued its new policy, the state required districts to assess their outstanding liabilities for certain post-retirement benefits every three years. The COEs should receive a copy of these studies so they are informed of the size of any existing liabilities.

Require districts to provide COEs by June 30, 2006, with a plan for addressing retiree benefits liabilities. The GASB policy requires large local agencies to make public data on retiree benefit liabilities beginning in 2007. Because of the prior state requirement and the new GASB policy, most districts with significant liabilities are aware of the problem. We think encouraging districts to develop a plan for addressing these long-term liabilities as soon as possible is in the districts' and state's interest. These plans could address district liabilities in several ways including prefunding

benefits, restructuring or eliminating benefits for new employees, and partial prefunding that protects districts during years when benefit costs are high.

Modify AB 1200 to require COEs to review whether districts' funding of long-term liabilities adequately cover likely costs. This change would have two elements. First, COEs would assess whether districts are following their plan for addressing the long-term liabilities for retiree benefits. This review would occur each time districts revise their actuarial estimate of liability. Second, SDE would add to existing AB 1200 regulations new guidelines for the development of future actuarial studies of retiree benefits. This would ensure that district studies used reasonable assumptions in their assessment of local liability.

Require SDE to report to the fiscal committees by December 15, 2005 on the size of retiree health liabilities in the 150 districts that provide the most extensive benefits. This would inform the Legislature's discussion about any future steps that may be needed to deal with this problem.

CREATE A NEW DECLINING ENROLLMENT OPTION

We recommend the Legislature adopt legislation to establish an alternate declining enrollment formula that would give districts more time to adjust to the financial impact of fewer students. Our recommendation would create no additional state costs in 2005-06 but would probably result in a 2006-07 cost of $80 million to $100 million. This cost would grow modestly over time until districts reach their equalization targets.

Each district is assigned a unique revenue limit, or per-pupil funding rate. Revenue limits are comprised of two main parts. First, each district receives a *base* revenue limit, which accounts for 95 percent of the amount of revenue limit funds provided to districts. Base revenue limits are determined largely by historical factors, including a district's spending levels at the time Proposition 13 was approved by voters in 1978. Since then, the Legislature has added "equalization" funding to revenue limits several times to reduce differences among districts in base revenue limits.

Second, the other 5 percent of revenue limit funding is for ten "add-on" programs. These add-ons, for instance, include funding for minimum teacher salary incentive programs, the Unemployment Insurance program, and longer school day and year incentives. Since districts receive significantly different amounts from these adjustments, the add-on programs introduce a second factor contributing to differences in district revenue limits among districts.

In our past reports on K-12 finance, we have recommended the Legislature address these two problems. In our view, most of the differences in

revenue limit funding levels among districts have no analytical basis. Instead, most of the variation stems from decisions made during the 1970s and 1980s that have little policy relevance today. To correct these problems, we have recommended the Legislature make progress in equalizing revenue limits. We have also recommended consolidating most of the add-on funding into base revenue limits so that the Legislature could equalize the amount of general purpose funds districts actually receive, not just the amounts represented by base revenue limits.

Recently, the Legislature made revenue limit equalization a funding priority. The *2004-05 Budget Act* provides $110 million for this purpose, setting the goal of equalization at the 90th percentile of all districts within each size and type. The 2005-06 budget proposal does not include any new funds to continue progress towards more uniform base funding levels.

Declining Enrollment Affects Many Districts

Another feature of the revenue limit system is known as the "declining enrollment adjustment." This adjustment gives districts a one-year reprieve from funding reductions caused by declining attendance. Technically, the adjustment allows districts to claim the higher of the current or prior year's average daily attendance (ADA). Since, in declining enrollment districts, the prior-year total exceeds the current-year ADA, the adjustment maintains a district's previous year's funding level (increased by a COLA).

A fall in the number of elementary school age students in California is creating declining enrollment in many school districts. In 2003-04, elementary and unified districts reported that 13,800 fewer students were enrolled in grades K-6 than in the previous year. This *net* decline is relatively small—only a 0.4 percent reduction in enrollment. However, the net figure masks the fact that the losses are not uniform across the state.

Forty Percent of Districts Are Declining. The most recent data available show that 412 districts (or 42 percent) experienced declining enrollments in 2003-04. The data suggest that attendance in most of these districts fell in both 2002-03 and 2003-04. The declining enrollment adjustment cost the state about $130 million in 2003-04.

The typical declining enrollment district lost 1.7 percent of its previous year's ADA. About one-fifth of districts reporting declines, however, lost more than 5 percent of their students. Districts of all sizes are experiencing falling enrollment. Most are small—about half enroll fewer than 1,000 students. Thirty-nine of the declining districts, however, are large, enrolling more than 10,000 students.

Declining revenues associated with falling enrollments create difficult fiscal issues for districts. Falling enrollments mean that districts need fewer

teachers. As districts stop hiring new teachers, the average teacher salary grows (simply because districts have more experienced, higher wage staff whose salaries are not offset by newer, lower-wage staff), which requires additional cost reductions. If the decline is large or continues over an extended period of time, districts typically need to close schools.

School fiscal experts advise that districts should accommodate declining enrollment by making cost adjustments *before* the decline actually occurs. Often, enrollment trends are known in advance. In some cases, however, falling enrollments can occur relatively quickly. Enrollment increases in one year may be followed by sharp declines in the next—with no transition year in between. In these instances, or when districts fail to adequately plan for sustained reductions in enrollment, the financial consequences can be severe.

Our fall 2004 estimate of future K-12 attendance growth projected a continuing decline in the growth rate of the student population. By 2008-09, we estimate no growth in ADA statewide. As a result, we expect declining enrollment will play an important role in district finance for several years. Many districts that are currently declining will continue to lose students. A portion of districts that are still growing will become declining enrollment districts in the near future.

Option: Permanently Increase Revenue Limits

For districts that face significant long-term reductions in ADA, the existing declining enrollment adjustment may not provide a sufficient amount of time for districts to adjust to the fiscal consequences of falling enrollments. In the first year of decline, the adjustment maintains the prior-year funding level (plus a COLA). Beginning in the second year of ADA reductions, however, districts lose revenue limit funding commensurate with the size of the ADA decline in the previous year. While the declining enrollment adjustment actually provides a series of one-time financial benefits to districts in this situation, the current formula still requires districts to ratchet down their annual spending as enrollment falls.

There are two basic ways the Legislature could help districts facing multiyear enrollment declines. First, it could expand the existing temporary protection, such as extending the funding adjustment to two years. This would provide districts with an additional year of constant funding before the impact of falling attendance reduced total revenue limit funding.

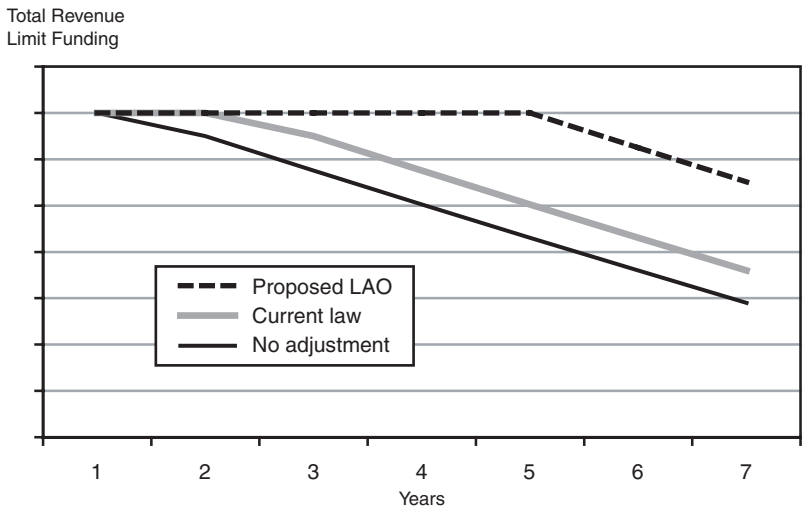
The second way is to provide a more lasting adjustment. We propose an option that increases revenue limits by an amount sufficient to offset the enrollment decline. This option would allow a district to maintain its prior-year level of funding over time. By allowing this option to be used only by

districts which are *below* the state's equalization target, it would have the dual benefit of helping the state make progress toward its equalization goal.

How Would This Option Work? Figure 2 illustrates the difference in the impact of the current adjustment and our alternative adjustment in a hypothetical district that experiences falling attendance over many years. The dark line shows how total revenue limit funding would decline without *any* funding adjustment; revenues would fall with enrollment. The existing declining enrollment adjustment is shown as a parallel line to the "no adjustment" scenario. The current adjustment delays the revenue reduction of falling attendance by one year. As a result, after one year of holding the district harmless from the effect of falling enrollment, the district experiences annual cuts in revenues equal to the previous year's reduction in attendance.

Figure 2

Funding Options for Districts With Declining Enrollment[a]



[a]Assumes district experiences declining enrollment each year, beginning in year 2.

Our proposed declining enrollment adjustment would operate quite differently. As the figure illustrates, total revenues for the hypothetical district would stay constant for several years. During this time, the district's per-pupil revenue limit would be increased annually to offset the fall in attendance and keep total funding constant. In year five, however, the revenue limit increases cause the district to reach the state's equalization tar-

get. After that point, the district no longer qualifies for our proposed adjustment, and further enrollment declines reduce district revenues.

Proposal Helps Districts, Makes Progress Towards Equal Funding. Our proposed revenue limit increase has two main advantages over the current declining enrollment formula. First, it provides a higher level of funding protection for most districts that are losing students. This increase in a district's per-pupil revenue limit would be permanent—it would not revert back to its previous level the next year as the current ADA adjustment does. Per-pupil revenue limit adjustments would continue only until the district reaches the state's equalization target. Since almost all districts are within about 10 percent of the state's equalization target, districts experiencing significant, sustained, declines would reach the 90th percentile funding level relatively quickly.

The second advantage of our proposal is that increasing district revenue limits to the state's equalization target makes progress on another state priority—a system of uniform revenue limits. Currently, districts are required to reduce spending due to declining enrollment regardless of whether they receive less per pupil than other similar districts. By holding total funding constant from year to year, the state can make progress towards its goal of reducing these differences.

Another advantage of our proposal is that the revenue limit adjustment would occur automatically. Like the existing adjustment, our proposal would automatically increase district revenue limits to compensate for declining enrollments. The Legislature would not be required to make a specific appropriation in the budget. Funds would flow to districts as part of the existing statutory appropriation. In this way, the state would make annual progress towards a more equal system of revenue limits.

It is important to recognize our alternate adjustment has a long-term cost. Since our proposal would generate the same amount of revenue limit funding to districts in the first year as the existing adjustment, our formula would not create any additional cost in 2005-06. Beginning in 2006-07, however, our formula would provide these districts a higher level of funding. Data are not available to allow us to make a precise estimate of the cost of this formula. Depending on the number of districts in decline and the size of the declines, the cost could total between $80 million and $100 million in 2006-07. This cost probably would increase modestly each year until districts reach their equalization targets. The total possible cost of the formula, however, cannot exceed the amount of funds needed to equalize revenue limits to the 90th percentile for all districts. We calculate this amount to be about $300 million.

Add a Declining Enrollment Revenue Limit Adjustment

We recommend the Legislature adopt legislation to create a new declining enrollment revenue limit adjustment that would begin in 2005-06. As discussed earlier in this section, we are concerned by the size and number of financial pressures districts currently face. We also see enrollment declines as a statewide problem that probably will continue for some time. Based on our K-12 enrollment projections, the financial pressures associated with declining enrollment will continue for at least the next five years. Our proposal is not intended to prevent declining districts from making cost reductions warranted by a long-term fall in ADA. Instead, our formula would give districts a longer period for adjusting to the financial pressures created by falling attendance.

Our analysis also suggests another way the Legislature could help declining enrollment districts and make progress towards a more uniform funding system—providing additional equalization funding for all districts. Equalization funding would help both declining and growing districts with revenue limits below the state's equalization targets.

We also recommend two additional steps that we think should accompany this new formula, as follows.

Limit Increases to 5 Percent. As discussed above, about one-fifth of the current declining enrollment districts experienced reductions of more than 5 percent in 2002-03. Districts that sustain such large declines in student attendance need to make immediate efforts to bring costs into line with revenues. Therefore, we recommend the Legislature limit annual revenue limit increases to 5 percent. Under our proposal, a district that lost 10 percent of its ADA would be able to choose between our formula (which would provide an ongoing 5 percent increase) and the existing adjustment (which would provide a one-time 10 percent increase).

Consolidate "Add-On" Funding Into Revenue Limits. The state's equalization targets focus on differences in district base revenue limits. As noted above, however, the revenue limit add-on funds alter the distribution of revenue limit funding. As a consequence, successfully bringing all district base revenue limits to the state's equalization targets would not eliminate funding disparities introduced by the add-ons. As part of our alternate declining enrollment formula, therefore, we recommend the Legislature merge most of the add-on funds into base revenue limits and reset the equalization targets based on the consolidated amounts.

CATEGORICAL REFORM

Recent categorical reform enacted through Chapter 871, Statutes of 2004 (AB 825, Firebaugh), consolidates 26 existing programs into six block grants to take effect in 2005-06. It requires that districts and county offices of education (COEs) use the consolidated funding for the purpose of the programs subsumed in each block grant. Figure 1 (see next page) shows the programs included in the six block grants.

Chapter 871 contains several provisions pertaining to flexibility over the use of the block grant monies. The law, for instance, allows districts and COEs to transfer annually up to 15 percent of funding from four of the block grants into the other block grants or into other categorical programs. No funds, however, may be transferred out of the Pupil Retention and Teacher Credentialing block grants. The total funding a district or COE may expend for a program to which funds are transferred may not exceed 120 percent of the amount apportioned for that program in that fiscal year.

We have particular concerns about the Pupil Retention Block Grant (PRBG) and the two teacher training block grants. In the sections that follow, we discuss these concerns.

CATEGORICAL REFORM AND SUPPLEMENTAL INSTRUCTION

We recommend the Legislature adopt trailer bill language adding two supplemental instruction programs to the new Pupil Retention Block Grant along with a requirement specifying that "first call" on funds in the block grant must be for these supplemental instruction program costs.

The PRBG, one of the six block grants created by Chapter 871, consolidates 11 programs that support supplementary instruction and services for students at risk of academic failure. The budget includes $173 million for this block grant and will provide an additional $26.7 million of deferred amounts in a trailer bill.

Figure 1

Six New Block Grants

Pupil Retention Block Grant—$172.9 Million

- "Core" programs supplemental instruction.
- Continuation high schools.
- Drop Out Prevention and Recovery.
- Reading, writing, math supplemental instruction.
- Tenth Grade Counseling.
- High-Risk Youth Education and Public Safety.
- Opportunity Programs.
- Los Angeles Unified At-Risk Youth Program.
- Intensive reading supplemental instruction.[a]
- Algebra academies supplemental instruction.[a]
- Early Intervention for School Success.[a]

School Safety Consolidated Competitive Grant—$16.3 Million

- Safe school planning and partnership mini-grants.
- School community policing.
- Gang Risk Intervention Program.
- Safety plans for new schools.
- School community violence prevention.
- Conflict resolution.

Teacher Credentialing Block Grant—$83.9 Million

- Beginning Teacher Support and Assessment program.

Professional Development Block Grant—$248.6 Million

- Staff Development Buyout Days.
- Comprehensive Teacher Education Institutes.
- College Readiness Program.
- Teaching as a Priority Block Grant.[b]

Targeted Instructional Improvement Block Grant—$874.5 Million

- Targeted Instructional Improvement Grant Program.
- Supplemental Grants.

School and Library Improvement Block Grant—$421.6—Million

- School library materials.
- School Improvement Program.

[a] These programs were not funded in 2004-05, but school districts are allowed to use new block grant monies for their purposes.

[b] Program defunded as of 2003-04, but school districts are allowed to use new block grant monies for its purposes (teacher recruitment and retention).

Figure 2 shows the programs that are consolidated in the block grant. More than one-half of the funding comes from the "core" supplemental instruction program. Other programs included in the block grant support various other supplemental instruction programs and interventions for at-risk youth. Three programs, intensive reading supplemental instruction, algebra academies supplemental instruction, and Early Intervention for School Success, were not funded in 2004-05 and therefore do not add to the total amount in the block grant for 2005-06.

Figure 2

Programs in the Pupil Retention Block Grant

2005-06
(In Millions)

Program	Services	Amount[a]
"Core" programs supplemental instruction	Supplemental instruction in core academic areas for K-12 education.	$93.2
Continuation high schools	Extra funding for new continuation high schools.	35.1
Drop Out Prevention and Recovery	Services to reduce dropout rates.	23.7
Reading, writing, and math supplemental instruction	Supplemental instruction for students falling behind in reading, writing, and math for grades 2 through 6.	19.8
Tenth Grade Counseling	Support for completing high school and pursuing educational opportunities.	12.4
High-Risk Youth Education and Public Safety	Prevention program for high-risk youth.	11.9
Opportunity Programs	Classes for pupils who are truant or insubordinate.	2.8
Los Angeles Unified At-Risk Youth Program	Intensive program for at-risk youth with school-based and residency component.	0.6
Intensive reading supplemental instruction	Reading instruction for grades 1 through 4.	—[b]
Algebra academies supplemental instruction	Intensive algebra instruction for grades 7 through 8.	—[b]
Early Intervention for School Success	Staff development in reading instruction.	—[b]
Subtotal		($199.6)
Less deferrals[c]		-26.7
Total Block Grant Amount		**$172.9**

a Amount added to block grant based on prior-year funding.

b Not funded in 2004-05.

c Deferred amounts will be provided in a separate trailer bill.

Complex "Holdback" for At-Risk Instructional Programs

Chapter 871 also creates a unique funding interaction between the PRBG and two programs for supplemental instruction that are *not* included in the block grant. These two programs provide extra help to students in grades 7 through 12 who are at risk of failing the California High School Exit Exam and students in grades 2 through 9 who have been recommended for retention. The 2005-06 budget proposes $165 million for the grades 7 through 12 program and $40 million for the grades 2 through 9 program. State law, however, entitles districts to full reimbursement for the number of instructional hours provided for at-risk students through the two supplemental instruction programs.

Chapter 871 establishes the following process to create a funding set aside for any unfunded costs of the two supplemental instruction programs:

- The act directs the State Department of Education (SDE) to allocate 75 percent of the block grant to districts.
- The other 25 percent will be held back until the required supplemental instruction has been fully funded.
- If the 25 percent holdback proves insufficient to cover the remaining costs of the additional supplemental instruction programs, the State Controller will transfer any amounts necessary from the current budget or subsequent budgets for the PRBG to cover the deficits.
- Any remaining block grant funds left from the 25 percent holdback will be distributed to districts.

Mandate Ruling Creates Another Cost Pressure

Recent action by the Commission on State Mandates (CSM) will increase the cost of the supplemental instruction program for students in grades 2 through 9. Current law requires districts to develop policies for retaining low-achieving students in grade. Students who are identified for retention under this policy must be offered supplemental instruction. The CSM found this state law to constitute a reimbursable state-mandated program.

The commission's findings are likely to substantially increase the cost of the grades 2 through 9 supplemental instruction program. In adopting the reimbursement methodology for the mandate (through the "parameters and guidelines"), CSM provided districts substantial latitude in determining the level of activities and services to comply with the state's mandate for the program. For example, the parameters and guidelines do not stipulate the allowed teacher-pupil ratios, number of hours of supplemental instruction, length of intervention, or proportions of the districts' students eligible to receive these services. While CSM's current estimate of the

mandate's cost is low, districts are likely to adapt their service models to provide more costly instruction to take advantage of the uncapped funding. As a result, we think the cost is likely to grow substantially in the future—possibly into the tens of millions of dollars annually.

Block Grant Faces Implementation Problems

While the intent behind the holdback—to contain the statewide costs of the two supplemental instruction programs—has merit, it renders the PRBG unworkable from a district perspective. In addition, the holdback does nothing to alter district incentives that could significantly increase the cost of the required supplemental instruction. We describe these potential problems below.

Block Grant Robs Peter to Pay Paul. As currently structured, the holdback provision of the block grant does not encourage districts to contain the costs of the two supplemental instruction programs. Instead, Chapter 871 would pay for increased district costs for supplemental instruction by redirecting block grant funds away from other districts. As a result, districts have little incentive to contain the costs of the supplemental instruction programs.

Timing Problems Create Budget Uncertainties for Districts. Districts' efforts to plan and implement programs using the new block grant will be constrained by the timing of the 25 percent holdback provision. Current apportionment practices at SDE suggest that the department will not allocate the 25 percent holdback for at least two years after the close of the fiscal year in order to tally the final cost of the two instructional programs. As a result, districts will either have to fund programs before they know whether state dollars will be provided or reduce services to students.

Funding Inequities Among Districts May Result. Claims for the supplemental instruction programs are currently concentrated in relatively few districts. Our review shows that only 92 districts have filed any claims for the two instructional programs. As a result, these districts would likely receive funding for supplemental instruction through the holdback provision of Chapter 871. Districts that do not submit claims for the two programs may be disadvantaged, as their 25 percent holdbacks are used to fund the other districts' mandate claims. As a result, the holdback provision may increase funding inequities among districts.

Add the Required Supplemental Instruction Programs To the Block Grant

As described above, the holdback provision results in many problems. To address these concerns, we recommend the Legislature revise the struc-

ture of the PRBG to take advantage of the strengths of a block grant in encouraging districts to control the cost of the supplemental instruction programs. The current structure creates the wrong incentives for districts and makes administration of the fund problematic. Instead, we recommend the Legislature give districts freedom over the use of a fixed level of funding for *all* pupil retention and promotion programs. With this change, the state would create strong local incentives to promote the efficient and locally appropriate use of those funds.

Specifically, we recommend the Legislature:

- Adopt trailer bill language to eliminate the holdback provisions from the PRBG.
- Consolidate the two supplemental instruction programs into the new block grant. This would increase the amount in the block grant by $205 million in 2005-06 (plus $63 million in deferred payments).
- Add language in the budget bill and trailer bill to require that first call on the PRBG funds must be for all costs—including any mandated costs—of the two instructional programs. We also recommend the Legislature add trailer bill language that limits the hourly reimbursement rate under the grades 2 through 9 instructional program to the amount provided in the annual budget act. Together, these two changes would significantly reduce the likelihood of any additional district claims for the two programs.

By including the required programs in the block grant, our recommendation would require districts to determine how best to use funds in the PRBG. Consequently, districts would allocate the block grant resources among the various intervention programs. We think this would greatly strengthen local incentives for cost containment because any "excess" costs for the two programs would reduce the amount of block grant funds available for other programs funded from the grant. It also would eliminate the problem of the two-year delay in knowing the amount of block grant funds available to each districts.

LINKING TEACHING WITH LEARNING

For the last several years, we have expressed concern with the state's approach toward K-12 professional development—funding dozens of different programs that ostensibly serve the same general purpose, though they are not well coordinated and entail considerable state and local administrative burden. We also have had an overriding concern with the state's incapacity to determine the value of its various professional development investments. This incapacity is due largely to the lack of a

state-level database that tracks program outcomes. Thus, we continue to recommend that the state build a teacher database that can be linked with its student database.

Below, we review recent developments relating to the state's teacher training programs. We then describe the Governor's budget-year teacher training block grant proposal and recommend specific changes to it. Most importantly, as a condition of receiving block grant monies, we recommend participating districts be required to supply the state with the data needed to do meaningful program evaluations.

Recent Developments Enhance Flexibility, Ignore Accountability

Chapter 871 established six block grants, including two teacher training block grants—the Teacher Credentialing Block Grant and the Professional Development Block Grant—that would take effect in 2005-06 (see Figure 3 next page). The Governor's budget proposal would add three programs to the Professional Development Block Grant. The 2005-06 budget also includes trailer bill language that would nominally merge the two block grants into a new "Professional Development and Teacher Credentialing Block Grant," though the teacher credentialing component, for all practical purposes, would be preserved as a distinct program—having a separate appropriation, funding mechanism, and expenditure requirements.

Chapter 871 Provides Small Increase in Flexibility. As established by Chapter 871, the Professional Development Block Grant consolidates funding for the sizeable Staff Development Buyout Day program and two small intersegmental programs. The Professional Development Block Grant provides some additional flexibility by allowing districts to use block grant monies for teacher recruitment and retention (such as offering signing bonuses and housing subsidies) as well as professional development. It somewhat reduces this flexibility, however, by requiring districts to provide all K-6 teachers with professional development in reading language arts. The credentialing block grant is itself a misnomer. It contains only one existing program (Beginning Teacher Support and Assessment [BTSA]) and makes no changes to the associated spending requirements, thereby offering no additional flexibility.

Governor's Budget Proposal Would Provide Another Small Increase in Flexibility. As shown in Figure 1, the administration proposes to add three programs to the newly created Professional Development Block Grant—the most notable being the Peer Assistance and Review program. It also would slightly increase local flexibility by allowing block grant monies to be used for teacher training relating to the Advancement Via Individual Determination program. The block grant would not include the Mathemat-

Figure 3

Summary of Teacher Training Block Grants

(In Millions)

	2005-06 Proposed
Teacher Credentialing Block Grant	
Beginning Teacher Support and Assessment	**$83.9**
Professional Development Block Grant	
Chapter 871 Consolidated:	
Staff Development Buyout Days	
Comprehensive Teacher Education Institutes	$248.6
College Readiness Program	
Governor's Budget Proposal Adds:	
Peer Assistance and Review	$27.3
Bilingual Teacher Training	1.9
Teacher Dismissal Apportionments	—[a]
Total, Professional Development Block Grant	**$277.9**
Grand Total, Teacher Training Block Grants	**$361.8**

[a] The Governor's budget includes $43,000 for this program.

ics and Reading Professional Development (MRPD) program—despite it being the state's largest existing professional development program.

Neither Chapter 871 Nor Governor's Proposal Enhances Accountability. Chapter 871 is clear in its intent to: (1) "refocus attention . . . on pupil learning rather than on state spending and compliance with operational rules for categorical programs" and (2) "provide schools increased flexibility in the use of available funds in exchange for accountability." The teacher training block grants, however, neither focus directly on student learning nor enhance accountability. Similarly, the Governor's proposal contains no link between teacher training and student learning, no data requirements, and no accountability provisions. It would provide $362 million for teacher training without any meaningful mechanism for assessing whether the state investment was worthwhile and cost-effective compared to other education programs.

Enhance Flexibility and Strengthen Accountability

We recommend the Legislature approve the Governor's proposed additions to the Professional Development Block Grant with three modifications. Unlike the Governor's budget proposal, we recommend including the Mathematics and Reading Professional Development program in the block grant and excluding Teacher Dismissal Apportionments. Additionally, we recommend the Legislature require school districts, as a condition of receiving block grant monies, to provide the State Department of Education with specific teacher-level data that can be linked with student-level Standardized Testing and Reporting data.

In general, we recommend approval of the Governor's proposal to merge additional teacher training programs into the Professional Development Block Grant. We think, however, that increased local flexibility should be accompanied by enhanced accountability—particularly by strengthening the state's capacity to conduct comparative program evaluations. Below, we discuss our specific recommendations for changes to the Governor's budget proposal.

Include the MRPD Program. Established in 2001, the MRPD program provides teachers with 120 hours of highly structured, standards-aligned training—including 40 hours of initial intensive training and 80 hours of onsite follow-up support and coaching. School districts receive $2,500 per participating teacher and are required to use state-approved professional development providers. The Governor's proposal excludes this program because it "provide[s] specific training to teachers . . . during a limited time period." All professional development programs presumably provide some type of training to teachers, so it is unclear why this would be a criterion for exclusion from a teacher training block grant. Moreover, the MRPD program is to sunset on January 1, 2007, but it has been funded with ongoing Proposition 98 monies ever since its inception—indicating an intent to use the funds for an ongoing education purpose, such as professional development. Furthermore, the MRPD program is the state's largest remaining professional development program; excluding it would undermine one of the major advantages of block granting—increased flexibility. Finally, the Governor's proposal includes new budget bill language that would require *all* professional development activities to be aligned with the state's academic content standards and curriculum frameworks—what some believed to be the unique advantage of the MRPD program. For these reasons, we recommend including it in the Professional Development Block Grant.

Exclude Teacher Dismissal Monies. The administration proposes to include Teacher Dismissal Apportionments—a tiny budget item ($43,000) unrelated to professional development. As its name suggests, the program relates to teacher dismissal and suspension. If a governing school board

seeks to dismiss or suspend a permanent employee of the district, the employee may request a hearing. The board and employee each select an individual to sit on a review panel (accompanied by an administrative law judge). If the panel members need to conduct the employee review during the summer or vacation period and they determine the employee should be dismissed or suspended, then the state (rather than the school district) reimburses them for their time (at their regular rate). It is unclear why the state would fold this item into a virtually unrelated block grant. Therefore, we recommend it be excluded.

Integrated Data System Essential for Meaningful State-Level Program Evaluations and Local-Level Accountability. If the state is setting aside monies specifically for a teacher training block grant to improve teacher quality, then it needs data on teachers' professional development activities and the effect of these activities on student learning. Under the current system (with a few exceptions), school districts fill out applications, the state gives them money, and the cycle begins anew. The state, however, does not know if programs meet their objective, if teaching and learning actually are improved, if any particular program achieves better results at a lower cost, or if certain program components are especially effective in helping schools with disadvantaged students. Without this type of information, the state will not be able to determine what types of professional development enhance student learning. With this information, professional development programs can be compared, their cost-effectiveness assessed, and budget decisions refined. This is why, for the last two years, we have recommended the state establish an integrated teacher-student data system. (Please see "Enhance State's Teacher Information System," *2003-04 Analysis of the Budget Bill* [pages E-158 to E-161], and "Enhance Accountability for Improving Teacher Quality, *2004-05 Analysis of the Budget Bill* [pages E-62 to E-64].) We would also note that many education groups have expressed interest in such systems (see nearby box).

To help the state collect the data needed for program evaluation, we recommend the Legislature require school districts, as a condition of receiving Teacher Credentialing or Professional Development Block Grant monies, to provide SDE with specific teacher-level data linked with students' Standardized Testing and Reporting (STAR) scores. Specifically, participating school districts should be required to:

- Identify the type of professional development undertaken and completed by each teacher, using a unique teacher identifier.
- Complete the currently optional STAR item identifying a student's teacher, using the same unique teacher identifier that is used to track professional development activities.

As a condition of receiving Teacher Credentialing Block Grant monies, we recommend participating BTSA programs be required to:

- Share with SDE teacher-level demographic, retention, and assessment information that it already collects, using the same unique teacher identifier. (The BTSA program currently uses a consent form to collect participating teachers' social security numbers, demographic information, teaching assignments, and education backgrounds.)

In conclusion, we recommend the Legislature establish an integrated teacher-student data system that would both promote meaningful state-level program evaluations and help hold districts accountable for using block grant monies in ways that actually improve teacher quality. Importantly, this state-level system would not be intended to replace existing processes for local teacher evaluations (some of which, however, already use locally integrated teacher-student systems). It would be intended to maximize the benefits of any potential categorical reform of K-12 professional development programs.

Nine Groups Come Together to Support Statewide Teacher Data System

In September 2004, nine groups in California came together to express their interest in developing a reliable, comprehensive teacher data system. The Teacher Information System Working Group includes representatives from teacher groups (California Federation of Teachers and California Teachers Association), school administrators (Association of California School Administrators and California County Superintendents Educational Services Association), various state agencies (State Department of Education, Commission on Teacher Credentialing, California State University, and California School Information Services), and a research center (Center for the Future of Teaching and Learning). The group believes that "gaps in the collection, use, and availability of data seriously compromise efforts to plan and monitor the teacher workforce at both the state and local level." The group already has compiled a master list of teacher data currently collected by state agencies. It continues to seek opportunities and funding for making system improvements that would maximize the usefulness and reliability of teacher data.

Assure Block Grant Monies Are Tied to Need

We recommend the Legislature adopt trailer bill language to change the funding mechanism for both the Teacher Credentialing and Professional Development block grants to ensure they remain responsive to changes in districts' needs. Specifically, we recommend Teacher Credentialing block grant allocations be determined annually based on the number of first-year and second-year teachers in the district. We recommend Professional Development Block Grant allocations be determined annually based on the number of teachers in the district with three or more years of experience.

In developing the new teacher training block grants, Chapter 871 changed the existing funding mechanisms from being dynamic and need-based to locking in the current funding distribution into perpetuity. Prior to Chapter 871, BTSA monies were allocated based on the number of participating first- and second-year teachers. Thus, it targeted funds to hard-to-staff schools with high teacher turnover as well as to growing schools with large numbers of first- and second-year teachers. Moreover, it annually adjusted districts' allocations in response to changes in staffing needs. Although less need-based, the Staff Development Buyout Day program was linked to the number of teachers attending professional development workshops. It too adjusted districts' allocations annually based on changes in the number of teachers receiving training.

Chapter 871 Severs Link to Need. By comparison, both of the new block grants lock in place the 2005-06 funding distributions and thereafter adjust them for inflation and growth in average daily attendance. Funding, therefore, will no longer be responsive to districts' staffing needs. Instead, they will create new funding inequities. Those areas most needing additional funding—those serving additional beginning teachers and those fastest growing—virtually are assured of *not* receiving it.

Re-Establish Link Between Funding and Need. We recommend re-establishing the link between districts' funding allocations and their staffing needs. Specifically, we recommend that districts' allocations for the credential and professional development block grants be made annually based on the number of beginning and veteran teachers, respectively. This will ensure that funding allocations remain dynamic and responsive to changing needs—providing more funding to those districts that most need it.

SPECIAL EDUCATION

In 2003-04, 682,000 students age 22 and under were enrolled in special education programs in California, accounting for about 11 percent of all K-12 students. Special education is administered through a regional planning system consisting of Special Education Local Plan Areas (SELPAs). In 2003-04, there were 116 SELPAs.

Figure 1 displays the amounts proposed for special education in 2004-05 and 2005-06. The Governor's budget proposes total expenditures of $4.4 billion for special education in 2005-06, an increase of $215 million, or 5.1 percent. Under this proposal, General Fund support for special education would increase by $135 million or 4.9 percent. The budget proposes sufficient funding to accommodate a projected 0.79 percent increase in the number of students in the state, a 3.93 percent cost-of-living adjustment (COLA), and an augmentation of $25 million to base SELPA funding levels.

Figure 1

Special Education Funding

(Dollars in Millions)

			Change	
	2004-05	2005-06	Amount	Percent
General Fund	$2,756.7	$2,891.3	$134.6	4.9%
Local property taxes	332.6	347.9	15.3	4.6
Federal funds	1,046.2	1,110.9	64.7	6.2
Totals	**$4,135.5**	**$4,350.1**	**$214.6**	**5.1%**

Our review of the 2005-06 proposed budget identifies several major issues:

- ***Technical Budgeting Issues.*** There are two significant technical issues with the proposed special education budget. Addressing these

issues would increase the Legislature's fiscal flexibility in the budget year.

- ***Mental Health Services.*** The Governor's proposal does not provide a long-term solution regarding the provision of mental health services for special education students.
- ***Incidence Adjustment.*** The budget includes no proposal for updating the special education incidence adjustment, despite the fact the adjustments are based on data that is now eight years old.

We discuss these issues in detail below.

TECHNICAL ISSUES OFFER SAVINGS

The state's special education budget is supported from three sources: local property tax collections, federal special education funds, and the state General Fund. Together, the state uses these three sources to maintain a system of relatively uniform per-pupil SELPA funding levels.

The Department of Finance (DOF) developed the 2005-06 special education budget by adding funding for the anticipated level of growth in the student population in 2005-06, a COLA, and other adjustments to the 2004-05 special education budget. As part of that process, DOF revised the 2003-04 and 2004-05 figures to reflect more recent estimates of program expenditures and growth in the student population. These base adjustments are important, as they can have a significant effect on the 2005-06 budget proposal.

We have identified two major technical budgeting issues with the 2005-06 special education budget that could reduce program costs by $61 million. First, we propose an alternative method for calculating the amount of federal funds that can be counted as an offset to the General Fund. Second, we identify technical problems in the special education budget that would, if corrected, generate significant General Fund savings.

Revise Federal Supplanting Calculation

We recommend the Legislature adopt an alternative calculation for complying with new federal supplanting rules. This recommendation would reduce General Fund special education costs in 2005-06 by $9.9 million.

Congress reauthorized the federal special education law in 2004. One new provision in the act prohibits states from using federal funds to pay for "state-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or in-

flation." It appears the new language is designed to prohibit states from using federal funds to supplant state funds for normal budget increases such as growth and COLA.

California has used federal special education funds in ways that the new federal law appears to prohibit. The *2004-05 Budget Act,* for instance, used $124 million in new federal funds to pay for growth and COLA for the entire special education budget—including the state's share. Using federal funds in this way reduced the state's cost of special education. It appears, however, that the new federal law prohibits this from occurring in the future.

The budget proposes to comply with the new federal restriction, proposing to use $38.1 million of the increase in federal funds to offset growth and COLA and $24.8 million to augment the base program. We think the budget's new supplanting calculation would not work, for two reasons. First, despite the administration's intent to comply with the new federal law, the proposal uses a portion of the federal funds to pay for state growth adjustments—something specifically prohibited by the new federal rule. Of the $38.1 million in new federal funds the budget would use to pay for prior-year adjustments, we identified $5 million in budget increases that fall into the category of "state-law mandated funding obligations." Second, we think the calculation would disadvantage the state in 2006-07 and beyond. The budget's proposed new supplanting formula works for only one year—in future years the state likely would have to pass through to SELPAs all new federal funds in the form of program augmentations.

We think there are simpler options for complying with the new federal supplanting rules that would continue to allow the state to satisfy the new law but also not disadvantage the state over the longer run. Our proposal accomplishes this goal by separating the state and federal funding for budgeting purposes. The state would be responsible for providing growth and COLA adjustments on the portion of special education funds supported by state and property tax funds. The federal government would provide funding for growth and COLA increases on the portion support by federal funds. Any increase in federal funds above the level needed for growth and COLA would be used for statewide program augmentations. Any federal increase below that level would mean that SELPAs would not be fully compensated for the effects of growth and inflation. Under this proposal, only $14.9 million must be passed through to increase special education funding—$9.9 million less than proposed in the Governor's budget.

In sum, we recommend the Legislature adopt our alternative methodology for budgeting special education federal funds at the state level. Our proposal provides a simpler, more straightforward way to comply with the intent of the new federal law than the calculation proposed in the budget.

In addition, our methodology would generate $10 million in General Fund savings. The purpose of our proposal, however, is to comply with the new federal law while protecting the state's system of local grants—not to generate short-term savings. Below, we discuss our proposal for the use of the $9.9 million and the $14.9 million in "pass-through" funds.

Significant Technical Problems With Budget Proposal

We recommend the Legislature make two technical corrections in the proposed special education budget that will free more than $36 million in funds for other special education and Proposition 98 programs.

As noted above, the DOF revised the 2003-04 and 2004-05 estimates of special education spending in the development of the 2005-06 proposed budget. Our review found two major technical problems with the adjustments to the 2003-04 and 2004-05 budgets:

- ***Lower Estimated 2003-04 Growth.*** The Governor's budget fails to recognize $16.1 million in savings resulting from the revised estimate of student growth in 2003-04, which is significantly lower than assumed in the *2003-04 Budget Act*. Because of federal "maintenance of effort" rules, these funds must be spent on special education.
- ***Overbudgeting the New Licensed Children's Institution (LCI) Formula.*** The 2005-06 budget inadvertently assumes a $19.2 million increase in 2004-05 special education costs of students residing in LCIs compared to the level included in the *2004-05 Budget Act*. This technical error results in overbudgeting the LCI formula by $20.2 million in the 2005-06 budget.

We recommend the Legislature correct these technical errors, for a total savings of $36.3 million.

Use Funds to Meet Special Education and Other Priorities

We recommend the Legislature spend $61 million resulting from our recommendations for various special education programs in 2004-05 and 2005-06.

Figure 2 summarizes the impact of the technical budgeting recommendations made above. The figure includes the $24.8 million in funds discussed in our recommendation for an alternative supplanting calculation. It also contains the $36.3 million in savings from our recommendation to correct two technical errors in the special education budget. This brings total funds available from our recommendations to $61.1 million.

Figure 2

LAO Savings and Spending Recommendations Special Education

2005-06
(In Millions)

Sources	Total
Augmentation to the LCI[a] formula	$20.2
Lower 2003-04 growth in K-12 ADA[b]	16.1
LAO supplanting proposal	24.8
Total	**$61.1**
Uses	
Mental health shift	$42.8
LCI[a] formula correction	4.4
One-time block grant	13.9
Total	**$61.1**

[a] Licensed children's institutions.
[b] Average daily attendance.

Figure 2 also shows our suggested uses of the $61 million. The 2003-04 savings are one-time in nature and, therefore, should be spent on one-time activities. The remaining funds represent 2005-06 funds that may be used for any special education purpose. Our proposal also is shaped by issues raised by the Governor's proposed special education budget for 2005-06. Specifically, we recommend the Legislature use the savings as follows:

- $42.8 million to increase support for mental health services for special education students. This would use most of the ongoing funding that is available from our savings recommendations. We discuss this issue further below.
- $4.4 million ($2.2 million in 2004-05 and $2.2 million in 2005-06) to add to the LCI formula a class of group homes that was inadvertently excluded by the enabling legislation. We discuss this issue further below.
- $13.9 million in 2003-04 funds would be distributed to SELPAs in a per-pupil block grant that could be used for any local purpose. Federal MOE rules require the state to spend these funds for spe-

cial education. By using the funds as a one-time block grant, the Legislature would honor the federal rules but not permanently increase special education funding.

MAKE MENTAL HEALTH SHIFT PERMANENT

We recommend the Legislature eliminate two county mental health mandates. We further recommend the Legislature provide a total of $143 million in state and federal funds to support Special Education Local Plan Areas costs of providing mental health services to special education students.

Federal law requires schools to provide mental health services to help special education students benefit from educational services. In practice, mental health services for this population range from short-term counseling on an outpatient basis to long-term psychiatric therapy for students in residential care facilities.

In the early 1980s, the state shifted responsibility for providing more intensive mental health services from school districts to county mental health agencies. This shift created a reimbursable state-mandated program that, by 2002-03, resulted in annual county claims of $123 million. This mandated program is often referred to as the "AB 3632" program, in reference to its enabling legislation. In 1996, the state also shifted responsibility for mental health services of students placed in out-of-state residential facilities to county mental health agencies. Claims for these out-of-state students totaled $22 million in 2002-03, resulting in total claims for the two mandates of $145 million.

As with most other education mandates, the state deferred payment of the two mandates in the *2004-05 Budget Act*—that is, the mandate was kept in place but no direct county reimbursement was provided in the Department of Mental Health's budget. To help pay for these mental health services, however, the special education budget included $69 million in federal funds for distribution to county mental health agencies. These funds provide partial state reimbursement for county AB 3632 costs. An additional $31 million from the General Fund was appropriated to support mental health services provided by SELPAs.

Budget Would Suspend Mandates

The Governor's budget proposes to suspend the two mandates in 2005-06. The passage of Proposition 1A in fall 2004 requires the state to either fund or suspend local government mandates each year. Suspending the mandate frees local government from the service requirement for 2005-06.

The budget proposes no county funding for AB 3632 or out-of-state students. Because state law would not require county mental health agencies to provide services to special education students in 2005-06, responsibility for services would fall to SELPAs and school districts. (This is because federal law requires these services to be provided to special education students.) The special education budget proposes to continue the 2004-05 funding set-asides for mental health services ($69 million in federal funds for counties and $31 million from the General Fund for SELPAs). The administration has not stated its long-term intent for funding the two mental health mandates.

We recommend the Legislature permanently assign this program responsibility to SELPAs, for several reasons. A one-year suspension, as proposed in the Governor's budget, would place SELPAs in a form of limbo: Does the proposal represent a permanent shift of responsibilities to education or would the mandates be funded in the future (thereby shifting program responsibility back to county mental health agencies)? A one-year suspension, therefore, would inhibit SELPAs from making the significant local administrative changes they would need to make if the shift in responsibilities is intended to be permanent.

In addition, the proposal muddies what have been clear lines of local responsibility. By continuing to funnel $69 million in special education funding to county mental health agencies, for instance, the budget proposal gives SELPAs financial responsibility for services, but does not give them administrative or policy control related to the services provided.

Finally, we recommend the Legislature make the shift of responsibility permanent because we are convinced that, by assigning full responsibility for these services to education, the state would foster a more efficient and effective service delivery system of mental health services to students. We discuss these issues further below.

Education Would Have Incentives to Provide Services Efficiently. In our view, the shift in responsibilities would result in a more efficient system primarily because educators would have strong incentives to be a "prudent purchaser" of services. Under the existing reimbursement system, educators and county mental health agencies have incentives to *increase* the state's mandated costs. Educators have the incentive to shift all mental health costs to the county agencies—including the cost of services that remained education's responsibility after the passage of AB 3632. County mental health agencies have the incentive to include all mental health services needed by students under the mandate—even if they are not required under federal law. In addition, by reimbursing 100 percent of a county's program costs, the system also reduces pressure on county agencies to limit the unit cost of services.

Recent audits by the State Controller's Office (SCO) confirms our view that the mandate reimbursement system encourages counties to inflate the actual cost of providing required mental health services to special education students. For instance, an audit of Los Angeles County's AB 3632 claim for services provided from 1998 through 2001 disallowed 21 percent, or $8.8 million, of the county's charges. These costs were disallowed because the county charged the state for (1) services that were not covered by the mandate, (2) services that were funded by other programs, (3) offsetting funding that was not identified, and (4) costs associated with overbilling and data entry errors. The county concurred with the SCO findings. Audits of other county AB 3632 claims show similar problems.

Placing SELPAs in charge of mental health services would strengthen local incentives for the efficient use of state mental health funds. By adding funding for these services into base special education grants, SELPAs would have the resources needed to provide mental health services directly or through county mental health agencies or other contracting entities. The SELPAs, however, would have the incentive to keep these costs to a minimum—any funds not needed for mental health services could be used to pay for other special education services. As a result, by giving SELPAs a reasonable amount of funds to pay for mental health services, we think the state would establish the incentives needed for a more efficient program structure.

Shift Could Improve Effectiveness of Services to Students. Returning responsibility for mental health services to SELPAs also would result in a more effective delivery system if it encouraged educators to increase the use of less-intensive preventive mental health services. As noted above, one consequence of AB 3632 is that the program creates an incentive for educators to shift as many mental health costs to county agencies as possible. In legislative discussions on AB 3632 last spring, county mental health agency staff expressed the belief that many schools fail to provide the early intervention services that remained the responsibility of education even after AB 3632 was enacted. To address this concern, the Legislature included $31 million in the 2004-05 special education budget to *require* SELPAs to provide more early intervention services.

Placing SELPAs in charge of mental health services, however, would encourage schools to recreate the capacity to provide these intervention services. Early intervention often is more cost effective. The proposal to shift responsibility back to education, therefore, may encourage educators to intervene earlier when behavioral problems can be treated with less intensive services. This would be good for students (avoiding the need for more intensive services) and it would represent another way that changing the local incentives for mental health services would benefit the state.

For the above reasons, we recommend that the Legislature eliminate the existing mental health mandates on counties. Federal law requires school districts provide these services. By eliminating the state mandate on counties, our recommendation has the effect of returning these responsibilities to school districts.

We also recommend the Legislature revise the proposed Budget Bill language and add the full $100 million earmarked for mental health services into the base special education funding formula. In addition, we recommend the Legislature redirect $42.8 million more in funding to SELPAs for mental health services (we discussed the source of these funds earlier in this section). This would provide a total of $142.8 million to SELPAs for mental health services in 2005-06. Based on past claims (and the magnitude of disallowed county costs), we believe our proposal provides a reasonable amount to allow SELPAs to pay for the needed mental health services.

OTHER ISSUES

Cleanup Needed on New Formula

We recommend the Legislature adopt trailer bill language to recognize the special education costs for residents of a class of licensed children's institutions that was inadvertently excluded from last year's trailer legislation. Fixing this error would cost $2.2 million in both 2004-05 and 2005-06.

As part of the *2004-05 Budget Act*, the Legislature revamped the funding formula for the support of special education students who reside in an LCI. In 2002-03, more than 50,000 K-12 students lived in an LCI (including foster family homes or group homes) because the youth's family was unable to provide needed care. The Department of Social Services licenses group homes based on the services needed by youth living in each home.

Since the enactment of the new formula, however, the State Department of Education (SDE) discovered that the trailer legislation inadvertently omitted a class of group homes from the formula. Specifically, the formula failed to include 129 community care facilities that serve disabled youth who are referred by regional centers for the disabled. Adding these group homes to the new LCI model increases costs by $2.2 million in both 2004-05 and 2005-06.

To correct for this oversight, we recommend the Legislature adopt trailer bill language that adds the community care facilities to the list of group homes used to distribute special education funds. We also recommend the Legislature add $4.4 million ($2.2 million in one-time funds that must be spent on special education programs for the 2004-05 costs and $2.2 mil-

lion in ongoing 2005-06 funds) to the special education budget to pay for costs associated with the additional facilities.

Incidence Factor Remains Outdated

We recommend the State Department of Education report to the budget subcommittees before March 1 on the feasibility of assuming responsibility for calculating the special education "incidence" adjustment.

The 2005-06 budget proposes $84 million to pay for the special education "incidence" adjustment in 2005-06. State law calls for these supplements to local apportionments as a way of acknowledging that, for a variety of factors, some SELPAs experience higher costs than the typical SELPA. The current adjustments were calculated in 1998 using 1996-97 cost data. Since the factors underlying local cost profiles change over time, the existing adjustments likely no longer reflect actual SELPA costs.

To update the adjustments, the Legislature required SDE to contract for a study in 2002-03. This study was completed in the fall of 2003. Despite significant data problems, the study recommended a new set of incidence adjustments. The data problems, however, were so severe that they clouded the legitimacy of these new adjustments in the eyes of many SELPA administrators. The credibility of the incidence adjustments is very important, as the adjustments are designed to increase the fairness of the state's system of uniform base special education grants.

The study identified data quality as a prime concern. The SDE maintains a comprehensive special education database that provided the data for the 1998 and 2003 incidence factor studies. According to SDE, changes to the database made in 2001-02 resulted in local coding errors that reduced the accuracy of the data. The department believes these problems have been corrected with the 2002-03 data.

The study also suggested that the state update the incidence adjustments annually in order to avoid "radical changes in funding for some SELPAs" that may occur if the adjustments are reassessed only every five years. Indeed, changes to the adjustments identified in the 2003 study were so large that the study recommended a phased approach to implementing the new adjustments. The study suggests that a more frequent calculation of the adjustments would ease transition problems.

In our view, the problems with the 2001-02 data require updating the incidence adjustments. This would be no small task, however. The study presents a series of technical and policy issues that have to be resolved each time the adjustment is recalculated. In our discussion on this issue, we asked SDE to assess the feasibility and cost of assuming responsibility

for this task. At the time this analysis was written, the department was in the process of determining what resources would be needed to replicate the study.

In our view, the long-term viability of the incidence factor rides on the department's capacity to update the adjustment. The current reliance on the 1998 adjustments can no longer be defended given the many changes to SELPA costs that have occurred over the past eight years. In addition, the use of outside contractors to recalculate the adjustment is expensive and time-consuming—particularly if the Legislature would like to update the adjustment more often than every five years. If the department does not believe it can reasonably develop the capacity to assume this responsibility, the Legislature will need to either (1) consider eliminating the adjustment or (2) spend about $150,000 each year or two to update the adjustment.

To assist the Legislature in assessing its options for the long-term viability of the incidence adjustment, we recommend SDE report to the budget subcommittees on the costs and feasibility of the department assuming responsibility for calculating the special education incidence adjustment.

CHARTER SCHOOLS

Ever since it was first implemented in 1999-00, we have had concerns with the calculation of the charter school categorical block grant funding level. The basic area of disagreement has revolved around which programs are in and out of the block grant. The Governor's budget addresses these existing disagreements in one way by "delinking" the charter school categorical block grant from any set of underlying categorical programs. This delinking approach, however, undermines the purpose of the block grant and is very likely to be unworkable. We recommend the Legislature pursue an alternative reform strategy based upon a new control section in the annual budget act that would provide charter schools a share of categorical funding that is equivalent to the proportion of K-12 students they serve. This alternative approach would be simple, workable, and consistent with the original intent of the block grant.

Below, we identify the basic problems with the existing charter school block grant funding model. These problems became so significant in 2004-05 that the budget act essentially suspended the existing model and authorized a working group to try to improve it. We summarize the progress the working group made toward developing a new model. We then describe the Governor's budget proposal to reform the model, discuss our concerns with the proposal, and recommend an alternative reform approach. We conclude this section with a brief discussion of a related budget proposal that would allow colleges and universities to authorize charter schools. As we recommended last year, we think a system of multiple charter authorizers, with certain accompanying safeguards, could enhance charter school oversight and accountability.

Existing Block Grant Funding Model Has Become Virtually Unworkable

The charter school block grant was established in 1999 to provide charter schools with categorical program funding similar to public schools serving similar student populations. The block grant currently suffers from two basic problems. The primary problem is a lack of consensus regarding

which programs are in and out of the block grant. A secondary problem is the funding formula used to calculate the block grant funding level is overly complex.

Categorical Confusion. Since its inception, our office and the Department of Education (SDE) have interpreted statute to include several programs in the charter school block grant that the Department of Finance (DOF) has excluded when determining the block grant funding level. Several of the programs at the center of contention are large programs with large fiscal implications for charter schools—Targeted Instructional Improvement, Regional Occupation Centers and Programs, Teaching as a Priority, Library Materials, Deferred Maintenance, and Mandates. In addition, statute is ambiguous as to whether county-administered programs, such as the California Technology Assistance Project, County Office Fiscal Oversight, California Student Information System, and the K-12 High Speed Network, are to be in or out of the block grant. A new area of ambiguity involves the block grants created by Chapter 871, Statutes of 2004 (AB 825, Firebaugh). Four of the six new block grants consolidate programs that are in the charter school block grant with programs that charter schools formerly had to apply for separately. It is unclear whether these block grants are to be subsumed into the charter school block grant, whether charter schools now have to apply separately for all six block grants, or whether all the pre-existing programs need to be tracked separately just for charter school funding purposes.

Methodological Madness. A secondary problem with the block grant is its overly complex funding formula. The formula uses 1998-99 as a base year and measures all changes from this year. Locking in 1998-99 as a base year has led to accidental funding errors (when the base year was not correctly updated to reflect budget-year adjustments). The base year also has become increasingly obsolete, with few of the categorical programs in the original block grant still remaining and many new categorical programs since created. These changes have made the formula increasingly difficult to use and have called into question the validity of the formula to account accurately for current categorical funding. In addition, the formula is sensitive to changes in revenue limits—changes that occur throughout the year and for which information is not generally available.

Working Group Makes Some Progress Toward New Model

As of a result of these problems, the *2004-05 Budget Act* contained language directing the Legislative Analyst's Office and DOF to coordinate a working group to "develop a simpler and clearer method for calculating the charter school block grant appropriation in future years." The working group, which held three meetings during fall 2004, included representa-

tives from SDE, the Office of the Secretary for Education, the California Charter School Association, the Charter School Development Center, EdVoice, the Association of California School Administrators, the California School Boards Association, the California Teachers Association, the California County Superintendents Educational Services Association, and legislative staff. Although the group did not ultimately agree as to exactly which programs should be in and out of the block grant or on all aspects of a new block grant method, it did achieve notable consensus in important areas.

Agreed on Purpose of Block Grant. The group generally agreed that existing statute provided sufficient guidance as to the basic intent of the charter school funding system. Existing statute states, "It is the intent of the Legislature that each charter school be provided with operational funding that is equal to the total funding that would be available to a similar school district serving a similar pupil population." Moreover, the group generally agreed that the specific purpose of the block grant was to provide charter schools with funding in lieu of categorical programs.

Agreed on Principles to Guide Development of New Block Grant Model. The group generally agreed that the following principles should guide development of a new model.

- The block grant calculation should be simple.
- The calculation and its outcome should be transparent.
- The calculation should entail as little administrative burden as practicable at the local level as well as the state level.
- The calculation should result in comparable funding rates for similarly situated charter schools and other public schools.
- The calculation should not require the state to overappropriate the Proposition 98 minimum guarantee.
- Charter schools should retain existing flexibility to use block grant funds for general education purposes.

Agreed on Some Methodological Changes. The group agreed the model should no longer rely on a base year. It also preferred having one budget section govern the block grant appropriation rather than having charter provisions embedded within the budget items for every associated categorical program. It also agreed changes should be made to clarify which programs did not apply to charter schools as well as which programs charter schools were to apply for separately. However, the working group did not achieve consensus on all aspects of a new block grant model.

Governor's Proposal Is Not Viable Reform Option

The Governor's budget contains a charter finance reform proposal that attempts to address the difficulties with the current system. The Governor's funding proposal provides $68 million for the charter school block grant—a $10 million augmentation over the current year. As Figure 1 shows, this augmentation funds anticipated growth in charter average daily attendance (ADA), a cost-of-living adjustment, and a $2.9 million base augmentation. The DOF states the base augmentation is provided in recognition of charter schools' low participation in certain categorical programs and inability to access funding for other categorical programs.

Figure 1

Governor's Budget Proposal
Charter School Categorical Block Grant

(In Millions)

2004-05 Funding Level	**$58.1[a]**
Change From Current Year	
Average daily attendance growth (8 percent)	$4.6
Cost-of-living adjustment (3.93 percent)	2.5
Base augmentation	2.9
Total augmentation	$10.0
2005-06 Funding Level	**$68.1[b]**

a Of this amount, $5.3 million is deferred until 2005-06.

b Of this amount, $5.9 million is deferred until 2006-07.

The funding proposal is associated with accompanying trailer bill language that would significantly change the charter school categorical block grant by delinking it from any underlying set of categorical programs. That is, the block grant funding level would no longer represent in-lieu funding for a set of specified categorical programs. Under the proposal, once the 2005-06 funding level has been set, the block grant funding level would be adjusted in future years for growth in ADA and inflation. The block grant funding level would be reviewed every three years, beginning in 2008-09, to determine how its growth compared with growth in K-12 categorical funding generally, less a small set of special categorical programs.

Proposal Undermines Purpose of Charter School Block Grant. Despite controversy regarding exactly which programs are in and out of the block grant, the general purpose of the block grant, as indicated above, has rarely been questioned and remains quite clear—the block grant is to provide charter schools with in-lieu categorical funding. When originally established, the block grant provided charter schools with in-lieu funding for 33 categorical programs. By disconnecting it from categorical programs, the Governor's proposal undermines the policy basis of the block grant.

Proposal Very Likely to Be Unworkable. Under the Governor's proposal, it is unclear how charter schools, the Legislature, and state agencies would know which programs charter schools could apply for separately. The DOF suggests charter schools could apply separately only for those programs for which they currently can apply separately. Given the existing disagreement over which programs charter schools can apply for separately, this new statutory ambiguity is likely to generate even greater confusion over which programs are in and out of the block grant. Moreover, despite DOF's intention, the proposed language would seem to allow charter schools to apply separately for all categorical programs except Economic Impact Act. Having to apply separately for virtually every categorical program undermines one of the primary legislative purposes of charter schools, which was to offer schools greater fiscal autonomy in exchange for performance-based accountability. Nonetheless, if charter schools actually did apply separately for all categorical programs, then their categorical block grant appropriation would represent a windfall—providing charter schools with almost $300 more per ADA than noncharter schools.

Alternative Approach Could Achieve Simplicity, Clarity, and Comparability

We recommend the Legislature repeal the existing block grant model, reject the Governor's reform proposal, and adopt an alternative reform approach. The alternative approach we recommend would link charter schools' share of categorical funding with the share of K-12 students they serve. The resulting block grant amount then would be distributed among charter schools using a simple conversation factor to ensure more per pupil funding was provided for disadvantaged students. This approach is simple to understand, yields comparable charter and noncharter categorical funding rates, protects against an unintentional Proposition 98 overappropriation, remains dynamic such that it can respond to a changing array of categorical programs, and might become so automated and uncontroversial that the Legislature would not need to address the charter school finance system every year.

As with the Governor's reform proposal, we recommend the Legislature repeal the existing code sections that detail the charter school categorical block grant and its funding formula (Education Code Section 47634 and Section 47634.5). In its place, we recommend the Legislature create a new in-lieu categorical funding system for charter schools. Below, we describe each component of this alternative reform approach.

Clarifies Programs for Which Charter Schools Are Not Eligible. To address existing statutory ambiguity regarding certain types of county-run programs, we recommend the Legislature adopt a new code section that would list the categorical programs for which charter schools are *not* eligible. For these programs, charter schools neither could apply nor receive direct or in-lieu funding. We recommend this list contain programs funded and administered directly by a select group of county offices for nonclassroom-based county-level activities. Figure 2 lists the programs we recommend including in this category.

Figure 2

Programs for Which Charter Schools Would Not Be Eligible[a]

2005-06
(In Millions)

Program	Proposed Funding Level
K-12 High Speed Network	$21.0
California Technology Assistance Project	16.0
County Offices of Education Fiscal Oversight	10.5
American Indian Education Centers	4.7
Center for Civic Education	0.3
California Association of Student Councils	—[b]
Total	**$52.8**

a As recommended by the Legislative Analyst's Office.

b The Governor's budget includes $33,000 for this program.

Clarifies Programs for Which Charter Schools Must Apply Separately. We also recommend a new code section to clarify exactly which categorical programs charter schools must apply for separately. This section would be intended to reduce potential controversy regarding which programs are

out of the block grant. Figure 3 lists the Proposition 98 programs for which we recommend charter schools be required to apply. As the figure shows, we recommend charter schools continue to apply separately for testing and student-information monies (to ensure their performance can be tracked), special education, and programs intended for non-K-12 populations (adult education and child development). This list is almost identical with existing statute governing the block grant funding formula and is largely consistent with the Governor's proposed trailer bill language for reviewing the block grant funding level. It also tries to be as consistent as possible with statutory directives that the charter school funding model be simple and allow for fiscal autonomy. (Nonetheless, this list still includes ten programs representing almost $5 billion in categorical funding, or approximately 40 percent of all Proposition 98 categorical funding.)

Figure 3

Programs Charter Schools Would Have to Apply for Separately[a]

2005-06
(In Millions)

Program	Proposed Funding Level
Special Education	$2,891.3
Child Development	1,177.9
Adult Education	600.3
After School Education and Safety[b]	121.6
Pupil Testing	85.9
Adults in Correctional Facilities	15.3
California School Information Services	4.5
Pupil Residency Verification	0.2
Teacher Dismissal Apportionments	—[c]
Mandates	—[d]
Total	**$4,897.0**

a As recommended by the Legislative Analyst's Office.

b Proposition 49 requires charter schools to apply separately for this program.

c The Governor's budget includes $43,000 for this program.

d The Governor's budget includes $36,000 for mandates.

Automates Funding While Ensuring Parity and Protecting Against Overappropriations. Third, we recommend the Legislature adopt a new system for providing charter schools with in-lieu categorical funding. The system would be described in statute but implemented through an annual budget control section. For all remaining Proposition 98 categorical programs (those that do not fall into the two above categories), we recommend control language that would provide charter schools a share of funding equal to the share of K-12 students they serve. Specifically, as part of the annual May Revision, SDE would project charter school's share of ADA in the budget year. This estimate would be included in the control section, accompanied with language providing the same share of funding from these remaining categorical programs to charter schools. This approach would allow SDE to distribute categorical funds immediately following enactment of the budget.

This approach eliminates the need for a base year, is not sensitive to changes in revenue limits, contains all relevant funding information in a single place, is dynamic such that it can reflect ongoing changes to the categorical landscape, and establishes a funding process that automatically produces parity. Thus, if any midyear adjustments, year-end pro-rata adjustments, or deferrals are made to any of these categorical programs, charter schools are automatically affected to the same degree as noncharter schools. Moreover, these adjustments are made without affecting overall Proposition 98 spending.

Simplifies Process, Strengthens Incentives to Serve Disadvantaged Students. Once charter schools' overall categorical funding level has been determined, we recommend a simple conversion factor be used to ensure charter schools receive more per pupil funding for the disadvantaged students they serve. Serving disadvantaged students is one of the legislative objectives of charter schools, and a supplemental disadvantaged-student funding rate is a core aspect of the existing charter school funding model. A conversion factor (for example, providing 25 percent more for every student eligible for free and reduced price meals) would be a simple means to generate incentives to serve disadvantaged students while ensuring the aggregate charter funding allocation is not exceeded.

Equalizes Funding Without Major Disruption. The model described above would provide charter schools with just over $200 million of in-lieu categorical funding in 2005-06. (This is based on DOF and SDE's assumption that charter schools will serve approximately 3 percent of all K-12 ADA in 2005-06 and on the Governor's proposed funding levels for categorical programs.) It is difficult to calculate how this compares to the amount charter schools currently are receiving. In a 2003 report, RAND found that, in California, charter schools received less categorical funding compared to noncharter public schools. If this is so, then our proposal,

which provides similar funding for charter and noncharter schools, would likely result in charter schools receiving an increase in funding and noncharter public schools experiencing a slight decrease. Since the decrease would be spread over approximately 40 categorical programs, the impact on any district for any program would be minimal.

The reason that we are not able to quantify the exact impact on charter and noncharter schools is because we do not know precisely what share of categorical funding charter schools currently receive. For example, charter schools currently do apply separately for some programs (such as K-3 Class Size Reduction and English Language Learner Assistance) for which, under our alternative approach, they would receive direct in-lieu funding. To derive a precise estimate of "new" funding would require a comprehensive accounting of charter schools' existing categorical participation. Nonetheless, it is likely that charter schools with very high categorical participation and very few disadvantaged students would experience a slight reduction in funding. Similarly, noncharter schools with very high categorical participation rates would experience a slight reduction in categorical funding. In contrast, charter schools with low categorical participation and many disadvantaged students would experience an increase in funding. Noncharter schools with low categorical participation would be virtually unaffected by the new model. In short, the new system would involve some equalization and benefit charter schools with low categorical participation and many disadvantaged students.

Alternative Approach Creates Reform Structure. This alternative approach is not dependent upon any particular view of categorical programs. In other words, the Legislature might adopt the basic reform structure even if it decided to modify the list of programs for which charter schools would not be eligible or would have to apply for separately. Regardless of the treatment of specific categorical programs, we think the basic reform structure would simplify and clarify charter school finance.

In sum, we recommend the Legislature repeal the existing charter school block grant model, which has become virtually unworkable. We also recommend the Legislature reject the Governor's reform proposal, which too is very likely to be unworkable. Instead, we recommend the Legislature establish a simpler, more transparent model that results in more comparable charter and noncharter funding rates. A major advantage of the new model we describe is that it would be able to respond to an ever-changing categorical landscape—perhaps the greatest challenge confronting the existing system. The model would be directly linked to underlying categorical programs and automatically adjusted as funding for these programs changed. Indeed, it could operate so automatically that the Legislature would not need to review the charter school finance system every year. This would allow the Legislature to turn attention from the relatively tech-

nical issue of a funding formula to more meaningful issues of oversight and quality.

Alternative Authorizers Could Improve Quality

We recommend the Legislature adopt in concept the Governor's proposal to allow colleges and universities to authorize and oversee charter schools. We think a system of alternative authorizers has the potential to notably improve charter school development, oversight, and accountability. In establishing an alternative authorizer system, we recommend further attention be given both to the criteria an entity should meet prior to chartering schools and the conditions under which the state would revoke an entity's chartering authority.

The *Governor's Budget Summary* includes a proposal to allow alternative authorizers to charter K-12 schools. The proposal currently is not associated with a funding request. At the time of this writing, bill language had not yet been released, but the intent apparently is to allow colleges and universities, upon approval by the State Board of Education, to charter schools. In our January 2004 report, *Assessing California's Charter Schools*, we recommended a multiple authorizer system as one strategy for enhancing charter school development, oversight, and accountability. Below, we discuss our concerns with the existing authorizer system, explain how a multiple authorizer system might address these concerns, and highlight components of the Governor's proposal that require additional development.

Poor Incentives Embedded Within Existing System. Under the existing authorizer system, school districts are required to initially approve charter petitions that are adequately developed—even if the school districts are unlikely later to be able to conduct the oversight needed to ensure schools are honoring their charters. We have concerns with three particular types of school districts.

- ***Those Authorizing Few Charter Schools.*** RAND's 2002 charter authorizer survey found that slightly more than two-thirds of charter authorizers had authorized only one charter school. School districts authorizing only one charter school are likely to be unfamiliar and inexperienced with the petition review, oversight, evaluation, and renewal process.
- ***Those Experiencing Fiscal Difficulties.*** Some school districts are facing serious fiscal problems but nonetheless are required to authorize charter schools. We question whether these types of school districts can devote sufficient attention and resources to conducting rigorous charter oversight.

- ***Those Likely to Be Overly Receptive or Unreceptive to Charter Schools.*** School districts face various incentives stemming from their local environments that might contribute to lax or inappropriate oversight. For example, school districts experiencing facility problems or rapid growth might view charter schools as expedient solutions and be less likely to revoke charters. Conversely, school districts experiencing declining or shifting enrollment might be unreceptive to charter schools and conduct inappropriate oversight. In either case, the charter school accountability system is weakened.

Multiple Authorizers Could Improve Incentives and Constrain Costs. Allowing charter groups choice among potential authorizers might notably enhance the quality of charter development, oversight, and accountability. Charter groups might connect with authorizers who are familiar, experienced, and reputable at conducting high quality oversight and providing meaningful local assistance. They might bypass school districts that are distracted with serious fiscal problems or otherwise likely to be unable to provide adequate oversight and service. A multiple authorizer system also could have the ancillary benefit of constraining oversight costs, as schools might act as savvy consumers, selecting authorizers who provide the best service for the lowest price.

Certain Safeguards Likely to Be Needed. Although we think allowing colleges and universities to charter schools could potentially improve the charter school system, two components of the Governor's proposal require further development—the criteria entities must meet to be allowed initial chartering authority and the conditions under which this authority would be revoked. The state can provide some safeguard against errant authorizing by setting clear expectations as to the minimum qualifications expected of new authorizers. Minnesota, for example, recently began requiring initial training for new authorizers. (Minnesota has a relatively broad array of charter authorizers. Currently, the state department, 29 school districts, 20 postsecondary institutions, and 14 nonprofit organizations charter schools.) The state can provide further safeguard by setting clear expectations as to the conditions under which authorizing power would be revoked. For example, the state would want to retain power to revoke chartering authority from agencies that were negligent, mismanaged, or corrupt.

In sum, we think the Governor's proposal to allow colleges and universities to charter schools has the potential to notably improve charter schools generally, but we think some of the proposal's details require further development.

MANDATES

The Governor's budget recognizes 36 state-mandated local programs for K-12 education in 2005-06. These mandates require districts and county offices of education (COEs) to conduct a wide range of instructional, fiscal, and safety activities, and require districts to administer local processes designed to protect parent and student rights.

The State Constitution requires the state to reimburse local governments for the costs of complying with mandated local programs. The Commission on State Mandates (CSM) determines whether state laws or regulations create a mandated local program and whether the mandate requires reimbursing local governments for the costs of following the mandate. The CSM also develops claiming guidelines for the specific mandated activities that are eligible for reimbursement.

For several years, the state has not provided reimbursements to K-12 school districts for mandated programs. The *2001-02 Budget Act* was the last time the state made major appropriations for K-12 mandates. The state has instead "deferred" payments, which means that funds will be provided at some unspecified future time. Even though payments have been deferred, school districts are still required to perform the mandated services.

The budget again proposes basically no funding for K-12 mandates in 2005-06. The budget would defer payment for district and COE claims to future budgets due to the fiscal condition of the state. With this new proposed deferral (estimated at roughly $315 million), we estimate the state will owe about $1.7 billion in unpaid K-12 mandate claims by the end of the budget year. Proposition 1A, which requires the state to pay for mandates or relieve local government of the service requirements, does not apply to local education agencies. As a result, the state may continue deferring K-12 mandate costs. These deferred costs would be paid from future Proposition 98 funds.

Chapter 895, Statutes of 2004 (AB 2855, Laird), eliminated six state mandates affecting K-12 education beginning in 2005-06. Two other mandates that affected both K-12 education and other local government agen-

cies also were eliminated. Based on 2002-03 final claims from districts and COEs, we estimate savings from eliminating the eight mandates totals more than $6 million annually. In addition, Chapter 895 directs CSM to review its decisions on the Standardized Testing and Reporting (STAR) program and the School Accountability Report Card mandates "in light of federal statutes enacted and state court decisions rendered since these statutes were enacted."

From our review of K-12 mandates, we have identified four issues:

- The budget should identify new mandates that have been approved by the Legislature.
- The State Department of Education (SDE) and the State Controller's Office (SCO) need to establish a process for sharing information on "offsetting revenues."
- The mandated cost of the new Comprehensive School Safety Plan mandate could be reduced by recognizing available revenues as offsets.
- Costs associated with the mandate to provide supplemental instruction to students in grades 2 through 9 could be reduced by limiting per pupil costs to the amount provided by the state for supplemental instruction programs.

We discuss the first three issues below. The fourth issue is discussed in the "Categorical Reform" section earlier in this chapter.

Newly Identified Mandate Review

We recommend the Legislature add eight new mandates to the budget bill in order to signal its recognition of the state's mandate liabilities.

Chapter 1124, Statutes of 2002 (AB 3000, Committee on Budget), requires the Legislative Analyst's Office to review each mandate included in CSM's annual report of newly identified mandates. In compliance with this requirement, this analysis reviews eight new education mandates. Figure 1 displays the new mandates and the costs associated with each one. The CSM estimates total district costs of $77 million for the eight mandates through 2004-05. This estimate is based on actual district claims through 2002-03. In 2005-06, we estimate the new mandates will cost the state about $11.3 million.

Before the current budget crisis, the state maintained a process for including new mandates in the budget. Specifically, once CSM had completed its determination of a mandate's costs, an appropriation for the approved costs would be included in an annual "mandate claims bill."

The claims bill allowed the Legislature to review and approve the cost of new mandates—or direct CSM to reassess its approved costs based on specific issues identified during the deliberations on the bill.

Figure 1

New Mandates Approved by The Commission on State Mandates in 2004

(In Millions)

Mandate	Requirement	Accrued Costs Through 2004-05	Estimated Cost In 2005-06
Comprehensive School Safety Plan	Develop and annually update a comprehensive school safety plan.	$37.1	$5.5
Immunization Records: Hepatitis B	Ensure students have needed immunizations before entering school.	29.6	4.3
Pupil Promotion and Retention	Provide supplemental instruction to students at risk of academic failure.	9.0	1.4
Standards-Based Accountability	Provide specific accountability information (one-time).	0.6	—
Charter Schools II	Requires districts and counties to review charter petitions.	0.3	0.1
Criminal Background Check II	Requires background checks on employees and contractors.	0.3	0.1
School District Reorganization	Provide specific information on school district reorganization petitions.	—a	—
Attendance Accounting	Provide information for state change in attendance accounting (one-time).	—a	—
Totals		**$76.9**	**$11.3**

a Less than $50,000.

Because the state has ceased all education mandate payments, there has been no K-12 claims bill. This leaves the budget process as the primary vehicle for the Legislature's review of new mandates. The 2005-06 Governor's budget recognizes only one of the new K-12 mandates—the Comprehensive School Safety Plan. According to the Department of Finance, the commission's actions on the other K-12 mandates are still under review and may be included in an April budget revision letter or in the May Revision.

Our review of the CSM decisions on the new mandates did not identify any issues with the commission's determination of mandated costs. By adding the new mandates to the budget bill, the Legislature would signal its recognition of the state's mandate liabilities. For this reason, we recommend the Legislature amend the budget bill to include the eight mandates approved by CSM during 2004.

Offsetting Revenues Process Is Needed

We recommend the Legislature direct the State Department of Education and the State Controller's Office submit a joint plan to the budget subcommittees by April 1, 2005, outlining a process for sharing information needed to reduce the state cost of state-mandated local programs.

In past recommendations on state-mandated programs, we have discussed the problem that districts sometimes fail to recognize state funds that districts should have used as an offsetting revenue in their claims for reimbursement of mandated costs. For instance in our *Analysis of the 2004-05 Budget Bill* (please see page E-104), we noted that several district claims we reviewed for the STAR program did not recognize the annual apportionment for local program costs that is included in the budget each year. Statute directs local governments to recognize any such revenues as an offset that reduces their total claim for reimbursement.

The SCO processes school district claims for mandate reimbursement. While SCO reviews the claims for completeness and accuracy, it does not have access to data on the amount of state funds districts receive in programs that have been identified as offsetting revenues to specific mandates. Without that information, the SCO review cannot assess whether a district claim appropriately identified the availability of such revenues.

The state would benefit from ongoing exchange of information on state mandates between SCO and SDE. The SDE maintains data on the amount provided to each district in K-12 categorical program funding. If SDE supplied SCO with district allocations for specific programs, the Controller would be able to double check that districts were identifying offsetting revenues for specific mandates. Because district claims appear to be weak in this area, giving the Controller apportionment data could save the state a significant amount of funds.

The SCO also has information that would be useful to SDE. Specifically, SCO could provide feedback to SDE on current issues with specific mandates. For instance, SCO could inform the department when claims for specific mandates increase significantly. Since SCO also audits district mandate claims, it could discuss problems with specific mandates that are discovered through the audit process, such as offsetting revenues, that sig-

nificantly increase state costs. With this information, SDE could advise the Legislature about statutory or budget changes to address these issues.

While sharing information seems like a simple task with significant benefits, it does not routinely occur. Therefore, we recommend the budget subcommittees direct SDE and SCO to jointly develop a plan for sharing data needed by both agencies. To give the subcommittees time to review the plan, we recommend the subcommittees require the agencies to submit the report by April 1, 2005.

Strengthen Language on Offsetting Revenues

We recommend the Legislature add budget bill and trailer bill language to ensure that districts use available funds to pay for local costs of the new Comprehensive School Safety Plan mandate.

The Comprehensive School Safety Plan mandate requires each K-12 school to develop and annually update a school safety plan. The plan must identify "strategies and programs that will provide or maintain a high level of school safety." The planning requirements are quite specific. For instance, the law requires schools to consult with local law enforcement in the writing of the school plan. The plan also requires schools to include in the plan (1) procedures for child abuse reporting; (2) the definition of "gang-related apparel;" and (3) other existing policies on sexual harassment, emergency disasters, and school discipline. We estimate the costs of the mandated planning process in 2005-06 at about $5.5 million. Since only about one-third of districts submitted a claim for this mandate, the long-term cost could be considerably higher.

The statute requiring the safety plans expresses the Legislature's intent that districts use existing funds to pay for the costs of developing the plans. The language, however, does not specifically identify any existing program that the Legislature intended districts to use for the planning process. The commission identified at least two possible funding programs that could support the mandated activities. Without an explicit requirement in law, however, CSM could not identify these programs as a required offsetting revenue. In this case, unless *districts* identify the funding sources as an offset, the state cannot require districts to use the funds to pay for the mandated planning process.

The two programs identified by CSM include a grant program for new school safety plans and the Carl Washington School Safety and Violence Prevention Act. In 2004-05, the budget act contains $1 million for the new school safety planning grants program. The program was merged into the School Safety Consolidated Competitive Grant program by Chapter 871, Statutes of 2004 (AB 825, Firebaugh), beginning in 2005-06. The Carl Wash-

ington program supports local activities to improve middle and high school safety programs. The budget proposes $91 million for this program in 2005-06.

Budget Proposes New Provisional Language. The proposed budget bill contains provisional language placing "first call" on funds in these two programs for any local costs of the Comprehensive School Safety Plan mandate. This language would require districts to first use funds to pay for the costs of the planning mandate. This language is appropriate because it would induce districts to use these school safety funds as offsets to any subsequent district claim for costs associated with this mandate. We think, however, a couple of other changes are necessary. First, we suggest adding a *statutory* first call provision to both programs, which would reinforce the priority of the programs' funds for mandated planning costs. Second, we have identified several technical issues that need to be corrected with the new language.

We also have identified an appropriate fund source for the cost of planning in elementary schools—the School Improvement Program (SIP). The SIP supports a wide range of school site activities, guided by a parent-teacher school site council. Since the Comprehensive School Safety Plan mandate directs site councils to develop the safety plan, we think the Legislature should require districts to use SIP funds to pay for the mandated school plans. Virtually all elementary schools receive significant annual funding under SIP.

As part of Chapter 871, the Legislature consolidated SIP into a new School and Library Improvement Block Grant. The budget proposes $419 million for the block grant in 2005-06—virtually all of these funds are currently part of the 2004-05 SIP appropriation. Thus, adding both budget and statutory direction for districts to use funds in the School and Library Improvement Block Grant would recognize that, in creating the Comprehensive School Safety Plan mandate, the Legislature added another duty to school site councils that should be paid from funds provided to the council.

AFTER SCHOOL PROGRAMS AND PROPOSITION 49

21ST CENTURY COMMUNITY LEARNING CENTERS NOT SPENDING FEDERAL GRANTS

The state has had problems in taking full advantage of federal funds for the 21st Century Community Learning Centers Program (21st Century program). By the end of 2004-05, the state could have up to $100 million in carryover funds. We suggest various steps the Legislature could take to reduce the carryover problems over the next several years.

Below, we first describe the purpose and structure of the 21st Century program and compare it to the state's After School Education and Safety (ASES) Program. In the following section, we describe the problems with unspent funds and discuss possible causes. We then provide several recommendations to begin reducing the level of unspent funds.

Background

The 21st Century program is a federally funded before and after school program that provides disadvantaged K-12 students with academic enrichment opportunities and supportive services to help the students meet state and local standards in core academic content areas. In the past, the federal Department of Education (DOE) awarded three-year competitive grants for these centers directly to school districts. In 2001, the reauthorized Elementary and Secondary Education Act converted the 21st Century program to a state formula program. Starting in 2002, DOE began phasing out the direct federal grants and began transitioning the program to a state-administered one.

The federal grant to California, which was $41.3 million in 2002-03, has steadily increased since then. In 2005-06 the federal grant amount is $136 million. The state has 27 months from the date the state appropriates funding in the annual budget act to spend these 21st Century program funds. Unspent funds are returned to DOE.

State Law Restricts 21st Century Program. The state implemented the 21st Century program at the elementary and middle school levels generally to parallel the state ASES program:

- ***Maximum Grants.*** Grant levels are capped at $75,000 for elementary schools with 600 or fewer students, $100,000 for middle schools with 900 or fewer students, and $250,000 for high schools. For larger schools, a per pupil funding formula allows higher maximum grant amounts.
- ***Per Pupil Reimbursement Rates.*** The elementary and middle school programs are reimbursed at a rate of $5 per student per day. (The state program, however, requires a 50 percent local match, increasing the total spending level to $7.50 per student per day. Federal law prohibits a local match on the 21st Century program.)

Small portions of the federal funds are used for high school grants, "equitable access," and support of family literacy programs.

Funds Are Consistently Underutilized

Since the inception of the state-administered 21st Century program, the State Department of Education (SDE) has experienced problems using these funds to serve eligible schools and students. Each year, SDE has carried over a substantial portion of appropriated funds into the following budget year. Figure 1 shows the state appropriations for the three years of the state-administered program and the amounts and proportions of funds that are expected to be spent by specified dates. For example, only 42 percent of the 2002-03 appropriation and 55 percent of the 2003-04 appropriation has been spent to date. The SDE has estimated that $119 million of the current year's appropriation (74 percent) will be spent. We think that this estimate is overly optimistic, given past experience, and would expect that much less will actually be spent.

Figure 1
21st Century Program Spending Lags Appropriations

(Dollars in Millions)

	2002-03	2003-04	2004-05
State appropriation	$40.9	$75.5	$162.8
Spending (estimate)	17.1	41.3	119.8
Percent spent	42%	55%	74%

Spending Roadblocks. The SDE and school districts are both responsible for these funds not being used to serve more students. Most of the problems are concentrated with the elementary and middle school grantees. Two primary issues appear to account for this:

- ***SDE Slow in Awarding Grants.*** First, SDE has not provided grant funds to grantees until the fiscal year is well underway in most years. For example, in 2002-03, grant award letters were not sent until April 2003, and in 2003-04, award letters for new grantees were not sent until July 2004—after the close of the fiscal year. For 2004-05, award letters were mailed in the late fall; however because of the paperwork requirements, funds were not disbursed until January 2005. When grantees do not know whether or when they will receive their grants, their efforts at program planning can be significantly hampered. For example, the new cohort of schools funded in 2003-04 only spent 15 percent of their funds in the fiscal year.

- ***Schools Do Not Fill All of Their Slots.*** The SDE grants a maximum dollar amount to a school—for example, $75,000 for an elementary school. The elementary and middle schools then must earn the grant at a rate of $5 per student per day (except for in the first year of the grant, when up to 15 percent can be used for start-up costs). Most schools are not able to earn their grant and must return funds to the state at the end of the fiscal year. Based on the short history of the program, schools on average have only earned about one-half of their grants, returning funds to the state at the end of the year.

Reversions of Federal Dollars a Threat by End of the Budget Year. The state avoided returning any 2002-03 federal monies (which had to be fully spent by September 2004) and it may spend enough by September 2005 to avoid reverting 2003-04 federal funds. However, available data from SDE suggest that $100 million of the 2004-05 federal funds will not be spent in the current year. As a result, these unspent funds could revert to DOE in September 2006 unless the Legislature takes action to change key aspects of the state's approach to disbursing 21st Century program funds.

One-Time Grants a Bad Strategy. Late in spring 2004, SDE notified the Legislature of the large carryover balances in this program, leaving the Legislature little time to develop a longer-term strategy. So, the state gave providers one-time grants totaling $25 million on a statewide basis from these carryover funds. Because these funds must be used for one-time purposes, it is not likely that they were used to serve additional students—the goal of the program. A better approach for taking full advantage of these funds is to restructure the program. We discuss such an approach to serve more kids below.

Restructure Program and Serve More Kids

We recommend the Legislature pass legislation creating a new group of grantees to begin in late summer 2005. In addition, we recommend the Legislature increase reimbursement rates, annual grant caps, and start-up funding for the elementary and middle school programs in their first year.

We believe that the Legislature needs to take action immediately to restructure this program. We recommend a series of measures aimed at increasing the possibility that grantees will be able to earn their grants within the budget year. Our recommendations will establish funding rate parity between the 21st Century program and ASES, provide grantees with the ability to establish program infrastructure prior to enrolling students, and enable grantees to start programs at the beginning of the fiscal year.

Create New Cohort. We recommend the Legislature pass urgency legislation this spring to appropriate funding for a new cohort of schools. This accelerated timeline would allow SDE to issue grants in summer 2005, and provide an opportunity for new grant recipients to earn a larger share of their grants in the first year by beginning the program with the school year.

Increase Elementary and Middle School Daily Reimbursement Rate and Increase Grant Caps. We recommend increasing the reimbursement rate for elementary and middle schools to $7.50 per student per day and increasing the statutory spending caps for the elementary and middle school programs. The current reimbursement rate for the elementary and middle school programs of $5 per pupil per day is less than the state rate of $7.50 per pupil per day (including the state required local match). Since the federal government prohibits a local match, the rate increase is a way to equalize funding between the state and federal programs.

If the Legislature acts to increase the reimbursement rate, we recommend it also increase the statutory schoolwide spending caps. The combination of the current $75,000 cap for an elementary school with 600 or fewer students and a $7.50 reimbursement rate would mean that elementary schools could serve a maximum of only 55 students per year. In a school with 600 students, 55 students would represent only 9 percent of the student body. We recommend the Legislature increase the school grant caps to $150,000 for elementary schools and $200,000 for middle schools.

Provide Larger Start-Up Grants for Elementary and Middle Schools. Currently, the elementary and middle school grantees must earn their grants by documenting student attendance. However, any program has start-up costs and fixed operating expenses that are required for any level of service. Currently, SDE provides 15 percent of the first-year grant amount that grantees do not have to "earn" with student attendance. Given the significant start-up investments that programs must make in order to attract and

enroll students, 15 percent may be inadequate. We propose the Legislature amend state law to increase the first-year start-up amount that does not need to be earned with attendance to 25 percent of the total grant amount. This would allow schools to address some of the facility, staff, equipment, and materials costs that are part of starting up a new program. From the state level, it would also help to ensure that a larger portion of first-year grants are actually used.

We believe that this three-pronged approach of a new cohort, higher reimbursement rates, and larger start-up grants would help the state to begin reducing the level of unspent funds and serve more children.

PROPOSITION 49: AFTER SCHOOL EDUCATION AND SAFETY PROGRAM

We recommend the Legislature enact legislation placing before the voters a repeal of Proposition 49 because (1) it triggers an autopilot augmentation even though the state is facing a structural budget gap of billions of dollars, (2) the additional spending on after school programs is a lower budget priority than protecting districts' base education program, and (3) existing state and federal after school funds are going unused.

As approved by voters in 2002, Proposition 49 requires the state to provide substantially more funding for the ASES program beginning some time between 2005-06 and 2007-08. When certain conditions are met (please see nearby box next page), the proposition triggers an automatic increase in state funding for the program—from the $122 million provided in 2003-04 to $550 million (a $428 million increase). Importantly, when these additional funds are provided for the program, they will be "on top of" the state's Proposition 98 minimum funding guarantee (referred to as an "overappropriation"). Proposition 49 also converted after school funding to a "continuous appropriation" (that is, no annual legislative action is needed to appropriate funds).

We have serious concerns with the proposition, which we discuss in detail below.

Autopilot Spending Badly Timed. Proposition 49's intent was to give after school programs the first call on additional General Fund revenues. Since its passage, the fiscal environment has changed significantly—with the state struggling through several consecutive years of budget difficulties. Whether Proposition 49 triggers in the budget year or as late as 2007-08, the state is likely still to be facing a significant budget problem. Moreover, the autopilot formula that triggers Proposition 49 creates additional spending obligations without the Legislature and Governor being able to assess

Disagreements Linger Over Proposition 49 "Trigger"

Proposition 49 requires the state to provide additional funding for after school programs when General Fund spending reaches a certain level. Specifically, the Proposition 49 trigger is calculated by (1) determining, for 2000-01 through 2003-04, when the level of "nonguaranteed" General Fund appropriations was at its highest level and (2) adding $1.5 billion to that base-year funding level. Two technical issues complicate the calculation of the trigger.

- ***What Are Nonguaranteed Appropriations?*** The definition of this term is open to interpretation. We think the term refers to non-Proposition 98 General Fund appropriations plus any overappropriations of the Proposition 98 minimum guarantee. Others believe Proposition 98 overappropriations are guaranteed. Under the latter view, Proposition 49 triggers sooner.
- ***Treatment of Vehicle License Fee (VLF) "Swap."*** The state's actions in the current year to meet local government VLF obligations with property tax revenues instead of General Fund payments (the VLF swap) essentially converted $4.8 billion of General Fund monies from nonguaranteed to guaranteed appropriations. The statutory language in Proposition 49 is unclear as to whether the base-year General Fund nonguaranteed spending should be adjusted (or rebenched) downward to account for this type of action. If rebenched, Proposition 49 would trigger sooner.

The figure below shows the uncertainty these two technical issues cause for determining when the Proposition 49 funding requirement is triggered. Depending upon how overappropriations and the VLF swap are treated, the trigger could be as soon as the budget year or as late as 2007-08. Since the trigger would likely require the entire $428 million augmentation be provided all at once, this uncertainty is a significant budget risk.

When Does Proposition 49 Trigger? Assumptions Matter

	Rebench for VLF[a] Swap	
Proposition 98 Overappropriations	**Yes**	**No**
Treat as nonguaranteed	2006-07	2007-08
Treat as guaranteed	2005-06	2007-08

[a] Vehicle license fee.

the merits of the augmentation. The additional spending also likely would require the state either to raise additional General Fund revenues and/or make program cuts in other areas.

Lower K-12 Education Priority. In previous sections, we have discussed the fiscal problems that school districts will face over the near future to maintain their base education programs. From our perspective, maintaining the base program is a higher priority than expanding after school funding. We think this is particularly the case given that some school districts are struggling with basic solvency issues. If the state were planning to overappropriate Proposition 98, we think providing the funding to address the $3.6 billion on the education credit card (discussed in the "Proposition 98 Budget Priorities" write-up in the "Crosscutting Issues" section of this chapter) would be a better strategy for helping districts address some of their current fiscal challenges.

Proposition 49 Funding Not Likely to Be Spent in a Timely Manner. As discussed above, the state is having a difficult time spending its relatively small increases in federal after school funding in a timely fashion. Since 2002-03, federal after school funding has grown to an annual level of $136 million, yet the state has been spending only about one-half its federal allotment and is now at risk of reverting federal monies. Since the late 1990s, the state also has had difficulty expending its state-funded ASES program. The program continues to revert funding annually, spending around 80 percent of the grant annually.

Given that the trigger mechanism likely would provide a $428 million augmentation all in one year, schools also are not likely to be able to spend much of the new funding in the near term. As with any new grant program, the state typically has a difficult time spending the allotted funds in the first couple of years. Given the size of the augmentation, as well as the poor track record of getting additional after school funding to schools, the state is likely to have hundreds of millions of dollars revert annually in the initial years of implementation.

In summary, because of the autopilot nature of the trigger, the impact that this appropriation could have on the budget problem, the relatively lower priority of after school programs compared to schools' base education program, and the small likelihood funding actually would be spent in the near term, we recommend the Legislature enact legislation placing before the voters a repeal of Proposition 49.

CHILD CARE

California's subsidized child care system is primarily administered through the State Department of Education (SDE) and the Department of Social Services (DSS). A limited amount of child care is also provided through the California Community Colleges. Figure 1 summarizes the funding levels and estimated enrollment for each of the state's various child care programs as proposed by the Governor's 2005-06 budget.

As the figure shows, the budget proposes about $2.6 billion ($1.3 billion General Fund) for the state's child care programs. This is an increase of about $33 million from the estimated current-year level of funding for these programs. About $1.2 billion (46 percent) of total child care funding is estimated to be spent on child care for current or former California Work Opportunity and Responsibility to Kids (CalWORKs) recipients. Virtually all of the remainder is spent on child care for non-CalWORKs low-income families. The total proposed spending level will fund child care for approximately 488,700 children statewide in the budget year.

Families receive subsidized child care in one of two ways: either by (1) receiving vouchers from county welfare departments or Alternative Payment (AP) program providers, or (2) being assigned space in child care or preschool centers under contract with SDE.

Eligibility Depends Upon Family Income and CalWORKs Participation

CalWORKs and non-CalWORKs families have differential access to child care in the current system. While CalWORKs families are guaranteed access to child care, eligible non-CalWORKs families are not guaranteed access, are often subject to waiting lists, and many never receive subsidized care, depending on their income.

CalWORKs Guarantees Families Child Care. State law requires that adequate child care be available to CalWORKs recipients receiving cash aid in order to meet their program participation requirements (a combination of work and/or training activities). If child care is not available, then

Figure 1

California Child Care Programs

2005-06
(Dollars in Millions)

Program	State Control[a]	Estimated Enrollment	Governor's Budget
CalWORKs[b]			
Stage 1[c]	DSS	98,000	$498.8
Stage 2[c]	SDE	94,000	575.4
Community colleges (Stage 2)	CCC	3,000	15.0
Stage 3[d]	SDE	14,500	87.6
Subtotals		(209,900)	($1,167.8)
Non-CalWORKs[b,e]			
General child care	SDE	88,000	$632.1
Alternative Payment programs	SDE	71,000	430.0
Preschool	SDE	101,000	325.4
Other	SDE	18,700	54.2
Subtotals		(278,800)	($1,441.6)
Totals—All Programs		**488,700**	**$2,609.4**

a Department of Social Services, State Department of Education, and California Community Colleges.

b California Work Opportunity and Responsibility to Kids.

c Includes holdback of reserve funding which will be allocated during 2005-06 based on actual need.

d Significantly reduced due to Governor's reform proposal to move current Stage 3 recipients to general child care.

e Does not include after school care, which has a budget of $250 million and is estimated to provide care for 249,500 school-aged children.

the recipient does not have to participate in CalWORKs activities for the required number of hours until child care becomes available. The CalWORKs child care is delivered in three stages:

- ***Stage 1.*** Stage 1 is administered by county welfare departments (CWDs) and begins when a participant enters the CalWORKs program. While some CWDs oversee Stage 1 themselves, 32 contract with AP providers to administer Stage 1. In this stage, CWDs or APs refer families to resource and referral agencies to assist them with finding child care providers. The CWDs or APs then pay providers directly for child care services.

- ***Stage 2.*** The CWDs transfer families to Stage 2 when the county determines that participants' situations become "stable." In some counties, this means that a recipient has a welfare-to-work plan or employment, and has a child care arrangement that allows the recipient to fulfill his or her CalWORKs obligations. In other counties, stable means that the recipient is off aid altogether. Stage 2 is administered by SDE through a voucher-based program. Participants can stay in Stage 2 while they are in CalWORKs and for two years after the family stops receiving a CalWORKs grant.
- ***Stage 3.*** In order to provide continuing child care for former CalWORKs recipients who reach the end of their two-year time limit in Stage 2, the Legislature created Stage 3 in 1997. Recipients timing out of Stage 2 are eligible for Stage 3 if they have been unable to find other subsidized child care. Assuming funding is available, former CalWORKs recipients may receive Stage 3 child care as long as their income remains below 75 percent of the state median income level and their children are below age 13.

Non-CalWORKs Families Receive Child Care If Space Is Available. Non-CalWORKs child care programs (primarily administered by SDE) are open to all low-income families at little or no cost to the family. Access to these programs is based on space availability and income eligibility. Because there are more eligible low-income families than available child care slots, waiting lists are common. As a result, many non-CalWORKs families are unable to access child care.

GOVERNOR'S CHILD CARE REFORM PROPOSALS

Figure 2 shows the child care reforms proposed by the Governor and their fiscal impact. The Governor's reforms fall into two broad categories: (1) eligibility for child care services and (2) provider reimbursement rates. The changes to eligibility feature a redistribution of child care slots to promote greater equity in child care access between CalWORKs recipients and the working poor. At the center of the rate reforms is a quality-driven tiered reimbursement rate structure. Most of the reforms would only affect the voucher program, leaving the SDE contracted programs basically unaltered.

Figure 2

Administration's Child Care Proposals

2005-06
(In Millions)

Reform	Cost/ Savings
Eligibility	
Moving Stage 3 Child Care Permanently expand the general Alternative Payment (AP) program by shifting all current CalWORKs Stage 3 child care recipients, and the associated funding, to the AP program, limiting guaranteed child care to a maximum of eight years and limiting Stage 3 to one year.	—
Creating Centralized Waiting Lists Require counties to create a two-tiered waiting list for all subsidized child care: the first tier for families below 138 percent of the federal poverty level (FPL) and the second tier for families above that level.	$7.9
Rebenching Child Care Eligibility Shift eligibility determination to FPL measures rather than the current State Department of Education state median income calculations.	—
After School Care for 11- and 12-Year-Olds Designate after school care as the default placement and require parents to submit a reason in writing that they cannot use the available after school program.	-$23.8
Reimbursement Rates	
Tiered Reimbursement Rates Reduce the amount the state is willing to pay license-exempt providers. Further, create fiscal incentives for all providers to raise the quality of the care they provide and encouraging additional training.	-$140.1
Equitable Provider Rates Adopt regulations establishing an alternative rate setting mechanism for providers that only serve subsidized families. These regulations have been suspended for the last two years.	-$8.2

ELIGIBILITY REFORMS

Shifting CalWORKs Families to AP Programs

The Governor proposes to shift Stage 3 California Work Opportunity and Responsibility to Kids (CalWORKs) child care to the State Department of Education's Alternative Payment (AP) program, in addition to creating centralized county waiting lists for subsidized child care. Timing problems under the Governor's proposal may disadvantage current CalWORKs recipients' attempts to receive long-term subsidized child care. To address this issue, we recommend delaying the shift of the Stage 3 program to the AP program until counties have created centralized waiting lists. We also recommend placing current CalWORKs participants on the waiting lists based upon the date that they first had earned income in the program.

Eliminating the Long-Term CalWORKs Child Care Guarantee

Under current law, current and former CalWORKs families are guaranteed child care as long as they meet eligibility requirements and have a need for child care. The Governor proposes shifting all current CalWORKs Stage 3 families (former CalWORKs recipients) into the AP program along with the associated funding and ending the child care guarantee for CalWORKs families. In other words, all families who are receiving Stage 3 child care as of June 30, 2005 would in the future be served by the non-CalWORKs AP voucher program. (Local AP providers assist families in locating child care and distribute vouchers to those families.) This shift would permanently expand the AP program. There would be no impact on families currently receiving service as their child care guarantee would not change. However, any families coming into Stage 3 CalWORKs after this point would be limited to one or two years.

Under this proposal, families who leave CalWORKs after June 30, 2005 would be allowed two years of transitional child care in Stages 1 and 2, and one year in Stage 3. In other words, they would be guaranteed child care for three years after leaving aid. If a family is currently off aid and in Stage 1 or Stage 2, the family would receive two years of Stage 3 child care while they are on the waiting list for a child care slot in the AP child care program. These families' child care guarantee would be for a maximum of four years after leaving aid, depending on the time they have left in Stage 2. Figure 3 shows the guaranteed time in child care for current and former CalWORKs families under current law and under the Governor's proposed reform.

Figure 3

CalWORKs[a] Child Care Current Law and Governor's Proposal

	CalWORKs Child Care Guarantee		
Family Status	**Current Law[b]**	**Governor's Proposal**	**Centralized Waiting List**
Aided family with earnings	Until family's income exceeds 75 percent of SMI[c] or children age out.	Remaining time in CalWORKs plus three years. Same age/income limits.	As soon as list is created.
Aided family without earnings	Same as above.	Same as above.	When parents become employed.
Formerly aided family in Stage 2	Same as above.	Up to two years in Stage 2 and two years in Stage 3.	As soon as list is created.
Formerly aided family in Stage 3	Same as above.	Until family's income exceeds 75 percent of SMI[c] or children age out.	Child care guaranteed. No waiting list.

a California Work Opportunity and Responsibility to Kids.

b Current practice has been to fully fund Stage 3 child care, which allows all former CalWORKs families to be served. However, Stage 3 is not an entitlement and is therefore subject to the appropriation of adequate funding.

c State median income.

This proposal allows all CalWORKs families to place their names on the waiting list as soon as they have earned income. Therefore, CalWORKs families would not have to wait until leaving aid before they can compete for SDE's subsidized child care. However, they would need to wait until they have earned income, which would be problematic for the families nearing their CalWORKs time limits who have been participating in welfare-to-work activities other than employment (such as community service or vocational education). Adults in CalWORKs have a five-year time limit.

We note that in contrast to last year, this proposal preserves the child care guarantee for families already in Stage 3 and allows aided families to place their names on centralized waiting lists as soon as they have earned income. These changes address the major concerns we raised in the *Analysis of the 2004-05 Budget Bill*.

Two-Tiered Waiting Lists

In addition to the changes in Stage 3, the Governor has proposed creating centralized county waiting lists for SDE subsidized child care.

Current Waiting Lists for Subsidized Child Care. There is not enough funding available to serve all of the working poor non-CalWORKs families who qualify for subsidized child care. Therefore, providers create waiting lists for those families seeking subsidized child care. Families place their names on waiting lists in the hopes of receiving assistance with the cost of child care. While there is currently no information on the number of families on waiting lists or the amount of duplication among the lists, it is commonly believed that families place their names on multiple lists in order to increase their chances of receiving subsidized child care. When a provider has a space for a subsidized family, that provider is required to serve the family on their list with the lowest income first, unless the family is referred by child protective services, in which case they receive priority.

Centralized List. The Governor proposes eliminating provider waiting lists and requiring each county to develop a centralized waiting list for all subsidized non-CalWORKs child care. The budget includes $7.9 million (General Fund) for this purpose. County waiting lists would be split into two different tiers, while maintaining the existing priority for families referred by child protective services. Families earning less than $2,168 per month (for a family of four) would be placed in the first tier of the waiting list and would be provided with child care on a first-come, first-served basis. This would include all CalWORKs families with earned income because under current law, a family of four is no longer eligible for CalWORKs once they have an income of $1,951 per month.

The second tier would be for families who have a monthly income above 138 percent of the federal poverty level (FPL), approximately $2,168 per month for a family of four. These families would be served only after all first-tier families have been served. From this list, families would be served based on income, with the lowest-income family served first.

Advantages to Governor's Proposal

Dismantling Stage 3 Helps Create Parity Among All Working Poor Families. Under the current system, families that receive child care through the CalWORKs system have traditionally been guaranteed subsidized child care until their incomes exceed eligibility limits or their children age out of the child care system. Conversely, working poor families that have not participated in the CalWORKs program must compete for the limited subsidized child care slots in their communities. The Governor's proposal permanently expands non-CalWORKs subsidized child care and effectively limits Stage 3 CalWORKs child care to one year. While the total number of child care slots would not change, this would provide greater access to child care for working poor non-CalWORKs families. Some of these work-

ing poor families may have family income significantly below many of the Stage 3 CalWORKs families.

Centralized Waiting Lists Would Provide Critical Information for Policymakers. As mentioned previously, there are virtually no centralized waiting lists in counties and those counties with centralized waiting lists cannot require providers to participate. Consequently, the Legislature and the administration have no way of knowing how many families need subsidized child care and are not receiving it, or the length of time families remain on waiting lists without being served. Centralizing the waiting lists would allow counties to establish an accurate count of families in their communities that are eligible and waiting for subsidized child care, and would allow them to clean up waiting lists by removing duplicate names or families that are no longer eligible for child care. They would also be able to determine the average length of time a family remains on the waiting lists. Having data provides the Legislature with the information it needs to determine the adequacy of California's subsidized child care system.

Implementation Concerns

Centralized Waiting Lists Should Be Created First. The Governor's proposal moves all of the current Stage 3 child care cases as of June 30, 2005 to general AP child care upon passage of the budget. This shift would not impact the current families in Stage 3. However, families in Stage 2 that would be moving to Stage 3 within the next year or so could be adversely affected during the transition period. This is because it will take time for counties to collect and merge all of the existing provider waiting lists in each county and then to sort through duplicate entries and determine whether a family should be placed on the first tier or second tier of the waiting list and in what order. Until this process is completed, there will not be a centralized waiting list for CalWORKs families on which to place their names. Moreover, to the extent that families leave the general AP program before the lists are created, those child care slots may remain unused or will only be available to working poor families on current waiting lists. In order to avoid this confusion and the delay in families receiving subsidized child care, the centralized waiting lists should be created before Stage 3 child care is dismantled.

CalWORKs Recipients May Be Located at the Bottom of the Waiting Lists. According to the administration, the centralized waiting lists in each county will be established by merging all of the existing lists that subsidized child care providers now maintain. As these lists are merged, families will be placed in the higher second tier (above 138 percent of the FPL) in lowest-income-first order. The remaining families (at or below 138 per-

cent of the FPL) will be placed in first-come, first-served order based upon the length of time they have been on their existing lists.

For the most part, the existing waiting lists do not contain the names of current and former CalWORKs families because those families have been served under the CalWORKs child care program. This means that all current or former CalWORKs families with earned income who need child care and are not currently in Stage 3 will have to place their names on the centralized county waiting lists. Most of them will be eligible for the lower first tier (below 138 percent of the FPL) of the waiting lists. Because the waiting lists would be created by merging existing lists that do not include these families, virtually all of the CalWORKs families will be placed at the bottom of the lists. Depending on the availability of subsidized child care and the length of the waiting lists in each county, CalWORKs families that have exhausted much of their five-year CalWORKs time limit will be at a disadvantage and are less likely to receive subsidized child care once their time in the CalWORKs child care program comes to an end.

In order to address this problem, during the initial development of the lists, CalWORKs families with earned income could be placed on the waiting list according to the date that they began working. Theoretically, non-CalWORKs working poor families placed their names on waiting lists when they had their first child and/or began working. Placing CalWORKs families in a similar position on the waiting lists by their work dates creates parity between the two groups. There may be some slight CalWORKs administrative costs associated with determining the appropriate dates for families. However, those costs should be minimal.

Funding May Grow Slightly Faster Under Governor's Proposal. We would note that funding for these former Stage 3 child care slots may grow faster under the Governor's proposal than under the current program. This is because the cost-of-living adjustments (COLAs) and growth adjustments used for subsidized child care are projected to increase at a greater rate than the caseload and COLAs used for CalWORKs child care.

LAO Recommendation

We believe there is considerable merit to the Governor's proposed changes to subsidized child care for CalWORKs families. Shifting CalWORKs Stage 3 child care to AP child care and creating centralized two-tiered waiting lists will allow more equitable access to subsidized child care for all families with very low incomes, whether they have participated in the CalWORKs program or not. However, in transitioning to this new system and essentially dismantling Stage 3 child care, it is important that current CalWORKs families not be disadvantaged. Accordingly, we recommend delaying the shift from Stage 3 to AP child care by

six months, thereby allowing enough time for counties to develop centralized waiting lists that include CalWORKs families within that six-month period. Once a county has a functioning waiting list, it can then shift its child care program.

In order to avoid placing existing CalWORKs families at the bottom of the waiting lists, we recommend placing CalWORKs families on the waiting list based upon the date they first had earned income in the program. However, CalWORKs families will still be expected to take the initiative of signing up for AP child care. To avoid lingering administrative problems, we recommend that CalWORKs families only be given 120 days once the list is functioning to ask to be placed, based upon their employment date. Once the 120-day period is up, CalWORKs families would be placed on the centralized waiting lists on a first-come, first-served basis.

Making these two adjustments to the Governor's proposal will ensure that existing CalWORKs families will be given a level playing field to compete with other working poor families for subsidized child care.

Governor Proposes Further Reforms for 11- and 12-Year-Olds

The Legislature was concerned about the Governor's 2004-05 budget proposal to shift 11- and 12-year-old children to after school programs. Many working poor families, whether CalWORKs or non-CalWORKs, are employed in nontraditional jobs that require working evenings, nights, and weekends. For these families, after school care usually is not a realistic option for their children. Therefore, the Legislature modified the Governor's proposal to encourage, rather than mandate, after school placement. Specifically, families were not required to shift their children to after school care and the Legislature established a reserve to continue to fund child care for these families.

To further strengthen the after school reform from the prior year while recognizing the difficulties faced by some families, the Governor has proposed making after school care the default placement for 11- and 12-year-olds. However, to the extent that this type of care is not acceptable or practical for families, they may submit their reason in writing and receive an alternate form of child care for their children. The budget assumes that 25 percent of families with 11- and 12-year-olds will shift them from child care to after school care.

We believe this modification allows families to continue to have flexibility in their child care decisions and addresses the concerns expressed by the Legislature in the previous budget.

REIMBURSEMENT RATE REFORMS

The Governor's proposal includes two reforms related to provider rates. The first would create a new system of tiered provider reimbursement. The second would revise regulations for determining rates for providers who do not have private pay clients.

Two Types of Service Models—Vouchers and Direct State Contracts

Currently, the state provides child care through two main mechanisms: vouchers and direct contracts with child care centers.

Most Families Receive Child Care Through a Voucher System. The CalWORKs families in any of the three stages of child care receive a voucher from CWD or AP. In addition, the state provides vouchers to working poor families through APs. The combined programs provide about 272,900 children with child care vouchers. The AP or CWD assists families in finding available child care in the family's community, typically placing families in one of three settings—licensed centers, licensed family child care homes (FCCHs), and license-exempt care. The licensed programs must adhere to requirements of Title 22 of the California Code of Regulations, which are developed by DSS' Community Care Licensing Division. These programs are often referred to as Title 22 programs. Currently, Title 22 centers and FCCH providers are reimbursed up to a maximum rate or ceiling of the 85th percentile of the rates charged by private market providers in the area offering the same type of child care. The 85th percentile is determined by the Regional Market Rate's (RMR) survey of public and private child care providers that determines the cost of child care in specific regions of the state. License-exempt care providers are reimbursed up to 90 percent of the FCCHs maximum rate (85th percentile). The relatively high reimbursement level of the vouchers for subsidized care reflects an attempt to ensure that low-income families can receive similar levels of child care service as wealthier families in the same region.

SDE Contracts Directly With Child Care and Preschool Centers. For child care and preschool, SDE contracts directly with 850 different agencies through approximately 2,100 different contracts. These providers are reimbursed with the Standard Reimbursement Rate, $28.82 per full day of enrollment. These providers must adhere to the requirements of Title 5 of the California Code of Regulations and are generally referred to as Title 5 providers.

In the nearby box, we provide a list of the child care terms and corresponding definitions used throughout the remainder of this section.

CHILD CARE TERMINOLOGY

Types of Providers

Voucher Providers. Providers who serve the California Work Opportunity and Responsibility to Kids (CalWORKs) and non-CalWORKS families who receive vouchers for child care.

- ***License-Exempt.*** Relatives or friends without a license for providing childcare.
- ***Title 22 Family Child Care Homes (FCCHs).*** Licensed providers caring for a small number of children typically in their own homes.
- ***Title 22 Centers.*** Licensed centers.

State Department of Education (SDE) Contractors/Title 5 Providers. Providers who contract directly with SDE to provide child care and preschool for primarily non-CalWORKs working poor families.

- ***Title 5 FCCHs.*** Licensed providers caring for a small number of children typically in their own homes. These FCCHs have not only obtained a license, but also meet SDE standards.
- ***Title 5 Centers, Including Preschool.*** Licensed centers that also meet SDE standards.

Other Terms

- ***Alternative Payment (AP) Program.*** The SDE-administered voucher program for non-CalWORKS working poor families.
- ***Standard Reimbursement Rate (SRR).*** The per child rate paid to Title 5 providers that contract with SDE.
- ***Regional Market Rate (RMR).*** Regionally-based market rates used to determine reimbursements to voucher providers.
- ***Maximum Rate.*** The rate ceiling for voucher providers. If they serve private pay clients, providers receive reimbursements equal to their private pay rates, up to the maximum rate. If they do not serve private pay clients, providers are reimbursed at the maximum rate.
- ***FCCH Maximum Rate.*** The 85th percentile of the maximum rate paid to Title 22 FCCHs. Serves as the basis for the license-exempt care rates.

Figure 4 shows the major care types and associated regulations offered through voucher providers and SDE contractors for preschool-aged children. Moving from the left-hand side of Figure 4 to the right, the requirements to provide the specific type of child care become more difficult to meet and suggest a higher level of quality.

Figure 4

Subsidized Child Care Providers Safety and Educational Requirements

Current Law for Preschool-Aged Children

	Voucher Providers			SDE Contractors
	License-Exempt Providers	Title 22 FCCHs	Title 22 Centers	Title 5 Providers Including Preschool
Provider/teacher education and training	None.	None.	Child Development Associate Credential or 12 units in ECE/CD.	Child Development Teacher Permit (24 units of ECE/CD plus 16 general education units).
Provider health and safety training	Criminal background check required (except relatives). Self-certification of health and safety standards.	15 hours of health and safety training. Staff and volunteers are fingerprinted.	Staff and volunteers fingerprinted and subject to health and safety standards.	Staff and volunteers fingerprinted and subject to health and safety standards.
Required ratios	None.	1:6 adult-child ratio.	1:12 teacher-child ratio or 1 teacher and 1 aide for 15 children.	1:24 teacher child ratio and 1:8 adult-child ratio.
Accountability, monitoring, and oversight	None.	Unannounced visits every five years or more frequently under special circumstances.	Unannounced visits every five years or more frequently under special circumstances.	Onsite reviews every three years. Annual outcome reports, audits, and program information.

FCCHs = family child care homes; SDE = State Department of Education; and ECE/CD = Early Childhood Education/Child Development.

The minimum standards for child care offered through the voucher, especially those for license-exempt providers, are generally lower than the standards for Title 5 providers contracted with SDE. For example, license-exempt providers, who are typically relatives, friends, or neighbors of the family needing child care, are *not* required to have any training or to adhere

to adult-to-child ratios. The Title 22 FCCH providers are required to meet minimal health and safety standards, adhere to an adult-to-child ratio, and require a site visit every five years for licensure. Title 22 centers require providers to have some college-level education. The Title 5 providers require a Child Development Teacher Permit, which is issued by the California Commission on Teacher Credentialing. In addition, they have annual program outcome reports and are required to have onsite reviews every three years.

Proposal Creates a Tiered Reimbursement Rate Structure for AP Providers

The Governor proposes to implement a tiered reimbursement rate structure for the voucher child care programs. Tiered reimbursement for child care provides differential reimbursement rates that encourage providers to improve program quality by obtaining additional training and education and improving outcomes as measured by independent standards of quality. We believe that the Legislature should first consider whether tiered reimbursement is desirable, and then decide upon specific levels of reimbursement.

Below, we (1) describe the Governor's proposal, (2) examine the merits of tiered reimbursement, and (3) discuss the appropriate levels for the rates in tiered reimbursement.

Governor's Tiered Reimbursement Proposal

The Governor's proposal creates a five-tiered child care reimbursement rate structure that reimburses voucher providers from 55 percent to 100 percent of the current maximum rates, depending on independent quality ratings, licensing, accreditation, education, and health and safety training. The proposal is summarized in Figures 5 and 6 (see next page). The intent of the proposal is to provide higher reimbursement rates to providers that exhibit higher quality. Figures 5 and 6 show the reimbursement rates for three categories of care—license-exempt, family home care, and center-based care. The figures also show the education and training requirements for the various levels of rates under the Governor's proposal. For license-exempt care, there are two levels: license-exempt and license-exempt plus. The FCCHs and centers are rated according to a three-star system whereby the highest quality providers receive three stars and the lowest one star. Please note that Figure 6 uses the term "environmental rating scale," which is explained below.

Figure 5

Governor's Tiered Reimbursement Proposal For License-Exempt Providers

	Percent of FCCH[a] Maximum	Additional Requirements
License-exempt	55 percent	None.
License-exempt plus	60 percent	License-exempt training, assistant teacher permit, or heath and safety training.

[a] Family child care homes.

Figure 6

Governor's Tiered Reimbursement Proposal For Licensed Providers

Star Rating	Maximum Rate	Additional Requirements	
		FCCHs[a]	Centers
*	75 percent of the 85th percentile RMR.[b]	None.	None.
**	85 percent of the 85th percentile RMR.[b]	Environmental rating scale average of 4 or associate teacher permit.	Environmental rating scale average of 4 or all teachers have teacher permit.
***	85th percentile RMR.[b]	Environmental rating scale average of 5.5, teacher permit, associates degree, or accreditation.	Environmental rating scale average of 5.5, all teachers have bachelor's degree, or accreditation.

[a] Family child care homes.

[b] Regional Market Rate (RMR) survey of providers in the area offering the same type of child care. The RMR will vary by care type.

License-Exempt Rate Reduction of $140 Million. The Governor's entire 2005-06 savings estimate for the tiered reimbursement proposal is based on reductions to license-exempt care rates for the voucher program (CalWORKs Stages 1, 2, and 3 and AP). Under the proposal, the rates of license-exempt care providers with no training would be cut to 60 percent

of the 85th percentile. This reduction would take effect on July 1, 2005. These providers would then have 90 days to obtain the specified training for the second reimbursement tier, license-exempt plus, or their rates will be further cut to 55 percent of the 85th percentile. Figure 7 shows how the changes would affect license-exempt provider rates in a sample of counties in various geographic regions throughout the state. In these counties, license-exempt providers' rates would be reduced by between $182 and $303 per child per month.

Figure 7

Monthly Child Care Maximum Reimbursement Rates

License-Exempt Providers

Percent of FCCH[a] Maximum	Sacramento	San Francisco	Los Angeles	Contra Costa	Fresno	Shasta
90 percent[b]	$526	$780	$585	$624	$488	$468
60 percent[c]	351	520	390	416	325	312
55 percent[d]	321	476	357	381	298	286
Potential Reduction	**-$205**	**-$303**	**-$227**	**-$242**	**-$190**	**-$182**

a Family child care homes.

b Current license-exempt rate limits are based on 90 percent of the FCCH rate maximum (85th percentile) for full-time monthly care for a child age two through five.

c Reflects the maximum reimbursement rates if exempts are limited to 60 percent of the 85th percentile of the FCCH rate maximum.

d Reflects the maximum reimbursement rates if exempts are limited to 55 percent of the 85th percentile of the FCCH rate maximum.

License-exempt providers also would have the option to become licensed as FCCHs. If current license-exempt providers obtain the 15-hour health and safety training in order to meet the license-exempt plus rating, they will have completed the educational and training component of the FCCH licensing requirements. If licensed, providers would have their rates increased significantly, as shown in Figure 6.

Reimbursement Reforms for FCCH and Center-Based Providers Would Not Affect Rates for Two Years. Currently, FCCHs and centers are reimbursed up to the 85th percentile of the RMR. Under the Governor's proposal, providers' rates would be reduced starting in 2007-08 unless the providers demonstrated high program quality through (1) educational attainment, (2) program quality review, or (3) accreditation. Available data

suggest that most providers would need to make significant investments to attain either a two-star or three-star rating.

Educational Attainment Options for Providers. The FCCH providers could achieve a three-star rating (highest rating) by completing 24 units in Early Childhood Education or Child Development, or obtaining a child care teacher permit (which requires 24 units). A two-star rating would require an associate teacher permit. For centers, the education requirements are more stringent. Teachers must have permits (24 units) for a two-star rating center or bachelor's degrees for a three-star rating.

Program Quality Review Options. The FCCH and center providers could agree to an independent assessment of their program through an environmental rating scale system. (See nearby box for a description of environmental rating scales.) Providers would need to score an average of 4 out of 7 on all the subscales for two stars or an average of 5.5 for three stars. The feasibility of meeting rating scale standards is difficult to assess since currently there is no system for independent assessments using environmental rating scales in California.

Program Accreditation. To receive three stars, the FCCHs also could become accredited through the National Association for Family Child Care, and centers could become accredited through either the National Association for the Education of Young Children or the National After School Association. Accreditation can be an arduous and costly process. Currently,

Environmental Rating Scales

Environmental rating scales are used to assess the quality of child care programs. There are numerous such assessments specific to the different ages of children served and the type of care provided. The Early Childhood Environmental Rating Scale (ECERS) has been designed for use in preschool, kindergarten, and child care classrooms which serve children ages two and one-half through five. The ECERS evaluates 43 specific items in seven main categories related to the quality of care: physical environment, basic care, schedule structure, program structure, curriculum, interaction, parenting classes, and staff education. For each of the 43 items, centers are rated on a 7-point scale ranging from inadequate (1) to excellent (7).

Assessment of a single classroom by an experienced rater requires approximately three hours. Generally, anyone can receive training to become a rater. Raters typically are evaluated on a regular basis to calibrate their scoring against standard benchmarks and against scores given by other raters.

less than 1 percent of the FCCH and less than 5 percent of the center-based programs in California are accredited.

The Governor's proposal does not include any savings estimates for the proposed changes to FCCH and center reimbursement maximum rates because they will not take effect for two years. At that point, savings could reach tens of millions of dollars annually.

Proposal to Create Incentives for Quality Makes Sense

We recommend the Legislature consider the Governor's tiered reimbursement proposal in two parts. First, the Legislature should determine if a tiered reimbursement rate structure that provides incentives for quality makes sense. Then the Legislature should determine the appropriate rates for the tiers.

The policy of tying reimbursement rates to a provider's level of training, education, and other factors has merit in that it (1) attempts to promote what research suggests are the characteristics of high quality care; (2) better reflects the cost of providing care; and (3) creates a rating system that is transparent, allowing parents and other stakeholders to easily identify quality options.

Reform Could Promote Child Development

The number of families utilizing nonparental child care has increased significantly in part due to enactment of the 1996 federal welfare reforms and the expansion of federal child care vouchers for low-income families. One federal study in 2000 suggested that the number of families receiving public child care support has increased by over one million nationwide since the 1996 reforms. The voucher system that has emerged in this context reflects an attempt to respond to increasing demand by offering parents choice and flexibility so that they can transition off cash aid and/or maintain employment.

The effort to provide parents with a variety of child care options, however, can result in tension with efforts to provide age-appropriate development and early learning to children served through child care. For example, some families may choose license-exempt care for reasons of convenience and availability. (Many centers and FCCHs have shortages of infant care slots and/or do not operate during nontraditional work hours.) Also, certain regions, especially rural areas, tend to have limited center-based and FCCH providers. At the same time, as we discuss below, placing children in exempt care may result in the children not receiving the learning and development opportunities to which their peers in center-based care and,

to some extent, FCCHs have access. While the child care system should strive to meet the needs of poor and working parents, it should also take into consideration the important early learning and development needs of their children.

Research Suggests Quality Differences by Care Type. Several small demonstration programs, such as the Perry Preschool Project and the Chicago Parent-Child Centers, have established a positive relationship between enrollment in the center-based preschool programs and children's cognitive development. While these studies provide preliminary evidence of the benefits of high quality preschool programs, it is difficult to generalize their findings to the larger child care and preschool market because of their unique qualities as demonstration programs. However, recent academic studies investigating the relative benefits of different child care types in existing settings have provided evidence that center-based programs offer a higher quality of care relative to FCCHs and license-exempt care. Exposure to the higher quality care appears to have significant positive cognitive effects on young children. Particularly important factors in the quality of care are (1) provider education and training, and (2) the stability of the environment (including provider turnover). Stability of care is often problematic when parents must rely on license-exempt providers. Data from Alameda County showing a two-thirds turnover rate among exempt providers in the span of one year suggest that lack of stability may be a significant problem in license-exempt care.

One-Half of Children in Lowest Quality Care. As shown in Figure 8, in California's voucher programs, close to one-half (48 percent) of the children are cared for by license-exempt providers. While the percentage of children enrolled in license-exempt care is highest in Stage 1 (60 percent), the percentage in license-exempt care remains close to 50 percent through Stages 2 and 3. Data from SDE for Stages 2 and 3 and AP show that among the children cared for by licensed providers, less than one-third are enrolled in center-based care. (Data showing the Stage 1 distribution by care type of children in licensed care were not available from DSS.)

Incentives Weighted Toward Lowest Quality Care. As discussed above, Title 5 providers have the highest standards. Yet, in some counties, providers with the lowest standards (license-exempt) are paid at a higher reimbursement rate than the Title 5 providers. Figure 9 compares child care reimbursement rates for the voucher system with the state contracted system. While statewide average rates are similar across care types, in some high-cost counties voucher providers can receive significantly higher reimbursements than the Title 5 contract providers.

Figure 8

Proportion of Children Served in Each Care Type by Program

Care Type	CalWORKs[a] Stage 1	CalWORKs Stage 2	CalWORKs Stage 3	Alternative Payment	Totals
License-exempt	60%	50%	47%	28%	48%
FCCHs	]—40[b]	29	27	39	]—52%[b]
Centers		21	26	33	
Totals	**100%**	**100%**	**100%**	**100%**	**100%**

a California Work Opportunity and Responsibility to Kids.

b Family child care homes. The Stage 1 distribution between centers and FCCHs was not available from the Department of Social Services.

Figure 9

Regional Reimbursement Rates for Voucher and Title 5 Providers

Dollars Per Month for Full Day Care

	Vouchers			
	License-Exempt Rate	Family Care Maximum Rate	Center Maximum Rate	Title 5 Providers
High-cost county	$780	$866	$988	$586
Low-cost county	384	427	355	586
Average statewide	505	561	556	586

In fact, in eight Bay Area counties, the current reimbursement rate for license-exempt care providers is greater than the rate for the Title 5 providers. In 21 counties, the rate maximum for Title 22 centers is higher than the rate for Title 5 providers.

These rate differentials are particularly prevalent in some of the most populous regions in the state, thus affecting a disproportionately large number of children. Fifteen percent of children in license-exempt care are cared for by providers who are reimbursed at rates higher than

Title 5 providers. Similarly, more than one-half of the children cared for in Title 22 centers and FCCHs have rate maximums that are higher than the Title 5 reimbursement rate. Under current law, most FCCHs only serve subsidized children, and are thus reimbursed at the maximum rate (please see discussion on the "Pick-Five" regulations below). Data are not available showing the actual rates that Title 22 centers receive, only that the rate maximum exceeds the Title 5 rate for two-thirds of the kids. Given the higher program requirements of Title 5 providers (as discussed in Figure 4), it seems counterintuitive that their reimbursement rates would be lower than the voucher programs.

Tiered System Would Reflect Real Cost of Service Differences

Tiered reimbursement would reflect the differences in the costs associated with providing care and the providers' differential investments of time and money for required training and education. As noted, license-exempt providers' investments and costs, particularly in terms of education and training, are minimal. In contrast, Title 22 centers have to maintain a facility and materials as well as a qualified staff. Title 5 providers not only have significant overhead and operating costs but also have the additional responsibility for student learning and development outcomes through SDE's Desired Results System. The Desired Results System is an evaluation and accountability system to measure the achievement of identified results for children and families.

A Star Rating System Would Make Quality Differences Transparent

The APs and Resource and Referral Networks (R&Rs)—local agencies that help parents place their children in child care settings—currently do not have the authority to recommend one provider over another because of the subjective assessment that such recommendations would involve. A rating system similar to that proposed by the Governor would create a set of transparent and objective criteria that APs and R&Rs could provide to parents attempting to find the best settings for their children. The simplicity of the star-rating system would enhance parents' ability to distinguish between different child care options and give the public at large access to information about the quality of child care offerings.

A Tiered Reimbursement Could Address Significant Problems in the Current System

The current system of reimbursements creates the wrong incentives for providers. Not only is lower quality care often reimbursed at higher rates than higher quality care, these rate differentials can reach in excess of

$200 per child per month. Moreover, the current system only creates a limited impetus for child care providers to seek the higher levels of training and education that research suggests can promote cognitive development in young children. Also, the state does not differentiate the reimbursement rate provided to those with higher educational/quality attainment, and therefore the nonsubsidized public may have a difficult time measuring the quality of a program.

Rate tiers would create a way to address these problems by providing reimbursements that better reflect differences in the cost of care and provide incentives for providers to seek higher levels of education and training. In doing so, tiered reimbursement would also create transparency in the child care system by giving stakeholders an objective basis for making child care placements and holding providers accountable for the quality of the care they offer. Finally, if California adopts a tiered system, it would be following in the footsteps of many other states that have adopted such reforms. According to a national clearinghouse for child care information, 34 states had implemented a tiered rating system for improving child care quality as of 2002. Almost all of them provide financial incentives for higher levels of quality. For these reasons, we recommend that the Legislature transform the current reimbursement rate structure into a tiered reimbursement structure.

Transition Title 5 Provider Reimbursement to RMRs

We recommend the Legislature transition reimbursement rates for Title 5 providers to be based on the rate provided to voucher providers.

As discussed above, Title 5 providers have the highest expectations of the state's subsidized child care programs. However, in some counties the Title 5 reimbursement rates are substantially lower than the market rates. This makes it difficult for Title 5 providers in these areas to compete for qualified teachers and to maintain the quality care that is expected of them. In many counties, these centers would be better off if they became Title 22 centers with lower quality expectations and potentially higher reimbursement rates. In other counties (primarily rural ones), Title 5 providers are reimbursed at rates that are substantially above local market rates. To address this differential treatment of Title 5 providers, we recommend the Legislature transition Title 5 providers to the RMR structure and that they receive the maximum RMR for their region. These changes to the Title 5 provider rates would promote parity with the voucher providers' rates and would help ensure that Title 5 provider rates better reflect regional cost variations. Under this system, many Title 5 providers' rates would increase, while some may decrease.

Reimbursement Rates Should Reflect a Systematic Approach to Improving Quality in Child Care

We recommend the Legislature consider an approach to reimbursement rates that promotes quality and child development while preserving family choice.

As the Legislature considers child care reimbursement rate options, we recommend weighing the Governor's rate reductions and corresponding savings against the potential benefits of alternative approaches to reimbursement rates. We suggest a structure that adheres to the following guiding principles:

- ***Promote Quality and Child Development.*** Reimbursement rate structures should promote quality child care through a system of tiered reimbursements that rewards providers with more advanced training and education, accreditation, and/or higher independent ratings of quality within and across care types. This approach should specifically incorporate SDE contracted Title 5 providers.
- ***Maintain Choice.*** Any modifications to current rates should aim to preserve families' ability to choose from a variety of child care options. Families opt for different child care settings for a variety of reasons and rates should be sufficient to preserve the current range of options, including exempt care.

The first principle appears to generally undergird the Governor's proposal. However, as noted above, the proposal does not address inequities between the Title 5 and the voucher providers.

With regard to the second guiding principle, it is unclear how the Governor's proposal would affect families' choices. Specifically, we are unable to predict how the Governor's proposal would influence child care supply because we do not know how the proposed license-exempt rate reductions would affect license-exempt providers' decisions to leave the child care market, continue providing care at lower rates, or seek licensure as a means to access higher rates. However, we suggest that the Legislature devote attention to these issues as it balances any reductions in child care spending against other K-12 priorities.

There are many different possibilities for rate reforms that could incorporate these guiding principles and also meet other objectives—such as generating savings or maintaining current child care funding levels. If the Legislature wants to implement a reform that is cost neutral, it could pursue a strategy that would implement the proposed five-tiered system while

modifying the proposed rates. Such an approach could preserve current reimbursement rates for FCCH and center-based providers who meet two-star standards and enhance funding for those that attain three-star quality. Reductions in the current license-exempt care rates and one-star providers could offset the increased costs of funding enhancements for the three-star providers. This approach would ensure that centers and FCCHs are able to maintain current levels of service and at the same time offer incentives for improving quality. Under this rate structure, license-exempt care providers could choose to pursue advanced training to enhance their rates as exempt providers or obtain FCCH licensure.

The practices of other states suggest that lowering the license-exempt care reimbursement maximum rate is a reasonable mechanism for generating savings to offset increased rates for higher quality providers. Several other large states reimburse license-exempt care providers at lower rates than California does currently. Most reimburse license-exempt providers between 50 percent and 80 percent of the licensed FCCH rate.

"Pick-Five" Regulations Would Enhance Rate Equity

We recommend the Legislature adopt the Governor's proposal to implement regulations for an alternative rate setting methodology for subsidized child care provider reimbursements when they serve no private pay customers.

Statute requires the state to provide reimbursement rates for voucher programs that do not exceed the local market rates for a provider's community. Also, providers cannot charge the state more than they charge a private paying customer. For providers that serve no private pay customers, it is difficult for the state to determine an appropriate reimbursement rate level. Under current practice, the state reimburses providers without private pay customers at the RMR's maximum rate. This approach likely overpays many providers, especially FCCH providers, and creates negative incentives to serve private pay customers.

Because of these factors, statute directed SDE to develop regulations to determine an alternative reimbursement approach. The State Board of Education adopted regulations for the 2003-04 fiscal year. These regulations, commonly referred to as the Pick-Five regulations, determine the rate for a provider with no private pay customers based on the rates charged by five randomly selected providers in the same or comparable zip codes that have private pay customers. Nevertheless, the Legislature enacted legislation to suspend implementation of these regulations. We believe, however, that the regulations have merit in creating rates for providers without private pay clients. Below, we explain the rationale for the regulations.

There are some communities where it would be difficult for providers to find private paying customers. At the same time, there are many communities where providers could enroll private pay customers, but choose not to because the state will reimburse them at higher-than-market rates if they do not serve private pay customers. This practice appears common in the FCCH environment. Under these circumstances, the state is providing a reimbursement rate that exceeds local market rates. While the Pick-Five regulations do not provide a perfect estimate of the local market costs, they do provide a reasonable proxy. We believe that the Pick-Five system is an improvement on current practice because it does not overpay providers and eliminates the incentive to discourage private pay customers. Accordingly, we recommend that the Legislature permit the existing suspension to expire on June 30, 2005, thus allowing the Pick-Five regulations to be implemented in the budget year. The Department of Finance (DOF) estimates that these regulations would save $8.2 million annually.

New RMR Survey Methodology Shows Promise

We recommend the Legislature require the State Department of Education to report at hearings on the new Regional Market Rate methodology, including how the new survey may improve the accuracy of the Pick-Five regulations.

The SDE has contracted with an independent research firm for a new RMR survey methodology. The new methodology would address problems in the current RMR survey. By reducing nonresponse rates and using a sophisticated new method of grouping providers based on demographic variables, the approach is expected to increase the accuracy of the estimates of market costs of child care in particular communities. The SDE is currently in the process of final reviews and adjustments to the methodology and aims to secure the required approval for adoption from DSS and DOF during the current tear. The SDE is planning to implement the new RMR survey in 2005-06.

In setting reimbursement rates for child care, the Legislature should strive to use the most accurate data possible. It appears that the new methodology may offer some distinct advantages over the previous survey approach. We recommend that the Legislature request a complete report on the new RMR survey methodology at hearings. While we support the new methodology in concept, we believe it requires substantial review because it is likely to significantly affect reimbursement rates providers receive in the budget year. We also think that this new methodology may improve the quality of the information used to meet the Pick-Five regulations, especially in communities with limited numbers of providers serving private

pay customers. For these communities, the new methodology may be able to use information on provider rates in demographically similar communities in other parts of the state.

COMMISSION ON TEACHER CREDENTIALING (6360)

The Commission on Teacher Credentialing (CTC) was created in 1970 to establish and maintain high standards for the preparation and licensing of public school teachers and administrators. The CTC issues permits and credentials to classroom teachers, student services specialists, school administrators, and child care instructors and administrators. In total, it issues almost 200 different types of documents. In addition to setting teaching standards and processing credentials, the commission (1) performs accreditation reviews of teacher preparation programs; (2) develops, monitors, and administers licensure exams; and (3) investigates allegations of wrongdoing made against credential holders. The CTC also administers two local assistance activities—the Internship and Paraprofessional Teacher Training programs.

The CTC receives revenue from two primary sources—credential application fees and teacher examination fees. Application fee revenue is deposited into the Teacher Credential Fund (TCF) and examination fee revenue is deposited into a subaccount within the TCF, the Test Development and Administration Account (TDAA). These revenues support CTC's operations. The General Fund supports CTC's two local assistance programs.

Below, we discuss concerns we have with CTC's TCF and TDAA fund conditions for 2004-05 and 2005-06. We first discuss discrepancies in the current-year TDAA fund condition. We then discuss the Governor's budget proposal, under which both the TCF and TDAA would end 2005-06 without a prudent reserve.

Revised TDAA Fund Condition Requires Additional Explanation

We recommend the Legislature direct the Commission on Teacher Credentialing to explain during budget hearings why its 2004-05 beginning balance and revenue assumptions have changed so significantly within such a short amount of time.

Figure 1 compares the 2004-05 TDAA fund condition as estimated in January 2004 and November 2004. The January fund statement is critical because it was presented to the Legislature as part of the 2004-05 proposed budget, and its revenue and expenditure estimates form the basis of the *2004-05 Budget Act*. The November fund statement revises the 2004-05 budget and establishes a base for the Governor's 2005-06 budget proposal.

As Figure 1 shows, there are large differences between the original and revised TDAA fund condition for 2004-05. In every respect, the revised fund condition is troubling. The CTC now expects to have a 2004-05 beginning balance only one-half of what it had originally estimated. In addition, its revenue estimate is down by $4.1 million. This represents a substantial decline (41 percent) even though the TDAA revenue stream tends to be rather stable. Whereas revenues are now expected to be much lower than originally anticipated, expenditures have increased slightly. The result of all these revisions is that CTC now expects to end the current year with a reserve of $2.3 million rather than the $9.3 million assumed in the *2004-05 Budget Act*.

Figure 1

Large Current-Year Fund Changes Require Additional Explanation

Test Development and Administration Account (In Millions)

	2004-05	
	January 2004	November 2004
Revenues		
Beginning balances	$5.1	$2.5
Revenues	13.9	9.8
Subtotals	($19.0)	($12.3)
Expenditures/ Transfers		
Expenditures	$9.7	$9.7[a]
Transfers to TCF[b]	—	0.3
Subtotals	($9.7)	($10.0)
Ending Balances	**$9.3**	**$2.3**

[a] Expenditures have increased by $56,000.

[b] Teacher Credential Fund.

In response to our inquiries, CTC was not able to provide clear answers as to why its current-year budget had experienced such unforeseen changes. It asserts that the changes are due to a transition it currently is undergoing with its test contractors. Rather than test fees being funneled through CTC, test fees are now to flow directly from test takers to test contractors. Changing its relationship with its test contractors in this way would reduce the amount of test revenue it reflects in its fund condition, but it also would reduce, dollar-for-dollar, its expenditures. Thus, it seems very unlikely that this transition is explaining the large discrepancies noted above in the TDAA fund balance.

The Legislature needs an accurate current-year fund statement both to ensure CTC has proper fiscal management and to make well-informed budget-year decisions. One of the reasons the Legislature did not raise the credential application fee in 2004-05 was because the TDAA was projected to end the year with a substantial reserve. Without confidence in the fund statements, the Legislature is likely to have difficulty deciding how to proceed in the budget year, and it might be placed in the awkward position of increasing the credential application fee unnecessarily or having CTC run a deficit without a reserve to cover it. For these reasons, we recommend the Legislature direct CTC to explain (1) why such large changes to its TDAA fund statement have occurred in such a short amount of time and (2) if other revisions are expected.

If Fund Statements Reliable, Action Should Be Taken to Keep CTC Solvent

If the Commission on Teacher Credentialing (CTC) can show that it will not have a prudent reserve at the end of 2005-06, then we recommend the Legislature consider various options for maintaining CTC's solvency.

One of the reasons the current-year TDAA fund balance is so critical is because, under the Governor's budget proposal, both the TCF and TDAA would end 2005-06 with no reserve. Figure 2 shows the TCF and TDAA fund balances for the prior year, current year, and budget year.

If CTC can provide clear and accurate fund statements that show it would end 2005-06 without a prudent reserve, then we recommend the Legislature consider the following options for maintaining CTC's solvency.

Increase the Credential Application Fee. Every $5 increase in the application fee generates an estimated $1.1 million. This amount equates to a TCF reserve of 7 percent, which typically would be deemed a modest reserve for a small state agency. (Given the TDAA also is to end the budget year without a prudent reserve, the Legislature might want to consider a slightly larger fee increase in 2005-06 or 2006-07.)

Figure 2

If Fund Statements Reliable, CTC Would End 2005-06 With No Reserve

(Dollars in Millions)

	2003-04 Actual	2004-05 Estimated	2005-06 Budgeted
Teacher Credential Fund (TCF)			
Revenues/Transfers			
Beginning balances	$0.4	$1.3	—
Revenues	13.2	13.2	$13.2
Transfers from TDAA	3.0	0.3	1.9
Subtotals	($16.6)	($14.8)	($15.1)
Expenditures	$15.4	$14.8	$15.1
Ending Balances:			
Amount	$1.3	—	—
Percent of expenditures	8%	—	—
Test Development and Administration Account (TDAA)			
Revenues			
Beginning balances	$4.9	$2.5	$2.3
Revenues	11.5	9.8	9.8
Subtotals	($16.3)	($12.3)	($12.1)
Expenditures/Transfers			
Expenditures	$10.9	$9.7	$10.2
Transfers to TCF	3.0	0.3	1.9
Subtotals	($13.8)	($10.0)	($12.1)
Ending Balances:			
Amount	$2.5	$2.3	—
Percent of expenditures	23%	23%	—

Automate or Devolve Credentialing Authority. The Governor's budget includes a proposal that would entrust accredited university-run teacher preparation programs with essentially preapproving the credential applications they submit to CTC, and CTC in turn would grant the official credential without further review. As CTC currently evaluates more than 50,000 applications submitted from universities, this would notably re-

duce CTC's workload. Given it represents a reasonable and feasible option for achieving greater efficiencies, the Legislature may want to approve this proposal.

The Legislature also may want to consider related options that might achieve even more substantial efficiencies. It could consider authorizing a similar preapproval process for district-run teacher preparation programs and community college child development programs. (In addition to the credential applications noted above, CTC currently reviews approximately 10,000 child development permits.)

Alternatively, the Legislature could consider establishing a pilot program that would devolve issuance authority to teacher preparation and child development programs. These programs already hire their own credential/permit analysts, already review their students' applications, and already recommend approved candidates to the CTC. A pilot program would entrust these campuses with actually issuing the credential/permit to the applicants, thereby eliminating CTC's cursory review process altogether. Participating campuses could be required to issue their credentials/permits prior to the beginning of the school year. This in turn would reduce county workload because county offices of education must issue temporary county certificates to credential applicants who, prior to the beginning of the school year, have not yet received their official CTC document.

Pursue Additional Efficiencies. The *2004-05 Budget Act* included budget bill language requiring CTC to submit a report to the Legislature and the Department of Finance that identified "at least three feasible options to further reduce processing time that could be implemented in 2005-06." The CTC submitted its report, which contains five efficiency options. (The commission is in the process of implementing some of these options.) Among the options is a proposal to conduct a public relations campaign to encourage more teachers to renew their credentials online and two proposals to eliminate hard copies of documents and instead provide only online access. Several of these proposals hold promise. The public relations campaign, for instance, could yield considerable long-term pay-off (as only 36 percent of eligible applicants currently renew online). The two online proposals also would reduce workload and postage costs. The Legislature may want CTC to provide periodic updates on its implementation of these efficiency initiatives.

In sum, the Legislature has a number of options for addressing a funding shortfall. Unless CTC can provide more reliable fund statements, it will however have difficulty knowing whether CTC is actually likely to experience a shortfall. If CTC can provide clear and accurate fund statements that show a likely budget-year shortfall, then it should offer the Legislature viable alternatives for addressing it. Ideally, CTC would submit a proposal

that contains revenue options (for example, an increase in the credential application fee) and expenditure options (for example, an estimate of personnel savings under various efficiency options). We recommend the Legislature direct CTC both to provide more reliable fund statements and present various options for addressing a potential shortfall.

OTHER ISSUES

Few Details on Other Proposals

We recommend the Legislature reject several new initiatives proposed in the budget unless the administration makes available complete proposals including a narrative that explains their rationale.

The Governor's budget for K-12 education contains a number of other proposals for which few details were available at the time this analysis was prepared. A complete budget proposal generally includes a narrative explaining the need for the program and the rationale for the approach proposed, a detailed description of the fiscal structure of the new program, and proposed budget or statutory language needed to implement the proposal. The budget provides none of this supporting material for the proposals discussed below. In several cases, the budget proposal also fails to identify how the new activities would be funded in the budget year.

The Legislature's budget process is designed to ensure that the state's fiscal plan targets funds to the state's highest priorities. Without a thorough understanding of the recommended changes, the Legislature is unable to evaluate the costs and benefits of the Governor's proposals. Therefore, unless the administration provides the Legislature with a complete package of supporting material for these proposals, we recommend the Legislature reject them.

This would be unfortunate because, in most cases, the concepts forwarded in the Governor's budget for K-12 appear to have merit. Below, we describe each proposal for which we received no supporting material and discuss our initial reaction to it.

Accelerated English Language Acquisition Program (ELAP). The budget would redirect $57.6 million in funds for ELAP and use the funds to provide staff development in teaching instruction to English learner (EL) students. Currently, ELAP funds are distributed to districts for services to EL students in grades 4 through 8. The new staff development program would serve teachers in these grades with services modeled on the existing Reading First staff development program. Reading First is a federally funded

program that provides districts with a minimum of $6,500 per K-3 teacher for reading professional development.

The most recent evaluation of ELAP suggests the current program has little impact on student learning. For this reason, we would support proposals that use these funds more effectively. In addition, we also believe that helping EL students learn English quickly is a critical task for the state's education system. The proposal raises several issues, however. Dedicating $50 million for a yet-unproven staff development program appears to be going too far, too fast. Moreover, no justification has been given why the Reading First model would be an effective approach for helping teachers meet the needs of EL students. Finally, given that English language development for most EL students in California begins in kindergarten, it is not evident why focusing on teachers in grades 4 through 8 is the most effective approach to helping this group of students.

Intervention in Low-Performing Schools. The budget proposes to convert failing schools into charter schools or assume management of the schools through a School Recovery Team. The budget proposal would place an unknown number of schools that are failing to meet state or federal performance goals into this intervention program.

Most critically, the budget does not identify how the administration proposes to support the new program. The budget is silent on the cost of the intervention, the length of time state teams would manage the schools, and what happens to the schools after the state leaves. We also note the budget proposal continues the past focus of intervention on individual schools. We think the state should concentrate most of its efforts on improving low-performing *districts* rather than schools. Since districts affect so many elements of school success—including teacher assignment, curriculum and instructional development, and resource decisions—we think a focus on improving districts has more promise than a state takeover of schools.

Delegating Budget Decisions to the School Site. The Governor's budget proposes a pilot program for determining the costs and benefits of school site budgeting and decision making. The pilot would test the concept in a small number of districts that volunteer for the program. As part of the pilot, schools would be given more flexibility over the use of state categorical program funds in order to help the sites use funds most effectively to meet student needs.

Districts in California and in other states currently are devolving a greater amount of budget discretion to school sites. Decentralization appears sufficiently promising that a study of the costs and benefits of the approach has merit. Details of the proposal, however, were not available at the time this analysis was prepared. How the proposal would extend greater

flexibility over categorical program resources to participating schools constitutes a critical detail. The proposal also failed to clearly specify the goals of the pilot and the criteria that would be used to measure its success. In addition, the Governor's proposal does not provide any resources to districts for planning or for the evaluation of the pilot.

Fitness and Nutrition Initiative. The budget proposes an initiative to prevent child obesity. According to the budget document, the initiative includes several school-based efforts such as improving the nutritional quality of food and beverages, increasing opportunities for physical activities, and making fresh fruit and vegetables more available. The budget includes $6 million in the Department of Health Services (DHS) budget for a series of obesity reforms, but provides no funding in the K-12 portion of the budget.

Data provided in the budget document indicate that the number of overweight children has grown significantly over the last two decades. The proposal, however, provides no specific details about how the school-based initiatives would be funded or implemented. Funding proposed in the DHS budget could support some of the proposed activities in schools. For example, the proposal provides $3 million for grants to community organizations to implement projects involving schools and other local agencies. No information was available on whether the DHS program was intended to support the K-12 activities or whether the administration expects to identify another funding source for the education component of the program. (Please see our analysis of the DHS proposal in the "Health and Social Services" chapter.)

INTRODUCTION

Higher Education

The Governor's budget proposes a $663 million augmentation in General Fund expenditures for higher education in 2005-06. This represents a 7.5 percent increase from the revised 2004-05 amount. The Governor's proposal also assumes the enactment of student fee increases which, when coupled with changes in all other revenue sources, would increase total higher education funding by $1.3 billion, or 4 percent. The budget funds cost-of-living adjustments and enrollment growth at the three public higher education segments, as well as increased costs of the Cal Grant program.

Total Higher Education Budget Proposal

As Figure 1 (see next page) shows, the 2005-06 budget proposal provides a total of $34.6 billion from all sources for higher education. This amount is $1.3 billion, or 4 percent, more than the Governor's revised current-year proposal. The total includes funding for the University of California (UC), the California State University (CSU), California Community Colleges (CCC), Hastings College of the Law, the Student Aid Commission (SAC), and the California Postsecondary Education Commission. Funded activities include instruction, research, and related functions, as well as other activities, such as providing medical care at UC hospitals and managing three major U.S. Department of Energy laboratories. The Governor's current-year estimates include a variety of technical adjustments.

Major Funding Sources

The 2005-06 budget proposal provides $9.5 billion in General Fund appropriations for higher education. This amount is $663 million, or 7.5 percent, more than proposed current-year funding. The budget also projects that local property taxes will contribute $1.8 billion for CCC in 2005-06, which reflects an increase of $77 million, or 4.4 percent, from the revised current-year amount.

Figure 1

Governor's 2005-06 Higher Education Budget Proposal

(Dollars in Millions)

	2004-05	2005-06	Change Amount	Change Percent
UC				
General Fund	$2,708.8	$2,806.3	$97.5	3.6%
Fee revenue	1,800.0	1,949.9	149.9	8.3
Subtotals	($4,508.8)	($4,756.2)	($247.4)	(5.5%)
All other funds	$14,162.5	$14,637.3	$474.9	3.4%
Totals	**$18,671.3**	**$19,393.5**	**$722.2**	**3.9%**
CSU				
General Fund	$2,496.7	$2,607.2	$110.5	4.4%
Fee revenue	1,111.3	1,212.5	101.2	9.1
Subtotals	($3,608.0)	($3,819.7)	($211.7)	(5.9%)
All other funds	$2,222.1	$2,197.5	-$24.5	-1.1%
Totals	**$5,830.1**	**$6,017.3**	**$187.2**	**3.2%**
CCC				
General Fund	$3,050.6	$3,349.7	$299.1	9.8%
Local property tax	1,750.4	1,827.0	76.7	4.4
Fee revenue	357.5	368.2	10.7	3.0
Subtotals	($5,158.5)	($5,545.0)	($386.5)	(7.5%)
All other funds	$2,168.2	$2,165.0	-$3.3	-0.2%
Totals	**$7,326.7**	**$7,709.9**	**$383.2**	**5.2%**
SAC				
General Fund	$589.4	$745.5	$156.1	26.5%
All other funds	758.6	646.9	-111.7	-14.7
Totals	**$1,348.0**	**$1,392.4**	**$44.4**	**3.3%**
Other				
General Fund	$10.2	$10.4	$0.2	2.4%
Fee revenue	25.5	26.2	0.7	2.8
All other funds	20.1	16.8	-3.2	-16.2
Totals	**$55.7**	**$53.4**	**-$2.3**	**-4.1%**
Grand Totals	**$33,231.7**	**$34,566.5**	**$1,334.7**	**4.0%**
General Fund	$8,855.7	$9,519.1	$663.4	7.5%
Fee revenue	3,294.3	3,556.8	262.5	8.0
Local property tax	1,750.4	1,827.0	76.7	4.4
All other funds	19,331.4	19,663.5	332.1	1.7

[a] Excludes payments on general obligation bonds.

In addition, student fee revenue at all the public higher education segments account for $3.6 billion of proposed expenditures. This is $263 million, or 8 percent, greater than student fee revenue in the current year. This increase is primarily due to planned fee increases at UC and CSU. (The Governor does not propose any fee increase for CCC.) The budget also includes $968 million in other state funds (such as lottery and tobacco funds), reflecting a decrease of $143 million, or 12.9 percent.

Finally, the budget includes $18.7 billion in nonstate revenue—including federal funding, private contributions to the universities, and other revenue. This amount is $475 million, or 2.6 percent, more than the revised current-year level. The amounts in Figure 1 do not include capital outlay expenditures or the General Fund costs associated with paying off general obligation bonds. These costs are discussed in the "Capital Outlay" chapter of this *Analysis*.

Funding by Segment

For UC, the budget proposal provides General Fund appropriations of $2.8 billion, which is a net $97.5 million, or 3.6 percent, more than the proposed current-year estimate. The Governor's budget also anticipates that, largely as a result of planned fee increases, student fee revenue will increase by $150 million. When General Fund and fee revenue are combined, UC's budget would increase by 5.5 percent.

For CSU, the budget proposes $2.6 billion in General Fund support, which is a net increase of $111 million, or 4.4 percent, from the revised current-year level. With proposed fee increases, student fee revenue would increase by $101 million. Total General Fund and fee revenue combined would increase by 5.9 percent.

For CCC, the Governor's budget proposes $3.4 billion in General Fund support, which is $299 million, or 9.8 percent, above the current-year amount. Local property tax revenue (the second largest source of CCC funding) would increase by 4.4 percent, to $1.8 billion. The Governor's budget does not propose an increase in student fee levels at CCC. Combined, these three sources of district apportionments (General Fund support, property taxes, and fee revenue) would amount to $5.5 billion, which reflects an increase of $387 million, or 7.5 percent.

Major Cost Drivers for Higher Education

Year-to-year changes in higher education costs are influenced by three main factors: (1) enrollment, (2) inflation, and (3) student fee levels.

Enrollment Growth. For UC and CSU, the state uses a "marginal cost" formula that estimates the added cost imposed by enrolling one additional full-time equivalent student. This estimate includes instructional costs (such as faculty salaries and teaching assistants), related educational costs (such as instructional materials and libraries), administrative costs, and student services. Because faculty (particularly at UC) spend part of their time performing noninstructional activities such as research, the marginal cost formula "buys" part of these other activities with each additional student enrolled. A similar approach is used for funding enrollment growth at CCC, although there are technical differences in how funding is calculated. (We discuss marginal cost funding in some detail in an intersegmental issue later in this chapter.)

Inflation. Higher education costs rise with general price increases. For example, inflation increases the costs of supplies, utilities, and services that are purchased by campuses. In addition, price inflation creates pressure to provide cost-of-living adjustments to maintain the buying power of faculty and staff salaries.

Student Fees. Student fees and General Fund support are the two primary funding sources for the segments' instructional programs. The Legislature generally considers fee increases either to (1) *maintain the share* of costs supported by fees as the segments' budgets increase yearly, or (2) *increase the share* of total costs supported by fees.

Major Budget Changes

The Governor's higher education budget proposal results primarily from base increases (essentially to compensate for inflation), enrollment increases, and increased financial aid costs. Figure 2 shows the major General Fund budget changes proposed by the Governor for the three segments.

Enrollment Growth. The Governor proposes enrollment increases of 2.5 percent at UC and CSU, and 3 percent at CCC. Figure 3 (see page E-146) shows enrollment changes at the three segments. We discuss proposed enrollment levels in more detail later in this chapter.

Student Fees. For UC and CSU, the Governor proposes fee increases of 8 percent for undergraduate students and teacher credential students, and 10 percent for graduate students. The Governor's budget does not account for the continued phase-in of higher fees for students taking "excess" course units. That fee phase-in was proposed by the Governor in the 2004-05 budget, and accepted by the Legislature. For 2005-06, the excess course unit policy is to generate $25.5 million in General Fund savings. Once fully implemented over five years, the excess course unit policy would raise student fees to the full marginal cost of education for students taking more than 110 percent of the credit units required for graduation.

Figure 2

Higher Education
Proposed Major General Fund Changes

University of California	**Requested:**	**$2.8 billion**	
	Increase:	**$97.5 million**	**(+3.6%)**

Base Augmentation: Provides $76.1 million for a 3 percent base funding increase.

Enrollment Growth: Provides $37.9 million for 2.5 percent enrollment growth, which is sufficient to fund 5,000 additional full-time equivalent (FTE) students.

Budget Reductions: Eliminates $3.8 million for Labor Institutes, and makes a $17.3 million reduction to enrollment and/or outreach. (The university would decide how to allocate this reduction between these two activities.)

California State University	**Requested:**	**$2.6 billion**	
	Increase:	**$111 million**	**(+4.4%)**

Base Augmentations: Provides $71.1 million for a 3 percent base funding increase, and $44.4 million for increased retirement costs.

Enrollment Growth: Provides $50.8 million for 2.5 percent enrollment growth, which is sufficient to fund 8,100 additional FTE students.

Budget Reduction: Includes a $7 million reduction to enrollment and/or outreach. (The university would decide how to allocate this reduction between these two activities.)

California Community Colleges	**Requested:**	**$3.3 billion**	
	Increase:	**$299 million**	**(+9.8%)**

Cost-of-Living Adjustments (COLAs): Provides $196 million for a COLA of 3.93 percent for apportionments and selected categorical programs.

Enrollment Growth: Provides $142 million for 3 percent enrollment growth (to fund about 34,000 additional FTE students).

Other Augmentations: Includes $20 million one-time funding to create new vocational curricula that link K-12 and community college classroom work. Also, sets aside an additional $31.4 million that would be added to general apportionments, contingent on the Board of Governors' adequately responding to legislation requiring the development of a district-level accountability proposal.

Technical Reductions: Reduction of $90.1 million which adjusts for increased fee and property tax estimates.

Figure 3

Higher Education Enrollment

Full-Time Equivalent Students

	Actual 2003-04	Budgeted 2004-05	Proposed 2005-06	Change	
				Amount	Percent
University of California					
Undergraduate	155,754	155,647	159,730	4,083	2.6%
Graduate	32,874	32,963	33,860	897	2.7
Health sciences	13,268	12,366	12,386	20	0.2
UC Totals	**201,896**	**200,976**	**205,976**	**5,000**	**2.5%**
California State University					
Undergraduate	278,774	272,419	279,207	6,788	2.5%
Graduate/postbacalaurate	52,931	51,701	53,016	1,315	2.5
CSU Totals	**331,705**	**324,120**	**332,223**	**8,103**	**2.5%**
California Community Colleges	1,108,348	1,142,987	1,177,276	34,289	3.0%
Hastings College of the Law	1,261	1,250	1,250	—	—
Grand Totals	**1,643,210**	**1,669,333**	**1,716,725**	**47,392**	**2.8%**

For CCC, the Governor proposes no increase in student fees. Resident students at CCC would continue to pay $26 per unit—the lowest fee in the country. Proposed student fees are shown in Figure 4, and are discussed in more detail later in this chapter.

Student Financial Aid. The Governor's budget provides $746 million in General Fund support for SAC, primarily for the Cal Grant programs. This reflects an increase of $156 million from the revised current-year level. About two-thirds of this increase would be used to backfill a reduction in funding from the Student Loan Operating Fund (SLOF). About $147 million in surplus funding in the SLOF was used on a one-time basis in the current year to achieve General Fund savings. For 2005-06, the Governor proposes a smaller one-time shift of $35 million from the SLOF. The remaining increase in General Fund support for SAC is largely due to higher fees at UC and CSU (which are covered by Cal Grants) and a projected increase in the number of Cal Grant awards.

Figure 4

Annual Education Fees for Full-Time Resident Students[a]

	Actual 2003-04	Actual 2004-05	Proposed 2005-06	Change From 2004-05	
				Amount	Percent
University of California					
Undergraduate	$4,984	$5,684	$6,141	$457	8%
Graduate	5,219	6,269	6,897	628	10
Select professional programs[b]					
Nursing	8,389	8,389	9,105	716	9
Pharmacy	10,339	14,139	15,027	888	6
Medicine	14,013	18,513	19,532	1,019	6
Business	14,824	19,324	20,368	1,044	5
Hastings College of the Law	$13,735	$18,750	$19,725	$975	5%
California State University					
Undergraduate	$2,046	$2,334	$2,520	$186	8%
Teacher education	2,256	2,706	2,922	216	8
Graduate	2,256	2,820	3,102	282	10
California Community Colleges	$540	$780	$780	—	—

a Fees shown do not include campus-based fees.

b The University of California currently charges special fee rates for nine professional programs—including the four shown. The Governor's budget proposes to charge a special rate ($10,897) for three additional programs—Public Health, Public Policy, and International Relations and Pacific Studies.

BUDGET ISSUES

Higher Education

INTERSEGMENTAL: HIGHER EDUCATION "COMPACT"

The Governor's 2005-06 budget proposal generally follows a "compact" between the Governor and the University of California (UC) and the California State University (CSU), agreed to in spring 2004. In return for specific funding commitments over the next six years, UC and CSU have agreed to meet various performance expectations negotiated with the Governor. Below, we explain our concerns with the Governor's compact and advise the Legislature to disregard it for budgeting purposes. Instead, we recommend the Legislature continue to use the annual budget process as a mechanism to fund its priorities and to hold the segments accountable for fulfilling the mission assigned to them by the **Master Plan for Higher Education.**

Background

In 1960, the state adopted a fiscal and programmatic roadmap for higher education in the form of the *Master Plan for Higher Education*. This document defines California's higher education goals and outlines strategies for achieving them. The guiding principle expressed in the Master Plan is that all qualified Californians should have the opportunity to enroll in high quality, affordable institutions of higher education. To achieve this goal, the Master Plan addresses various overarching matters, including governance structures and mission differentiation. It also establishes guidelines for eligibility pools, transfer policies, enrollment planning, facility utilization, financial aid, and other policy areas. The Master Plan has proven

to be a remarkably enduring planning document, enjoying bipartisan support since its adoption. Starting in the mid-1990s, the state's public universities have entered into a series of nonbinding funding compacts to try to gain greater fiscal and programmatic stability.

Previous Higher Education Funding Agreements. In 1995, UC and CSU entered a four-year compact with the Wilson Administration following several years of fiscal uncertainty caused in large part by the state's economic recession. Under the agreement, the Governor committed to request at least a specified level of General Fund revenue in his annual budget proposals to support base budget increases, enrollment growth, and other priorities. In return, UC and CSU agreed to meet certain program objectives. Desiring to extend this arrangement, UC and CSU negotiated a new agreement with the Davis Administration in 1999. This agreement, known as the "Partnership," contained many of the same provisions of the previous compact. The Partnership agreement lasted from 1999 through 2003.

Previous Agreements Did Not Deliver Expected Funding. The Partnership agreement included provisions for a 5 percent annual base increase for UC and CSU. However, the state experienced a pronounced fiscal deterioration, caused by significantly lower-than-expected revenues. As a result, the Governor proposed in the May Revision to his 2001-02 budget to provide UC and CSU with a 2 percent base increase instead of the 5 percent called for under the Partnership. The following year he proposed a 1.5 percent base increase—again, less than outlined in the agreement. As shown by these and other experiences, the provisions of the segments' funding agreements are primarily expressions of intent at a point in time. They have not and cannot guarantee budgetary predictability to the public universities.

Development of the Current Agreement. In developing his budget proposal for 2004-05, the Schwarzenegger Administration confronted an estimated $17 billion General Fund shortfall. The Governor proposed to make up for some of this with General Fund reductions for UC and CSU, much of which was "backfilled" with revenue from student fee increases. While this budget proposal was being deliberated in the Legislature, the Governor developed a new compact with UC and CSU to provide annual budget increases beginning in 2005-06. The 2004-05 budget adopted by the Legislature approved some of the Governor's proposals for reductions at UC and CSU and significantly modified a few of them. The enacted budget made no reference to the compact.

Major Terms of the Current Agreement. The current compact would guide the Governor's budget proposals for the public universities through 2010-11. As Figure 1 shows, the compact establishes annual funding targets, including base increases of 3 percent (increasing to 4 percent in 2007-08

and 5 percent in 2008-09), 2.5 percent annual increases in enrollment funding, and annual fee increases that would generate additional funding to be used at the segments' discretion. As part of the compact, the segments agree to meet various programmatic expectations and to provide annual reports with specified information. (These are outlined in Figure 2 (see next page) and discussed in further detail later in this section.)

Figure 1

Major Funding Provisions of the Governor's Compact With UC and CSU

	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
General Fund Augmentations						
Base increase	3.0%	3.0%	4.0%	5.0%	5.0%	5.0%
Enrollment growth	2.5	2.5	2.5	2.5	2.5	2.5
Student Fee Increases						
Undergraduate fees	8.0%	8.0%	—[a]	—[a]	—[a]	—[a]
Graduate fees (minimum increase)	10.0	10.0	—[b]	—[b]	—[b]	—[b]

Other Provisions

Phase in excess course unit fee (over five-year period ending in 2008-09).

Full funding of lease-revenue debt service, annuitant health benefits, and other expenses.

General obligation bond support of $345 million per segment, per year, for capital outlay.

a Starting in 2007-08, undergraduate fees are to change at the same rate as per capita personal income. The compact permits fees to increase further—up to 10 percent—if required by "fiscal circumstances."

b Graduate student fees are dependent on the development of a fee policy in which graduate fees gradually increase to 150 percent of undergraduate fees.

CONCERNS WITH THE COMPACT

The Governor's budget proposal for higher education largely is guided by his compact. Below, we identify several concerns with it.

Compact's Funding Targets Are Disconnected From Master Plan

The compact's funding expectations for enrollment growth, base increases, and student fees have no direct link to funding needs derived from the Master Plan.

No Link Between Master Plan and Compact's Enrollment Targets. The Master Plan provides guidance on eligibility criteria for each of the higher

education segments. Specifically, UC is directed to accept students from the top one-eighth (12.5 percent) of high school graduates, CSU from the top one-third (33.3 percent) of high school graduates, and community colleges are to accept all applicants 18 years of age and older who can benefit from attendance. A recent report by the California Postsecondary Education Commission (CPEC) showed that in 2003, UC and CSU's eligibility criteria were not aligned with the eligibility targets outlined in the Master Plan. According to CPEC's analysis, UC drew its students from the top 14.4 percent of high school graduates (exceeding its 12.5 percent target by about one-seventh) and CSU drew its students from the top 28.8 percent of high school graduates (falling short of its 33.3 percent target by a similar proportion).

Figure 2

Major Accountability Provisions of the Governor's Compact With UC and CSU

- ✓ Meet Master Plan eligibility targets.
- ✓ Complete lower division major preparation agreements by the end of 2005-06.
- ✓ Provide summer instruction to at least 40 percent of the average fall/winter/spring enrollment by 2010-11.
- ✓ Improve student persistence and graduation rates.
- ✓ Improve supply of science and mathematics teachers.
- ✓ Approve college preparatory courses that integrate academics with technical content.
- ✓ Strengthen community service programs.
- ✓ Provide accountability report on various performance measures annually to the Legislature and Governor.

The annual increases in enrollment called for in the compact show no obvious link to the Master Plan's eligibility targets. They appear neither to address the mismatch between the Master Plan eligibility targets and current practice nor to mesh with projected growth in the college-age population over the next few years. Instead, the compact would provide UC and CSU identical fixed levels of annual enrollment growth for the term of the

agreement. In contrast, we believe the Legislature should make enrollment funding decisions annually to provide the segments with the resources necessary to meet their Master Plan eligibility targets.

No Link Between Master Plan and Compact's Base Increases. The state's public universities, like other institutions, experience increases in their program costs due to inflation. In order to maintain the Master Plan's commitment to support quality academic programs, therefore, the Legislature periodically increases the segments' base budgets. To maintain the same purchasing power, these base increases would generally track an inflationary index such as the state and local deflator. The Governor's agreement with the segments, however, prescribes specific base increases through 2010-11, irrespective of the rates of inflation the segments will actually experience. Under the Governor's agreement with UC and CSU, the proposed base increases might match, exceed, or fall behind the annual rate of inflation.

We believe the Legislature should consider increasing the public universities' base budgets to adjust for the effects of inflation during annual budget hearings. Such consideration should weigh providing these increases against competing budget priorities. In this way, the Legislature maintains flexibility in the allocation of budget resources.

Compact's Fee Targets Are Arbitrary. The State Constitution confers on the Board of Regents the power to set student fee levels for UC, and the Legislature statutorily confers on the Board of Trustees the power to set fee levels for CSU. Both universities in recent years have determined fee levels as a response to the state's fiscal situation. For example, in the late 1990s, the public universities reduced fees—despite a strong economy and burgeoning financial aid opportunities—because state General Fund revenue was available to substitute for some fee revenue. Over the last couple of years, UC and CSU have raised student fees significantly to compensate for General Fund reductions. The Governor's agreement with the segments prescribes annual fee increases through 2010-11. Specifically, the compact proposes 8 percent fee increases in undergraduate fees in 2005-06 and 2006-07, with subsequent increases based on the change in per capita personal income. Graduate fees would increase by at least 10 percent in 2005-06 and 2006-07, with the segments committing to "make progress" in subsequent years toward the goal of raising graduate fees to 150 percent of undergraduate fees. This policy would ensure that fee increases are relatively moderate and predictable, but it does not provide an underlying policy rationale for the actual fee levels.

We believe the Legislature should instead adopt a long-term fee policy that results in students paying a fixed percentage of their total education costs each year. The size of the students' share would be a policy choice for the Legislature to make. This policy would provide an underlying ratio-

nale for fee levels, ensure moderate and gradual fee increases, and reflect underlying costs.

Compact Would Place Higher Education Funding on "Autopilot"

Compact Seeks Routine Increases. Rather than allowing for an annual review to reassess budget assumptions, the Governor's compact seeks automatic spending increases for UC and CSU. By prescribing specific targets for enrollment growth and base budget increases, the compact attempts to lock into place specific funding levels, thereby putting higher education on autopilot. As shown in Figure 3, by the final year of the compact, UC and CSU's General Fund support is projected to increase by about $2 billion from the 2004-05 level. When combined with student fee revenue, total resources for UC and CSU would increase by more than more $3.2 billion. In contrast, our projections of population growth and inflation suggest that UC and CSU would require an additional $1.8 billion in 2010-11, or about 60 percent of the increase called for by the compact. (Note: These figures do not include other increases that would be provided under the compact—such as funding for annuitant health benefits and capital outlay-related expenses.)

Figure 3

Funding Expectations Under Governor's Compact[a]

Additional Funding Above 2004-05 Level (In Millions)

	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Additional General Fund support	$208	$439	$739	$1,119	$1,551	$2,013
Additional student fee revenue	251	504	658	829	1,005	1,205
Totals	**$459**	**$943**	**$1,397**	**$1,948**	**$2,556**	**$3,218**

[a] Base increases, fee increases, and enrollment growth only. The compact calls for undefined levels of additional General Fund support to cover other cost increases.

Budget Process Should Be Followed. The Legislature makes budget decisions within a context of changing fiscal, economic, and policy conditions. Unanticipated challenges, including natural disasters and economic downturns, require annual reassessments of funding needs as part of the budget process. To better accommodate these unexpected situations, as well as any policy changes the Legislature may want to implement, we

believe the Legislature should reject the compact's autopilot approach and continue to use the annual budgetary process to allocate resources to the segments.

Compact's Accountability Provisions Are Inadequate

While we agree that accountability is an important issue directly connected with budgeting, we believe the accountability provisions referenced in the Governor's compact are inadequate for several reasons.

Compact's Accountability Lacks Explicit Goals and Measures. The Governor's agreement with the public universities includes performance measures as a means to monitor UC and CSU's progress toward meeting certain goals. Program goals and performance measures are important components of any successful accountability system. However, to be effective, goals should describe the desired outcomes or impact. Similarly, measures should directly relate to a specific goal, be quantifiable, and focus on results.

Although the compact makes an effort to measure various activities and outputs, it does not provide enough detail in the goals it hopes to achieve or in the measures it suggests to determine performance. For example, the compact lists a goal of "utilization of systemwide resources." Proposed measures of this goal include "faculty honors and awards," "information on technology transfer," and "instructional activities per faculty member." Using the criteria mentioned above, the proposed goal of utilization of systemwide services does not provide enough clarity about expected results. The lack of clarity, in turn, precludes the development of measures that accurately gauge progress toward the goal.

Compact's Accountability Not Focused on Outcomes. The Governor's agreement with the public universities includes *output* measures, which are concerned with the number of goods produced, rather than *outcome* measures, which focus on program results and impact on society. For example, the segments are expected to report the number of degrees awarded and instructional activities per faculty member. Although *outputs* are important, ultimately it is *outcomes* that provide insight into how well a program meets its mission.

Conclusion

The *Master Plan for Higher Education* serves as the state's framework for higher education. Since 1960, the Legislature, Governor, and public education segments have looked to the Master Plan for guidance on the operation and support of the state's public institutions of higher education. The Governor's budget proposal is based on an agreement he made with UC and CSU. The funding targets of this compact have no explicit link to the

objectives outlined in the Master Plan. We recommend the Legislature continue to use the annual budget process as a mechanism to fund its priorities and to hold the segments accountable for fulfilling the mission assigned to them by the *Master Plan for Higher Education*.

INTERSEGMENTAL: HIGHER EDUCATION ENROLLMENT GROWTH AND FUNDING

The Governor's budget proposes $88.7 million to fund 2.5 percent enrollment growth at the University of California (UC) and the California State University (CSU). This amount would provide $7,588 in General Fund support for each additional student at UC and $6,270 for each additional student at CSU. The proposed budget also provides $142 million for a 3 percent increase of enrollment at California Community Colleges. In this section, we (1) review current-year enrollment levels at UC and CSU, (2) analyze the Governor's proposed enrollment growth and funding rates for 2005-06, and (3) recommend alternatives to those funding rates.

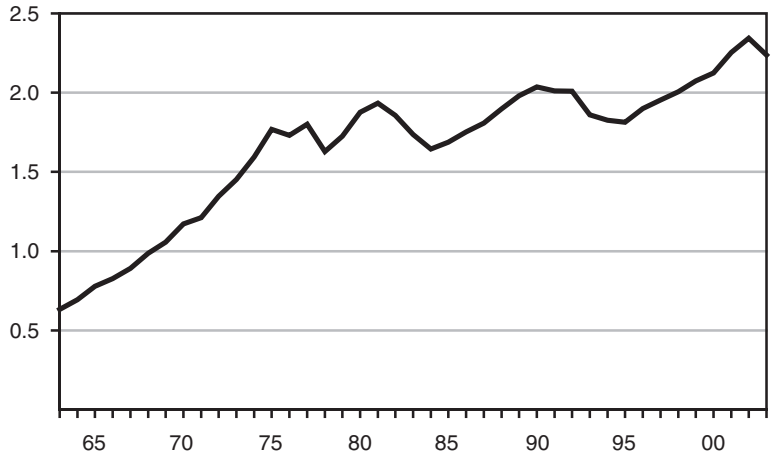
HIGHER EDUCATION ENROLLMENT TRENDS

In 2003, approximately 2.2 million students (headcount) were enrolled either full-time or part-time at the University of California (UC), the California State University (CSU), and California Community Colleges (CCC). This is equal to roughly 1.7 million full-time equivalent (FTE) students. (We describe the differences between *headcount* and *FTE* in the accompanying text box.) Figure 1 (see next page) displays actual headcount enrollment for the state's public colleges and universities for the past 40 years. The figure shows that enrollment grew rapidly through 1975 and then fluctuated over the next two decades. Since 1995, enrollment grew steadily until a slight decline in 2003. As we discuss in the "California Community Colleges" section of this chapter, this decline was largely made up of part-time community college students who were taking relatively few courses. Despite this drop in *headcount*, there was a much smaller decline in community college *FTE* enrollment from 2002 to 2003.

Figure 1

California Public Higher Education Enrollment[a]

Headcount (In Millions)



[a] Includes the University of California, the California State University, and the California Community Colleges.

Full-Time Equivalent (FTE) Versus Headcount Enrollment

In this analysis, we generally refer to FTE students, rather than headcount enrollment. Headcount refers to the number of individual students attending college, whether they attend on a part-time or full-time basis. In contrast, the FTE measure converts part-time student attendance into the equivalent full-time basis. For example, two half-time students would be represented as one FTE student. In 2003-04, on average, one headcount enrollment equaled 0.88 FTE at the University of California, 0.75 FTE at the California State University, and 0.68 FTE at California Community Colleges.

Headcount measures are typically used to reflect the number of individuals participating in higher education. On the other hand, FTE measures better reflect the costs of serving students (that is, the number of course units taken) and is the preferred measure for state budgeting purposes.

Enrollment Down in 2004-05, But Master Plan Intact

As a reference point to guide legislative and executive decisions, the *Master Plan for Higher Education* (adopted by the Legislature in 1960 and periodically reassessed) established admission guidelines that remain the state's official policy today. Each year, UC and CSU typically accommodate all eligible freshman applicants. In enacting the 2004-05 budget, the Legislature rejected the Governor's proposal *not* to admit some eligible freshmen, and instead required that UC and CSU accommodate all eligible students as called for in the Master Plan. (See accompanying box for further information about this proposal.)

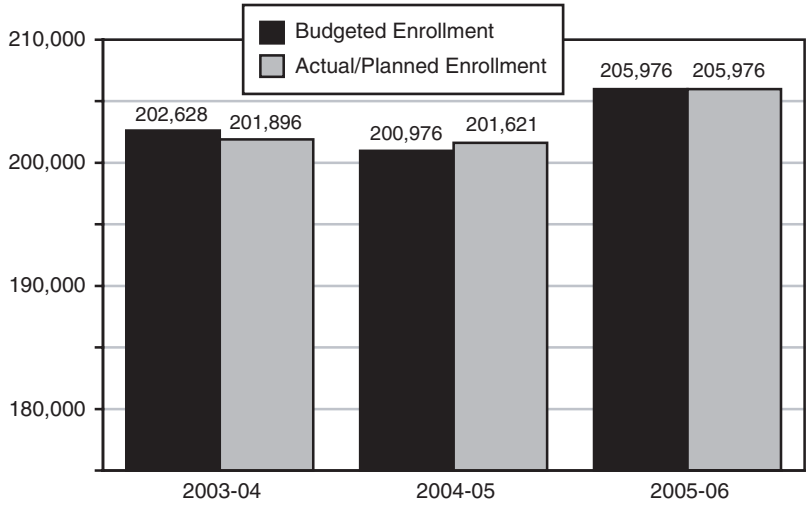
The *2004-05 Budget Act* nevertheless included reductions to budgeted enrollment levels at both UC and CSU.

- For UC, the budget established a total enrollment target of 200,976 FTE students. However, as indicated in Figure 2, this amount is about 900 students *fewer* than the number of students actually served in the prior year.

Figure 2

UC Enrollment Trends

Full-Time Equivalent Students



Redirection of UC Freshmen to Community Colleges

In his January budget proposal for 2004-05, the Governor proposed to reduce new freshman enrollment at the University of California (UC) and the California State University (CSU) in order to achieve General Fund savings. Under this proposal, these freshmen would have been redirected to the lower-cost community colleges, with those students being promised eventual admission to a UC or CSU campus after completing a transfer program. In recognition of the Governor's proposal, UC redirected about 5,700 eligible freshman applicants to the community colleges in the spring of 2004. In contrast to UC, CSU did not at any time redirect eligible freshman applicants to the community colleges.

In enacting the 2004-05 budget, the Legislature rejected the Governor's proposal to require the redirection of freshman enrollment, insisting instead that UC and CSU accommodate all eligible students. Accordingly, UC subsequently offered freshman admission to the 5,700 (formerly) redirected students. Students were admitted to one of UC's campuses (which might not be a campus to which a student had applied). All these students were still provided the option to first attend a community college as part of a *voluntary* redirection program established by Chapter 213, Statutes of 2004 (SB 1108, Committee on Budget and Fiscal Review). Of the 5,700 redirected students, about 1,500 decided to enroll at UC as freshmen, and about 500 students chose to participate in the voluntary redirection program. All students participating in the program in 2004-05 will have their fees waived during their first two years at a community college. After 2004-05, only financially needy students will have their community college fees waived.

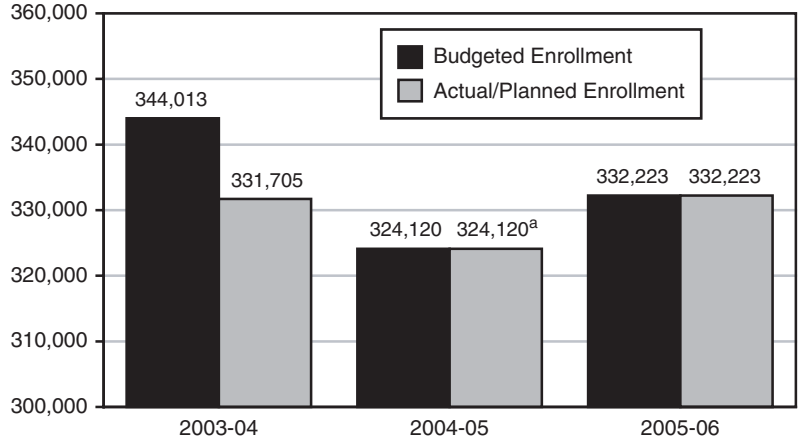
- For CSU, the budget established a total enrollment target of 324,120 FTE students. However, as indicated in Figure 3, this amount is about 7,600 FTE students *fewer* than the number of students actually served in the prior year.

Despite the above reductions to budgeted enrollment levels at UC and CSU, the state has been able to maintain the Master Plan's commitment to college access. Specifically, the segments indicate that no eligible applicants were denied admission to the universities as a whole in 2004-05. (We recognize, however, that some eligible applicants were not admitted to their preferred campus as happens every year.)

Figure 3

CSU Enrollment Trends

2003-04 Through 2005-06
Full-Time Equivalent Students



[a]This represents the number of students CSU plans to enroll in the current year. Unlike UC, CSU could not provide an estimate on the number of students actually enrolled at this point in time.

Disconnect Between Enrollment Funding and Actual Enrollment

The budgeted enrollment levels funded in each year's budget are targets for which funding is provided. Because the number of eligible students enrolling at the segments cannot be predicted with complete accuracy, in any given year UC and CSU typically serve slightly more or less FTE students than budgeted. Recently, however, actual enrollment has deviated more significantly from funded levels. As we discussed in our *Analysis of the 2004-05 Budget Bill* (page E-182), for example, CSU enrolled significantly *fewer* students than it was funded for in 2003-04. This was because the university redirected a significant amount of enrollment funding to essentially "backfill" budget reductions in other program areas. Although not in the same magnitude, UC also redirected some enrollment funding to other purposes in 2003-04.

In recognition of the above disconnect between the number of students funded at each segment and the number of students actually enrolled, the Legislature adopted provisional language as part of the *2004-05 Budget Act* to ensure that UC and CSU use enrollment funding for enrollment. Specifically, the 2004-05 budget required that UC and CSU report to the Legislature by March 15, 2005, on whether they met their current-year enrollment targets (200,976 FTE students for UC and 324,120 FTE student for CSU). If

the segments do not meet these goals, the Director of the Department of Finance (DOF) is to revert to the General Fund the total amount of enrollment funding associated with the share of the enrollment goal that was not met.

At the time of this writing, UC is projected to exceed its budgeted enrollment target by roughly 600 FTE students, for a total of 201,621 FTE students. The CSU was unable to provide an estimate of the actual number of students currently enrolled at the university. However, the university tells us it expects to meet its current-year enrollment target.

GOVERNOR'S BUDGET PROPOSAL

The budget requests a total of $225.4 million in General Fund support to increase enrollment at UC , CSU, and CCC. The $225.4 million total consists of:

- $37.9 million to UC for 2.5 percent enrollment growth (or 5,000 FTE students) above current-year budgeted enrollment, which is based on a marginal General Fund cost of $7,588 per additional student. (This amount includes funding for 1,000 new FTE students at the Merced campus, which will open in fall 2005.)
- $50.8 million to CSU for 2.5 percent enrollment growth (or 8,103 FTE students) above current-year budgeted enrollment, which is based on a marginal General Fund cost of $6,270 per additional student.
- $142 million (Proposition 98) to CCC for 3 percent enrollment growth (or 34,000 FTE students) above current-year budgeted enrollment, which is considerably higher than the statutory growth rate of 1.89 percent. (We further discuss enrollment at CCC in the "California Community Colleges" section of this chapter.)

DETERMINING ENROLLMENT GROWTH FUNDING FOR 2005-06

One of the principal factors influencing the state's higher education costs is the number of students enrolled at the three public higher education segments. Typically, the Legislature and Governor provide funding in the annual budget act to support a specific level of enrollment growth at the state's public higher education segments. The total amount of enrollment growth funding provided each year is based upon a per-student funding rate multiplied by the number of additional FTE students. For example, the Governor's budget proposes a per-student funding rate of $6,270 for 8,103 additional students at CSU, for a total of $50.8 million.

As earlier noted, the proposed budget includes a total of $88.7 million for 2.5 percent enrollment growth at UC and CSU. In reviewing the Governor's enrollment growth funding proposal, the Legislature must determine the following:

- How much enrollment growth (or additional students) to fund at UC and CSU for 2005-06?
- How much General Fund support to provide the segments for each additional student (commonly known as the "marginal cost")?

Below, we examine each of these issues and make recommendations concerning the Governor's enrollment funding proposals.

HOW MUCH ENROLLMENT GROWTH SHOULD BE FUNDED?

Determining the amount of additional enrollment to fund each year can be difficult. Unlike enrollment in compulsory programs such as elementary and secondary school, which corresponds almost exclusively with changes in the school-age population, enrollment in higher education responds to a variety of factors. Some of these factors, such as population growth, are beyond the control of the state. Others, such as higher education funding levels and fees, stem directly from state policy choices. Although the Master Plan sets eligibility targets, it is often difficult to accurately predict factors that affect the level of demand for higher education. As a result, most enrollment projections have had limited success as predictors of actual enrollment demand.

In general, there are two main factors influencing enrollment growth in higher education:

- ***Population Growth.*** Other things being equal, an increase in the state's college-age population causes a proportionate increase in those who are eligible to attend each segment. Population growth, therefore, is a major factor driving increases in college enrollment. Most enrollment projections begin with estimates of growth in the student "pool," which for the rest of this decade is expected to range from a little more than 1 percent to about 2.5 percent annually.
- ***Participation Rates.*** For any subgroup of the general population, the percentage of individuals who enroll in college is that subgroup's college participate rate. California's participation rates are among the highest in the nation. Specifically, California currently ranks fourth (tied with four other states) in college enrollment among 18- to 24-year-olds, and first among 25- to 49-year-olds. However, predicting future changes to participation rates is

difficult because students' interest in attending college is influenced by a number factors (including student fee levels, availability of financial aid, and the availability and attractiveness of other postsecondary options).

Provide 2 Percent Enrollment Growth

Based on our demographic projections, we recommend the Legislature reduce the Governor's proposal for budgeted enrollment growth for the University of California and the California State University from 2.5 percent to 2 percent. Our proposal should easily allow the segments to accommodate enrollment growth next year due to increases in population, as well as modest increases in college participation.

If college participation rates remain constant for all categories of students next year, we project that enrollment at UC and CSU will grow roughly 1.5 percent from 2004-05 to 2005-06. (See accompanying text box for a description of the demographics-based methodology we developed to estimate future higher education enrollment levels.) Since this projection is driven solely by projected population growth, it should serve as a starting point for considering how much enrollment to fund in 2005-06. In other words, the Legislature can evaluate how various related budget and policy choices could change enrollment compared to this baseline. We note that over the years the Legislature has taken deliberate policy actions (such as funding student outreach programs and expanding the availability of financial aid) to increase college participation rates. Consistent with these actions, the state has provided funding for enrollment growth in some of those years that significantly exceeded changes in the college-age population.

In view of the Legislature's interest in increasing college participation, we recommend funding 2 percent enrollment growth at UC and CSU for the budget year. This is about one-third higher than our estimate of population-driven enrollment growth, and therefore should easily allow the segments to accommodate enrollment growth next year due to increases in population, as well as modest increases in college participation. More importantly, our recommended 2 percent growth rate helps preserve the Legislature's priority that UC and CSU accommodate all eligible students (as called for in the Master Plan).

Accordingly, we recommend that the Legislature reduce the Governor's proposed enrollment growth for UC and CSU from 2.5 percent to 2 percent. (In the next section on per-student funding rates, we discuss the General Fund savings associated with reducing the Governor's proposed growth rate.)

LAO Higher Education Enrollment Projections

In our demographically driven model, we calculate the ethnic, gender, and age makeup of each segment's student population, and then project separate growth rates for each group based on statewide demographic data. For example, we estimated a distinct growth rate for Asian females between 18 and 24 years of age, and calculated the resulting additional higher education enrollment this group would contribute assuming constant participation rates. When all student groups' projected growth rates are aggregated together, we project that demographically driven enrollment at the University of California and the California State University will grow annually between 1.4 percent and 2 percent from 2005-06 through 2009-10. In terms of the budget year (2005-06), we project enrollment growth of roughly 1.5 percent at the two university segments.

In addition to underlying demographics, enrollment growth is affected by participation rates—that is, the proportion of eligible students who *actually* attend the segments. Participation rates are difficult to project because they can be affected by a variety of factors—state enrollment policies, the job market, and changes in students and their families' financial situations. We have assumed that California's participation rates will remain constant. This is because the state's rates have been relatively flat over recent years, and we are not aware of any evidence supporting alternative assumptions. We do acknowledge that participation rates could change to the extent that the Legislature makes various policy choices affecting higher education. Our projections merely provide a baseline reflecting underlying population trends. We believe that our enrollment projections are valuable not as a prediction of what will happen, but as a starting point for considering higher education funding.

Ensuring That Enrollment Targets Are Met

We recommend the Legislature adopt budget bill language specifying enrollment targets for both the University of California and the California State University, in order to protect its priority to increase higher education enrollment.

Although the Governor's budget would increase funded enrollment by 2.5 percent at UC and CSU, the total number of students the segments in fact would serve in 2005-06 is not clear. This is because the proposed budget bill departs from recent practice and does not hold the segments accountable for meeting a specific budgeted enrollment target.

We believe that the Legislature, the Governor, and the public should have a clear understanding of how many students are funded at UC and CSU in the annual budget act. Additionally, the segments should be expected to use enrollment funding provided by the state for that purpose and be held accountable for meeting their annual enrollment targets as adopted by the Legislature. If UC or CSU does not meet its goal, the amount of enrollment funding associated with the enrollment shortfall should return to the state's General Fund. However, under the Governor's proposal, the segments would have the flexibility to reduce enrollments at their discretion regardless of the Legislature's priority to increase enrollment. As previously discussed, there has been a disconnect in recent years between funded and actual enrollment. This is because the segments have redirected enrollment funding away from serving additional students essentially to maintain services in other program areas.

For the above reasons, we recommend the Legislature establish specific enrollment targets (based on our recommended 2 percent enrollment growth) and accountability provisions for UC and CSU. We propose language for 2005-06 that is similar to what was adopted in 2004-05. First, we propose the Legislature add the following provision to Item 6440-001-0001:

> The amount appropriated in Schedule (1) includes funding for the University of California to enroll 204,996 full-time equivalent (FTE) students. The Legislature expects the university to enroll this number of FTE students during the 2005-06 academic year. The university shall report to the Legislature by March 15, 2006, on whether it has met the 2005-06 enrollment goal. If the university does not meet this goal, the Director of the Department of Finance shall revert to the General Fund the total amount of enrollment funding associated with the share of the enrollment goal that was not met.

Similarly, we also recommend adding the following provision to Item 6610-001-0001:

> The amount appropriated in Schedule (1) includes funding for the California State University to enroll 330,602 full-time equivalent (FTE) students. The Legislature expects the university to enroll this number of FTE students during the 2005-06 academic year. The university shall report to the Legislature by March 15, 2006, on whether it has met the 2005-06 enrollment goal. If the university does not meet this goal, the Director of the Department of Finance shall revert to the General Fund the total amount of enrollment funding associated with the share of the enrollment goal that was not met.

HOW MUCH GENERAL FUND SUPPORT SHOULD BE PROVIDED FOR EACH ADDITIONAL STUDENT?

In addition to deciding the number of additional FTE students to fund in 2005-06, the Legislature must also determine the *amount* of funding to provide for each additional FTE student at UC and CSU. Given recent practice, this funding level would be based on the marginal cost imposed by each additional student for additional faculty, teaching assistants (TAs), equipment, and various support services. The marginal cost is less than the average cost because it reflects what are called "economies of scale"—that is, certain fixed costs (such as for central administration) which may change very little as new students are added to an existing campus. The marginal costs of a UC and CSU education are funded from the state General Fund and student fee revenue. (A similar, but distinct, approach is used for funding enrollment growth at community colleges.)

The current practice has been for the state to provide a separate funding rate for each higher education segment. In other words, the state uses a model of differential funding—providing separate funding rates for distinct categories of students—based on which higher education segment the student attends. (As we discuss below, the state in the past has provided separate funding rates based on education level and type of instruction.) As discussed above, the Governor's budget for 2005-06 proposes to provide $7,588 in General Fund support for each additional student at UC and $6,270 for each additional student at CSU.

Background on the Development of the Marginal Cost Methodology

For many years, the state has funded enrollment growth at UC and CSU based on the marginal cost of instruction. However, the formula used to calculate the marginal cost has evolved over the years. In general, the state has sought to simplify the way it funds enrollment growth. As we discuss below, the state has moved from utilizing a large number of complex funding formulas for each segment to a more simplified approach for calculating enrollment funding that is more consistent across the two university systems.

UC and CSU Used Different Methodologies Before 1992

From 1960 through 1992, CSU's enrollment growth funding was determined by using a separate marginal cost rate for each type of enrollment category (for example, lower division lecture courses). In other words, the

different marginal cost formulas took into account education levels—lower division, upper division, and graduate school—and "instructional modes" (including lecture, seminar, laboratories, and independent study). Each year, CSU determined the number of additional academic-related positions needed in the budget year (based on specific student-faculty ratios) to meet its enrollment target. These data were used to derive the separate marginal cost rates. Unlike the current methodology, the marginal cost formulas before 1992 did not account for costs related to student services and institutional support. The state made funding adjustments to these budget areas independent of enrollment funding decisions.

Similar to CSU, annual enrollment growth funding provided to UC before 1992 was based on the particular mix of new students, with different groups of students funded at different rates. However, UC's methodology for determining the marginal cost of each student was much less complex than CSU's methodology and did not require different rates based on modes of instruction. The university only calculated separate funding rates for undergraduate students, graduate students, and for each program in the health sciences based on an associated student-faculty ratio. For example, the marginal cost of hiring faculty for new undergraduate students was estimated by dividing the average faculty salary and benefits by 17.48 FTE students (the undergraduate student-faculty ratio at the time). Each marginal cost formula also estimated the increased costs of library support due to enrolling additional students. As was the practice for CSU, however, UC's marginal cost formulas did not account for costs related to student services and institutional support.

Legislature Called for New Methodology in 1990s

Beginning in 1992-93, the Legislature and Governor suspended the above marginal cost funding practices for UC and CSU. While the state did provide base budget increases to the universities, it did not provide funding specifically for enrollment growth during that time. In the *Supplemental Report of the 1994 Budget Act*, the Legislature stated its intent that, beginning in the 1996-97 budget, the state would return to the use of marginal cost as the basis for funding enrollment. Specifically, the language required representatives from UC, CSU, DOF, and our office to review the 1991-92 marginal cost formulas and propose improvements that could be used in developing the 1996-97 budget. The working group had two primary goals: (1) updating the calculations to more accurately reflect actual costs and (2) establishing more consistency between segments in the methods used to fund enrollment growth. This work coincided with CSU's efforts to simplify the university's budget development process, streamline budget formulas, and increase the system's budget discretion.

After a series of negotiations in 1995, the four agencies developed a new methodology for estimating the amount of funding needed to support each additional FTE student. The new methodology was first implemented in 1996-97 and has generally been used to calculate enrollment funding ever since. Some of the key features of this methodology include:

- ***Single Marginal Cost Formula for Each Segment.*** Enrollment growth funding is no longer based on differential funding formulas by education level and academic program. Instead, each university segment uses one formula to calculate a single marginal cost that reflects the costs of all the system's education levels and academic programs. For instance, a fixed student-faculty ratio (as adopted in the budget act) helps determine the faculty costs associated with each additional student (regardless of education level). Thus, the state currently provides a different per-student funding rate depending only on which higher education segment that student attends. (See nearby text box for a review of the different types of differential funding and their potential benefits and drawbacks.)

- ***Marginal Cost for Additional Program Areas.*** The working group concluded that the marginal cost formula should include additional cost components beyond salaries for faculty, teaching assistants, and other academic support personnel. As a result, the current formula takes into account the marginal costs for eight program areas—faculty salary, faculty benefits, TAs, academic support, instructional support, student services, institutional support, and instructional equipment. These program costs are based on current-year funding and enrollment levels, and then discounted to adjust for fixed costs that typically are not affected by year-to-year changes in enrollment.

- ***Student Fee Revenue Adjustments.*** In addition, the working group suggested that both the General Fund and student fee revenue should contribute toward the total marginal cost. This is because fee revenue is unrestricted, and is thus used for general purposes the same as General Fund revenue. It also reflects the state's policy that students and the state should share in the cost of education. Therefore, under the methodology, a portion of the student fee revenue that UC and CSU anticipate from the additional students is subtracted from the total marginal cost in order to determine how much General Fund support is needed from the state for each additional FTE student.

Instituting a More Differential Funding System

Our office recently examined various options to modify California's existing higher education funding practices in a way that differentiates funding in other ways than just by segment. (Currently, the state also provides different funding rates for credit and noncredit courses at the community colleges.) The most common factors other states use to differentiate among enrollments are as follows:

- ***Differential Funding by Education Level.*** The most common practice among states is to provide a different funding rate for lower division students, upper division students, and graduate students. Funding rates generally increase as students advance to higher education levels, reflecting the higher costs typically incurred at those levels.

- ***Differential Funding by Academic Program.*** Another common method is to distinguish funding based upon a program's cost. This means providing higher funding rates for more costly programs (such as nursing).

- ***Differential Funding by Mode of Instructional Delivery.*** Some states provide different funding rates for lecture and laboratory courses. Because they often require expensive equipment and materials, as well as a lower student-faculty ratio, laboratory courses typically are much more costly than lecture courses and therefore are associated with higher funding rates.

The different forms of differential funding are not mutually exclusive. That is, California could redesign its enrollment funding system around any combination of the above factors. For example, it might retain its existing distinctions and incorporate new funding rates for undergraduate and graduate students enrolled in lecture and laboratory courses. A myriad of other combinations are possible.

Potential Advantages and Disadvantages. Differentiated funding systems more accurately account for specific differences in education costs. They can also increase transparency, strengthen accountability, and ensure comparable funding for comparable services. Despite these benefits, more differentiated funding systems can also have potential drawbacks. Depending upon how they are designed, some systems may create more complexity without improving the budget process. In particular, too many enrollment categories can limit flexibility and increase administrative burden.

Recent Departure From the 1995 Marginal Cost Methodology

After the above marginal cost methodology was developed in 1995, UC and CSU used it every fall to estimate the amount of funding they would require for each additional FTE student enrolled in the coming year. (If necessary, the estimate is later updated to reflect revised current-year expenditures.) From 1996-97 through 2003-04, these amounts were in turn used in the annual budget act to fund enrollment growth at UC and CSU. However, the budgets adopted for the current year (2004-05) and proposed for the budget year (2005-06) depart from this practice and rely on a slightly different methodology used by DOF.

Different Methodology Used for CSU in 2004-05 Budget. The *2004-05 Budget Act* included new enrollment funding for CSU based on DOF's calculation of a marginal General Fund cost of $5,662 per additional FTE student. According to CSU, however, the 1995 methodology would have called for $5,773 in General Fund support per student. (This is the rate approved by the CSU Board of Trustees as part of its budget request to the Governor.) The DOF's calculation departs from the 1995 methodology in that it is based on funding and enrollment levels proposed for 2004-05, rather than as budgeted in 2003-04.

Unexplainable Methodology Proposed for UC in Governor's 2005-06 Budget. For 2005-06, the Governor proposes to provide $7,588 in General Fund support for each additional student at UC. However, it is unclear how the administration calculated this per-student funding rate. At the time of this analysis, DOF staff could neither substantiate nor explain the methodology it used to derive the $7,588 proposed marginal cost. In a departure from past practices, DOF staff declined to provide the specific formulas and data supporting its proposal. Thus, we are unable to conclude whether the administration is proposing an entirely new methodology for UC in the budget year. As we discuss below, UC calculated a different marginal cost rate as part of its 2005-06 budget request.

LAO Recommendations Based on 1995 Methodology

Using our marginal cost estimates for enrollment growth based on the agreed-upon 1995 methodology and our proposed 2 percent enrollment growth, we recommend deleting $21.3 million from the combined $88.7 million requested in the budget for enrollment growth. Our proposal would leave sufficient funding to provide $7,180 for each additional University of California student and $5,999 for each additional California State University student. (Reduce Item 6440-001-0001 by $9.4 million and Item 6610-001-0001 by $11.9 million.)

Until the Legislature approves a new marginal cost methodology, we believe that it should fund enrollment growth at UC and CSU in the 2005-06 budget that is aligned with the 1995 methodology. Using our marginal cost estimates for enrollment growth based on the agreed-upon 1995 methodology, we recommend alternatives to the Governor's proposed funding rates.

Provide $7,108 in General Fund Support for Each Additional UC Student. As discussed above, it is unclear how the administration calculated its proposed marginal General Fund cost of $7,588 for each additional student at UC. More importantly, as we discuss below, this rate is considerably different from our estimate of what would be called for under the marginal cost methodology developed in 1995. As part of its 2005-06 budget request to the Governor this past fall, the UC Board of Regents approved a marginal General Fund cost of $7,528 per FTE student that is based on the 1995 marginal cost methodology (see Figure 4).

Figure 4

University of California (UC) 2005-06 Marginal Cost Calculation

(As Requested by UC[a])

Basic Cost Components (Based on Initial 2004-05 Costs)	Average Cost Per FTE[b]	Discount Factor	Marginal Cost Per FTE[b]
Faculty salary	$2,876[c]	—	$2,876
Faculty benefits	619	—	619
Teaching assistants salary	653	—	653
Instructional equipment	266	—	266
Instructional support	3,903	10%	3,512
Academic support	1,102	35	716
Student services	1,079	20	863
Institutional support	1,896	50	948
Totals	**$9,425**	—	**$10,454**
Less student fee revenue	—	—	-$2,926[d]
State Funding Per Student	—	—	**$7,528**

a The Governor's budget proposes a different marginal General Fund cost for UC ($7,588). At the time of this analysis, the administration was unable to explain its cost calculations.

b Full-time equivalent.

c Based on an annual salary of $53,780 (Assistant Professor, Step 3) and a student-faculty ratio of 18.7:1.

d Based on a percentage of the total marginal cost per FTE student that equals the percentage of UC's operating budget that is funded from student fee revenue.

However, since UC calculated this rate several months ago, it does not reflect current legislative policies and expenditure data. For example, as part of the 2004-05 budget package, the Legislature approved the Governor's proposal to increase the student-faculty ratio at UC from 19.7:1 to 20.7:1 in order to achieve ongoing General Fund savings. As noted in Figure 4, however, the faculty salary and benefits included in the university's own marginal cost calculation is based on a student-faculty ratio of 18.7:1. In addition, the average cost per FTE student for instructional support, academic support, and institutional support reflect initial planning estimates for the current year. (The Governor's budget for 2005-06 displays revised funding data for 2004-05.) After making the above adjustments, we calculate a marginal General Fund cost at UC of $7,108 based on the 1995 methodology.

Provide $5,999 in General Fund Support for Each Additional CSU Student. Figure 5 displays a simplified version of the marginal cost calculations used by CSU to estimate the $6,270 per FTE student funding rate proposed in the Governor's budget for 2005-06. As noted in the figure, the

Figure 5

California State University (CSU)
2005-06 Marginal Cost Calculation

(As Requested by CSU and Funded in Governor's Budget)

Basic Cost Components (Based on 2004-05 Costs)	Average Cost Per FTE[a]	Discount Factor	Marginal Cost Per FTE[a]
Faculty salary	$3,079[b]	—	$3,079
Faculty benefits	1,114	—	1,114
Teaching assistants salary	358	—	358
Instructional equipment	142	—	142
Instructional support	799	10%	719
Academic support	1,360	15	1,156
Student services	1,066	20	853
Institutional support	1,507	35	980
Totals	**$9,425**	—	**$8,401**
Less student fee revenue	—	—	-$2,131[c]
State Funding Per Student	—	—	**$6,270**

a Full-time equivalent.

b Based on an annual salary of $58,196 (Associate Professor, between Steps 7 and 8) and a student-faculty ratio of 18.9:1.

c Based on a percentage of the total marginal cost per FTE student that equals the percentage of CSU's operating budget that is funded from student fee revenue.

identified costs associated with faculty salary and benefits assume a student-faculty ratio of 18.9:1. However, as was done for UC, the Legislature in the last two budget acts increased the student-faculty ratio at CSU as a cost-cutting measure. Specifically, the *2004-05 Budget Act* assumed $53.5 million in General Fund savings from increasing the student-faculty ratio by 5 percent (from 19.9:1 to 20.9:1). In effect, this higher ratio means that fewer new faculty positions are necessary to teach a cohort of additional students than otherwise would be needed with a lower ratio. Thus, an increase in the student-faculty ratio effectively reduces the marginal cost per additional FTE student. We estimate that a student-faculty ratio of 20.9:1 results in a marginal General Fund cost of $5,999 for CSU.

In view of the above technical adjustments, we recommend the Legislature provide $7,180 in General Fund support for each additional student at UC and $5,999 for each additional student at CSU. (See Figure 6 for a detailed description of our marginal cost calculations.) Given our earlier proposal to fund enrollment growth at a rate of 2 percent at both UC and CSU,

Figure 6

LAO Marginal Cost Recommendations

(Based on 1995 Marginal Cost Methodology)

	Marginal Cost Per FTE[a]	
Basic Cost Components	**UC**	**CSU**
Faculty salary[b]	$2,598	$2,784
Faculty benefits[b]	559	1,008
Teaching assistants salary	653	358
Instructional equipment	266	142
Instructional support	3,578	719
Academic support	596	1,156
Student services	863	853
Institutional support	758	980
Totals	**$9,871**	**$7,999**
Less student fee revenue	-$2,763	-$2,000
State Funding Per Student	**$7,108**	**$5,999**

a Full-time equivalent.

b Based on a student-faculty ratio of 20.7:1 at the University of California (UC) and 20.9:1 at the California State University (CSU). Also based on costs for an Assistant Professor (Step 3) at UC and an Associate Professor (between Steps 7 and 8) at CSU, as called for in the 1995 methodology.

we therefore recommend reducing the proposed General Fund augmentation for enrollment growth by a total of $21.3 million, including $9.4 million from UC and $11.9 million from CSU. Under our proposal, the segments would still receive sufficient funding to cover the estimated costs of enrollment growth due to increases in population and college participation.

Legislative Review of Marginal Cost Methodology Needed

We believe the Legislature should revisit and reassess the marginal cost methodology. Specifically, we recommend the Legislature direct our office, in consultation with representatives from the Department of Finance, the University of California, and the California State University, to review the current system of funding new enrollment and propose modifications for use in the development of future budgets.

The Legislature's most recent review of the Master Plan (in 2002) called for an assessment of the existing marginal cost formula. According to the 2002 Joint Committee to Develop a Master Plan for Education, "The State should analyze the appropriateness of modifying the current marginal cost approach for funding all additional enrollments in public colleges and universities, to account for contemporary costs of operations, differing missions and functions, and differential student characteristics that affect costs in each sector." Such a review is particularly important at this time because the Governor in his budget proposal is already deviating from the 1995 marginal cost methodology for UC. We also note that the segments themselves have expressed concern in the past about the adequacy of the existing marginal cost methodology.

Obviously, there are many ways to calculate the marginal General Fund cost for each additional student at UC and CSU. Based on our assessment of the current marginal cost methodology (as developed in 1995), we have developed a series of principles to guide the Legislature in determining how to more effectively fund the increased costs associated with enrollment growth. Figure 7 (see next page) outlines the principles, which we discuss in further detail below.

Comparable Formulas for UC and CSU. We recognize that there are instances where it is reasonable to have different formulas for the segments, particularly in recognition of their differing missions and costs. However, under the current methodology, there is an unexplainable difference between the segments regarding the formulas used to adjust for fixed costs in two program areas (academic support and institutional support). For example, CSU's methodology includes a higher percentage of institutional support costs. (Institutional support primarily includes funding for the central administration offices of university presidents and chancel-

lors.) Based on our conversations with the segments, we find no analytic reason why cost increases for institutional support would be different at the two segments.

Include Only Program Costs Linked to Enrollment Growth. The marginal cost formula should include only program costs that tie directly to enrollment growth. For example, the marginal cost should include funding to purchase instructional equipment for the additional students, but not to replace or upgrade existing equipment for use by existing students. Legislative decisions regarding funding for such nonenrollment-growth-related costs should be made independent of marginal cost funding. Moreover, there also may be some costs not included in the current marginal cost formula which increase when a university enrolls an additional student. Such costs (for instance, related to operation and maintenance services) might appropriately be added to the marginal cost methodology.

Figure 7

Guiding Principles for Marginal Cost Funding

- ✓ ***Comparable Formulas for the University of California (UC) and the California State University (CSU).*** To the extent possible, the calculation of the different variable costs (such as for institutional support) should be consistent across the two university systems.
- ✓ ***Include Only Program Costs Linked to Enrollment Growth.*** Since marginal cost funding is intended to support the various costs that UC and CSU will incur in enrolling one additional full-time equivalent (FTE) student, the marginal cost formula should include only program costs that increase with enrollment growth.
- ✓ ***Input Data Should Reflect Actual Costs.*** In order to appropriately budget for enrollment growth, the expenditure and enrollment data used to calculate the marginal cost for UC and CSU should reflect actual costs.
- ✓ ***Accurately Account for Available Student Fee Revenue.*** In order to determine how much General Fund support is needed from the state for each additional FTE student, the marginal cost formula should "back out" the fee revenue that UC and CSU anticipate collecting from each student.

Input Data Should Reflect Actual Costs. The expenditure and enrollment data used to calculate the marginal cost at UC and CSU should appropriately reflect actual costs. For example, the costs for additional faculty and TAs should be determined based on current data regarding the salaries and benefits of existing personnel. We note that a key component of the current marginal cost methodology is an underlying assumption

that the annual salary of a TA at CSU is roughly 50 percent of an entering faculty member's annual salary. For 2005-06, this translates to an estimated annual TA salary of about $38,000. According to the CSU Chancellor's Office, however, the average annual salary for a TA is currently only $7,180 (about 12 percent of an entering faculty member's salary). This means that the state is currently overbudgeting the marginal cost of hiring additional TAs. Conversely, there may be certain program costs that are not fully funded under the existing marginal cost formula.

Accurately Account for Available Student Fee Revenue. In order to determine how much General Fund support is needed from the state for each additional FTE student at UC and CSU, the marginal cost formula must "back out" the fee revenue that the segments anticipate collecting from each student. Under the current methodology, this is based on the percentage of the university's entire operating budget that is supported by student fee revenue. For example, if fee revenue makes up 40 percent of UC's budget for 2004-05, then fee revenue would be deemed to support 40 percent of the total marginal cost for 2005-06. The remaining 60 percent would be funded by the state's General Fund. A different approach could simply be to adjust the marginal cost based on the fee revenue collected for each FTE student (regardless of education level).

Moreover, the total amount of fee revenue collected by the segments is not always accounted for in the current methodology. For example, UC does not include the revenue collected from nonresident tuition when adjusting for fee revenues. Since the different program costs are based on expenditures from all fund sources (including nonresident tuition), then the marginal cost formula should include the supplemental fee paid by nonresident students in order to accurately determine the state's share of the total marginal cost. (An alternative approach would be to exclude nonresident tuition altogether from the marginal cost calculations.)

In conclusion, we recommend the Legislature direct our office, in consultation with DOF, UC, and CSU to review the current process of determining the amount of funding to provide for each additional FTE student and propose any modifications for use in the development of future budgets.

INTERSEGMENTAL: STUDENT FEES

Currently, the state has no student fee policy. Instead of making fee decisions based upon an explicit agreement as to share of cost or an assessment of other specified factors (such as fee levels at similar institutions), the state has made fee decisions based almost entirely on the state's fiscal situation—raising fees in bad fiscal times and lowering them in good fiscal times. Given the recent volatility in fee levels and disparity in cost burden among student groups over time, both the Governor and Legislature worked in 2004-05 to develop a state fee policy. Despite these efforts, fee legislation was not enacted. We continue to recommend the state adopt a fee policy that designates explicit share-of-cost targets. This policy then could be used to guide annual fee decisions.

Below, we describe the Governor's fee agreements with the University of California (UC) and the California State University (CSU), identify our concerns with them, and list the Governor's specific budget-year fee proposals. We then describe a share-of-cost fee policy and illustrate how the Legislature could use this policy to make its budget-year fee decisions. Next, we discuss the Governor's treatment of new fee revenue—treatment that is inconsistent with general budgeting standards—and highlight a technical budgeting error related to excess-unit fee revenue. We conclude with a discussion of community college fees.

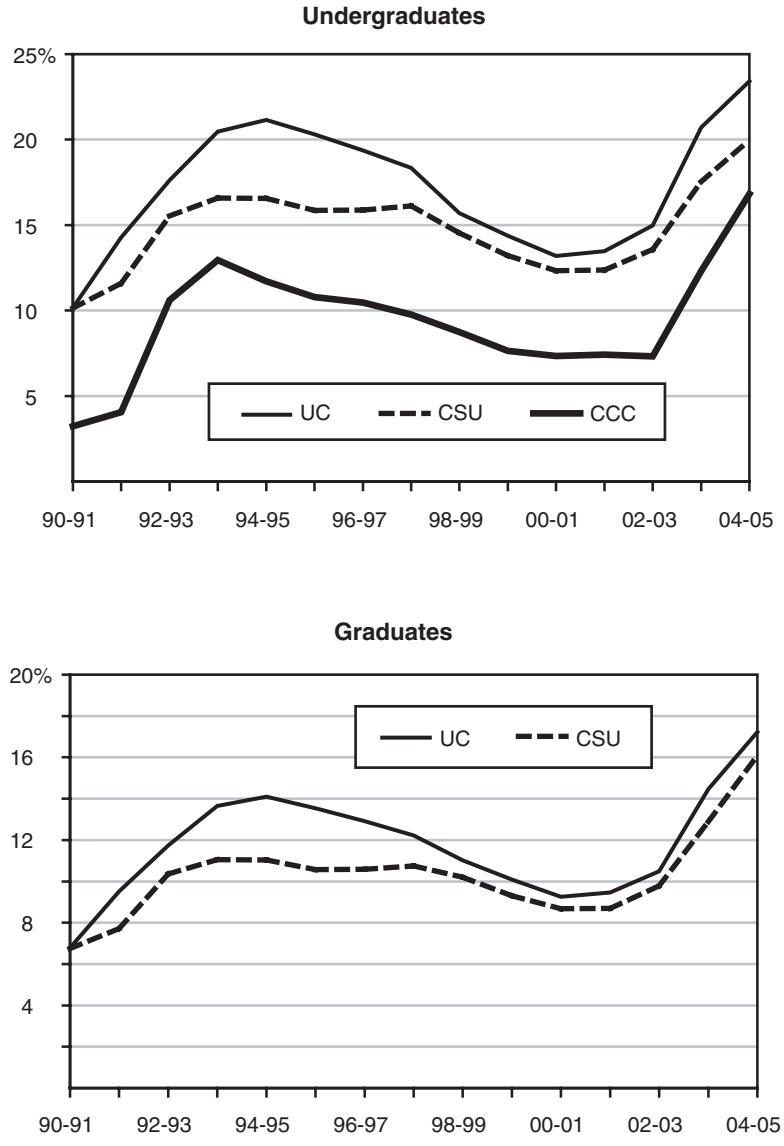
Lack of Fee Policy Has Resulted in Volatility and Disparity

Figure 1 shows, in inflation-adjusted dollars, student fees as a share of total education support costs. During the early 1990s recession, students' average share of cost increased notably—peaking between 1993 and 1995. Undergraduates at UC, for example, were paying 21 percent of their total education costs in 1994-95 compared to 10 percent in 1990-91. Similarly, California Community College (CCC) students were paying 13 percent of their total education costs in 1993-94 compared to 3 percent three years earlier.

Figure 1

Lack of Fee Policy Has Resulted in Volatility and Disparity

2004-05 Inflation-Adjusted Dollars



Students' average share of cost declined for the next six to seven years. For example, CSU undergraduates' share of cost fell from 17 percent in 1994-95 to 12 percent in 2001-02. Students' share of cost, as well as fee levels themselves, declined despite increases in education costs, burgeoning financial aid opportunities, a strong economy, and a nationwide trend toward higher fees. Fees declined despite California's public institutions charging much less than similar public institutions. At the same time, California was the only state in the country that was not maximizing its receipt of federal Pell Grant monies and one of few states not maximizing federal tax credit benefits.

Since 2001-02, students' share of cost for both undergraduates and graduate students has increased at all three segments. Despite these increases, students' share of cost remains small, fee levels still are low compared to similar institutions, and California continues not to maximize its receipt of federal financial aid funding.

Partly because of this recent volatility in fees, the Legislature passed a major fee bill in 2004 (AB 2710, Liu). Though the bill was vetoed, it represented a significant step toward developing a state fee policy. (Please see the nearby gray box for a summary of the bill.)

Governor Makes Agreement With UC and CSU on Student Fees

The Governor's compact with UC and CSU, which is not binding on the Legislature but which he nonetheless uses for budgeting purposes, contains the following components.

- ***Undergraduate Fees to Increase on Annual Basis.*** After increasing 14 percent in the current year, undergraduate fees would increase by 8 percent in 2005-06 and 8 percent in 2006-07. Annually thereafter, undergraduate fees would increase consistent with the change in California per capita income. Use of this index, however, could be suspended during difficult fiscal times and fees allowed to increase by as much as 10 percent.
- ***Graduate and Professional School Fees to Increase Annually Based Upon Multiple Factors.*** Graduate fee decisions would be determined annually after considering the average fee charged at comparison institutions, students' share of cost, the total cost of attendance, the need to preserve or enhance the quality of certain graduate programs, and the state's need for additional workers in particular occupations. Overlaying these factors is a target that graduate academic fees be 50 percent more than undergraduate fees. This differential, developed with the segments' input, is to account for the higher costs of providing graduate education.

- ***Segments to Determine Institutional Aid Set Aside.*** For undergraduates, the budget would assume between 20 percent and 33 percent of new fee revenue is set aside for financial aid. For graduate students, the segments apparently would have complete discretion to set aside for financial aid any amount of their choosing.
- ***New Fee Revenue Not Accounted for in Budget.*** New fee revenue essentially would be unbudgeted. That is, the segments would be allowed full discretion in deciding how to spend additional fee revenue. They would not be required to use any new fee monies for state-identified priorities.

Legislature Tried to Enact Fee Policy During Last Session

In the 2004 session, the Legislature passed a fee policy, AB 2710 (Liu), which the Governor vetoed. Assembly Bill 2710 included three primary policy guidelines, which, in many respects, echoed former state fee policies.

- ***Cost to Be Shared.*** The bill declared that the total cost of education should be a shared responsibility of students and the state, with the state bearing the preponderance of the cost.
- ***Changes to Be Gradual, Moderate, and Predictable.*** The bill emphasized that fee increases should take place gradually, be moderate in magnitude, and clearly anticipated, with students given sufficient advance notice.
- ***Fee Levels to Be Based on Share of Cost and Related Factors.*** The bill also specified that the total cost of education, students' share of cost, and families' ability to pay should be considered when setting fee levels.

Assembly Bill 2710 was distinct from earlier state fee policies in that it suggested share-of-cost targets. Undergraduate fees were not to exceed 40 percent of overall education costs at the University of California (UC) and 30 percent of overall costs at the California State University (CSU). To this end, students' share of cost was to be calculated annually and presumably incorporated into fee-setting discussions. The Governor vetoed the bill because he felt it was "inconsistent" with the provisions of his compact with UC and CSU.

Governor's Agreement Has Serious Shortcomings

We have three major concerns with the Governors' fee agreements with UC and CSU.

No Rational Basis for Determining UC and CSU Undergraduate Fees. The Governor's agreement assumes the 2003-04 fee was the "right" fee for UC and CSU and hereafter merely needs to be adjusted annually consistent with families' ability to pay. Given UC and CSU's 2003-04 undergraduate fee levels were (1) the lowest of all their public comparison institutions, (2) substantially beneath the comparison-institution average (20 percent lower at UC and 51 percent lower at CSU), and (3) represented a small share of total education cost (26 percent of total education costs at UC and 21 percent at CSU), it is unclear why the state would want to essentially lock them in place.

No Rational Institutional Aid Policy. The Governor's agreement allows the segments broad discretion to budget for institutional aid without any associated expectation that they justify their decisions. That is, the Governor's agreement does not require the segments to document their need and identify the amount required to cover it—seemingly disregarding even the most basic budgeting standards. Moreover, the segments are effectively granted authority to augment their institutional aid programs without the typical state-level discussion of competing priorities (whether it be the Cal Grant program, other higher education priorities, or other state priorities). Please see the nearby box for a more detailed discussion of our concerns with the segments' institutional aid set aside.

Treatment of New Fee Revenue Translates Into Autopilot Budgeting. Perhaps the most significant problem with the Governor's compact is its treatment of new fee revenue. In contrast to past practice, the Governor's budget proposal does not consider new fee revenue as available to meet needs identified in the state budget. Instead, the Governor's compact would fund all identified budgetary needs entirely with General Fund support, allowing the segments to use all their new fee revenue for whatever additional purposes they deemed worthwhile. This approach allows the segments routinely to receive significantly more total revenue than is needed to cover the normal cost increases resulting from enrollment growth and inflation.

Fee Agreement Used to Justify All Budget-Year Fee Proposals

The Governor's budget contains several fee proposals. The justification given for these proposals is that they are consistent with his compact with UC and CSU. The major fee proposals are to increase:

- Resident undergraduate fees at UC and CSU by 8 percent.

- Resident graduate fees at UC and CSU by 10 percent.
- Resident professional schools at UC and Hastings College of the Law from 5 percent to 9 percent, depending on the program. Addi-

Institutional Aid Decisions Need Better Justification

As we have discussed in previous years, we do not think the state (or the segments) should budget for institutional financial aid by setting aside an arbitrary percentage of new fee revenue. This set-aside approach has no rational policy basis and has resulted in funding levels that are disconnected from identified needs. For example, between 2002-03 and 2003-04, the state augmented the Cal Grant Entitlement program by $88 million (or 37 percent) to cover enrollment growth and undergraduate fee increases at the University of California (UC) and the California State University (CSU). Despite providing financial aid increases sufficient to offset costs through the Cal Grant program, UC and CSU's own undergraduate institutional aid budgets increased $130 million (or 54 percent) due to set asides from fee increases. It is unclear what financial aid purposes were served by the set-aside funds that were not explicitly addressed by the Legislature through its Cal Grant funding decisions.

The fee set-aside approach also disregards basic budgeting standards for accountability and hinders legislative oversight. For example, when asked for information about the institutional aid set aside, the segments could estimate neither the number of need-based institutional aid recipients nor the average institutional aid award for the prior, current, or budget years. In lieu of this approach, we continue to recommend the elimination of fixed percentage fee set asides. Instead, the segments should be required to provide the Legislature with evidence of their student aid needs and justification for any requested augmentation. In the absence of better information or more sophisticated forecasting tools, we recommend the Legislature address any shortfalls in undergraduate financial aid by augmenting the Cal Grant program (sufficient to cover enrollment growth and fee increases, as is longstanding practice). Since the Cal Grant program does not address *graduate* financial need, it would be appropriate for the Legislature to consider providing additional resources to the segments in this area, given growth in graduate students and proposed graduate fee increases. (For additional detail about the segments' institutional aid programs and the set-aside approach, please see "The Institutional Aid Set Aside," *2004-05 Analysis of the Budget Bill*, pages E-228 to E-233.)

tionally, three programs—Public Health, Public Policy, and International Relations and Pacific Studies—would begin charging supplemental professional school fees for the first time, resulting in much higher year-to-year percent increases (61 percent) for these programs.

Total nonresident charges at UC and CSU would increase due to these proposed increases in resident fees, which essentially represent base charges for nonresident students. In addition, for UC undergraduates, the budget assumes nonresident tuition (which essentially represents a supplemental charge) would increase by 5 percent. Figure 2 compares 2004-05 undergraduate and graduate fee levels with the proposed 2005-06 levels, and Figure 3 (see page E-186) provides comparable information for professional school fees.

Adopt Share-of-Cost Fee Policy

We recommend the state adopt a fee policy for the University of California, California State University, and California Community Colleges that sets certain targets for the share of education cost to be paid by students.

To address the problems with the state's existing fee-setting practices and the Governor's fee agreements with the segments, we recommend the state adopt a share-of-cost fee policy. Most importantly, a share-of-cost fee policy would provide both an underlying rationale for fee levels and a mechanism for annually assessing these levels. In doing so, it would promote clear expectations about fee levels and consistent treatment of student cohorts over time. It also would create incentives for students to hold the segments accountable for keeping costs low and quality high, and it would formally recognize the private as well as public benefits of higher education.

Promotes Clear Expectations and Consistent Treatment. A share-of-cost fee policy would make explicit the share of total education costs that nonfinancially needy students would be expected to bear. (Financially needy students meeting certain academic and age criteria would continue to receive aid sufficient to cover education fees.) Once the share-of-cost target was achieved, it would be maintained over time. For example, if nonneedy UC undergraduates were expected to pay 40 percent of their total education costs, fees would be adjusted annually such that students continued to pay 40 percent of total costs (without the need to rely upon any specific inflationary index). The central advantages of this approach are that nonneedy students would have clear expectations about the share of cost they would be expected to bear and student cohorts would be treated consistently over time.

Figure 2

Summary of Governor's Undergraduate and Graduate Fee Proposals

(Systemwide Charges for Full-Time Students[a])

	2004-05 Actual	2005-06 Proposed	Change	
			Amount	Percent
University of California				
Resident Charge				
Undergraduates	$5,684	$6,141	$457	8%
Graduates	6,269	6,897	628	10
Nonresident Charge				
Undergraduates	$22,640	$23,961	$1,321	6%
Graduates	21,208	21,858	650	3
California State University				
Resident Charge				
Undergraduates	$2,334	$2,520	$186	8%
Teacher education students	2,706	2,922	216	8
Graduates	2,820	3,102	282	10
Nonresident Charge				
Undergraduates	$12,504	$12,690	$186	1%
Graduates	12,990	13,272	282	2
California Community Colleges				
Resident charge[b]	$780	$780	—	—
Nonresident charge[c]	4,470	4,530	$60	1%

a Reflects only systemwide charges. Does not include campus-based fees.

b Reflects $26 per unit charge.

c Nonresident students are charged on a per-unit basis (as are resident students). In 2004-05, the nonresident per-unit rate was $149. This rate is projected to increase to $151 in 2005-06.

Strengthens Accountability. A share-of-cost fee policy would link fee levels to total education costs. As costs increased, fees would increase along with them. In other words, a portion of any increase in the cost of education would be automatically passed on to nonneedy students in the form of higher fees. Students and their families, therefore, would have a much greater incentive to hold their campuses accountable for keeping costs low and quality high.

Figure 3

Summary of Governor's Professional School Fee Proposals

(Systemwide Charges for Full-Time Students[a])

	2004-05 Budget Act	2005-06 Proposed	Change	
			Amount	Percent
University of California				
Resident Charge				
Business/management	$19,324	$20,368	$1,044	5%
Law	19,113	20,150	1,037	5
Medicine	18,513	19,532	1,019	6
Dentistry	18,024	19,029	1,005	6
Veterinary medicine	16,029	16,974	945	6
Optometry	14,139	15,027	888	6
Pharmacy	14,139	15,027	888	6
Theater, film, and television	11,249	12,051	802	7
Nursing	8,389	9,105	716	9
Public health	6,269	10,092	3,823	61
New programs[b]	6,269	10,092	3,823	61
Nonresident Charge				
Business/management	$31,569	$32,613	$1,044	3%
Law	31,358	32,395	1,037	3
Medicine	30,758	31,777	1,019	3
Dentistry	30,269	31,274	1,005	3
Veterinary medicine	28,274	29,219	945	3
Optometry	26,384	27,272	888	3
Pharmacy	26,384	27,272	888	3
Theater, film, and television	23,494	24,296	802	3
Public health	20,963	22,337	1,374	7
New programs[b]	20,963	22,337	1,374	7
Nursing	20,634	21,350	716	3
Hastings College of the Law				
Resident charge	$18,750	$19,725	$975	5%
Nonresident charge	30,950	30,950	—	—

[a] Reflects only systemwide charges. Does not include campus-based fees. In 2004-05, average campus-based fees ranged from $1,199 in public health programs to $4,101 in the veterinary medicine program.

[b] Public health, public policy, and international relations and pacific studies.

Formally Recognizes That Higher Education Is Shared Responsibility With Shared Benefits. The fee policies the state adopted in 1985 and 1990 both indicated that higher education should be a shared responsibility among students and the state. A share-of-cost fee policy explicitly recognizes the private returns of higher education by asking nonneedy students to contribute some portion toward their education costs. Clearly, individuals receive significant private benefits from higher education. Although establishing causality is difficult, a high correlation exists between level of education and personal earnings. For example, compared to those with only a high school education, the median earnings for adults with an associate degree is 22 percent higher. The median earnings for adults with a baccalaureate degree is 62 percent higher, and the median earnings of professional degree-holders is more than 200 percent greater. Unsurprisingly, higher education institutions across the country commonly use potential earnings (one key measure of private benefits) to determine appropriate cost-sharing arrangements.

Other Factors Might Be Considered to Provide Fuller Context. Although we think an explicit share-of-cost target would be the simplest, most consistent, and most defensible factor to use in setting and adjusting fees, the Legislature might want periodically to consider fee levels in the context of other factors—including fees at comparison institutions, the quality of specific education programs, the need for additional workers in particular occupations, and federal financial aid policies. This periodic review would help the Legislature better assess how well the share-of-cost fee policy was meeting various policy objectives.

Use Share-of-Cost Approach to Assess Budget-Year Fee Levels

We recommend the Legislature assess the Governor's budget-year fee proposals in light of their effect on students' share of cost. In most cases, the proposals would make at least some progress toward the share-of-cost targets specified in AB 2710 (Liu).

Below, we assess each of the Governor's fee proposals.

Increasing Resident Undergraduate Fees by 8 Percent Progresses Toward AB 2710 Share-of-Cost Targets. Figure 4 (see next page) shows resident fees as a percent of total operating costs for each of the three segments. As the figure shows, UC and CSU's proposed fee increases for resident undergraduates would increase students' share of total cost slightly. While the share of cost at UC and CSU would remain below the targets specified in AB 2710, some progress would be made toward eventually reaching them.

Figure 4

Resident Fees as a Share of Total Education Costs At California's Public Colleges and Universities

	2003-04 Actual	2004-05 Budgeted	2005-06 Proposed
Undergraduates			
University of California (UC)			
Cost of education	$19,144	$19,859	$20,087
Resident fees	4,984	5,684	6,141
Fee as a percent of cost	26.0%	29.0%	31.0%
California State University (CSU)			
Cost of education	$9,699	$10,312	$10,601
Resident fees	2,046	2,334	2,520
Fee as a percent of cost	21.0%	23.0%	24.0%
California Community Colleges			
Cost of education	$4,343	$4,698	$4,883
Resident fees	540	780	780
Fee as a percent of cost	12.4%	16.6%	16.0%
Graduates			
UC			
Cost of education	$28,716	$29,788	$30,130
Resident fees	5,219	6,269	6,897
Fee as a percent of cost	18.0%	21.0%	23.0%
CSU			
Cost of education	$14,549	$15,468	$15,902
Resident fees	2,256	2,820	3,102
Fee as a percent of cost	16.0%	18.0%	20.0%

Undergraduate Fees Would Remain Low Relative to Comparison Institutions. The proposed resident undergraduate fee increases likely would not affect UC and CSU's ranking compared to similar institutions. As Figure 5 shows, of UC's four public comparison institutions, only the State University of New York, Buffalo campus had a lower fee level in 2004-05. The UC undergraduate rate was more than $1,000 below the average of its public comparison institutions. Assuming fees at the comparison institutions increase in 2005-06 at the same average rate they increased last year, the UC undergraduate rate would remain more than $1,000 below the comparison-institution average. At CSU, even with the proposed 8 percent fee

increase, its fee would very likely remain the lowest of all its public comparison institutions and only about one-half of the average of these comparison institutions.

Figure 5

UC and CSU's Resident Undergraduate Fees Low Relative to Comparison Institutions

	2004-05 Actual	2005-06 Proposed/ Projected[a]
UC and Its Public Comparison Institutions		
University of Michigan	$8,722	$9,323
University of Illinois	7,944	8,491
Average	*7,341*	*7,846*
University of Virginia	6,790	7,258
UC	**6,312**	**6,769**
State University of New York	5,907	6,314
CSU and Its Public Comparison Institutions		
Rutgers University	$8,869	$9,652
University of Maryland, Baltimore	8,020	8,728
University of Connecticut	7,490	8,151
Cleveland State University	6,618	7,202
State University of New York, Albany	6,383	6,946
University of Wisconsin, Milwaukee	5,835	6,350
Wayne State University	5,819	6,333
Average	*5,656*	*6,155*
Illinois State University	5,588	6,081
George Mason University	5,448	5,929
University of Texas, Arlington	5,093	5,543
North Carolina State University	4,260	4,636
University of Colorado, Denver	4,160	4,527
Georgia State University	4,154	4,521
Arizona State University	4,066	4,425
University of Nevada, Reno	3,034	3,302
CSU	**2,916**	**3,102**

[a] Reflects Governor's budget proposals for UC and CSU. For comparison institutions, adjusts 2004-05 fee levels by the average prior-year growth rate (6.9 percent for UC's comparison institutions and 8.8 percent for CSU's comparison institutions).

Increasing Graduate Fees by 10 Percent Makes Slight Progress Toward Target Differential. As shown in Figure 4, the graduate fee proposal would result in slight increases in graduate students' share of cost. These shares, however, would remain quite low. For example, even with a 10 percent fee increase, nonneedy graduate students at CSU would be bearing only one-fifth of their total support costs. Moreover, graduate students' share of cost would remain below that of undergraduates. It is unclear why the state would ask nonneedy undergraduates to bear a larger share of their education cost than nonneedy graduate students.

Graduate Fees Likely to Remain Lowest of Comparison Institutions. In addition, UC and CSU's graduate fees are even further below their comparison institutions (in both dollar and percentage terms) than undergraduate fees. The CSU 2004-05 rate, for example, is approximately $600 lower than the next lowest comparison institution and $4,300 less than the average of the comparison institutions. As Figure 6 shows, UC and CSU's graduate fees currently are the lowest of all their comparison institutions, and, even with the proposed 2005-06 fee increases, would very likely remain the lowest.

Over Next Several Years, Slightly Larger Graduate Fee Increases Would Help Address Existing Disparities. In short, graduate fees represent an even smaller share of cost than undergraduate fees, and, relative to undergraduate fees, are even further below their comparison institutions. Moreover, graduate fees are not yet 50 percent higher than undergraduate fees, a target agreed upon by the segments. To address these existing disparities, the Legislature may want to institute slightly higher graduate fee increases over the next several years.

Inconsistent Treatment of Nonresident Students. Figure 7 (see page E-192) summarizes the fees paid by nonresident students at the three segments. As the figure shows, nonresident undergraduates at UC and CSU currently are paying substantially more than full cost, and nonresident students at CCC (largely because of statutory requirements) are paying just about full cost. By comparison, nonresident graduate students at UC and CSU are paying considerably less than full cost.

Over Next Several Years, Larger Nonresident Graduate Fee Increases Would Help Align With Full Cost. It is unclear why the state currently is providing a substantial subsidy to nonresident graduate students. A share-of-cost fee policy might have all nonresident students pay full cost. If this were to be the state's policy, then the Legislature would want to increase nonresident graduate tuition more quickly over the next several years while holding nonresident undergraduate tuition steady. Both actions would help align nonresident charges with full cost.

Figure 6

UC and CSU'S Resident Graduate Fees Lowest of Comparison Institutions

	2004-05 Actual	2005-06 Proposed/ Projected[a]
UC and Its Public Comparison Institutions		
University of Michigan	$13,585	$15,204
Average	*10,138*	*11,346*
State University of New York	9,455	10,582
University of Virginia	9,200	10,296
University of Illinois	8,310	9,300
UC	**7,928**	**8,556**
CSU and Its Public Comparison Institutions		
University of Maryland, Baltimore	$13,500	$15,466
Rutgers University	10,846	12,425
Wayne State University	9,978	11,431
Cleveland State University	9,308	10,663
State University of New York, Albany	8,949	10,252
University of Connecticut	8,476	9,710
University of Wisconsin, Milwaukee	8,131	9,315
George Mason University	7,830	8,970
Average	*7,663*	*8,779*
University of Colorado, Denver	6,918	7,925
University of Texas, Arlington	6,740	7,721
Illinois State University	5,646	6,468
Arizona State University	5,310	6,083
Georgia State University	4,830	5,533
North Carolina State University	4,479	5,131
University of Nevada, Reno	4,009	4,593
CSU	**3,402**	**3,684**

[a] Reflects Governor's budget proposals for UC and CSU. For comparison institutions, adjusts 2004-05 fee levels by the average prior-year growth rate (11.9 percent for UC's comparison institutions and 14.6 percent for CSU's comparison institutions).

Figure 7

Nonresident Fees as a Share of Total Education Costs At California's Public Colleges and Universities

	2003-04	2004-05	2005-06
Undergraduates			
University of California (UC)			
Cost of education	$19,144	$19,859	$20,087
Nonresident fees	19,194	22,640	23,961
Fee as a percent of cost	100%	114%	119%
California State University (CSU)			
Cost of education	$9,699	$10,312	$10,601
Nonresident fees	10,506	12,504	12,690
Fee as a percent of cost	108%	121%	120%
California Community Colleges			
Cost of education	$4,343	$4,698	$4,883
Nonresident fees	4,470	4,470	4,530
Fee as a percent of cost	103%	95%	93%
Graduates			
UC			
Cost of education	$28,716	$29,788	$30,130
Nonresident fees	17,708	21,208	21,858
Fee as a percent of cost	62%	71%	73%
CSU			
Cost of education	$14,549	$15,468	$15,902
Nonresident fees	10,716	12,990	13,272
Fee as a percent of cost	74%	84%	83%

Legislature Should Budget New Fee Revenue

We recommend the Legislature reject the Governor's proposal to let the segments decide how to spend fee increase revenues. We recommend instead the Legislature follow standard budget practices and assess the segments' needs, decide what to fund, and then apply the segment's new fee revenue toward the identified costs.

As described earlier, one of the primary problems with the Governor's budget proposal is that it treats new fee revenue as unavailable to meet legislatively determined needs of the segments. Instead, the segments could use new fee revenue for whatever they deemed worthwhile. This

translates into a highly unusual form of budgeting, whereby the segments raise and spend revenue outside of the regular legislative review process. It also is a departure from longstanding policy that fee revenues are an important funding source for the segments' basic instructional programs.

Focus on Needs, Apply Fee Revenue to Them. We recommend the Legislature follow common budgeting practices and begin by identifying the segments' needs and debating the advantages and disadvantages of specific funding requests. For example, the Legislature might choose to fund enrollment growth and a cost-of-living adjustment for each segment. It also might choose to provide the segments additional support for graduate financial aid. Each action obviously would entail related costs. As a result of the Governor's proposed fee increases, UC and CSU have $114 million and $76 million, respectively, in new revenue from the fee increases that can be used to cover all or a portion of these costs. If fee revenue is inadequate to meet all identified needs, then, as is typically the case, the General Fund would be applied toward the remaining costs.

In sum, rather than following the Governor's approach, which would result in inadequate oversight of the segments' budgets, we recommend the Legislature carefully consider each of the segments' requests and determine which ones should be funded. In doing so, the Legislature should consider new fee revenue as available to help meet identified needs.

Score Fee Revenue From Second-Year Phase In Of Excess-Unit Fee Initiative

We recommend the Legislature score $25.5 million in additional fee revenue associated with the second-year phase in of the excess-unit fee policy and capture a like amount of General Fund savings ($1.1 million for the University of California and $24.4 million for the California State University).

Adopted in the current year, the excess-unit fee policy is to charge undergraduate students full cost for units taken in excess of 110 percent of the units needed to obtain their degree. The policy is to be phased in over a five-year period—capturing only one-fifth of the potential excess-unit fee revenue in 2004-05, two-fifths of potential excess-unit fee revenue in 2005-06, and, so forth, until all excess-unit fee revenue is scored in 2008-09. This extended implementation period was designed to give the segments considerable flexibility in implementing the new policy and determining who should be assessed the higher fee.

UC and CSU Have Been Developing Segmental Policies. The UC Board of Regents plans to adopt a detailed policy at its upcoming March meeting. It tentatively has decided to define "full" cost as the full marginal

cost (which is used for the state's enrollment growth funding practices), and it is likely to provide special treatment for students with a double major or high-unit major. The CSU indicates it is making progress on developing its policy, but, at the time of this writing, could provide no detail.

Second-Year Phase In to Yield $25.5 Million in Additional Fee Revenue. Despite being the second-year phase in of the excess-unit fee policy adopted by the Legislature and reflected in the Governor's higher education compact, the 2005-06 budget proposal does not reflect any associated fee revenue. The second-year phase in is to yield $25.5 million in additional fee revenue consistent with the savings scored in 2004-05. We recommend the Legislature score these revenues in 2005-06, resulting in a comparable amount of General Fund savings.

State Lacks CCC Fee Policy

The state currently does not have a policy for setting CCC fees. The Governor's fee agreements do not encompass CCC fees, nor did AB 2710 address CCC fees. Yet, without a fee policy, students have no clear expectation as to what they will need to pay for a CCC education, and the public has no clear understanding of its expected contribution. Currently, the CCC fee is the lowest of any state in the country. In 2004-05, annual community college fees for a full-time student were $780. The national average was about three times this amount ($2,324).

Existing Fee Level Has Unintended Consequence—State Loses Federal Funds, CCC Loses Revenue. Although keeping fees low might seem like a reasonable strategy for maintaining access, it has an unintended effect—the state loses substantial revenue from middle-income and wealthy students—many of whom would receive substantial, if not full, fee refunds from the federal government. California is one of the few states that does not take full advantage of these federal funds (that come back to fee-paying students in the form of tax credits and tax deductions). Moreover, if California's fee waiver program works as intended, a fee increase would have no effect on financially needy students' access to community colleges—as all students with any financial need would receive full fee coverage. Thus, a low fee policy actually works to the disadvantage of the state.

Federal Tax Benefits Result in Fee Refunds for Middle- and Upper Middle-Income Students. Figure 8 provides basic information about the federal Hope tax credit, Lifetime Learning tax credit, and tuition and fee tax deduction. As the figure indicates, the Hope tax credit is designed for middle-income students with family incomes up to $105,000. Through the Hope tax credit, the federal government reimburses these middle-income students for the first $1,000 they pay in education fees. For students with family incomes

between $105,000 and $160,000, the federal government provides a tax deduction on the first $2,000 they pay in education fees.

Almost Every Other State in the Nation Maximizes Federal Aid. Currently, only California and some community colleges in New Mexico charge less than $1,000. Only 16 states charge less than $2,000. California, therefore, is one of few states currently not maximizing Hope tax credits for higher education. Put another way, CCC is not collecting from middle- and upper middle-income students fee revenue that, if collected, would be significantly offset with federal tax credits back to these same students. In effect, the state is paying for costs that the federal government would otherwise pay.

Figure 8

Federal Tax Benefits Applied Toward Higher Education Fees

Hope Credit	Lifetime Learning Credit	Tuition and Fee Deduction
• Directly reduces tax bill.	• Directly reduces tax bill.	• Reduces taxable income.
• Covers 100 percent of first $1,000 in fee payments. Covers 50 percent of second $1,000 (for maximum tax credit of $1,500).	• Covers 20 percent of first $10,000 in fee payments.	• Deducts up to $2,000 in fee payments.
• Designed for middle-income students who are: —In first or second year of college. —Attend at least half time.	• Designed for any middle-income student beyond first two years of college.	• Designed for any upper middle-income student not qualifying for a tax credit.
• Phases out entirely at adjusted income of $52,000 for single filers and $105,000 for married filers.	• Phases out entirely at adjusted income of $52,000 for single filers and $105,000 for married filers.	• Capped at adjusted income of $65,000 for single filers and $160,000 for married filers.

Increasing CCC Fee Shifts Costs to Federal Government Without Hurting Students

We recommend the Legislature increase the per unit fee at California Community Colleges (CCC) from $26 to $33. This higher fee, to be charged only to middle-income and wealthy students, would generate about $100 million in additional revenue for CCC. The federal government, in turn, would fully reimburse those fee-paying students with family incomes up to $105,000 (unless they do not have sufficient tax liability) and partially reimburse those fee-paying students with family incomes up to

$160,000. Financially needy students, on the other hand, are entitled to have their fees entirely waived (through a state aid program) and thus should pay nothing even with fees being increased. Given the Governor's budget continues to provide CCC with $37 million for financial aid outreach and counseling, CCC has resources to ensure that all eligible students receive available aid.

The existing $26 per unit fee, which only nonnneedy students are required to pay, represents 17 percent of total education costs. If raised to $33 per unit, nonneedy students' share of cost would increase to 20 percent. We believe it is reasonable for the state to ask nonneedy students (those who demonstrate no financial need using the standard federal means-tested methodology) to pay one-fifth of their total education costs. Raising the fee also would have substantial benefits—increasing CCC revenue and federal aid without restricting access for financially needy students.

Generates More Than $100 Million in State Revenue. Charging nonneedy students an additional $7 per unit would generate about $100 million in additional fee revenue for the community colleges. Of the nonneedy students paying the higher fee, those with family incomes up to $105,000 would qualify for a full fee refund in the form of a Hope tax credit. (This assumes that the family had a tax liability at least equal to the fee payment, which would usually be the case.) Others with family incomes up to $160,000 would qualify for a partial fee refund in the form of a Lifetime Learning tax credit or tax deduction. Based on data in the 2003 Student Expenses and Resource Survey, more than 90 percent of CCC students having to pay the higher fee would receive some offsetting federal tax benefit. In total, we estimate about one-half of the higher fees paid would be offset by these federal tax benefits.

Raising the fee also might result in a small additional Pell benefit (of several million dollars) to the financially neediest students attending some community colleges. That is, raising the fee to $33 per unit would ensure that the financially neediest students at all community colleges, even those with low average full-time workloads, would be able to obtain the maximum federal Pell Grant.

Fee Waiver Designed to Insulate Financially Needy Students From Effect of Any Fee Increase. The fee increase should not affect financially needy students. This is because the Board of Governors' fee waiver program waives fees for all students who demonstrate financial need. The program, which functions as an entitlement, is a generous needs-based program—requiring students to demonstrate only $1 of need to receive full fee coverage. Moreover, it helps financially needy students of all kinds—young and old; entering college for the first time or returning as an adult; seeking an

associate degree, vocational degree, certificate, or license; seeking to transfer; already possessing a baccalaureate degree; seeking to prepare for a new career or advance in an existing career; and taking any number of classes.

The program also has relatively high income cut-offs. For example, a community college student living at home, with a younger sibling and married parents, could have a family income up to roughly $62,000 and still qualify for a fee waiver. The income cut-off would increase to roughly $75,000 if this same student was living away from home and would increase to $110,000 if two children were attending community college simultaneously. An older, independent student living alone could have an income up to roughly $40,000 and a student with a one child could have an income up to roughly $76,000 and still qualify for fee waivers.

Outreach Funding Helps Educate About Federal Aid Opportunities. In 2003-04 and 2004-05, in conjunction with the enacted CCC fee increases, the state provided CCC with significant new outreach funding to help educate students about federal and state financial aid opportunities. The Governor's 2005-06 budget proposal maintains this outreach funding at its current-year level of $37 million. These funds are to be used explicitly for individual financial aid counseling and a statewide media campaign that focuses on educating students about state and federal financial aid opportunities. This funding is in addition to the approximately $18 million the Student Aid Commission spends annually on financial aid outreach and counseling. (Even if fees are unchanged, the Governor's budget assumes both CCC and the commission will continue these outreach efforts.)

For all these reasons, we recommend raising the CCC fee, which only nonneedy students are required to pay, from $26 to $33 per unit. This would generate about $100 million in additional fee revenue for community colleges. Significantly, the state could realize these revenues without any effect on financially needy students (who are eligible for full fee waivers) and very little impact on middle-income students (whose fees would be offset by comparable increases in federal tax benefits).

UNIVERSITY OF CALIFORNIA (6440)

The University of California (UC) consists of eight general campuses and one health science campus. The university is developing a tenth campus in Merced, which is scheduled to open in fall 2005. The Governor's budget proposal includes about $19.4 billion for UC from all fund sources—including state General Fund, student fee revenue, federal funds, and other funds. This is an increase of $722 million, or 3.9 percent, from the revised current-year amount. The budget proposes General Fund spending of $2.8 billion for the segment in 2005-06. This is an increase of $97.5 million, or 3.6 percent, from the proposed revision of the 2004-05 budget.

For the current year, the Governor proposes a net General Fund reduction of $12.2 million to account for (1) Public Employees' Retirement System rate adjustments and (2) an unexpended balance from lease-revenue bond proceeds. For the budget year, the Governor proposes $128.1 million in General Fund augmentations, $21.1 million in General Fund reductions, and a $9.5 million net decrease for baseline and technical adjustments. Figure 1 summarizes the Governor's proposed General Fund changes for the current year and the budget year.

Proposed Augmentations. The budget provides UC with a 3 percent General Fund base increase of $76.1 million that is not restricted for specific purposes. The UC indicates that it would apply most of these funds towards various salary increases. The Governor's budget also includes a $37.9 million General Fund augmentation for enrollment growth at UC. This would increase the university's budgeted enrollment by 5,000 full-time equivalent (FTE) students, or 2.5 percent, above the current-year level. In addition, the budget proposes a $14 million one-time augmentation for the UC campus in Merced, which is scheduled to open this fall.

Proposed Reductions. While the Governor's budget proposes a total of $128.1 million in General Fund augmentations, it also proposes $21.1 million in General Fund reductions. Specifically, the budget includes a $17.3 million reduction to outreach programs (also known as academic

preparation programs) and enrollment. Proposed budget bill language directs UC to apply this reduction to any combination of outreach programs and student enrollment that it chooses. The Governor's budget also eliminates all General Fund support for the labor research institute, for savings of $3.8 million. Both of the above proposals would reduce specific augmentations approved by the Legislature last year in its adoption of the 2004-05 budget.

Figure 1

University of California (UC)
General Fund Budget Proposal

(Dollars in Millions)

	General Fund
2004-05 Budget Act	**$2,721.0**
Baseline adjustments	-$12.2
2004-05 Revised Budget	**$2,708.8**
Baseline and Technical Adjustments	-$9.5
Proposed Increases	
Base budget increase (3 percent)	$76.1
Enrollment growth (2.5 percent)	37.9
One-time augmentation for UC Merced	14.0
Subtotal	($128.1)
Proposed Reductions	
Reduce funding for enrollment and outreach	-$17.3
Eliminate labor research institute	-3.8
Subtotal	(-$21.1)
2005-06 Proposed Budget	**$2,806.3**
Change From 2004-05 Revised Budget	
Amount	$97.5
Percent	3.6%

Student Fee Increases

The Governor's budget assumes that the university will receive $144.6 million in new student fee revenue—$30.6 million associated with 2.5 percent enrollment growth and $114 million from fee increases recently

approved by the UC Board of Regents for undergraduate, graduate, professional school, and nonresident students. Below, we review the proposed fee levels. (For a detailed discussion about the need for a long-term fee policy and how fees interact with General Fund revenue, please see the "Student Fees" write-up earlier in this chapter.)

Undergraduate and Graduate Systemwide Fees. Figure 2 summarizes the planned increases in undergraduate and graduate systemwide fees. As the figure shows, the budget assumes a planned increase of 8 percent in the systemwide fee for undergraduate students. The budget also assumes a 10 percent increase in the systemwide fee for graduate students. When combined with campus-based fees, the total student fee for a resident full-time student in 2005-06 would be $6,769 for undergraduates and $8,556 for graduates. In addition to paying the systemwide and campus-based fees, professional school students and nonresident students also pay special supplementary fees, as we discuss below.

Figure 2

UC Systemwide Fees[a]
Resident Full-Time Students

			Change From 2004-05	
	2004-05	2005-06	Amount	Percent
Undergraduates	$5,684	$6,141	$457	8%
Graduates	6,269	6,897	628	10

[a] Amounts do not include campus-based fees.

Professional School Fees. The Governor's budget assumes $7.3 million in additional revenue from a planned 3 percent average increase in professional school fees. The budget also proposes extending a supplementary fee to professional programs in public health, public policy, and pacific international affairs. Currently, professional school fees vary by program. For 2005-06, the professional school fee is planned to range from a low of $3,013 for students in nursing programs to a high of $14,276 for business/management school students.

Nonresident Tuition. The proposed budget also assumes a planned 5 percent increase in the tuition surcharge imposed on nonresident students. Specifically, this surcharge would increase from $16,476 to $17,304. The increase in nonresident tuition is expected to provide about $6 million in additional fee revenue in the budget year.

Intersegmental Issues Involving UC

In intersegmental write-ups earlier in this chapter, we address several issues relating to UC. For each of these issues, we offer an alternative to the Governor's proposal. We summarize our main findings and recommendations below.

Evaluate Higher Education Funding Needs Based on Master Plan, Not Governor's "Compact." The General Fund support and student fee increases proposed for 2005-06 are consistent with the compact that the Governor developed with UC and the California State University last spring. This compact specifies targets for the Governor's budget requests through 2010-11. Notwithstanding the Governor's compact, we advise the Legislature to enact a budget for higher education as it normally does, by examining each of the Governor's proposals on its own merits. Specifically, the Legislature should evaluate funding for higher education based on its *Master Plan for Higher Education* and not the Governor's compact.

Fund Enrollment Growth Consistent With Demographic Projections and Agreed-Upon Funding Practices. The Governor's budget provides $37.9 million to fund 2.5 percent enrollment growth at a marginal General Fund cost of $7,588 per additional FTE student. We recommend the Legislature instead provide funding for enrollment growth at a rate of 2 percent, which better matches anticipated need under the Master Plan. We also recommend adopting budget bill language specifying an enrollment target of 204,996 FTE students for UC. Moreover, using our marginal cost estimate based on the agreed-upon 1995 methodology, we recommend reducing the Governor's proposed per student funding rate for UC from $7,588 to $7,108. Accordingly, we recommend a General Fund reduction of $9.4 million for UC. In the "Enrollment Growth and Funding" write-up in this chapter, we also propose that the Legislature revisit and assess how the state determines the amount of funding to provide UC for each additional FTE student in future budget years.

Align Student Fee Increases to Share of Education Costs. The proposed budget assumes an additional $114 million in student fee revenue from various fee increases recently approved by the UC Regents. However, the Governor's budget does not account for this revenue, ceding to UC full discretion in deciding how to spend the additional revenue. We recommend that the Legislature consider this revenue as part of the base support for UC's programs, as it always has. In the "Student Fees" section, we also propose the Legislature adopt a long-term fee policy that sets fees at a fixed percentage of students' total education costs. Moreover, we recommend the Legislature reduce UC's General Fund appropriation to reflect $1.1 million in new revenue and savings associated with the second-year phase-in of the excess-unit fee policy that was adopted as part of the 2004-05 budget.

Impact of LAO Recommendations

Adopting all the above recommendations would result in a much different approach to UC's budget than that taken by the administration. In our view, the Legislature should approach UC's budget as it traditionally has: (1) assessing the cost of funding the programmatic objectives the Legislature has identified and (2) directing available funding—including both General Fund support and student fee revenue—to cover those costs. Figure 3 shows how UC's budget would be affected if the Legislature adopted our recommendations under this approach. Specifically, it shows the additional expenditures and resources above 2004-05 levels.

Figure 3

LAO Alternative 2005-06 Budget Plan for UC

Increases Over 2004-05

	In Millions
Expenditures	
Base budget increase (3 percent)[a]	$122.2
Enrollment growth (2 percent)	28.5
Adjustments for Merced and annuitant health and dental benefits[b]	4.5
Total	**$155.2**
Resources	
Additional revenue from student fee increase[c]	$113.4
Additional revenue from excess course unit charge	1.1
Governor's proposed General Fund increase	97.5
Total	**$212.0**
Freed Up General Fund Resources	**$56.8**

a Based on total state General Fund and student fee revenue.

b As proposed in the Governor's budget.

c Assumes 2 percent enrollment growth.

Expenditures. Figure 3 first shows new spending components:

- ***Base Increase.*** As discussed earlier, the Governor proposes a 3 percent base increase for UC. Given that we project inflation in 2005-06 will roughly match this percentage, we do not take issue with it.

However, the Governor applies the 3 percent increase only to the portion of UC's budget funded from the General Fund. We believe that a base increase should be applied to all of UC's base budget, including that portion which is funded with student fee revenue. As a result, under our approach, a 3 percent base increase would cost $122.2 million.

- ***Enrollment Growth.*** As discussed earlier, we recommend the Legislature fund a 2 percent increase in enrollment for UC. This would cost $28.5 million.
- ***Other Adjustments.*** The Governor proposes a net increase of $4.5 million to accommodate the costs of opening UC Merced in fall 2005 and various health and benefits costs. We have included these costs in Figure 3. We have not, however, included the Governor's proposed $17.3 million reduction to outreach and enrollment funding, which grants to UC the authority to decide where the cuts would be made. We believe the Legislature should specifically designate any areas for reduction so that it knows what it is buying in the budget.

Resources. Figure 3 displays two sources of new revenue:

- ***Fee Revenue.*** We estimate that the planned fee increases for the budget year will provide UC with $114.5 million in new student fee revenue. This amount assumes additional revenue from the university's excess course unit policy and our proposed 2 percent enrollment growth.
- ***General Fund Support.*** As discussed earlier in this analysis, the Governor's budget proposes to increase General Fund support for UC by $97.5 million from the revised 2004-05 budget (see Figure 1). As a starting point, therefore, these funds are available to fund the additional costs identified above.

Uncommitted Resources. As shown in Figure 3, the Legislature could (1) fully fund enrollment growth and a cost-of-living adjustment for UC and (2) reject the Governor's proposed $17.3 million reduction to UC's outreach programs and enrollment funding, all at a lower General Fund cost than proposed by the Governor. In fact, under our proposal the Legislature would free up almost $57 million in General Fund support (from the level in the Governor's budget proposal) to address other priorities.

As discussed earlier, the Legislature may wish to use some of this amount to provide increased financial aid for UC graduate students, given that these students, unlike needy UC undergraduates, are not protected

from fee increases by the Cal Grant entitlement program. Our identified General Fund savings could also be used to fund legislative priorities in other areas, including addressing the state's budget problem.

CALIFORNIA STATE UNIVERSITY (6610)

The California State University (CSU) consists of 23 campuses. The Governor's budget includes about $6 billion for CSU from all fund sources—including General Fund, student fee revenue, federal funds, and other funds. This is an increase of $187 million, or 3.2 percent, from the revised current-year amount. Of that increase, $101 million will be generated from student fees. The budget proposes General Fund spending of $2.6 billion for the system in 2005-06. This is an increase of $111 million, or 4.4 percent, from the revised 2004-05 budget. Figure 1 (see next page) summarizes changes from the enacted 2004-05 budget to the Governor's 2005-06 proposal.

Proposed Augmentations. The proposed budget provides CSU with $122.5 million in General Fund augmentations to fulfill an agreement the Governor made with CSU. Specifically, the budget provides $71.7 million for a 3 percent base budget increase and $50.8 million to accommodate a 2.5 percent enrollment increase (to serve an additional 8,100 full-time equivalent [FTE] students).

Proposed Reductions. The budget also proposes $12 million in General Fund reductions. These changes include a $7 million reduction to enrollment growth and outreach, which would be allocated between the two areas at CSU's discretion.

Student Fee Increases

For 2005-06, the Governor's budget assumes increases in the systemwide fee for undergraduate and graduate students and nonresident tuition. These increases have already been approved by the Board of Trustees. The fee increases are expected to provide an additional $76 million in new student fee revenue. The Governor's proposal assumes the additional student fee revenue will *not* be offset by a reduction in CSU's General Fund support. (For a detailed description about the need for a long-term fee policy and how fees represent another source of funding for the university's operations, please see the "Student Fees" write-up earlier in this chapter.)

Figure 1

California State University General Fund Budget Proposal

(Dollars in Millions)

	General Fund
2004-05 Budget Act	**$2,448.0**
Baseline and Technical Adjustments	
Public Employees' Retirement System rate increase	$44.4
Carryover/reappropriation	4.4
Lease-revenue bond payment adjustment	-0.1
Revised 2004-05 Budget	**$2,496.7**
Proposed Increases	
Base increase (3 percent)	$71.7
Enrollment growth (2.5 percent)	50.8
Subtotal	($122.5)
Proposed Reductions	
Reduce funding for enrollment or outreach	-$7.0
Technical adjustments	-5.0
Subtotal	(-$12.0)
2005-06 Proposed Budget	**$2,607.2**
Change From 2004-05 Revised Budget	
Amount	$110.5
Percent	4.4%

Undergraduate and Graduate Systemwide Fees. As Figure 2 shows, the Governor's budget assumes an increase from 2004-05 of 8 percent, or $186, in the systemwide fee for undergraduate students. The proposed budget also assumes a 10 percent increase, or $282, in the graduate student systemwide fee.

Nonresident Fees. At CSU, nonresident students also pay a supplementary fee in the form of nonresident tuition. The budget assumes this supplementary fee will remain at the current level of $10,170.

Figure 2

CSU Systemwide Fees[a]
Resident Full-Time Students

	2004-05	2005-06	Change From 2004-05 Amount	Change From 2004-05 Percent
Undergraduates	$2,334	$2,520	$186	8%
Graduates	2,820	3,102	282	10

[a] Amounts do not include campus-based fees.

Intersegmental Issues Involving CSU

In intersegmental write-ups earlier in this chapter, we address several issues relating to CSU. For each of these issues, we offer an alternative to the Governor's proposal. We summarize our main findings and recommendations below.

Evaluate Higher Education Funding Needs Based on Master Plan, Not Governor's "Compact." The General Fund support and student fee increases proposed for 2005-06 are consistent with the compact that the Governor developed with CSU and the University of California (UC) last spring. This compact specifies targets for the Governor's budget requests through 2010-11. Notwithstanding the Governor's compact, we advise the Legislature to enact a budget for higher education as it normally does, by examining each of the Governor's proposals on its own merits. Specifically, the Legislature should evaluate funding for higher education based on its *Master Plan for Higher Education* and not the Governor's compact.

Fund Enrollment Growth Consistent With Demographic Projections and Agreed-Upon Funding Practices. The Governor's budget provides $50.8 million to fund 2.5 percent enrollment growth at a marginal General Fund cost of $6,270 per additional FTE student. We recommend the Legislature instead provide funding for enrollment growth at a rate of 2 percent, which better matches anticipated need under the Master Plan. We also recommend adopting budget bill language specifying an enrollment target of 330,602 FTE students for CSU. Moreover, using our marginal cost estimate based on the agreed-upon 1995 methodology, we recommend reducing the Governor's proposed per student funding rate for CSU from $6,270 to $5,999. Accordingly, we recommend a General Fund reduction of $11.9 million for CSU. In the "Enrollment Growth and Funding" write-up of this chapter, we also propose that the Legislature revisit and assess how

the state determines the amount of funding to provide CSU for each additional FTE student in future budget years.

Align Student Fee Increases to Share of Education Costs. The proposed budget assumes an additional $101 million in student fee revenue largely due to various fee increases recently approved by the CSU Board of Trustees. However, the Governor's budget does not account for this revenue, ceding to CSU full discretion in deciding how to spend the additional funds. We recommend that the Legislature consider this revenue as part of the base support for CSU's programs, as it always has. In the "Student Fees" write-up, we also propose the Legislature adopt a long-term fee policy that sets fees at a fixed percentage of students' total education costs. Moreover, we recommend the Legislature reduce CSU's General Fund appropriation to reflect $24.4 million in new revenue and savings associated with the second-year phase in of the excess unit fee policy that was adopted as part of the 2004-05 budget.

Impact of LAO Recommendations

Adopting all the above recommendations would result in a much different approach to CSU's budget than that taken by the administration. In our view, the Legislature should approach CSU's budget as it traditionally has: (1) assessing the cost of funding the programmatic objectives the Legislature has identified and (2) directing available funding—including both General Fund support and student fee revenue—to cover those costs. Figure 3 shows how CSU's budget would be affected if the Legislature adopted our recommendations under this approach. Specifically, it shows the additional expenditures and resources above 2004-05 levels.

Expenditures. Figure 3 first shows new spending components:

- ***Base Increase.*** As discussed earlier, the Governor proposes a 3 percent base increase for CSU. Given that we project inflation in 2005-06 will roughly match this percentage, we do not take issue with it. However, the Governor applies the 3 percent increase only to the portion of CSU's budget funded from the General Fund. We believe that a base increase should be applied to all of CSU's base budget, including that portion which is funded with student fee revenue. As a result, under our approach, a 3 percent base increase would cost $105 million.
- ***Enrollment Growth.*** As discussed earlier, we recommend the Legislature fund a 2 percent increase in enrollment for CSU. This would cost $38.9 million.

Figure 3

LAO Alternative Budget Plan for CSU

Increases Over 2004-05

	In Millions
Expenditures	
Base budget increase (3 percent)[a]	$105.0
Enrollment growth (2 percent)	38.9
Technical adjustments[b]	-5.0
Total	**$138.9**
Resources	
Governor's proposed General Fund increase	$110.5
Additional revenue from student fee increases[c]	75.5
Additional revenue from excess course unit charge	24.4
Total	**$210.4**
Freed Up General Fund Resources	**$71.5**

a Based on total state General Fund and student fee revenue.

b As proposed by Governor.

c Assumes 2 percent enrollment growth.

- ***Other Adjustments.*** The Governor's budget includes a net $5 million reduction to CSU's base budget. This includes accounting for the one-time effect of a carryover appropriation and other technical adjustments.

Resources. Figure 3 displays two sources of new revenue:

- ***Fee Revenue.*** We estimate that the planned fee increases for the budget year will provide CSU with $75.5 million in new student fee revenue. This amount assumes additional revenue from the university's excess course unit policy and our proposed 2 percent enrollment growth.
- ***General Fund Support.*** As discussed earlier in this analysis, the Governor's budget proposes to increase General Fund support for CSU by $110.5 million from the revised 2004-05 budget (see Figure 1). As a starting point, therefore, these funds are available to fund the additional costs identified above.

Uncommitted Resources. As shown in Figure 3, the Legislature could (1) fully fund enrollment growth and a cost-of-living adjustment for CSU and (2) reject the Governor's proposed $7 million reduction to CSU's outreach programs and enrollment funding, all at a lower General Fund cost than proposed by the Governor. In fact, under our proposal the Legislature would free up over $71 million in General Fund support (from the level in the Governor's budget proposal) to address other priorities.

As discussed earlier, the Legislature may wish to use some of this amount to provide increased financial aid for CSU graduate students, given that these students, unlike needy UC undergraduates, are not protected from fee increases by the Cal Grant entitlement program. Our identified General Fund savings could also be used to fund legislative priorities in other areas, including addressing the state's budget problem.

CALIFORNIA COMMUNITY COLLEGES (6870)

California Community Colleges (CCC) provide instruction to about 1.6 million students at 109 campuses operated by 72 locally governed districts throughout the state. The system offers academic, occupational, and recreational programs at the lower division (freshman and sophomore) level. Based on agreements with local school districts, some college districts offer a variety of adult education programs. In addition, pursuant to state law, many colleges have established programs intended to promote regional economic development.

Funding Increases Proposed. The Governor's budget includes significant funding increases for CCC. As shown in Figure 1 (see next page), the Governor's proposal would increase total Proposition 98 funding for CCC by $361 million, or 7.5 percent. This increase funds a cost-of-living adjustment (COLA) of 3.93 percent, and enrollment growth of 3 percent. When all fund sources—including student fee revenue and federal and local funds—are considered, CCC's budget would total almost $8 billion.

CCC's Share of Proposition 98 Funding. As shown in Figure 1, the Governor's budget includes $5.1 billion in Proposition 98 funding for CCC in 2005-06. This is about two-thirds of total community college funding. Overall, Proposition 98 provides funding of approximately $50 billion in support of K-12 education, CCC, and several other state agencies. As proposed by the Governor, CCC would receive about 10.3 percent of total Proposition 98 funding.

State law calls for CCC to receive approximately 10.9 percent of total Proposition 98 appropriations. However, in recent years, this provision has been suspended in the annual budget act and CCC's share of Proposition 98 funding has been lower than 10.9 percent. The Governor's budget proposal would again suspend this provision.

Figure 1

Community College Budget Summary

(Dollars in Millions)

	Actual 2003-04	Estimated 2004-05	Proposed 2005-06	Change From 2004-05 Amount	Change From 2004-05 Percent
Community College Proposition 98					
General Fund	$2,272.5	$3,036.3	$3,320.9	$284.6	9.4%
Local property tax	2,102.1	1,750.4	1,827.0	76.7	4.4
Subtotals, Proposition 98	($4,374.6)	($4,786.7)	($5,147.9)	($361.3)	(7.5%)
Other Funds					
General Fund	($132.4)	($247.7)	($259.9)	($12.2)	(4.9%)
Proposition 98 Reversion Account	0.1	5.4	20.0	14.6	271.5
State operations	8.6	8.9	8.8	-0.1	-1.2
Teachers' retirement	40.3	98.3	79.8	-18.5	-18.8
Bond payments	83.3	135.1	151.3	16.2	12.0
State lottery funds	120.8	143.3	139.9	-3.4	-2.4
Other state funds	8.6	8.8	9.1	0.3	2.9
Student fees	243.3	357.5	368.2	10.7	3.0
Federal funds	249.2	277.1	277.1	—	—
Other local funds	1,563.8	1,738.9	1,738.8	-0.1	—
Subtotals, other funds	($2,318.1)	($2,773.4)	($2,793.1)	($19.7)	(0.7%)
Grand Totals	**$6,692.7**	**$7,560.1**	**$7,941.0**	**$380.9**	**5.0%**

Major Budget Changes

Figure 2 shows the changes proposed for community college Proposition 98 spending in the current and budget years. Major base increases include $142 million for enrollment growth of 3 percent and $196 million for a COLA of 3.93 percent. (This is based on an estimate of inflation that will not be finalized until April.) The Governor also "sets aside" $31.4 million for a potential restoration of funding he vetoed in 2004-05. (We describe this set-aside later in this piece.) In addition to the new Proposition 98 spending shown in Figure 2, the Governor proposes $20 million in one-time Proposition 98 Reversion Account funds for aligning K-12 and CCC vocational curricula. (We discuss this proposal in the "Crosscutting Issues" section of this chapter.)

Figure 2

California Community Colleges Governor's Budget Proposal

Proposition 98 Spending[a] (In Millions)

2004-05 (Enacted)	**$4,808.0**
Local property tax shortfall	-$21.5
Lease-revenue augmentation per Section 4.30	0.1
2004-05 (Estimated)	**$4,786.7**
Property tax base adjustment	$21.5
Proposed Budget-Year Augmentations	
Cost-of-living adjustment of 3.93 percent	$195.5
Enrollment growth of 3 percent	141.9
Set-aside for restoration of 2004-05 vetoed funds	31.4
Lease-revenue payments	4.0
Permanently shift funding for Foster Parent Training Program to Proposition 98	3.0
Subtotal	($375.9)
Proposed Budget-Year Reductions	
Adjustment for increased estimate of fee revenue	-$34.9
Technical adjustments	-1.3
Subtotal	(-$36.1)
2005-06 (Proposed)	**$5,147.9**
Change From 2004-05 (Estimated)	
Amount	$361.3
Percent	7.5%

[a] Numbers may not add due to rounding.

Proposition 98 Spending by Major Program

Figure 3 (see next page) shows Proposition 98 expenditures for various community college programs. As shown in the figure, apportionment funding (available to districts to spend on general purposes) accounts for $4.6 billion in 2005-06, an increase of about $312 million, or 7.3 percent, from the current year. Apportionment funding in the budget year accounts for about 89 percent of CCC's total Proposition 98 expenditures.

Figure 3

Major Community College Programs Funded by Proposition 98

(Dollars in Millions)

	Estimated 2004-05	Proposed 2005-06	Change	
			Amount	Percent
Apportionments				
State General Fund	$2,507.8	$2,742.8	$235.0	9.4%
Local property tax revenue	1,750.4	1,827.0	76.7	4.4
Subtotals	($4,258.1)	(4,569.8)	($311.7)	(7.3%)
Categorical Programs				
Extended Opportunity Programs and Services	$98.8	$104.6	$5.8	5.9%
Disabled students	86.0	91.0	5.1	5.9
Matriculation	62.5	66.2	3.7	5.9
Services for CalWORKs[a] recipients	34.6	34.6	—	—
Part-time faculty compensation	50.8	50.8	—	—
Part-time faculty office hours	7.2	7.2	—	—
Part-time faculty health insurance	1.0	1.0	—	—
Physical plant and instructional support	27.3	27.3	—	—
Economic development program[b]	35.8	35.8	—	—
Telecommunications and technology services	23.4	23.4	—	—
Basic skills and apprenticeships	41.7	43.4	1.7	4.1
Financial aid/outreach	47.3	46.2	-1.1	-2.4
Foster Parent Training Program	1.8	4.8	3.0[c]	171.0
Fund for Student Success	6.2	6.2	—	—
Other programs	4.2	4.2	—	—
Subtotals	($528.6)	($546.7)	($18.2)	(3.4%)
Other Appropriations				
Set-aside for possible veto restoration	—	$31.4	—	—
Totals	**$4,786.7**	**$5,147.9**	**$361.3**	**7.5%**

a California Work Opportunity and Responsibility to Kids.

b For 2005-06, the Governor's budget also includes $20 million from the Proposition 98 Reversion Account to align career-technical education curricula between K-12 and California Community Colleges.

c Replaces $3 million previously provided by the Foster Children and Parents Training Fund.

Categorical programs (whose funding is earmarked for specified purposes) are also shown in Figure 3. These programs support a wide range of activities—from services to disabled students to part-time faculty health insurance. The Governor's budget proposes increases of 5.9 percent for the

three largest categorical programs (to fund a COLA and enrollment growth), but for most other programs he proposes no changes. In addition, the Foster Parent Training Program would be funded entirely from Proposition 98 General Fund support, replacing $3 million previously provided by the Foster Children and Parents Training Fund.

Student Fees

The Governor proposes no change to the existing student fee level of $26 per unit. Under the Governor's budget, student fee revenue would account for 4.6 percent of total CCC funding. (In the "Student Fees" intersegmental piece earlier in this chapter, we recommend raising the CCC fee to $33 per unit. This would increase total revenue available to the state, and maximize federal reimbursements for students paying the fee.)

ENROLLMENT GROWTH

Enrollment Changes Over Time

The CCC is the nation's largest system of higher education, enrolling about 1.6 million students in fall 2004. As shown in Figure 4, enrollment has gradually increased over the past two decades by about 420,000 students, although it has fluctuated on a year-to-year basis.

Figure 4

CCC Enrollment

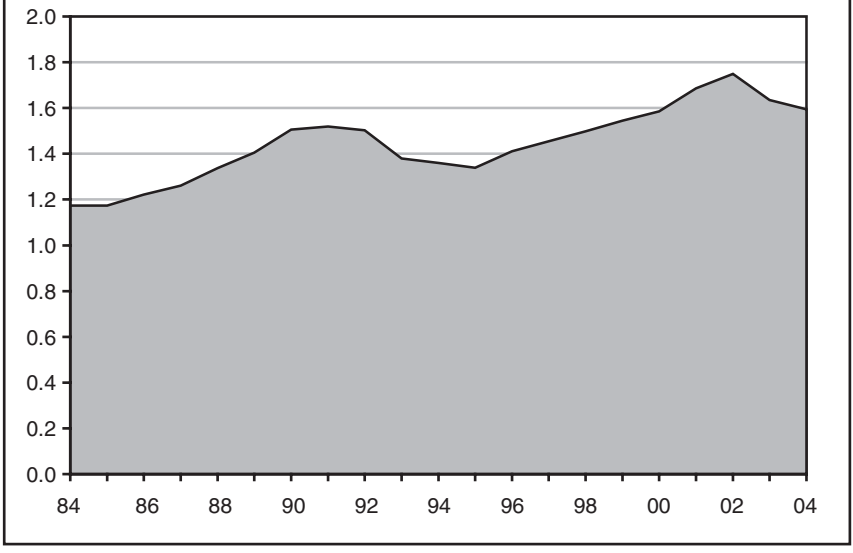


Figure 5 compares the cumulative change in enrollment over the past two decades with the cumulative change in the adult population, as well as the cumulative change in the traditional college-age population (18- to 24-year-olds). As the figure shows, CCC's enrollment has far outpaced the college-age population, and has generally matched growth in the adult population.

Figure 5

CCC Enrollment Versus State Population Growth

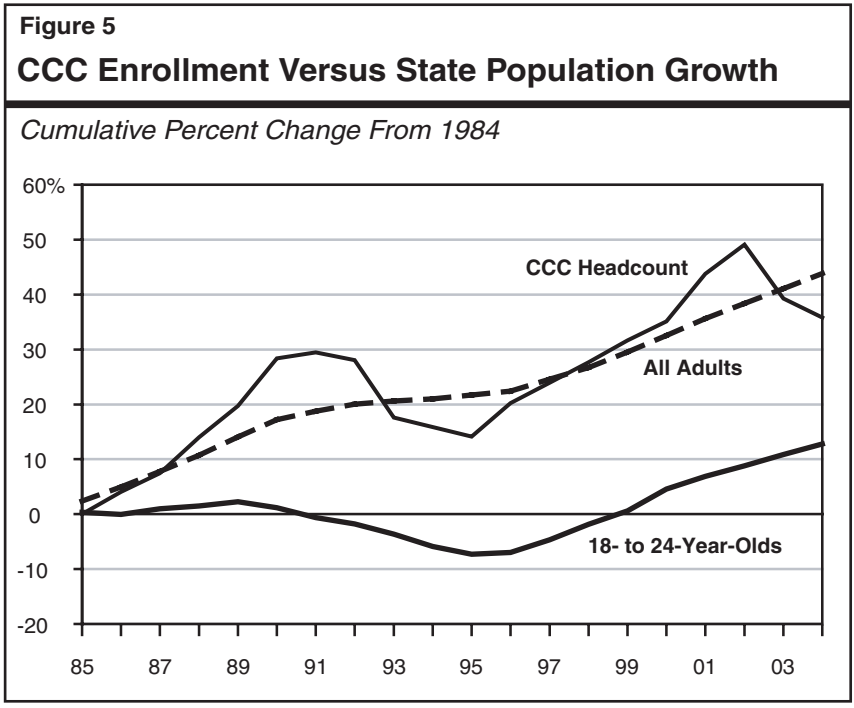


Figure 5 suggests that CCC's adult participation rate has generally remained constant, with temporary ups and downs, over the past two decades. Although participation rates can provide a rough sense of whether "access" to CCC is increasing or decreasing, it does not provide any obvious guidance as to what the participation rate "should" be. Based on comparisons with other states, however, California's college participation levels stand out. For example, the National Center for Public Policy and Higher Education recently found that California has some of the highest participation rates in the nation. Specifically, the National Center determined that California ranks fourth (tied with four other states) in college enrollment among 18- to 24-year olds, and that it ranks first in college enrollment among 25- to 49-year-olds.

Recent Slight Decline in CCC Enrollment—The Story Behind the Numbers

Over time, CCC's enrollment has fluctuated. These fluctuations respond to changes in a variety of factors, including the size and age distribution of the underlying population, cost factors (such as fees and the availability of financial aid), convenience of course schedules, and so on. As observed in Figure 4, CCC's enrollment increased through the late 1980s, declined in the early 1990s, and then rose significantly through the second half of the 1990s until 2003. In that year, CCC's enrollment dropped by about 115,000 students, or about 6.6 percent. What accounts for this enrollment decline?

Some Enrollment Decline Explained by Concurrent Enrollment Change. Some of the decline in enrollment was an intended result of statutory and budget changes to address a problem. Beginning in 2002, the Legislature and Governor both became concerned that a number of districts were inappropriately, and in some cases illegally, claiming state funding for a rapidly increasing number of high school students who were "concurrently enrolled" in CCC. While statute does make provision for some such enrollment, it was generally found that this provision was being abused. In response, the Chancellor called on districts to rein in these practices, and for 2003-04 the Legislature reduced funding for concurrent enrollment by $25 million and tightened related statutory provisions. As a result, high school students concurrently enrolled in community college courses dropped from a peak of about 94,000 in fall 2001 to about 80,000 in fall 2002 and 49,000 in fall 2003. Thus, more than one-quarter of the system's overall headcount drop between fall 2002 and fall 2003 can be explained by the drop in these high school students.

Cause of Remainder of Decline Unclear. The *2003-04 Budget Act* required the Chancellor's Office to report on changes in CCC enrollment for the 2003-04 academic year. Although a final report was due September 1, 2004, at the time this analysis was prepared (early February 2005), CCC could only provide preliminary data and draft reports. Available information suggests two main causes for the remaining enrollment decline (that is, not explained by the tightening of concurrent enrollment regulations):

- ***Reduced Course Offerings.*** The CCC suggests that districts reduced course offerings in spring 2003 in anticipation of possible budget reductions that had been included in the Governor's budget proposal for 2003-04. Although these proposed reductions were largely excluded from the enacted budget, the Chancellor's Office suggests that districts had already prepared for the reductions by hiring fewer part-time faculty and taking other steps to reduce costs. With fewer course offerings, some potential students found there was no space in courses they needed and thus did not enroll.

- ***Increased Fees.*** The Legislature raised student fees at CCC from $11 per unit to $18 per unit starting in fall 2003. Some students likely chose not to enroll at CCC at this higher cost. As noted in the nearby box, available data appear to indicate that the fee increase had no disproportionate impact on student racial and gender groups between fall 2002 and fall 2003.

Little Enrollment Decline Using Full-Time Equivalent (FTE) Measure. While headcount is a useful indicator of "access" in that it measures the number of individuals receiving instruction, it does not accurately reflect the amount of instruction being provided. This is because headcount measures do not distinguish between a full-time student taking 30 units per year and a part-time student taking, say, 6 units per year. For instance, although student headcount dropped about 6.6 percent between fall 2002

Fee Increase Had No Disproportionate Impact on Students

Budget bill language in the 2003-04 and 2004-05 budget acts requires the Chancellor's Office to provide data and analysis on the effect of recent fee increases upon student enrollment. The Chancellor's Office had only been able to provide preliminary information at the time this analysis was prepared. Based on this information, we offer the following conclusions about the changes to the makeup of the student population.

No Disproportionate Effect on Racial and Gender Groups. As shown in the figure, based on available information the recent small decline in enrollment in 2003-04 had no disproportionate effect on racial groups over the one-year period. Similarly, there was no change in the proportion of female and male students.

Small Effects on Age and Income Groups. The only significant change in the makeup of the student population in 2003-04 compared to the prior year relates to age. As shown in the figure, the percentage of CCC students under 18-years-old declined by more than one-quarter (largely reflecting the intended decline in concurrently enrolled students). Students between ages 18 and 29 somewhat increased their share of the student population, while those age 30 and above declined slightly.

The CCC's data show no evidence of disproportionate impact on income groups *as a result of the fee increase*. This likely reflects the fact that needy students are not required to pay fees. (The CCC's preliminary information does suggest there was a "modest" correlation between students' income and their likelihood to be affected by the reduction in course sections in spring 2003.)

(Continued)

and fall 2003, the number of total course "slots" that were taught declined by less than 2 percent. This suggests that, on average, the individual students making up the 6.6 percent headcount decline had been part-time students taking fewer than the average number of units. Indeed, anecdotal evidence suggests that many of these students were taking only one or two courses per semester.

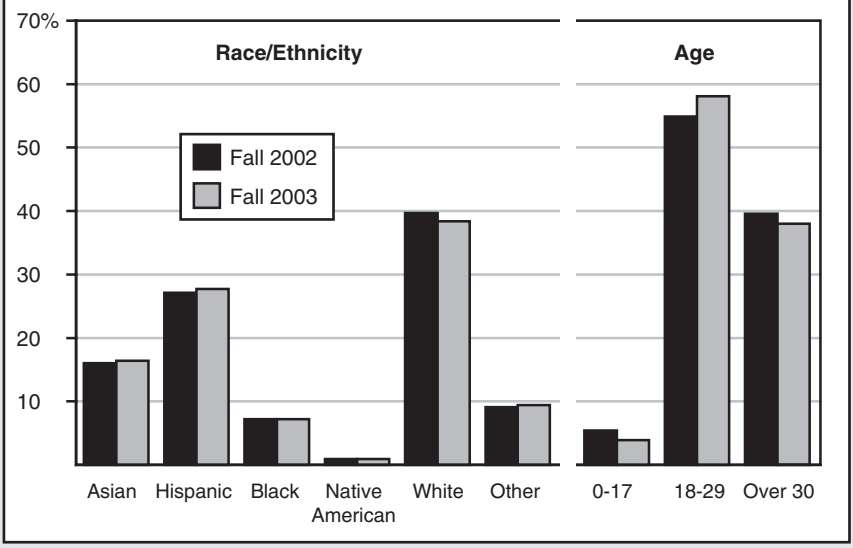
Enrollment Funding

The Governor's budget proposes an augmentation of $141.9 million to fund 3 percent enrollment growth at California Community Colleges. This is about one and one-half times the projected amount of enrollment growth due to underlying population increases. We recommend the Legislature fund this projected level of enrollment (1.9 percent), and redirect the remaining proposed growth funding to other K-14 priorities.

Report Overdue on Student Enrollment in 2004-05. For 2004-05, student fees increased again, from $18 per unit to $26 per unit. The *2004-05 Budget Act* required CCC to provide a report assessing the effect of this fee increase on enrollment by November 15, 2004. As of mid-February 2005, CCC had not yet provided that report.

Student Demographic Change

Percent of Total Headcount Enrollment



State law calls for CCC's annual budget request to include funding for enrollment growth that is at least the rate of increase in the adult population, as determined by the Department of Finance (DOF). For 2005-06, DOF projects that California's adult population will increase by 1.9 percent. This growth rate would translate into about 22,000 additional (FTE) students, at a cost of $91.3 million. The Governor's budget proposes to fund enrollment of about one and one-half times this amount: a 3 percent increase in FTE enrollment, which would fund 34,000 additional students at a cost of $141.9 million.

Recommend 1.9 Percent Enrollment Growth Funding. For 2005-06, we recommend the Legislature provide funding for 1.9 percent enrollment growth. The Master Plan calls on CCC to be open to all adults who can benefit from instruction, and DOF estimates that this eligibility pool will grow by 1.9 percent. Other things being equal, an increase in the eligibility pool should translate into a proportionate increase in enrollment. (We independently estimated the increase in CCC's enrollment based on various demographic factors, and arrived at a similar growth projection of 1.8 percent.)

As noted earlier, enrollment growth at the community colleges has been slowing in recent years, and California's college participation rates are among the highest in the country. In fact, preliminary data and anecdotal evidence suggest that many community college districts will serve fewer FTE students than they are funded to serve in 2004-05. For these reasons, we believe aligning enrollment growth funding with population growth for 2005-06 is a reasonable approach.

Funding Growth at 1.9 Percent Would Free Up Proposition 98 Resources for Other Priorities. The Governor's budget for CCC dedicates new Proposition 98 funding for two main purposes: enrollment growth and a COLA. If the amount of funding for growth were reduced to our recommended level of $91.3 million (to fund an enrollment increase of 1.9 percent), $50.6 million would be freed up for other K-14 priorities.

Reduce Enrollment Funding by $50.6 Million. We therefore recommend the Legislature reduce enrollment funding by $50.6 million, leaving $91.3 million to fund enrollment growth of 1.9 percent. We believe that this amount would be sufficient to fund increased enrollment demand at the community colleges.

STATE'S EFFORT TO EQUALIZE DISTRICT FUNDING SHOULD REMAIN A HIGH PRIORITY

We recommend the Legislature continue to support equalization of community college funding. The Legislature and Governor have already

established that this is an important goal, towards which they committed about one-third of necessary funding in the current year.

As a result of tax base differences that predate Proposition 13 in 1978, coupled with somewhat complex district allocation formulas, community college districts receive different amounts of funding for their students. In 2003-04, average funding per FTE student ranged from about $3,500 to about $8,200, although most districts have levels within a few hundred dollars of the state median of about $4,000. Small funding differences may be acceptable or even desirable (if they reflect real cost differences encountered by different districts). However, the funding differences currently experienced by community college districts have little correlation to underlying costs.

Numerous reports and hearings in recent years have recognized this disparity and have called for efforts to "equalize" funding among districts. In general, equalization can foster:

- ***Increased Fairness.*** Providing all districts with similar levels of funding per FTE student helps to ensure that students in different parts of the state have access to similar levels of educational support, which can translate into similar levels of educational quality and student services.

- ***Accountability.*** The *Master Plan for Higher Education* and state law assign to community colleges a number of educational missions. The state has also called on the community colleges to meet performance expectations in a number of areas, including preparing students to transfer to a four-year institution, awarding degrees and certificates, and improving course completion rates. It is difficult to hold all districts accountable for these standards when the amount of funding provided per student varies from district to district.

2004-05 Budget Act *Initiated Multiyear Equalization Effort.* The *2004-05 Budget Act* included $80 million toward the goal of equalizing community college district funding over three years. The Legislature also enacted Chapter 216, Statutes of 2004 (AB 1108, Committee on Budget and Fiscal Review), which describes the goal of having at least 90 percent of statewide CCC enrollment eventually receive the same level of funding per FTE student, and specifies how the $80 million should be allocated toward that goal. We estimate that the $80 million moves the state about one-third of the way towards its equalization goal.

The Governor proposed the 90th percentile goal for equalization in his budget proposal last year, and called equalizing CCC and K-12 funding "foremost" among various education provisions enacted with the 2004-05 budget. He does not, however, propose that the state continue to move

forward on its CCC equalization goal as part of the 2005-06 budget. We believe it is important to continue the state's commitment toward equalizing community college funding for the reasons mentioned above. It is especially important in light of the state's concern with CCC accountability. (We discuss recently enacted legislation concerning CCC accountability below.)

Consider Additional Funds for Equalization. We recommend, therefore, the Legislature consider allocating additional Proposition 98 funding to equalization, to be allocated in a manner consistent with Chapter 216. While we advise first funding workload increases (such as enrollment growth and cost-of-living increases), we recommend the next priority for additional ongoing Proposition 98 funding go to equalization. We think a target of $80 million—matching the current-year commitment—would make sense, to the extent that funding is available.

GREATER ACCOUNTABILITY NEEDED

With over a million and a half students spread across 109 campuses, the CCC system is large and decentralized. It also has a budget of almost $8 billion in public funds. For these reasons, oversight and accountability measures are critical for ensuring that public resources are being effectively used toward the various missions assigned to CCC by the Master Plan and by statute. The Chancellor's Office is generally charged with some oversight responsibilities. At the same time, the Legislature and Governor also have sought more formalized oversight and accountability provisions in statute. In recent years, evidence of fiscal mismanagement, inappropriately claimed reimbursements for nonexistent courses, and other improprieties by some districts have heightened the state's concern with CCC accountability.

"Partnership for Excellence" Has Expired

In 1998, the Legislature and Governor established the Partnership for Excellence (PFE) program through Chapter 330 (SB 1564, Schiff). In general, the PFE provided additional funding to community colleges in exchange for the commitment to improve their performance in five specified areas, such as the percentage of students who complete courses. A key accountability provision of the PFE called for district- and system-level performance in these specified areas to be reported annually. This information would be available to inform state-level budgeting, and could be used (if the CCC's Board of Governors [BOG] so chose) to influence the allocation of funding among districts. The BOG chose not to pursue this linking of funding to performance. The system made some very modest gains in some of the specified areas, such as workforce development, although to-

wards the end of the program, performance again declined and most of those gains were lost. With the PFE sunsetting in December 2004, the Legislature moved the program's funding ($225 million) into districts' base apportionments. This funding thus remains in district budgets beyond the expiration of the program. (The Governor vetoed $31.4 million of this funding when he signed the *2004-05 Budget Act*, although as we explain below, he has set aside this amount for a possible restoration in the 2005-06 budget.)

District-Level Accountability to Be Developed

CCC Required to Develop New Accountability Measures. The PFE sunsetted on January 1, 2005. As imperfect as the PFE was as an accountability mechanism, the state now has no comprehensive mechanism for monitoring CCC's performance in various critical areas. Recognizing this, the Legislature and Governor enacted Chapter 581 (AB 1417, Pacheco) as part of the 2004-05 budget package. Among other things, Chapter 581 requires the BOG to develop "a workable structure for the annual evaluation of district-level performance in meeting statewide educational outcome priorities," including transfer, basic skills, and vocational education. The BOG is to provide its recommended evaluation structure to the Legislature and Governor by March 25, 2005.

Consistent with Chapter 581, the BOG has consulted with our office, DOF, and various other higher education experts and interested parties as it has been developing its district-level accountability structure. We will advise the Legislature on the BOG's final proposal once it is completed and made public. In general, the Legislature should determine if the accountability mechanism:

- Uses meaningful indicators which measure both CCC's success in meeting minimum standards, and the degree of improvement achieved (or "value added") when students take CCC courses.
- Measures how well both the overall CCC system, and the individual districts, are fulfilling the missions assigned to them by the state.
- Recognizes the differing local needs that are encountered by districts.
- Is useful to the Chancellor's Office for the purpose of ensuring adequate district performance, and to the state for the purpose of monitoring the system's fulfillment of the mission assigned to it by the Master Plan.

Governor's Budget Proposal Makes Restoration of Vetoed Funds Contingent on CCC's Accountability Mechanism. The Governor vetoed $31.4 million of CCC's apportionment funding when he signed the *2004-05 Budget Act*. In his veto message, the Governor indicated that he was willing

to restore this funding, which originally had been used to fund PFE-related improvements, if "district-level goals and performance evaluations are incorporated into the accountability structure" called for in the *2004-05 Budget Act* and Chapter 581. Accordingly, in his budget proposal for 2005-06, the Governor sets aside $31.4 million in new Proposition 98 support for possible appropriation through separate legislation "pending the outcome" of the BOG's proposed accountability mechanism.

We think it is reasonable to link a portion of the funding originally provided for one accountability-related program (the PFE) to a successor accountability program (the district-level accountability system called for in Chapter 581). However, we are concerned that provisional language in the Governor's proposal purports to express the *Legislature's* intent that DOF solely judge the adequacy CCC's proposed accountability program and, by extension, decide whether to restore the $31.4 million. We recommend this language be deleted, as outlined below:

> 4. As a condition of receiving funds appropriated in Schedule (1), the Board of Governors shall continue to assess and report to the Legislature, on or before April 15, data measures required by the current Partnership for Excellence program, scheduled to sunset January 1, 2005. It is the intent of the Legislature that these measures be replaced for reporting and assessment purposes, by district-specific outcome measures being developed by an accountability workgroup established by Chapter 581, Statutes of 2004. ~~It is also the intent of the Legislature that the final accountability measures produced by the workgroup, as approved by Department of Finance, result in the restoration of $31,409,000 to community college apportionments.~~

We plan to advise the Legislature on the bulk of the $31.4 million potential restoration once the BOG provides its proposal. Later in this section we recommend a small amount (about $1.25 million) of this funding setaside be appropriated for expanding a performance-measurement data-sharing system that promises to be useful in helping districts make improvements in the areas of state concern expressed by Chapter 581.

Local Autonomy in Course Offerings Should Be Balanced With State Oversight

Course Offerings Should Emphasize State Priorities. Community college districts (which are governed by locally elected boards of trustees) have considerable autonomy in choosing which courses to offer in any given term. In fact, state regulations empower local districts to undertake any activity or initiate any program that is not in conflict with other laws and not inconsistent with CCC's broad mission. For example, a district could emphasize courses that are transferable to public universities and offer relatively few remedial courses. Another district could offer a much

larger share of its courses in vocational fields and offer relatively few physical education courses.

At the same time, the Legislature has established various priorities for community colleges. Recognizing that existing statutes and regulations do not clearly prioritize the various components of CCC's mission, the Legislature and Governor in recent years have emphasized three state priority areas for CCC course offerings: student transfer to four-year colleges and universities, basic skills, and vocational/workforce training. Toward that end, the 2003-04 and 2004-05 budget acts have included provisions to help ensure that CCC districts in fact observe these priorities.

Criteria for Allocating Apportionment Funding. The *2003-04 Budget Act* included a provision requiring the BOG to adopt criteria for allocating apportionment funding to ensure that courses related to the three state priorities "are provided to the maximum extent possible within budgeted funds." In response, the Chancellor's Office developed a "cap" of 2 percent on the amount of funded credit FTE students that a district could provide outside of the three priority areas. Under the policy, the Chancellor's Office would monitor compliance and work with districts that exceeded the cap to either (1) identify an acceptable reason for exceeding the cap or (2) develop a plan to redirect the district's activity into compliance.

Methodology for Identifying Priority Courses. Concerns were expressed during budget hearings in 2004-05 about how CCC's policy defined and measured (and thus promoted) priority courses. For example, if the criteria for defining a course as meeting the state's priorities were vague or overbroad, the 2 percent cap could become meaningless. To address this concern, the *2004-05 Budget Act* included a provision requiring the BOG to adopt a clear methodology for determining which courses address any of the three priority areas. In response, the BOG defined as meeting state priorities all credit courses that are classified into any of five categories:

- "Transferable" to the University of California and/or the California State University.
- "Basic skills."
- "Occupational."
- Applicable towards any degree.
- English as a Second Language.

While the names of some of these categories appear to correspond to state priority areas, we remain concerned that, as a classification scheme, they are very broadly drawn. Indeed, it is unclear which types of credit courses, if any, are *not* included somewhere in these five categories.

Of greater concern, CCC's methodology excludes all noncredit courses, which make up about 9 percent of funded FTE students. Regulations require only that noncredit courses "meet the needs of" the students who take them. With such vague standards, the Legislature can have no assurance that noncredit courses focus on the state's stated priorities.

Recommend Clearer, More Inclusive Methodology. The CCC's limit on nonpriority courses provides little assurance that transfer, basic skills, and vocational education will in fact be accorded highest priority by districts. This is because the methodology for classifying courses as meeting the state's priorities is so expansive. We believe that the methodology should be refined to better identify courses that reasonably can be considered to address the state's three priority areas. At a minimum, noncredit courses as well as credit courses should be evaluated in determining the extent to which districts are advancing state priorities. We therefore recommend the Legislature amend budget bill language concerning these priorities so as to direct CCC to make these improvements.

> Item 6870-101-0001, Provision 9. Notwithstanding any other provision of law, funds appropriated in Schedule (3) of this item shall only be allocated for growth in full-time equivalent students (FTES) , on a district-by-district basis, as determined by the Chancellor of the California Community Colleges. The chancellor shall not include any FTES from concurrent enrollment in physical education, dance, recreation, study skills, and personal development courses and other courses in conflict with existing law for the purpose of calculating a district's three-year overcap adjustment. The board of governors shall implement ~~the~~ criteria required by provision 5(a) of the Budget Act of 2003 for the allocation of funds appropriated in Schedules (1) and (3), so as to assure that courses related to student needs for transfer, basic skills and vocational/workforce training are accorded the highest priority and are provided to the maximum extent possible within budgeted funds. <u>These criteria shall apply to both credit and noncredit courses. The Chancellor shall report to the Governor and Legislature by December 1, 2005, on the implementation of this provision.</u>

Cal-PASS Helps Districts to Improve Outcomes, Fosters Accountability

We recommend the Legislature allocate to the California Partnership for Achieving Student Success $1 million of the $31.4 million that is set aside for potential restoration. This funding would permit California Community Colleges to continue and expand a program that has been proven to promote better student outcomes and accountability.

In February 2003, the California Partnership for Achieving Student Success (Cal-PASS) was launched by Grossmont-Cuyamaca community

college district using a grant from the Chancellor's Office. The Cal-PASS is a data-sharing system aimed at improving the movement of students from high schools to community colleges to universities.

Student transitions are critical to the success of the educational system. For community colleges they are especially critical. The success of students at community colleges depends in part on how well the K-12 curriculum is aligned with community college courses. In addition, the success of community college students wishing to eventually earn a four-year degree depends to a large extent on how well CCC's curriculum is aligned with that of the universities and colleges to which students transfer. The Cal-PASS collects information on students throughout the state regarding their performance and movement through these various segments. These data are used by faculty consortia, institutions, and researchers to identify potential obstacles to the successful and efficient movement of students between segments. For example, high remediation rates of students who take English at a particular high school and enroll at a particular college could point to a need to better align the English curriculum or standards between these two institutions. Similarly, data concerning course standards and content can help reduce the incidence of students taking unnecessary or inappropriate courses for transfer.

Participation in Cal-PASS by individual institutions is voluntary. Since its inception, the Cal-PASS network has grown from several colleges, universities, and high schools in the San Diego area to more than 700 institutions statewide. Our review has found numerous examples of improved outcomes, increased efficiencies, and cost savings as a result of the Cal-PASS program. Moreover, in 2003 Cal-PASS was endorsed by the Assembly higher education committee, the Senate subcommittee on higher education, and the Joint Committee to Develop an Education Master Plan.

Cal-PASS Can Help Address State's Accountability Concerns. We believe Cal-PASS promotes district-level and system accountability in two ways.

- ***Identifies Problems.*** The Cal-PASS helps districts identify problems in areas of particular concern to the state, including transfer and remediation. Identifying these problems is a first step toward improving performance. The Cal-PASS already has shown its value in this regard in community college districts across the state and across disciplines.

- ***Monitors Progress.*** The Cal-PASS can measure changes in performance over time, thereby providing policymakers with information on how well districts and the system as a whole are responding to state concerns. We note that some of the data elements available through Cal-PASS are directly related to elements in CCC's draft district accountability measures.

Recommend $1.5 Million Base Funding for Cal-PASS. Although Cal-PASS has expanded far beyond its original inception as a pilot program, its grant funding (from the state Chancellor's Office) has not increased and in fact will expire at the end of 2005-06. Based on our review of equipment, staffing, and other costs, we believe that a base budget of $1.5 million per year would ensure the continuation and further expansion of Cal-PASS.

Given that Cal-PASS still has access to about $500,000 in grant funds for 2005-06, we recommend an additional $1 million be directed to Cal-PASS. We recommend this funding be redirected from the $31.4 million that the Governor's budget has set aside pending CCC's response to the accountability requirements of Chapter 581. This would leave almost $30.4 million of the set-aside funds potentially to be restored to district base budgets. In effect, redirecting the $1 million to Cal-PASS would spread the cost of running the Cal-PASS system across all districts at an average cost of less than $1 per FTE student. We believe this is a reasonable cost for the benefits of Cal-PASS.

STUDENT AID COMMISSION (7980)

The Student Aid Commission provides financial aid to students through a variety of grant and loan programs. The proposed 2005-06 budget for the commission includes state and federal funds totaling $1.4 billion. Of this amount, $746 million is General Fund support—all of which is used for direct student aid for higher education. A special fund covers the commission's operating costs.

Below, we first summarize the Governor's budget proposals for the Cal Grant program and the Assumption Program of Loans for Education (APLE). We have concerns with three of these proposals—the reduction to the private university Cal Grant, the "set aside" for the National Guard APLE program, and the size of EdFund's operating surplus (which partly supports the Cal Grant program). We discuss these issues later in this section.

Major Budget Proposals

Figure 1 (see next page) compares the commission's revised 2004-05 budget with the proposed 2005-06 budget. As the figure shows, financial aid expenditures would increase $44.6 million, or 6 percent, from the current year. Virtually all of this increase is due to additional Cal Grant costs ($37.3 million) and APLE costs ($6.9 million). As the figure also shows, in the budget year, General Fund support would increase considerably, in part to backfill a major reduction in support from the Student Loan Operating Fund (SLOF). Whereas $146.5 million in SLOF monies were used to support the Cal Grant program in 2004-05, the Governor's budget proposes to use $35 million in SLOF monies in 2005-06.

Cal Grant Program. Figure 2 (see page E-231) provides a more detailed breakdown of the four major budget proposals relating to the Cal Grant program. The Governor's budget assumes the commission will issue 3,345 additional Cal Grant awards. This represents a 1.3 percent increase from the current year in the total number of Cal Grant awards issued. The

Governor's budget also proposes to increase the value of Cal Grants for University of California (UC) and California State University (CSU) students (to compensate for the proposed undergraduate fee increases), but it would decrease Cal Grants for financially needy students attending private institutions by $873, or 10 percent. (Please see below for a more detailed discussion of the private university Cal Grant issue.)

Figure 1

Student Aid Commission Budget Summary[a]

(Dollars in Millions)

	2004-05 Revised	2005-06 Proposed	Change	
			Amount	Percent
Expenditures				
Cal Grant programs				
Entitlement	$551.0	$608.9	$57.9	11%
Competitive	116.2	124.9	8.7	7
Pre-Entitlement	37.2	7.4	-29.8	-80
Cal Grant C	9.7	10.3	0.6	6
Subtotals—Cal Grant[b]	($714.1)	($751.4)	($37.3)	(5%)
APLE[c]	$34.0	$40.9	$6.9	20%
Graduate APLE	0.2	0.4	0.2	75
National Guard APLE	—	0.2	0.2	—
Law enforcement scholarships	0.1	0.1	—	1
Totals	**$748.5**	**$793.1**	**$44.6**	**6%**
Funding Sources				
General Fund	$589.4	$745.5	$156.1	26%
Student Loan Operating Fund[d]	146.5	35.0	-111.5	-76
Federal Trust Fund[d]	12.6	12.6	—	—
Totals	**$748.5**	**$793.1**	**$44.6**	**6%**

a In addition to the programs listed, the commission administers the Byrd Scholarship and Child Development Teacher and Supervisor programs—both of which are supported entirely with federal funds. It also administers the Student Opportunity and Access program, an outreach program supported entirely with Student Loan Operating Fund monies.

b Includes $46,000 for the Cal Grant T program in 2004-05. The program has been phased out as of 2005-06.

c Assumption Program of Loans for Education.

d These monies pay for Cal Grant costs as well as support and administrative costs.

Figure 2

Major Cal Grant Budget Proposals

Governor's Budget Proposal	Cost (In Millions)
Increase in number of Cal Grant awards (3,345)	$21.6
Increase University of California Cal Grant by 8 percent (raising maximum award from $5,684 to $6,141)	15.3
Increase California State University Cal Grant by 8 percent (raising maximum award from $2,334 to $2,520)	7.9
Decrease private university Cal Grant by 10 percent (lowering maximum award from $8,322 to $7,449)	-7.5
Total	**$37.3**

Figure 3 (see next page) shows growth in the number of Cal Grant awards from 2003-04 (actual) to 2005-06 (projected). The budget assumes the commission will issue almost 260,000 Cal Grants in 2005-06. It assumes a modest increase (2.3 percent) in the number of new High School Entitlement awards, and no increase in the number of new Transfer Entitlement awards (though the commission indicates it currently is analyzing transfer patterns and might revise this estimate in the spring). Per statute, the budget assumes the commission will award 22,500 new Competitive Cal Grant awards and 7,761 new Cal Grant C awards. (The Competitive Cal Grant program is designed for older students whereas the Cal Grant C program is designed for students enrolled in short-term vocational programs.) The commission is in the midst of studying renewal patterns in the competitive program to determine if its associated budget-year projections need to be revised. The budget assumes only 1,660 pre-entitlement renewal awards—indicating that almost all pre-entitlement recipients already have completed college. In a couple of years, the program will be entirely phased out.

APLE Program. The Governor's budget includes a $6.9 million General Fund augmentation to cover loan-forgiveness costs associated with APLE warrants issued in previous years. The Governor's budget proposes to issue 7,700 new APLE warrants—the same level as in the current year. The Governor's budget also includes $200,000 to fund a maximum of 100 new National Guard APLE warrants. (Please see below for a more detailed discussion of this proposal.)

Figure 3

Growth in Cal Grant Participation

	2003-04 Actual	2004-05 Revised	2005-06 Projected	Change From 2004-05	
				Number	Percent
High School Entitlement					
New awards	60,359	63,000	64,449	1,449	2.3%
Renewal awards	82,486	106,960	114,371	7,411	6.9
Subtotals	(142,845)	(169,960)	(178,820)	(8,860)	(5.2%)
Transfer Entitlement					
New awards	2,270	4,300	4,300	—	—
Renewal awards	209	1,075	2,895	1,820	169.3%
Subtotals	(2,479)	(5,375)	(7,195)	(1,820)	(33.9%)
Competitive					
New awards	22,391	22,902	22,500	-402	-1.8%
Renewal awards	28,717	35,193	33,670	-1,523	-4.3
Subtotals	(51,108)	(58,095)	(56,170)	(-1,925)	(-3.3%)
Pre-Entitlement Renewal Awards	28,010	8,135	1,660	-6,475	-79.6%
Cal Grant C					
New awards	7,580	7,761	7,761	—	—
Renewal awards	6,500	6,884	7,964	1,080	15.7%
Subtotals	(14,080)	(14,645)	(15,725)	(1,080)	(7.4%)
Cal Grant T Renewal Awards	255	15	—	-15	-100.0%
Totals	**238,777**	**256,225**	**259,570**	**3,345**	**1.3%**

Private University Cal Grant

The Governor's budget proposes to reduce the maximum Cal Grant for students attending private colleges and universities by $873, or 10 percent—lowering the award from its current-year level of $8,322 to $7,449. This would be the second consecutive reduction. Between 2003-04 and 2004-05, the award was reduced by $1,386, or 14 percent. Approximately 12,100 financially needy students attending private universities likely would be affected by the proposal, which would be imposed only on new Cal Grant recipients. Of these students, approximately 8,500 would expe-

rience the reduction in the budget year whereas approximately 3,600 others would experience the reduction in 2006-07. (This delayed impact is due to a state policy that does not provide fee assistance to most first-year Cal Grant B recipients, even though they represent the financially neediest students served by the Cal Grant program.) Continuing students would retain the higher award rates they are receiving in the current year. The Governor's budget assumes the proposal would generate $7.5 million in General Fund savings. Below, we discuss our concerns with this proposal.

Create Parity for Financially Needy Students Attending Public and Private Universities

We recommend the Legislature establish in statute a policy and an associated award formula that would link the Cal Grant for financially needy students attending private universities to the General Fund subsidy the state provides for financially needy students attending public universities. Under our recommended formula, the private university Cal Grant would be $10,568 in 2005-06. Providing this higher award amount to new 2005-06 recipients would cost $26.6 million relative to the Governor's budget. We recommend the Legislature use additional Student Loan Operating Fund surplus monies to cover this cost (please see final write-up of this section).

Since 2001-02, the state has had neither an explicit nor an implicit policy for determining the private university Cal Grant. Without a policy, Cal Grant decisions can appear arbitrary, the program can become disconnected from its primary objective, and the program can be more difficult to oversee and evaluate. For these reasons, we recommend the Legislature establish a statutory private university Cal Grant policy that is linked with an associated award formula that can be used for budgeting purposes. We recommend a policy and related formula that would provide a simple means by which the state could ensure that it contributes about the same amount of support for all financially needy students.

Since 2000, State Has Not Had Private University Cal Grant Policy. When Chapter 403, Statutes of 2000 (SB 1644, Ortiz), created the new Cal Grant Entitlement program, the state's existing private university award policy was replaced with a new provision that linked the private university Cal Grant to whatever amount was specified in the annual budget act. For the next three consecutive years, the private university award was maintained at its 2000 level before being reduced in the current year.

Without a Policy, Funding Decisions Can Appear Arbitrary. Without an award policy, private university Cal Grant decisions can appear arbitrary. For example, in the current year, college costs (including fees and tuition)

increased for public and private students alike. However, the Cal Grant award increased for public university students while the private university Cal Grant declined.

Without a Policy, Program Can Become Disconnected From Its Purpose. Without a policy to guide annual private university award decisions, the Cal Grant program can quickly become disconnected from its primary purpose. Although maintaining access and choice for all financially needy students is the primary goal of the Cal Grant program, the state's current-year action appeared to promote access to public institutions while dampening the potential for some financially needy students to attend private institutions. This is of particular concern because some private institutions are very specialized and essentially have no public university equivalent, yet they may best meet a financially needy student's educational objective. Access also is of particular concern because a significant proportion of financially needy, baccalaureate-seeking students attend *local* four-year private universities—living at home to substantially reduce overall college costs. For example, more than one-third of the financially neediest students (with family incomes less than $30,000) attending private four-year colleges live at home. Moreover, of the 25 private schools that enroll the greatest number of Cal Grant recipients (please see nearby box), all but a handful are relatively small regional universities with relatively small endowments. These institutions would not be as likely to backfill the proposed reduction in the state's award.

Without a Policy, Program Is Difficult to Evaluate. One of the primary benefits of any statutory policy is that it can clarify the objective of a program, thereby allowing the Legislature to monitor and track its performance. Without a policy, the Legislature cannot determine whether the private university award is fulfilling its objective. A statutory policy could establish criteria upon which to evaluate the private university award's success in promoting access, choice, and persistence among financially needy students as well as its success in expanding general higher education enrollment capacity.

State's Former Statutory Policy Sought Parity. Prior to 2000, the state had a longstanding statutory policy that guided private university Cal Grant decisions. Statute then specified, "The maximum award for students attending nonpublic institutions shall be set and maintained at the estimated average General Fund cost of educating a student at the public four-year institutions of higher education." Toward this end, statute included a formula that set the private university Cal Grant at 75 percent of the average General Fund cost per student at CSU plus the average of UC and CSU's student fees (both systemwide and campus-based).

Our Modified Formula Promotes Greater Parity. Our recommendation is consistent with the intent of the state's former statutory policy to provide comparable General Fund support for financially needy students attending public and private schools. We recommend modifying the previous formula to better meet this intent. The earlier formula was somewhat arbitrary in linking the award to "75 percent of the average General Fund cost per student at CSU." Our modified formula is based on the enrollment-weighted General Fund subsidy provided for students attending UC and CSU. We think this is a more accurate reflection of how much the state provides for an additional public university student. Second, our modified formula is based on the marginal cost rather than the average cost, as this too is a better reflection of the amount the state pays for each additional (rather than existing) student. Third, the earlier formula accounted for both systemwide and campus-based fees to reflect former Cal Grant policies. Our modified formula reflects current Cal Grant policies, which link awards only to systemwide fees. All three modifications establish a simple, ongoing means for equalizing what the state provides for financially needy students at public and private universities.

Figure 4 compares the support the state provides for different groups of financially needy students. As reflected in the figure, the Governor's proposed private university Cal Grant award would be 15 percent less

Figure 4

Comparing State Support for Financially Needy Students

	2005-06
University of California	
General subsidy	$7,588
Cal Grant	6,141
Total subsidy	$13,729
California State University	
General subsidy	$6,270
Cal Grant	2,520
Total subsidy	$8,790
Private University Cal Grant	
Proposed rate	$7,449
LAO-formula rate	10,568
Former statutory rate	10,694

than the level of General Fund support provided for financially needy students at CSU and 46 percent less than the level of General Fund support provided for financially needy students at UC. Also reflected in the figure, the budget-year private university rate generated by our recommended formula would be just slightly less than what the award would have been using the state's former statutory formula.

Fiscal Implication of New Parity Policy. Increasing the private university Cal Grant to $10,568 for new 2005-06 recipients would cost $26.6 million relative to the Governor's budget. (By comparison, the Governor's budget proposal includes a $23 million augmentation for UC and CSU Cal Grants in the budget year.) We recommend the Legislature use surplus SLOF monies to cover this budget-year cost. In 2006-07, the cost of the higher private university grant would increase by approximately $8.3 million as second-year Cal Grant B recipients began receiving a fee award (rather than only a subsistence award). The Legislature also may want to consider increasing the award for new Cal Grant recipients in the current year, who were subject to the 14 percent award reduction. We estimate providing the higher award of $10,568 for these students would cost an additional $25.5 million in 2005-06.

In sum, we recommend the Legislature adopt a policy that would seek parity between state support provided for financially needy students attending public and private universities. This policy could help guide annual private university Cal Grant decisions, thereby making them seem less arbitrary. It also would support the primary objective of the Cal Grant program—to promote access and choice for all financially needy students. Finally, having an explicit policy could enhance the Legislature's ability, on an ongoing basis, to assess the public benefit of the private university Cal Grant.

NATIONAL GUARD APLE PROGRAM

As established in 2003 and amended in 2004, the National Guard APLE program offers loan forgiveness as an incentive for more individuals to enlist or re-enlist in the National Guard, State Military Reserve, and Naval Militia. Specifically, qualifying members have a portion of their education loans forgiven after each year of military service—$2,000 after their first year of service and $3,000 after their second, third, and fourth years of service—for total loan forgiveness of $11,000. The annual budget act has not yet authorized the commission to issue any National Guard warrants.

Private University Cal Grant Helps Financially Needy Students Attending Diverse Set of Institutions

To help answer some private university Cal Grant questions that often arise, we list below the 25 private schools that enrolled the greatest number of Cal Grant recipients in 2004-05. Of the 25 schools, 23 are four-year institutions whereas 2 are two-year institutions. Seventeen are nonprofit institutions whereas eight are for-profit institutions. Two schools (Stanford and the University of Southern California) have endowments that exceed $1 billion, six schools have endowments that exceed $100 million, and the remaining nonprofit schools have relatively small endowments. These 25 schools enroll just about one-half of all private university Cal Grant recipients. In total, new Cal Grant recipients in 2004-05 are enrolled at 191 private institutions.

Private Institutions Enrolling the Greatest Number of Cal Grant Recipients

(2004-05)

Private Institution	Cal Grant Recipients	Private Institution	Cal Grant Recipients
University of Southern California	838	University of San Diego	231
University of Phoenix[a]	572	Saint Mary's College of California	215
Devry University, Pomona[a]	488	Westwood College of Technology[a]	199
Loyola Marymount University	392	University of Redlands	194
University of the Pacific	348	California Baptist University	194
Fashion Institute of Design[a,b]	334	The Art Institute of California, Los Angeles[a]	192
University of Laverne	306	Universal Technical Institute[a,b]	178
Azusa Pacific University	299	American Intercontinental University[a]	175
University of San Francisco	278	Santa Clara University	172
Mount St. Mary's College	264	La Sierra University	158
Stanford University	253	The Art Institute of California, San Francisco[a]	153
Chapman University	236	Fresno Pacific University	151
Biola University	232		

[a] For-profit institutions.

[b] Two-year institution.

New Warrants Have No Budget-Year Cost

Because no National Guard warrants have been issued to date, and individuals must complete one year of military service prior to receiving loan forgiveness, the commission will incur no associated program costs in 2005-06. Thus, the Governor's budget prematurely funds the program. We therefore recommend the Legislature capture the associated $200,000 as General Fund savings.

The Governor's budget proposes to authorize up to 100 new National Guard APLE warrants. It also includes $200,000 for the program, with accompanying budget bill language that "these funds shall remain available through 2006-07." Because warrant-holders must complete one year of military service before receiving loan forgiveness, the state would not begin incurring a cost for a new National Guard APLE warrant (as is the case with all APLE warrants) until at least one year after it is originally issued. Thus, no funding would be needed in the budget year. Moreover, the Governor's proposal to set aside 2005-06 monies that will not be needed until 2006-07 is inconsistent with existing APLE funding practices. Specifically, the state has a long history of funding APLE warrants only as payment on them becomes due. This helps ensure funds are provided when needed. We recommend the Legislature continue to adhere to its existing budget practice and pay for any new warrants when payment becomes due. Thus, we recommend the Legislature capture the unneeded $200,000 as General Fund savings.

EDFUND OPERATING SURPLUS

Chapter 961, Statutes of 1996 (AB 3133, Firestone), gave the commission the authority to establish an auxiliary organization for purposes of administrating the Federal Family Education Loan (FFEL) program. Toward this end, the commission created EdFund, which, consistent with statute, functions as a nonprofit public benefit corporation. Colleges and universities that are interested in participating in the FFEL program may choose to work with EdFund or one of several other independent guaranty agencies. Alternatively, colleges and universities may participate in the Federal Direct Student Loan program, in which case their student loans are guaranteed and administered directly by the federal government.

After Six Years of Increasingly Large Annual Surpluses, EdFund Had $267 Million Cumulative Surplus. From federal fiscal year (FFY) 1997-98 through FFY 2002-03, EdFund experienced increasingly large annual operating surpluses. In 2002-03, EdFund's annual surplus reached $108 million. EdFund's annual operating expenses that year were $118 million, so it was generating about twice as much revenue as it needed to cover its

operating costs. By the close of 2002-03, EdFund was carrying a cumulative surplus of $267 million. EdFund attributes these surpluses to three primary factors—an increase in its loan volume as well as its success in default prevention and loan collections.

Current-Year "Swap" Works as Intended. In 2004-05, the state decided to use $146.5 million in SLOF monies to cover a portion of Cal Grant costs. The swap worked as intended—helping to maintain existing Cal Grant benefits for most students, reducing EdFund's surplus without threatening the viability of the agency, and relieving the General Fund. Even after accounting for this swap, EdFund has a cumulative surplus of $160 million (as of September 2004).

Use Larger Budget-Year Swap to Restore Cal Grant Benefits

We recommend the Legislature use an additional $26.6 million in Student Loan Operating Fund surplus monies to restore Cal Grant benefits for financially needy students attending private universities (thereby reducing the cumulative surplus to a more moderate level).

The Governor's budget proposes to use $35 million in SLOF surplus monies to support the Cal Grant program. In essence, it swaps $35 million in SLOF surplus monies for General Fund monies. We recommend the Legislature increase the swap by $26.6 million—for a total of $61.6 million—to restore the current-year and proposed reductions to the private university Cal Grant. If EdFund generated no additional operating surplus in FFY 2004-05, our recommendation would reduce EdFund's cumulative surplus from $160 million to $98 million. This equates to roughly a nine-month reserve. We think, for a nonprofit public agency, this is still a substantial reserve level—one that would not reduce EdFund's viability as a guaranty agency.

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E-193 ■ **Score $25.5 Million in Fee Revenue From Second-Year Phase In of Excess-Unit Fee Initiative ($1.1 Million for UC and $24.4 Million for CSU).** The excess-unit fee policy, initiated in the current year and being phased in over a five-year period, requires students (with certain exceptions) to pay full cost for excess units (more than 110 percent of that needed to obtain their degree). Despite being the second-year phase in of the excess-unit fee policy, the 2005-06 budget proposal does not reflect any associated increase in fee revenue. We recommend the Legislature score the revenue that is to be generated from the surcharge policy in the budget year ($25.5 million).

E-195 ■ **Increase California Community Colleges (CCC) Fee to $33 Per Unit. Score $101 Million in Additional CCC Fee Revenue**. This higher fee, to be charged only to middle-income and wealthy students, would generate about $100 million in additional revenue for CCC. The federal government, in turn, would fully reimburse those fee-paying students with family incomes up to $105,000 (if they had sufficient tax liability). It would partially reimburse those fee-paying students with family incomes up to $160,000. In total, these middle- and upper middle-income students would receive approximately $50 million in federal aid. Financially needy students, on the other hand, are entitled to have their fees waived (through a state aid program) and thus should pay nothing even with fees being increased.

University of California (UC)

E-202 ■ **Alternative Budget Proposal for UC.** Based on our review of the UC's funding needs for 2005-06, we recommend an alternative to the Governor's budget for the university. Our alternative would increase funding in the budget year to maintain the Master Plan's commitment to student access, while avoiding the programmatic reductions proposed by the Governor. At the same time, our proposal would free up $57 million in General Fund support to address other priorities.

California State University (CSU)

E-208 ■ **Adopt the Legislative Analyst's Office Alternative Budget for CSU.** Based on our review of CSU's funding needs for 2005-06, we recommend an alternative to the Governor's budget for the university. Our alternative would increase funding in the budget year to maintain the Master Plan's commitment to student access, while avoiding the programmatic reductions proposed by the Governor. At the same time, our proposal would free up $71.5 million in the General Fund to address other priorities.

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California Community Colleges (CCC)

E-219 ■ **Fund Enrollment Growth of 1.9 Percent.** The Governor proposes to fund enrollment growth of 3 percent. We recommend funding enrollment growth of 1.9 percent, which is the same rate as adult population is projected to grow. We recommend the associated savings ($50.6 million) be redirected to other K-14 priorities.

E-220 ■ **Continue to Advance Equalization Effort.** Recommend the Legislature continue the effort, begun in the current year, to equalize per-student funding among community college districts. We recommend equalization be made a funding priority for new Proposition 98 funding that is not needed to fund workload increases.

E-222 ■ **Clarify Accountability Expectations.** We recommend two changes to provisional language in the Governor's budget proposal in order to clarify the state's expectations about CCC's recent accountability efforts.

E-226 ■ **Fund the California Partnership for Achieving Student Success. Increase Item 6870-101-0001 by $1 Million.** Recommend the Legislature fund the continuation and expansion of an important and proven program that improves district performance and can assist in accountability efforts.

Student Aid Commission

E-233 ■ **Create Parity for Financially Needy Students Attending Public and Private Universities. Increase Item 7980-101-0001 by $26.6 Million.** Recommend the Legislature provide the same amount of support for financially needy students at public and private universities. This would help ensure that the Cal Grant program continued to promote access and choice for all financially needy students.

E-238 ■ **New National Guard Assumption Program of Loans for Education Warrants Have No Budget-Year Cost. Reduce Item 7980-101-001 by $200,000.** Given no National Guard warrants have been issued to date, and individuals must complete one year of military service prior to receiving state benefits, the state would incur no associated program cost until at least 2006-07. Rather than setting aside funds even though they would not be needed, recommend the Legislature capture $200,000 as General Fund savings.

E-239 ■ **Use Larger Budget-Year Swap to Restore Cal Grant Benefits. Increase Reimbursements to Item 7980-101-0001 by $26.6 Million.** Recommend the Legislature designate $61.6 million (or $26.6 million more than proposed in the Governor's budget) in Student Loan Operating Fund surplus monies to restore Cal Grant benefits for all financially needy students. This larger swap would reduce EdFund's cumulative surplus from $160 million to about $98 million. This equates to roughly a nine-month operating reserve—still a healthy reserve for the agency.

2013-14

Governor's Budget Summary

To the California Legislature
Regular Session 2012-13

Edmund G. Brown Jr. Governor
State of California

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GOVERNOR

Edmund G. Brown Jr.

January 10, 2013

To the Members of the Senate and the Assembly of the California Legislature:

California today is poised to achieve something that has eluded us for more than a decade — a budget that lives within its means, now and for many years to come.

We are in this favorable position both because of the huge budget reductions that you have made in the last two years, and because the people voted for Proposition 30.

Under this budget, K-12 school districts will see an increase in funds. School districts serving those students who have the greatest challenges will receive more generous increases — so that all students in California have the opportunity to succeed. This budget also focuses more responsibility and accountability on those who are closest to our students.

This budget proposes annual funding increases for public higher education. The goal is to provide our students with a solid and affordable education. It challenges the leaders of our higher education system to do better by our students by deploying their teaching resources more effectively.

This budget takes the next step to implement federal health care reform. Given the complexity and financial risk, I urge you to expand our health care system in ways that are both affordable and sustainable.

This budget finally puts California on a path to long-term fiscal stability. What must be avoided at all costs is the boom and bust, borrow and spend, of the last decade. Fiscal discipline is not the enemy of democratic governance, but rather its fundamental predicate. That is the spirit that I trust will characterize our work together in the coming year.

With respect,

s/ Edmund G. Brown Jr.

Edmund G. Brown Jr.

STATE CAPITOL • SACRAMENTO, CALIFORNIA 95814 • (916) 445–2841

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2013-14 Budget Summary

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Introduction

In 2011, the state faced $20 billion in expected annual gaps between its revenues and spending. Just two years later, California is on its most stable fiscal footing in well over a decade. With the tough spending cuts enacted over the past two years and new temporary revenues provided by the passage of Proposition 30, the state's budget is projected to remain balanced for the foreseeable future.

The Budget invests in both K-12 and higher education. These investments are critical to provide Californians, regardless of their financial circumstance, access to high-quality academic and career education, improve educational attainment, and support critical thinking and civic engagement—thereby strengthening the foundation for sustainable growth. The Budget also expands health care coverage as the state implements federal health care reform. It also preserves the state's safety net and pays down debt.

Despite the dramatic budgetary changes of the past two years, there remain a number of major risks and pressures that threaten the state's new-found fiscal stability, including the overhang of billions of dollars in debt accumulated in prior years.

Achieving Fiscal Balance

When Governor Brown took office, the state faced a $26.6 billion short-term budget problem and estimated annual gaps between spending and revenues of roughly $20 billion. The 2011-12 and 2012-13 budgets rejected the past reliance on gimmicks,

borrowing, and deferrals. These two budgets addressed the $20 billion annual deficit through spending cuts, primarily in corrections, health and human services, and education. In total, these budgets provided three dollars of spending cuts for every dollar in temporary tax revenues approved by the voters.

The two budgets achieved the following goals:

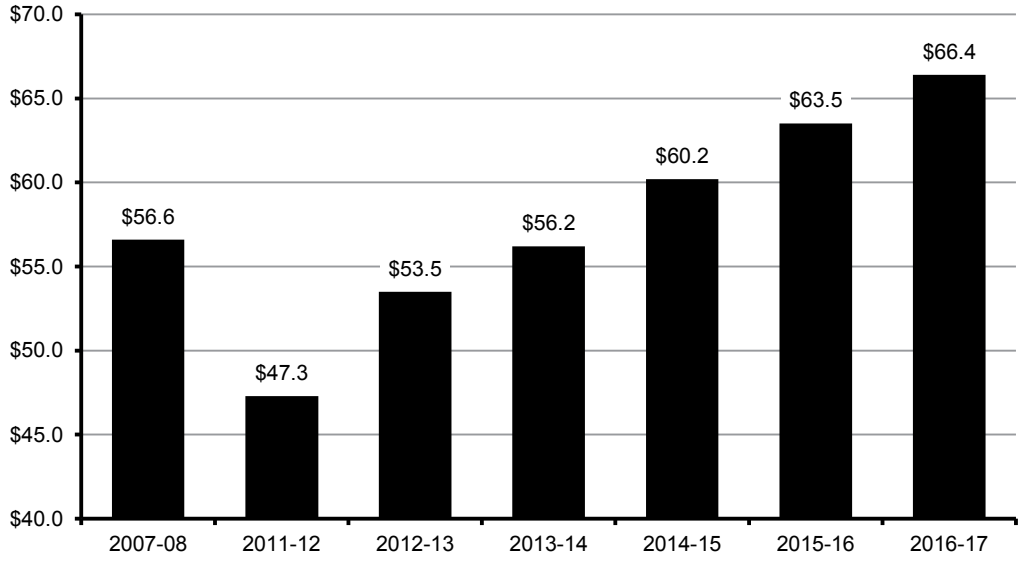
- Realigning public safety programs to bring government closer to the people.
- Implementing a downsizing plan for the California Department of Corrections and Rehabilitation. The plan is intended to satisfy the U.S. Supreme Court's order requiring reduced crowding and end federal court oversight of our prison system. It will reverse the trend of prison spending that has consumed a growing percentage of the General Fund budget. Over time, spending will decline from 11 percent to 7.5 percent of the General Fund.
- Eliminating redevelopment agencies to increase funding for schools, police, fire, and other core local services.
- Refocusing the state's welfare program on getting people back to work. The total number of months an adult can receive a monthly cash benefit has been reduced from 60 months to 48 months. Furthermore, the benefit is only provided to the adult for up to 24 months unless the individual is meeting federal work requirements. The Budget provides specific funding to implement these reforms.
- Making tough cuts across state government to align spending with available tax dollars. Grants to low-income seniors and persons with disabilities (State Supplementary Payment) have been reduced to 1982 levels. CalWORKs grants have been reduced to below 1987 levels. The Williamson Act subventions, child care and dependent tax credit refunds, and the Healthy Families Program were eliminated.
- Reducing the state workforce by more than 30,000 positions. The state workforce is at its lowest level as a share of the state's population in almost a decade—and California already had one of the nation's lowest levels of government employment.
- Overall General Fund spending is down from its peak of $103 billion in 2007-08 to $93 billion in 2012-13, a decrease of $10 billion, or 10 percent. As a share of the economy, General Fund spending in 2011-12 and 2012-13 remains at its lowest level since 1972-73.

While the state has made very difficult programmatic reductions over the past two years, California has maintained its safety net for the state's neediest and most vulnerable residents. Compared to other states, it continues to provide broader health care coverage to a greater percentage of the population, including in-home care; guarantees access to services for persons with developmental disabilities; makes available higher cash assistance to families and continues that assistance to children after their parents lose eligibility; and provides very generous financial aid to those seeking higher education in California.

Reinvesting in Education

Proposition 30, the Governor's Initiative, was premised on the need to reinvest in education. For the first time since the recession began in 2008, with the passage of the Initiative, the Governor's Budget reinvests in, rather than cuts, education funding. As shown in Figure INT-01, the minimum guarantee of funding for K-14 schools was $56.6 billion in 2007-08 and sank to $47.3 billion in 2011-12. From this recent low, funding is expected to grow to $66.4 billion in 2016-17, an increase of $19 billion (40 percent).

Figure INT-01
Budget Reinvests in Education
(Dollars in Billions)



K-12 Education

For K-12 schools, funding levels will increase by almost $2,700 per student through 2016-17, including an increase of more than $1,100 per student in 2013-14 over 2011-12 levels. This reinvestment also provides the opportunity to correct historical inequities in school district funding. By allocating new funding to districts on the basis of the number of students they serve, all California school districts can improve. By committing the most new funding to districts serving English language learners and low-income students, the Budget ensures that our educational system supports equal opportunity for all Californians. This new funding will be coupled with new, but simplified, accountability measures. The goal is to ensure sufficient flexibility at the local level so that those closest to the students can make the decisions.

Higher Education

The budget plan also invests in the state's higher education system to maintain the quality and affordability of one of California's greatest strengths. Since 2007-08, systemwide tuition and fees have increased by $5,556 (84 percent) at the University of California and by $2,700 (97 percent) at the California State University. The Budget provides stable funding growth over multiple years and should eliminate the need for further tuition increases—if the universities rise to the challenge by deploying their teaching resources more effectively. By focusing on reducing the time it takes a student to successfully complete a degree, the state can ensure a system that is financially sustainable over the long term. For the state's universities and community colleges, the Budget provides 5 percent growth to each system. A similar level of funding is proposed to be provided in future years.

Expanding Health Care

Medi-Cal, the state's Medicaid health care program for low-income families, currently serves one out of every five Californians (more than 8 million individuals). The program currently receives 20 percent of the General Fund budget. As the state implements its commitment to federal health care reform, these numbers will increase. The Budget includes $350 million General Fund to begin to pay for this federally required expansion of coverage.

In addition to the required expansion of coverage, states have the option under federal health care reform to expand coverage to include medically indigent adults. The federal

government promises to provide 100 percent funding in the short term for much, but not all, of the costs associated with the expansion. States will bear a portion of expansion costs on a permanent basis. The Budget outlines two possible approaches to the optional expansion—a state-based approach or a county-based approach. Each approach has its own set of strengths, challenges, risks, and benefits.

Expansion of health care under either approach will have a significant effect on both state and county finances. Under the current system, counties provide health care to medically indigent adults using a combination of their own and state 1991 realignment funds. The implementation of health care reform provides a unique opportunity to focus on the future of the state-county relationship. The goal is to fairly allocate risk, strengthen local flexibility, and clearly delineate the respective responsibilities of the state and the counties.

A Balanced Budget Plan for the Coming Years

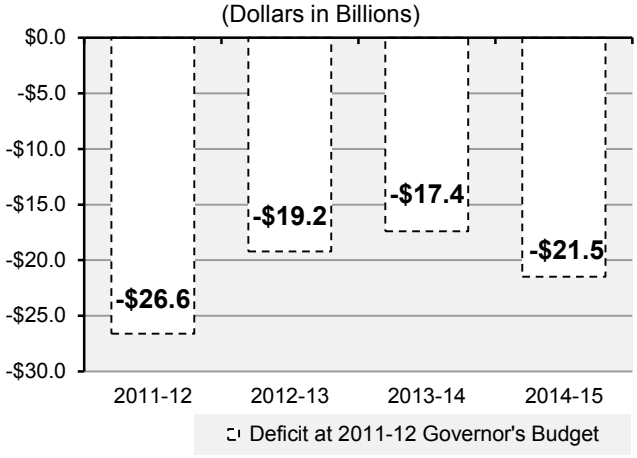
The Budget proposes a multiyear plan that is balanced, maintains a $1 billion reserve, and pays down budgetary debt from past years. Overall General Fund spending is projected to grow by 5 percent, from $93 billion in 2012-13 to $97.7 billion in 2013-14. The vast majority of the spending growth is in education and health care.

Absent changes, the 2013-14 budget is projected to be balanced—but without an adequate reserve. To create a $1 billion reserve, the Budget proposes:

- Suspending four newly identified mandates. ($104 million)
- Using 2012-13 funds appropriated above the Proposition 98 minimum guarantee to prepay obligations to schools under the *CTA v. Schwarzenegger* settlement. ($172 million)
- Continuing the use of miscellaneous state highway account revenues to pay for transportation bond debt service. ($67 million)
- Extending the hospital quality assurance fee. ($310 million)
- Extending the gross premiums tax on Medi-Cal managed care plans. ($364 million)

Under current projections, the Budget is expected to remain in balance in future years. This represents the first time in over a decade that future spending is expected to stay within available resources. Figure INT-02 shows the roughly $20 billion annual shortfalls projected just two years ago that have been eliminated.

Figure INT-02
Last Two Budgets Have Eliminated $20 Billion Annual Shortfalls*
(Dollars in Billions)



*Under current projections, the state would have operating surpluses of $851 million in 2013-14, $47 million in 2014-15, $414 million in 2015-16, and $994 million in 2016-17.

The state's budget remains balanced only by a narrow margin. The 2012 Budget Act assumed and spent the revenue provided by Proposition 30. In addition, this revenue is temporary, with the sales tax expiring at the end of 2016 and the income tax expiring at the end of 2018. The state must begin to plan now to ensure that the budget will remain balanced after the revenue expires.

A number of risks could quickly return the state to fiscal deficits:

- In addressing its own fiscal challenges, the federal government could shift costs to the state.
- While the Budget projects modest economic growth, the pace of the nation's and state's economic recovery remains uncertain.

- The federal government and the courts have hindered the state's past efforts to reduce spending and could again interfere with the successful implementation of budget actions authorized in 2011-12 and 2012-13.
- Rising health care costs will continue to strain the state budget.

The state's budget challenges have been exacerbated by the Wall of Debt—an unprecedented level of debts, deferrals, and budgetary obligations accumulated over the prior decade. In 2013-14 alone, the state will dedicate $4.2 billion to repay this budgetary borrowing—paying for the expenses of the past, instead of meeting current needs. Moving forward, continuing to pay down the Wall of Debt is key to increasing the state's fiscal capacity. In 2011, the level of outstanding budgetary borrowing totaled $35 billion.

Figure INT-03

Budget Plan Would Reduce Wall of Debt to Less than $5 Billion

(Dollars in Billions)

	End of 2010-11 [1/]	End of 2012-13 [2/]	End of 2016-17 [2/]
Deferred payments to schools and community colleges	$10.4	$8.2	$0.0
Economic Recovery Bonds	7.1	5.2	0.0
Loans from Special Funds	5.1	4.1	0.0
Unpaid costs to local governments, schools and community colleges for state mandates	4.3	4.9	2.5
Underfunding of Proposition 98	3.0	2.4	0.0
Borrowing from local government (Proposition 1A)	1.9	0.0	0.0
Deferred Medi-Cal Costs	1.2	1.7	1.1
Deferral of state payroll costs from June to July	0.8	0.7	0.7
Deferred payments to CalPERS	0.5	0.4	0.0
Borrowing from transportation funds (Proposition 42)	0.4	0.2	0.0
Total	**$34.7**	**$27.8**	**$4.3**

[1/] As of 2011-12 May Revision

[2/] As of 2013-14 Governor's Budget

As shown in Figure INT-03, the debt has already been reduced to less than $28 billion. Under current projections, it will be reduced to less than $5 billion by the end of 2016-17.

Figure INT-04

Unfunded Retirement Liabilities

	($ in Billions)
State Retiree Health	$62.1
State Employee Pensions	38.5
Teacher Pensions	64.5
University of California Employee Pensions	12.8
Judges' Pensions	3.3
Total	**$181.2**

California will still need to address other looming liabilities, such as the deficit in the state's Unemployment Insurance Fund and the more than $100 billion in unfunded liabilities in retiree health and pension systems. In addition, as Figure INT-04 also shows, the retirement systems for University of California employees and teachers have accumulated $77 billion in liabilities which will need to be addressed.

The state has $37.6 billion in authorized infrastructure bonds that have yet to be sold. Nevertheless, this sum is relatively small when compared to the money California must spend to maintain and modernize its infrastructure in the coming years.

The boom and bust in our state's budget over the last decade is something we should not repeat. Instead, the state must live within its means, pay down debt, and build up a "rainy day" fund — all to ensure a stable government that earns the respect of the citizens that pay for it.

Summary Charts

This section provides various statewide budget charts and tables.

Figure SUM-01
2013-14 Governor's Budget
General Fund Budget Summary
(Dollars in Millions)

	2012-13	2013-14
Prior Year Balance	-$1,615	$785
Revenues and Transfers	$95,394	$98,501
Total Resources Available	**$93,779**	**$99,286**
Non-Proposition 98 Expenditures	$55,487	$56,780
Proposition 98 Expenditures	$37,507	$40,870
Total Expenditures	**$92,994**	**$97,650**
Fund Balance	**$785**	**$1,636**
Reserve for Liquidation of Encumbrances	$618	$618
Special Fund for Economic Uncertainties	$167	$1,018

Figure SUM-02
General Fund Expenditures by Agency
(Dollars in Millions)

	2012-13	2013-14	Change from 2012-13 Dollar Change	Change from 2012-13 Percent Change
Legislative, Judicial, Executive	$2,044	$2,546	$502	24.6%
Business, Consumer Services & Housing	217	645	428	197.2%
Transportation	183	207	24	13.1%
Natural Resources	2,022	2,062	40	2.0%
Environmental Protection	47	46	-1	-2.1%
Health and Human Services	27,121	28,370	1,249	4.6%
Corrections and Rehabilitation	8,753	8,805	52	0.6%
K-12 Education	38,323	41,068	2,745	7.2%
Higher Education	9,776	11,109	1,333	13.6%
Labor and Workforce Development	345	329	-16	-4.6%
Government Operations	661	742	81	12.3%
General Government:				
Non-Agency Departments	480	528	48	10.0%
Tax Relief/Local Government	2,520	421	-2,099	-83.3%
Statewide Expenditures	502	772	270	53.8%
Total	**$92,994**	**$97,650**	**$4,656**	**5.0%**

Note: Numbers may not add due to rounding.
These figures reflect the organization of departments and Agencies based on the Governor's Reorganization Plan 2, which becomes operative July 1, 2013.

Figure SUM-03
2013-14
General Fund Expenditures
(Dollars in Millions)

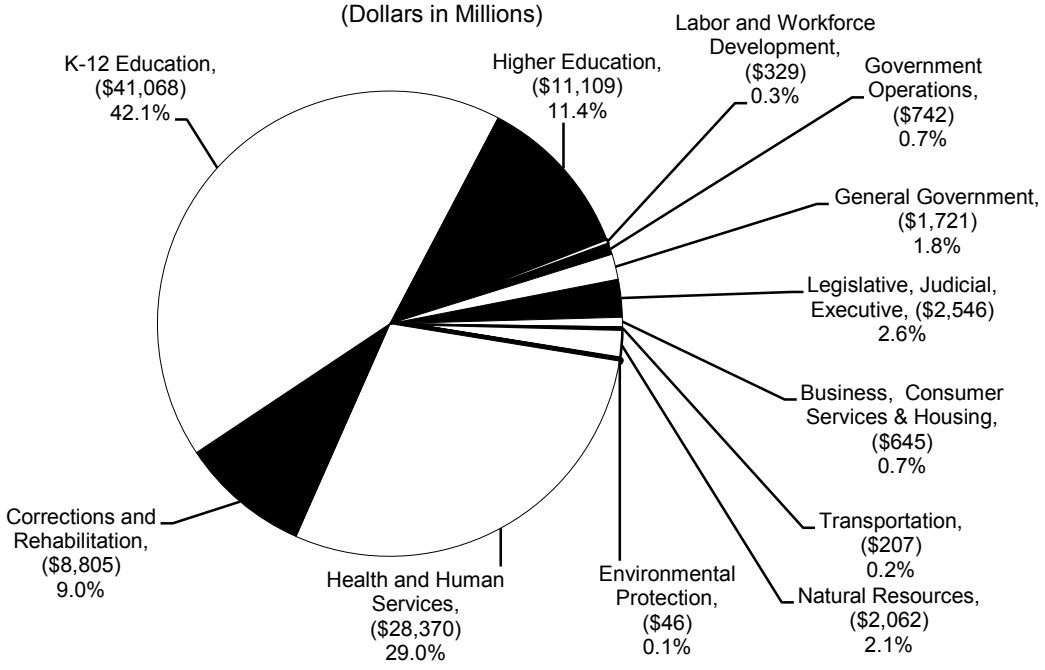


Figure SUM-04
General Fund Revenue Sources
(Dollars in Millions)

	2012-13	2013-14	Change from 2012-13 Dollar Change	Change from 2012-13 Percent Change
Personal Income Tax	$60,647	$61,747	$1,100	1.8%
Sales and Use Tax	20,714	23,264	2,550	12.3%
Corporation Tax	7,580	9,130	1,550	20.4%
Insurance Tax	2,022	2,198	176	8.7%
Liquor Tax	320	326	6	1.9%
Tobacco Taxes	91	89	-2	-2.2%
Motor Vehicle Fees	26	23	-3	-11.5%
Other	3,994	1,724	-2,270	-56.8%
Total	**$95,394**	**$98,501**	**$3,107**	**3.3%**

Note: Numbers may not add due to rounding.

Figure SUM-05
2013-14
General Fund Revenues and Transfers
(Dollars in Millions)

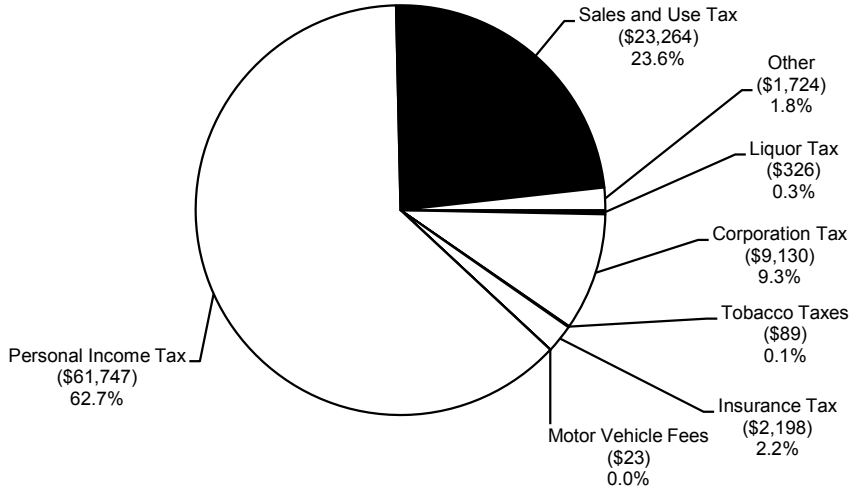


Figure SUM-06
2013-14 Total State Expenditures by Agency
(Dollars in Millions)

	General Fund	Special Funds	Bond Funds	Totals
Legislative, Judicial, Executive	$2,546	$2,579	$275	$5,400
Business, Consumer Services & Housing	645	741	68	1,454
Transportation	207	8,186	5,085	13,478
Natural Resources	2,062	1,181	1,209	4,452
Environmental Protection	46	2,450	127	2,623
Health and Human Services	28,370	16,799	76	45,245
Corrections and Rehabilitation	8,805	2,272	4	11,081
K-12 Education	41,068	119	5	41,192
Higher Education	11,109	45	383	11,537
Labor and Workforce Development	329	535	-	864
Government Operations	742	335	13	1,090
General Government				
Non-Agency Departments	528	1,581	3	2,112
Tax Relief/Local Government	421	1,876	-	2,297
Statewide Expenditures	772	2,229	-	3,001
Total	**$97,650**	**$40,928**	**$7,248**	**$145,826**

Figure SUM-07
2013-14
Total State Expenditures
(Including Selected Bond Funds)
(Dollars in Millions)

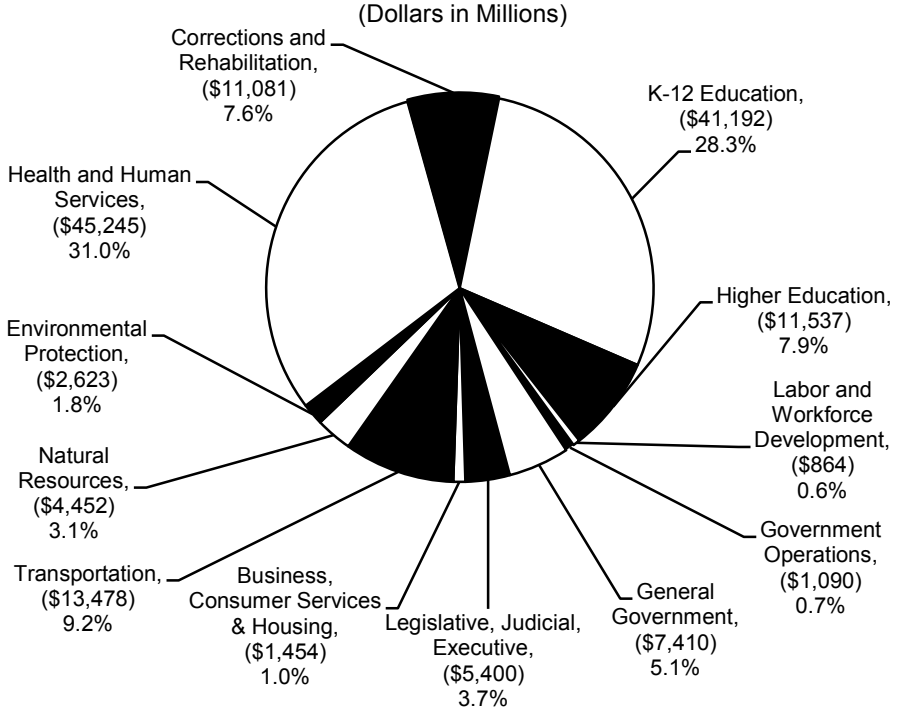
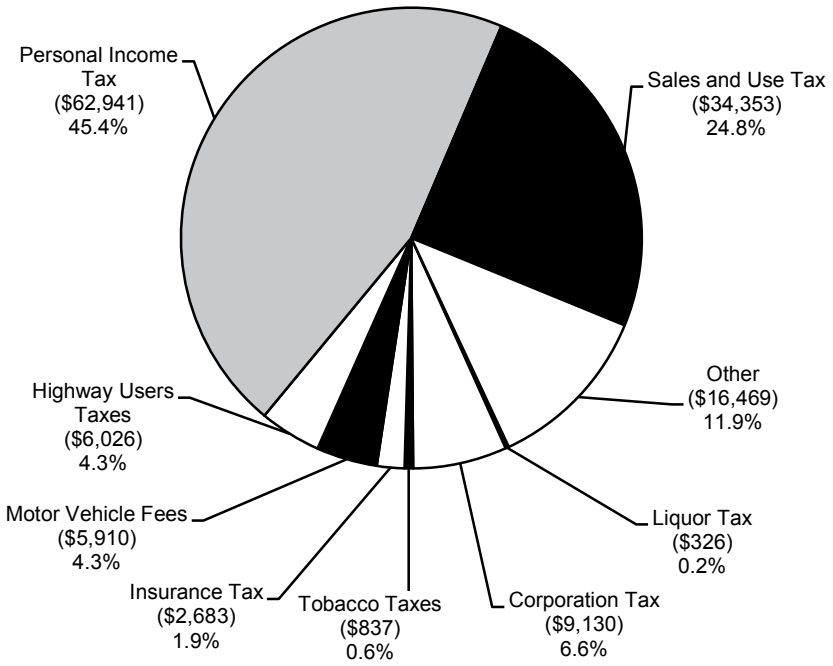


Figure SUM-08
2013-14 Revenue Sources
(Dollars in Millions)

	General Fund	Special Funds	Total	Change From 2012-13
Personal Income Tax	$61,747	$1,194	$62,941	$945
Sales and Use Tax	23,264	11,089	34,353	3,237
Corporation Tax	9,130	-	9,130	1,550
Highway Users Taxes	-	6,026	6,026	407
Insurance Tax	2,198	485	2,683	297
Liquor Tax	326	-	326	6
Tobacco Taxes	89	748	837	-25
Motor Vehicle Fees	23	5,887	5,910	118
Other	1,724	14,745	16,469	-2,262
Total	**$98,501**	**$40,174**	**$138,675**	**$4,273**

Note: Numbers may not add due to rounding.

Figure SUM-09
2013-14
Total Revenues and Transfers
(Dollars in Millions)



K thru 12 Education

California provides compulsory instruction and support services to roughly six million students in grades kindergarten through twelve in more than 10,000 schools throughout the state. Through a system of 58 county offices of education and more than 1,000 local school districts and charter schools, students are provided with instruction in English, mathematics, history, science, and other core competencies to provide them with the skills they will need upon graduation for either entry into the workforce or higher education.

Investing in Education

The Budget includes Proposition 98 funding of $56.2 billion for 2013-14, an increase of $2.7 billion over revised funding levels for the 2012-13 year. With the passage of Proposition 30, the Schools and Local Public Safety Protection Act of 2012, schools have been spared billions of dollars of mid-year trigger reductions. Building off the stabilized funding base for 2012-13, the Budget proposes investments for 2013-14 that will significantly reduce late payments to schools and target substantial additional funding to schools and students in most need of these resources.

During the economic downturn, the state deferred payments to schools, therefore, schools received approximately 20 percent of their funds a year after they spent them. Some school districts were able to borrow to manage these deferrals, while others had to implement deferrals as cuts. Districts that were able to borrow incurred substantial interest costs, which led to dollars taken out of the classroom. The Budget proposes repayment of approximately $1.8 billion in deferred payments to fund programs and

increase budget transparency. This investment will provide additional certainty of funding for expected levels of programs and services, while also reducing the substantial borrowing costs borne by schools as result of the deferrals.

In addition to revenues provided by Proposition 30, schools and community colleges also benefit from the passage of Proposition 39, the California Clean Energy Jobs Act. For 2013-14, Proposition 39 will result in a $526 million increase in the Proposition 98 guarantee level. The Budget proposes to transfer $450 million of the revenues generated in 2013-14 into a special fund for energy efficiency projects in schools and community colleges, consistent with the provisions of Proposition 39. The expenditures from this special fund for energy efficiency projects will also count towards meeting funding obligations for schools and community colleges under Proposition 98.

Since reaching an all-time high of $56.6 billion in 2007-08, Proposition 98 funding for K-14 education slipped to $47.3 billion for the 2011-12 year. In recognition of the key role schools play in promoting equal opportunity for Californians, supporting civic engagement and critical thinking, the Budget reverses this almost half-decade decline in funding for education programs. It gives schools resources to fund base programs and services, stabilize and expand their teaching and support personnel, and renew investments in facilities, instructional materials and other education infrastructure. While increasing funding for districts, it makes targeted investments in districts serving students with the greatest level of needs—recognizing that this approach will help the state reduce disparities, maximize student achievement, and strengthening the foundation for sustainable growth.

Restoring Local Control and Making Needs-Based Investments

California's school finance system, which provides funding for school districts, county offices of education, and charter schools, has become overly complex, administratively costly, and inequitably distributed. In many ways, the current system of school finance is a relic of the past, where program allocations have been frozen and are no longer reflective of changing student needs. There are many different funding streams, each with their own allocation formula and spending restrictions. It is state-driven and interferes with local officials deciding how best to meet the needs of students. Further, scholarly research and practical experience indicate that low-income students and English language learners come to school with unique challenges and often require supplemental

instruction and other support services to be successful in school. Additionally, the current school finance system provides few incentives for school districts to offer innovative educational programs that increase student success.

The Budget proposes new funding formulas for both schools and county offices of education. The proposal will increase local control, reduce state bureaucracy, and ensure that student needs drive the allocation of resources. The new funding formulas will also greatly increase transparency in school funding, empowering parents and local communities to access information in a more user-friendly manner and enhance their ability to engage in local school financial matters. The goal is to ensure sufficient flexibility and accountability at the local level so those closest to the students can make the decisions.

School District and County Office of Education Finance

The Budget proposes a new Local Control Funding Formula that distributes combined resources to schools through a base revenue limit funding grant (base grant) per unit of average daily attendance (ADA) with additional supplemental funding allocated to local educational agencies based on their proportion of English language learner and free and reduced-price meal eligible students. The proposed formula entitles every school district to a base grant adjusted for grade span cost differentials, multiplied by ADA. The average base grant when fully implemented will be equal to the current average undeficited school district revenue limit. A K-3 grade span adjustment is provided to ensure that current K-3 Class Size Reduction program funding is targeted to students in those grades. Base funding will be used by each locality at their discretion to fulfill local educational priorities. Under the new formula, basic aid districts would be defined as districts whose local property taxes equal or exceed their district's formula allocation. Those districts would continue to retain local property taxes in excess of their new formula allocation.

The proposed formula provides supplemental funding to districts based on the proportion of English language learners and free and reduced-price meal eligible students they serve. Supplemental funding is equal to 35 percent of the base grant. When the proportion of English language learners and economically disadvantaged students exceeds 50 percent of its total student population, the school district will receive an additional concentration grant equal to 35 percent of the base grant for each English language learner and economically disadvantaged student above the 50-percent threshold. Under the formula, charter schools are essentially treated the same as a district, except they cannot receive a higher concentration grant than the school district in which it resides. The supplemental

and concentration grants are available for any purpose that benefits the students generating the funding.

While most categorical program funding is redistributed through the new funding formula, the Targeted Instructional Improvement Grant program and Home-to-School Transportation program funding allocations will be distributed as permanent add-on programs to the new funding formula allocations for each district. Schools will be provided with discretion to use these funds for any purpose.

This proposal builds on last year's budget proposal and reflects input from stakeholder groups and the Legislature. The Department of Finance, in collaboration with the State Board of Education and the Department of Education, convened three stakeholder meetings to discuss the concept of a new funding formula and obtain feedback from various education stakeholders. These discussions were guided by six key principles, which are: (1) creating a funding mechanism that is equitable, easy to understand, and focused on the needs of students, (2) implementing the formula in concert with funding increases for K-12 education, (3) phasing in the formula over several years, (4) paying schools back for deferrals and forgone cost-of-living adjustments through restoration of the deficit factor, and funding annual cost-of-living adjustments going forward, (5) allowing schools maximum flexibility in allocating resources to meet local needs, and (6) holding schools accountable for academic and fiscal outcomes. The key changes to last year's proposal include the following:

- Allocating half of the available Proposition 98 growth funding to move local educational agencies towards their respective formula allocation.
- Increasing the supplemental grant and reducing the concentration grant weights.
- Folding current career technical education funding into a 9-12 grade span adjustment.
- Authorizing local educational agencies to receive supplemental and concentration grant funding for an English language learner student for no more than five years.
- Linking funding in the K-3 grade span adjustment to maximum class sizes. A student-to-teacher ratio of 24 to 1 is established as the maximum standard in grades K-3 upon full implementation of the new formula. This ratio may be exceeded if agreed to at the local level according to local priorities.

The Budget proposes a new two-part funding formula for county offices of education that will provide (1) per-ADA funding to support instruction of students who attend community

schools and juvenile court schools, and (2) unrestricted funding for general county office operations, distributed based on the total number of school districts in the county and the total ADA of all students in the county. Under the new formula, county offices of education will receive a base grant per-ADA for students served in alternative schools that acknowledges the higher cost of education in these settings, while also providing the same targeted supplemental grants for English language learner and low income students as proposed in the school district formula.

Accountability

The Budget proposes to focus accountability on the core requirements and outcomes expected of schools and to better integrate accountability with the local school district budget process. The new system moves away from expenditure requirements and other input-based measures. The Budget requires that all school districts produce and adopt a District Plan for Student Achievement concurrent and aligned with each district's annual budget and spending plan. While school districts have some discretion regarding the content of the plan, all plans are required to address how districts will use state funding received through the new funding formula toward improvement in the following categories:

- Basic conditions for student achievement (having qualified teachers at each school site, sufficient instructional materials available for students, and school facilities in good repair).
- Programs or instruction that benefit low-income students and English language learners.
- Implementation of Common Core content standards and progress toward college and career readiness (as measured by the Academic Performance Index, graduation rates, and completion of college-preparatory and career technical education courses).

The Budget eliminates most programmatic and compliance requirements that school districts, county offices of education, and charter schools are currently subject to under the existing system of school finance. Important requirements that remain in place include federal accountability requirements, as well as fiscal and budgetary controls and academic performance requirements.

Flexibility

A variety of temporary program and funding flexibility options, which have been provided to local schools since 2008-09, are set to expire over the next two fiscal years.

Consistent with the Administration's policy of having those closest to the students make the decisions, the Budget proposes the following permanent changes:

- Routine Maintenance Contributions—Eliminate the minimum contribution requirement for routine maintenance.
- Deferred Maintenance Program Matching Requirement—Eliminate the required local district set-aside for deferred maintenance contributions.
- Surplus Property—Allow districts to use the proceeds from the sale of any real and personal surplus property for any one-time general fund purposes.

As schools transition to a new funding formula and as funding grows, it is important to consider other flexibilities currently granted to schools. These include the ability of schools to reduce the school year by up to five days or the equivalent number of minutes without incurring penalties, and the ability of schools to reduce their budget reserves to significantly lower levels. The Administration will engage local school officials and education stakeholders in a discussion of the need for additional flexibility until funding returns to the 2007-08 level.

Other Program Reforms and Investments

In addition to proposing reforms of school district and county office of education funding, the Administration proposes additional changes and investments in the areas of charter schools, special education, K-12 mandates, technology-based instruction, and adult education.

Charter Schools

Charter schools emerged in the early 1990's as an alternative to traditional public schools, providing opportunities for both parents and teachers to establish public schools that are free from most of the requirements of the Education Code. This freedom is intended to provide charter schools maximum flexibility to foster innovation and allow alternative approaches to education in local public schools. Instead of being governed by state law, charter schools are required to comply with the provisions of their local charter petition, as approved by their local school district, county office of education, or the State Board of Education.

Although the number of charter schools has grown to almost 1,000 statewide, there are a number of financial and operational challenges facing charter schools that limit

their potential effectiveness as alternatives to traditional public schools. In financial terms, charter schools receive significantly less funding on a per-student basis than traditional schools. They also face challenges in being able to secure necessary facilities for instruction. Compounding these problems is a labyrinth of control agencies that charter schools must deal with to secure funding for a variety of different programs. To remedy these issues, the Budget proposes the following:

- Shifting the Charter School Facility Grant Program and the Charter School Revolving Loan Program from the Department of Education to the California School Finance Authority to improve the efficiency of charter school program administration and disbursement of funds to local charter schools. The Authority already administers similar programs.
- Modifying the funding determination process for non-classroom based charter schools by limiting it to the first and third years of operation in most instances. Charter schools that are found to be out of compliance with minimum standards and applicable laws will be required to comply with annual funding determinations.
- Expanding the Charter Schools Facility Grant Program to include eligibility for non-classroom based charter schools, as these schools still have facility needs for instructional support.
- Extending for five additional years the 2012-13 requirement that school districts with identified surplus property and facilities first offer to sell those resources to charter schools before selling them to other entities or disposing of those assets.

Special Education Finance

The special education funding formula, created in Chapter 854, Statutes of 1997 (AB 602), has become unnecessarily complicated over time with certain formula components creating funding inequities among special education local plan areas. Also, a number of program add-ons created over the years have resulted in both inefficiencies and a lack of flexibility at the local level. To address these issues, the Budget proposes the following:

- Eliminating the integration of federal funds in the state's AB 602 calculation and treating both funding streams separately to remove unnecessary complications in the formula and help equalize funding among special education local plan areas.

- Consolidating funding for several special education program add-ons into the base AB 602 formula calculation, while collapsing another 15 special education add-on programs into 10 based on similar activities.

The changes proposed for special education finance will not affect funding set aside for the realignment of mental health services for special education students implemented last year—$357 million in Proposition 98 General Fund and an additional $69 million in federal funds will be dedicated for this purpose.

K-12 Mandates Block Grant

The Budget Act of 2012 created an alternative method for school and community college districts to receive compensation for performing state-mandated activities by appropriating $200 million for two new block grants—one for school districts, county offices of education, and charter schools; and one for community college districts. To date, almost 77 percent of school districts and charter schools have opted for block grant funding, while 93 percent of community college districts have selected this option. The block grant statutes specify which mandates are funded through the block grants, and schools are provided with a per-student funding allocation to support the performance of those activities. Schools that choose to receive block grant funding may not submit reimbursement claims. However, two K-12 mandated programs were not included in the K-12 block grant last year; the Graduation Requirements and Behavioral Intervention Plan programs. The Administration proposes to restructure requirements for the Behavioral Intervention Plan program, which will eliminate almost all reimbursable costs for this mandate. There are no changes proposed for the Graduation Requirements program, and the Administration continues to believe that any costs associated with this activity have run their course in the almost 30 years since the inception of this requirement. Nonetheless, the Budget proposes adding an additional $100 million to the K-12 block grant to fund costs for these two additional programs.

Technology-Based Instruction

School districts are limited in their ability to offer instruction in venues other than traditional classroom-based settings. The primary alternative instructional methods available to school districts are through the use of non-classroom based independent study and synchronous online education courses. Independent study programs, while providing freedom from the traditional classroom-based setting, still mandate the same pupil-to-teacher ratios as regular classroom instruction and focus heavily on process compliance with independent study agreements, which are contracts with students that govern the goals and expectations for this type of instruction. Synchronous online

courses are internet-based instructional courses, which provide an additional level of flexibility, but are limited by the requirement that these classes can only be offered under the immediate online supervision of a teacher.

To remove impediments to greater instructional flexibility, the Budget proposes statutory changes that will enable school districts to offer asynchronous online courses through a streamlined and outcome-focused independent study agreement. Asynchronous instruction does not require the simultaneous participation of all students and instructors, thereby increasing flexibility in the delivery of instruction. To hold these types of courses accountable, a refined independent study contract focused on specific measurable student outcomes, and teacher validation of those outcomes, will be used as the basis for whether schools receive funding for offering these courses. Under such a revised contract, schools will be held accountable for student achievement, rather than process requirements.

Adult Education and Apprenticeship Realignment

Currently, K-12 school districts and community colleges are authorized to provide adult education instruction. However, there is no statewide requirement or mechanism to coordinate the efforts of these two systems. As a result, the state has an inefficient and redundant system that is not always structured in the best interest of adult learners. Further, funding for the K-12 adult education program is currently flexible, available for any educational purpose, and many districts are eliminating their programs and redirecting this funding to support their core instructional programs.

To create a more accountable and centralized adult education learning structure, the Budget proposes $315.7 million Proposition 98 General Fund to fund a comparable K-12 adult education service delivery system. It proposes an increase of $300 million to support the program within the community colleges. It also shifts $15.7 million for the Apprenticeship Program. The proposal eliminates the current bifurcated system and places the community colleges in a position to improve coordination at the regional and statewide levels. Community colleges are better positioned than K-12 schools to address the needs of adult learners because that is their core function. Funding will be allocated from a new adult education block grant based on the number of students served, and the colleges will be encouraged to leverage the capacity and expertise currently available at the K-12 district adult schools. Additional detail on this proposal is discussed in the Higher Education Chapter.

Energy Efficiency Investments

K-12 school facilities represent the single largest capital outlay investment made by the state since the mid-1990's. From 1998 to present, the state has invested more than $30 billion in school bond funding to modernize and construct school facilities. School districts and community colleges are well positioned to undertake projects that reduce their current utility requirements and expand the use of renewable energy resources. As a result, to make a substantial energy efficiency imprint throughout the state, the Budget proposes to allocate all Proposition 39 funding to schools and community colleges. Proposition 39 will provide $450 million in 2013-14 to support these investments in schools and community colleges, and $550 million in each of the next four years. The reduction in utility costs will in turn assist schools and community colleges in recovering from budgetary reductions implemented over the past five years.

The Department of Education and the Chancellor's Office for the California Community Colleges will be responsible for distributing funding, and may consult with both the California Energy Commission and the Public Utilities Commission to develop guidelines for prioritizing the use of the funds. These guidelines will reflect the state's energy "loading order", which guides the state's energy policies and decisions according to the following order of priority: (1) decreasing electricity demand by increasing energy efficiency, (2) responding to energy demand by reducing energy usage during peak hours, (3) meeting new energy generation needs with renewable resources, and (4) meeting new energy generation needs with clean fossil-fueled generation. Schools and community colleges will be able to use Proposition 39 funding consistent with the state's loading order policies and guidance to undertake energy efficiency measures including, but not limited to, the construction or modernization of buildings in a manner that uses less energy, purchasing energy efficient equipment, as well as undertaking renewable energy projects like installation of solar panels and geothermal heat pumps.

Local schools and community colleges may use Proposition 39 funds for technical assistance to help identify, evaluate, and implement appropriate projects. Schools and community colleges will also be encouraged to partner on their energy efficiency projects with the California Conservation Corps' Energy Corps program and participating community conservation corps programs, which provide career technical education and on-the-job work experience in the energy efficiency and renewable energy industry sectors. Upon project completion, schools and community colleges will report their project expenditure information to the Department of Education and the Chancellor's Office, respectively. The Administration will work with the Department of Education,

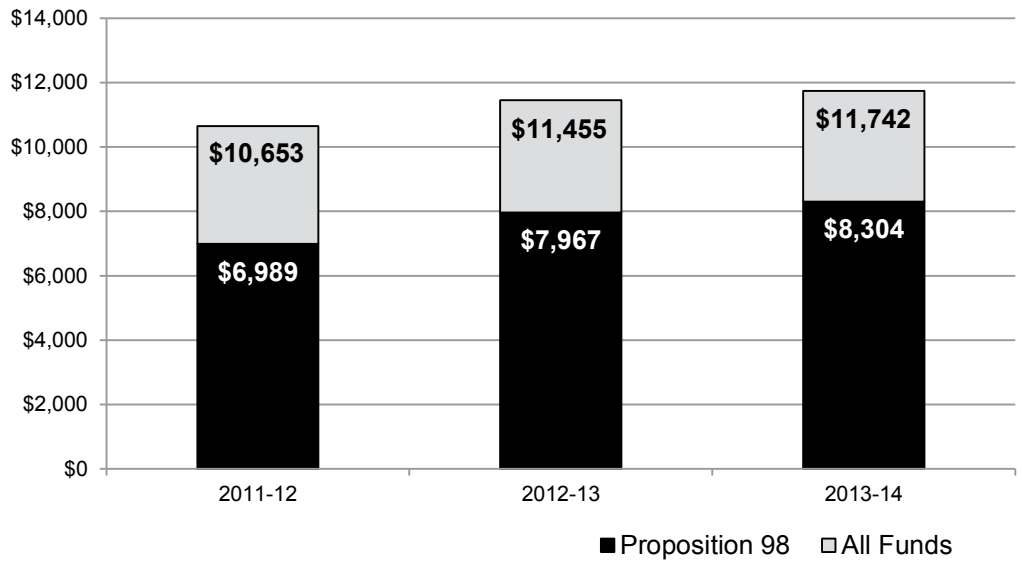
the Chancellor's Office and the Citizens Oversight Board to ensure these funds are used by schools and community colleges in a manner that is consistent with Proposition 39.

K-12 School Spending and Attendance

Per-Pupil Spending

Total per-pupil expenditures from all sources are projected to be $11,455 in 2012-13 and $11,742 in 2013-14, including funds provided for prior year settle-up obligations. Ongoing K-12 Proposition 98 per-pupil expenditures in the Budget are $8,304 in 2013-14, up significantly from the $7,967 per-pupil provided in 2012-13. (See Figure K12-01). Figure K12-02 displays the revenue sources for schools.

Figure K12-01
K-12 Education Spending Per Pupil



How Schools Spend Their Money

Figure K12-03 displays 2010-11 expenditures reported by schools from their general funds, the various categories of expenditure and the share of total funding for each category.

Attendance

After a period of declining attendance from 2005 to 2010, attendance in public schools began increasing gradually in

Figure K12-02
Sources of Revenue for California's K-12 Schools
(As a Percent of Total)

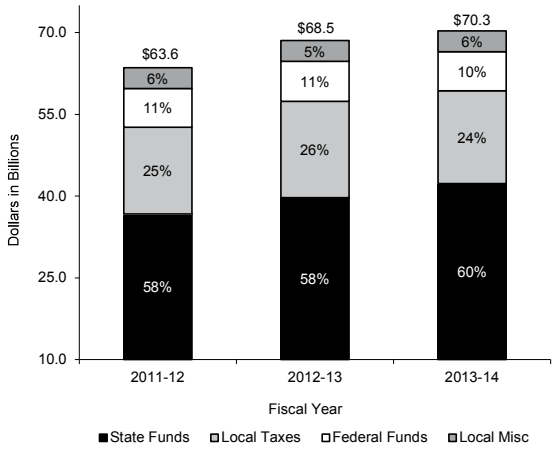
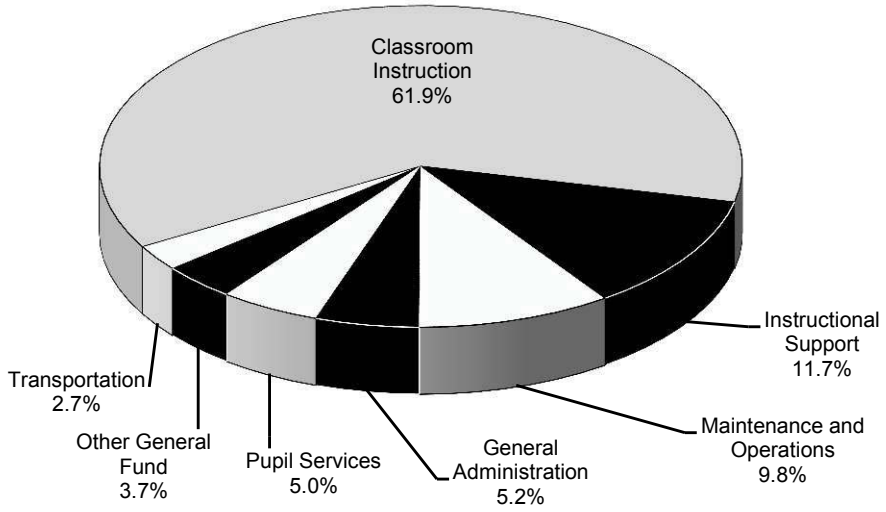


Figure K12-03
Where Schools Spend Their Money[1]



Classroom Instruction includes general education, special education, teacher compensation, and special projects.
General Administration includes superintendent and board, district and other administration and centralized electronic data processing.
Instructional Support includes research, curriculum development and staff development that benefits and supports student instruction.
Maintenance and Operations includes utilities, janitorial and groundskeeping staff, and routine repair and maintenance.
Pupil Services includes counselors, school psychologists, nurses, child welfare, and attendance staff.
Other General Fund includes spending for ancillary services, contracts with other agencies, and transfers to and from other district funds.

[1] Based on 2010-11 expenditure data reported by schools for their general purpose funding.

the 2010-11 fiscal year. Public school attendance is projected to continue increasing during the 2012-13 and 2013-14 fiscal years. For 2012-13, K-12 ADA is estimated to be 5,982,430, an increase of 16,090 from the 2011-12 fiscal year. For 2013-14, the Budget estimates that K-12 ADA will increase by an additional 5,967 to 5,988,397.

Proposition 98 Guarantee

A voter-approved constitutional amendment, Proposition 98 guarantees minimum funding levels for K-12 schools and community colleges. The guarantee, which went into effect in the 1988-89 fiscal year, determines funding levels according to multiple factors including the level of funding in 1986-87, General Fund revenues, per capita personal income, and school attendance growth or decline.

Proposition 98 originally mandated funding at the greater of two calculations or Tests (Test 1 or Test 2). In 1990, Proposition 111 (SCA 1) was adopted to allow for a third funding test in low revenue years. As a result, three calculations or tests determine funding for school districts and community colleges (K-14). The calculation or test that is used depends on how the economy and General Fund revenues grow from year to year.

Proposition 98 Test Calculations

Test 1 — Percent of General Fund Revenues: Test 1 is based on a percentage or share of General Fund tax revenues. The base year for the Test 1 percentage is 1986-87, a year in which school districts and community colleges (K-14) received approximately 40 percent of General Fund tax revenues. As a result of shifts in property taxes between K-14 schools and other local government entities, as well as a shift in the number of programs funded within Proposition 98, the current rate is approximately 39 percent.

Test 2—Adjustments Based on Statewide Income: Test 2 is operative in years with normal to strong General Fund revenue growth. This calculation requires that school districts and community colleges receive at least the same amount of combined state aid and local property tax dollars as they received in the prior year, adjusted for enrollment growth and growth in per capita personal income.

Test 3—Adjustment Based on Available Revenues: Test 3 is used in low revenue years when General Fund revenues decline or grow slowly. During such years, the funding guarantee is adjusted according to available resources. A "low revenue year" is defined as one in which General Fund revenue growth per capita lags behind per capita personal income growth by more than one-half percentage point. Test 3 was designed so that education is treated no worse in low revenue years than other segments of the

state budget. In years following a Test 3 funding level, the state is required to provide funding to restore what was not allocated the previous year. This is often referred to as a "maintenance factor".

K-12 School Facilities

Since 1998, voters have approved approximately $35 billion in statewide general obligation bonds to construct or renovate public school classrooms used by the state's roughly six million elementary, middle and high school students. In addition to general obligation bonds, school districts may use developer fees, local bonds, certificates of participation and Mello-Roos bonds to construct additional classrooms or renovate existing classrooms.

Currently, there is no bond authority remaining in the core school facilities new construction and modernization programs. As a result, now is an appropriate time to engage in a dialogue on the future of school facilities funding. Central to this discussion must be a consideration of what role, if any, the state should play in the future of facilities funding. It is also appropriate to engage in a deeper examination of the acceleration in state bond issuances for school facilities over the course of the last 15 to 20 years. Further, there are problems inherent in the current program that must be examined. School facility funding and related debt service costs have been supported outside of operational funding provided to schools, as such, facility needs are not balanced with the operational needs of schools. The current School Facilities Program is overly complex and administered by multiple control agencies with fragmented responsibilities. The current program is also largely state-driven, restricting local flexibility and control.

The Administration suggests the following guiding principles:

- From a state perspective, future K-12 facilities funding needs must be considered in the context of other competing education and non-education priorities and needs.
- The school facilities construction process should be easy to understand and efficient.
- School districts and their respective localities should have appropriate control of the school facilities construction process and priorities.

- School districts and community college districts should have incentives to balance their facility costs against operational needs within the total amount of funding available from state and local sources for education.

K-12 Budget Adjustments

Significant adjustments:

- K-12 Deferrals—An increase of approximately $1.8 billion Proposition 98 General Fund to reduce inter-year budgetary deferrals. Combined with the $2.2 billion provided in 2012-13 to retire inter-year deferrals, the total outstanding deferral debt for K-12 will be reduced to $5.6 billion at the end of the 2013-14 fiscal year, and all remaining deferrals will be paid off by the end of the 2016-17 fiscal year. Inter-year deferrals for K-12 had reached a high of $9.5 billion in the 2011-12 fiscal year.
- New School District Funding Formula—Additional growth of approximately $1.6 billion in Proposition 98 General Fund for school districts and charter schools in 2013-14, an increase of 4.5 percent.
- New County Office of Education Funding Formula—An increase of $28.2 million Proposition 98 General Fund to support first year implementation of a new funding formula for county offices of education in 2013-14.
- Energy Efficiency Investments—An increase of $400.5 million Proposition 98 General Fund to support energy efficiency projects in schools consistent with Proposition 39.
- Charter Schools—An increase of $48.5 million Proposition 98 General Fund to support projected charter school ADA growth.
- Special Education—An increase of $3.6 million Proposition 98 General Fund for Special Education ADA growth.
- K-12 Mandates Funding—An increase of $100 million to the K-12 portion of the mandates block grant to support costs associated with the Graduation Requirements and Behavioral Intervention Plans mandates.
- Cost-of-Living Adjustment Increases—The Budget provides $62.8 million to support a 1.65-percent cost-of-living adjustment for a select group of categorical programs that will remain outside of the new student funding formula, including Special

Education, Child Nutrition, American Indian Education Centers, and the American Indian Early Childhood Education Program. Cost-of-living adjustments for school district and county office of education revenue limits will be provided in the form of new funding allocated for the implementation of the new funding formulas.

- Emergency Repair Program—An increase of $9.7 million one-time Proposition 98 General Fund Reversion Account for the Emergency Repair Program.
- Local Property Tax Adjustments—An increase of $526.6 million Proposition 98 General Fund for school district and county office of education revenue limits in 2012-13 as a result of lower offsetting property tax revenues. An increase of $608.6 million in Proposition 98 General Fund for school districts and county offices of education in 2013-14 as a result of reduced offsetting local property tax revenues.
- Average Daily Attendance (ADA)—An increase of $304.4 million in 2012-13 for school district and county office of education revenue limits as a result of an increase in projected ADA from the 2012 Budget Act. An increase of $2.8 million in 2013-14 for school districts and county offices of education as a result of projected growth in ADA for 2013-14.
- Child Nutrition Program—An increase of $77 million for 2013-14 in federal local assistance funds to reflect growth of nutrition programs at schools and other participating agencies.
- The revised 2012-13 Proposition 98 guarantee will be $162.8 million below the level of General Fund appropriated in 2012-13. The Budget proposes that this amount be used to retire future funding obligations under the terms of the *CTA v. Schwarzenegger* settlement agreement.

Child Care

Subsidized Child Care includes a variety of programs designed to support the gainful employment of low-income families. These programs are primarily administered by the Department of Education through non-Proposition 98 funding and the annual federal Child Care and Development Fund grant. All programs are means-tested and require that families receiving subsidies have a need for child care, which means all adults in the family must be working or seeking employment, or are in training that leads to employment. Most programs are capped, drawing eligible families from waiting lists, while those specifically limited to CalWORKs families or former CalWORKs families have been funded for all eligible recipients.

The major capped programs include General Child Care, Alternative Payment Program, and Migrant Child Care. CalWORKs programs include: Stage 1, administered by the Department of Social Services, is for families on cash assistance whose work activities have not stabilized; Stage 2, administered by the Department of Education, is for those CalWORKs families with stable work activities and for families who are transitioning off aid, for up to two years; and Stage 3, also administered by the Department of Education, is reserved for families who have successfully transitioned off aid for more than two years and still have a child care need.

The current subsidized child care system is fragmented by design. As discussed in the Health and Human Services Chapter, the Department of Social Services will convene a stakeholder group to assess the current structure of opportunities for streamlining and other improvements.

Significant adjustments:

- Child Care and Development Programs—The significant workload adjustments for these programs are as follows:
    - Stage 2—A decrease of $21 million non-Proposition 98 General Fund in 2013-14, primarily to reflect a decline in the number of eligible CalWORKs Stage 2 beneficiaries. In 2010-11, approximately 6,000 children were determined eligible for diversion services in Stage 2. Currently, these children and their eligible families are re-entering Stage 3 in 2012-13, and this population trend will persist into 2013-14. Total base cost for Stage 2 is $398.3 million.
    - Stage 3—An increase of $24.2 million non-Proposition 98 General Fund in 2013-14 primarily to reflect the transfer of approximately 6,000 children from Stage 2 to Stage 3. Total base cost for Stage 3 is $172.6 million.
    - Child Care and Development Funds—A net decrease of $9.8 million federal funds in 2013-14 to reflect removal of one-time carryover funds available in 2012-13 ($20.7 million), an increase of $16.8 million in one-time carryover funds, and a decrease of $5.9 million in available base grant funds.

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Higher Education

Each year, millions of Californians pursue degrees and certificates and enroll in courses to improve their knowledge and skills at the state's higher education institutions. More are connected to the system as employees, contractors, patients, and community members. California's system of higher education consists of three segments. Drawing from the top 12.5 percent of the state's high school graduates, the University of California (UC) educates approximately 239,500 undergraduate and graduate students and is the primary institution authorized to independently award doctoral degrees and professional degrees. Drawing students from the top one-third of the state's high school graduates, the California State University (CSU) provides undergraduate and graduate instruction to approximately 410,300 students. The California Community Colleges are publicly supported local educational agencies that provide open-access educational and vocational programs to approximately 2.4 million students. The state also provides financial aid to students attending all institutions of public and private postsecondary education through the Cal Grant program. Over 99,000 students received new Cal Grant awards, and over 150,000 students received renewal awards, in 2011-12.

Beginning with the Master Plan in 1960, California's approach to higher education has been to heavily subsidize the public segments and keep costs low for university students (and even lower for community college students). California's higher education system is relatively affordable to students because of California taxpayers' investment in that system. California institutions have some of the lowest published tuition and fee levels in the country. In addition to providing direct support to the higher education

system, California fully reimburses all UC, CSU and community college tuition and fee costs for students with family incomes below $96,000 through the Cal Grant and the California Community Colleges Board of Governors Fee Waiver programs. In total, California taxpayers provide approximately $13 billion of annual General Fund support to California's higher education system through a combination of general-purpose, categorical program, and Cal Grant Program funding.

As a result of the taxpayers' investment in higher education, California public college and university graduates carry some of the lowest student loan debt burdens when compared to graduates from other states. California students in public and non-profit colleges rank 46th in student debt levels—half of California undergraduates have student debt, averaging $18,800, compared to two-thirds of graduates nationally, averaging $26,600.

The recent economic downturn and resulting shortfalls in state revenues required reductions in the state's subsidies of public higher education. During this period of fiscal constraints, state and local public agencies throughout California reexamined their cost structures and refocused limited resources on the most essential functions. UC and CSU pursued administrative efficiencies that have yielded from the low-to-mid hundreds of millions of dollars of savings for each segment. However, from 2007-08 to 2012-13, when other public agencies were retrenching, UC expenditures increased by 15 percent and CSU expenditures increased by 3 percent. These expenditure increases were funded by approximately $1.4 billion in tuition revenue increases at UC and $1 billion at CSU, a near doubling of tuition and fees from 2007-08 to the present. Specifically, UC's tuition and fees increased by $5,556 over that period. CSU's tuition and fees increased by $2,700 over that same period (see Figure HED-01). These rapid tuition increases have been a significant hardship for students and their families, particularly middle-income families who do not qualify for Cal Grants.

The rising cost of higher education not only threatens affordability, it also threatens the quality of California's system of higher education as it relies on a model that is not sustainable. Historically, California's public higher education institutions have led the world in terms of quality, innovation, and affordability for students. However, California is beginning to lose its lead in these areas in large part because of a higher education cost structure that continually increases without necessarily adding productivity or value. While this is a problem nationwide, California's higher education system is more expensive than other states' systems because (1) spending is very high in UC compared to other public research universities, and (2) completion and transfer rates are very low in CSU and the community colleges, resulting in great inefficiencies.

Figure HED-01
UC and CSU Expenditures and Undergraduate Tuition and Fees
(Dollars in Millions)

	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14 [4/]	Change from 2007-08 Dollars	Change from 2007-08 Percent
UC									
General Fund	$3,257.4	$2,418.3	$2,591.2	$2,910.7	$2,272.4	$2,377.3	$2,644.1	-$613.3	-19%
Tuition and Fee Revenue	1,593.1	1,676.8	2,054.4	2,212.7	3,022.6	3,000.6	3,029.2	1,436.1	90%
Federal Funds - ARRA [1/]	-	716.5	-	106.6	-	-	-	-	-
Total Funds [2/]	$5,453.3	$5,453.4	$5,298.1	$5,948.2	$6,117.2	$6,263.6	$6,526.6	$1,073.3	20%
Systemwide Tuition and Fees	$6,636	$7,126	$8,373	$10,302	$12,192	$12,192	$12,192	$5,556	84%
CSU									
General Fund [3/]	$2,970.6	$2,155.3	$2,345.7	$2,577.6	$2,002.7	$2,063.6	$2,333.0	-$637.6	-21%
Tuition and Fee Revenue	1,176.3	1,406.1	1,630.6	1,681.9	2,187.0	2,129.9	2,129.9	953.6	81%
Federal Funds - ARRA [1/]	-	716.5	-	106.6	-	-	-	-	-
Total Funds [2/ 3/]	$4,487.1	$4,616.9	$4,279.9	$4,674.5	$4,612.0	$4,633.2	$4,902.7	$415.6	9%
Systemwide Tuition and Fees	$2,772	$3,048	$4,026	$4,440	$5,472	$5,472	$5,472	$2,700	97%

[1] The second round allocations of American Recovery and Reinvestment Act (ARRA) funding from the State Fiscal Stabilization Fund are shown in 2008-09 to more accurately reflect segmental expenditures between the two fiscal years and intent of federal law to backfill 2008-09 reductions.

[2] Total funds for UC and CSU include offsetting general purpose income, but exclude self-supporting functions such as auxiliary enterprises and extramural programs among others.

[3] Beginning in 2012-13, health benefits provided for CSU retired annuitants are included in CSU's main General Fund and Total Funds budget, rather than in the main statewide item for retired annuitant benefits, as reflected in Figure HED-02. However, for purposes of this figure, to compare 2007-08 to 2013-14 funding, these expenditures are not reflected in CSU's funding levels in 2012-13 or 2013-14.

[4] Beginning in 2013-14, the general obligation bond debt service payments are included in UC and CSU's main General Fund and Total Funds budgets. However, for purposes of this figure, to compare 2007-08 to 2013-14 funding, the GO bond debt service amounts are not reflected in the segments' 2013-14 expenditures.

UC and CSU have proposed budgets that call for increases in state funding of about 12 percent and 18 percent, respectively, from the preceding year. By comparison, over the past three years, personal income growth in California has averaged slightly less than 4 percent per year. California taxpayers cannot sustain institutions whose cost growth greatly outpaces the state's income growth. Furthermore, the rapidly growing numbers of college graduates who are unable to repay their student loans is an indication that these costs cannot be forever pushed onto students through tuition and fee increases.

Even while the California higher education system demands more funding, it produces transfer and completion rates that need improvement. Less than 30 percent of degree

seeking students at community colleges complete a degree, earn a certificate, or transfer within six years. For CSU, only 16 percent of students complete their degree within four years, and just 60 percent of students earn a degree in four years at UC. A significant obstacle to timely completion is the unavailability of courses. When students are turned away from courses, time to completion increases and students enroll in courses they do not need for their degree, generating excess costs to the student and the state, and crowding out other students in the process.

Until recently, the state has funded higher education based on enrollment targets. However, enrollment-based funding does not promote innovation and efficiency or improve graduation rates. It does not focus on critical outcomes—affordability, timely completion rates, and quality programs. Instead, it builds the existing institutional infrastructure, allowing public universities and colleges to continue to deliver education in the high-cost, traditional model.

Investing in Higher Education

The state must begin to reinvest to improve the quality and affordability of California's system of higher education. This investment is critical to provide all Californians—regardless of their financial circumstance—access to high-quality post-secondary instruction, improve educational attainment, and support civic engagement and critical thinking—thereby strengthening the foundation for sustainable growth. While continued state support of the Cal Grant program will maintain access for low-income families, additional state support for UC, CSU and community colleges alone will not be sufficient to stabilize tuition and fee costs for middle-income students or maintain the quality of these institutions. The UC, CSU and community colleges need to move aggressively to implement reforms to provide high-quality instruction at lower cost, decrease the time it takes to earn a degree, and increase graduation rates, by deploying their teaching resources more effectively.

There are many immediate demands for state funding. The Budget chooses to invest new, discretionary General Fund resources in higher education because the Administration believes that maintaining a quality, affordable system is critical to the future of the state. The Budget aims to enhance the quality of California's higher education institutions by making them more affordable, decreasing time to completion, improving overall completion rates in all higher education segments, and improving the transfer rate of community college students to four-year colleges and universities.

The Budget proposes total funding of $25.8 billion, reflecting an increase of $1.3 billion, or 5.3 percent, above 2012-13. The Budget proposes funding of $13.2 billion in General Fund and Proposition 98 related-sources reflecting an increase of $1.2 billion above 2012-13.

See Figure HED-02 for a summary comparison of individual institution funding totals reflecting the budget proposal and prior year appropriations.

Figure HED-02
Higher Education Expenditures
(Dollars in Millions)

	2011-12	2012-13	2013-14	Change from 2012-13 Dollars	Change from 2012-13 Percent
University of California [1/]					
Total Funds [2/]	$6,348.7	$6,453.0	$6,728.3	$275.3	4.3%
General Fund	2,503.9	2,566.7	2,845.8	279.1	10.9%
California State University [1/]					
Total Funds [2/ 3/]	$4,840.3	$5,069.0	$5,379.6	$310.6	6.1%
General Fund [3/]	2,231.0	2,492.4	2,809.3	316.9	12.7%
Community Colleges [1/]					
Total Funds	$10,674.6	$11,263.7	$11,880.3	$616.6	5.5%
General Fund & P98 [4/]	5,594.7	6,166.2	6,784.0	617.8	10.0%
Student Aid Commission					
Total Funds	$1,578.6	$1,654.3	$1,752.6	$98.3	5.9%
General Fund	1,486.2	735.6	719.6	-16.0	-2.2%
Other Higher Education [5/]					
Total Funds	$55.8	$58.9	$57.8	-$1.1	-1.9%
General Fund	9.1	9.2	9.5	0.3	3.3%
Total Funds	**$23,498.0**	**$24,498.9**	**$25,798.6**	**$1,299.7**	**5.3%**
General Fund	**$11,824.9**	**$11,970.1**	**$13,168.2**	**$1,198.1**	**10.0%**

[1/] UC, CSU, and CCC General Fund and Total Funds include general obligation bond debt service.

[2/] For purposes of this table, expenditures for the UC and CSU have been adjusted to include the offsetting general purpose income, but exclude self-supporting functions such as auxiliary enterprises and extramural programs among others. This provides consistency in comparing magnitudes and growth among the various segments of education.

[3/] Beginning in 2012-13, the health benefits provided for CSU retired annuitants are reflected in CSU's budget, rather than in the statewide total.

[4/] For purposes of comparing with UC and CSU General Fund, CCC includes property tax revenue as a component of the state's obligation under Proposition 98.

[5/] The Other Higher Education amount includes Hastings College of the Law, including Hastings' GO bond debt service, and the California Postsecondary Education Commission.

Multi-Year Stable Funding Plan

The state's General Fund contribution to UC, CSU, and Hastings will increase by 5 percent per year in 2013-14 and 2014-15 and by 4 percent in each of the subsequent two years. Community colleges funding will also increase by 5 percent in 2013-14. It is expected that community colleges funding will grow significantly over the next several years. All institutions will be expected to use these increases to implement reforms that will make available the courses students need and help them progress through college efficiently, using technology to deliver quality education to greater numbers of students in high-demand courses, improving course management and planning, using faculty more effectively, and increasing use of summer sessions. With savings achieved in this way, in combination with the General Fund increases and realizing the savings of current efficiency efforts (e.g. UC's Working Smarter Initiative and CSU's Systemwide Administrative Efficiencies), the Administration expects the colleges and universities to maintain current tuition and fee levels over the next four years. The Administration will continue to engage UC, CSU, and community colleges administration, faculty, staff, and students in this effort to maintain the quality of education at these institutions while, at the same time, controlling costs and preventing further increases in tuition and student fees for motivated and focused students.

Expand the Delivery of Courses through Technology

The Budget provides $16.9 million to the community colleges to increase the number of courses available to matriculated undergraduates through the use of technology. The focus should be on the courses that have the highest demand, fill quickly, and are prerequisites for many different degrees. Priority will be given to development of courses that can serve greater numbers of students while providing equal or better learning experiences, but only if those courses are aimed at advanced students who are likely to succeed in these types of courses. This initiative will include three key elements: (1) the creation of a "virtual campus" to increase statewide student access to 250 new courses delivered through technology, (2) the creation of a single, common, and centralized delivery and support infrastructure for all courses delivered through technology and for all colleges, and (3) the expansion of options for students to access instruction in other environments and earn college credit for demonstrated knowledge and skills through credit by exam.

In addition, the Budget provides UC and CSU $10 million each to increase the number of courses available to matriculated undergraduates through the use of technology,

specifically those courses that have the highest demand, fill quickly, and are prerequisites for many different degrees. Priority will be given to the development of courses that can serve greater numbers of students while providing equal or better learning experiences.

Student Success

The plan provides annual General Fund augmentations and expects each institution to direct those funds to the achievement of the following priorities: improvements in time-to-completion, improvements in graduation and completion rates in all segments, increases in transfer students enrolled at CSU and UC, and successful credit and basic skills course completion. Not all students matriculating in higher education have the common goal to earn a degree in four years. Both CSU and community colleges have significant populations of students who are earning their degrees or certificates on a part-time basis (e.g. full-time employment and family commitments). Higher education systems should provide all students the opportunity to access the courses needed to complete their degrees or certificates within the students' intended timelines. This applies to students whether they complete their undergraduate coursework in a traditional four-year period or over a longer timeframe.

Student Incentives

To shorten students' time-to-degree, reduce costs for students and the state, and increase access to more courses for other students, the number of units students can take while receiving a state General Fund subsidy at any of the segments will be capped.

- For UC and CSU, in the first two years of the proposal, students will be allowed to accrue no more than 150 percent of the standard units needed to complete most degrees (270 quarterly units at UC and 180 semester units at CSU); in later years, students will be allowed to accrue units equivalent to no more than about one additional year of coursework (225 units at UC and 150 units at CSU). If students enroll in courses that exceed these unit caps, students will be required to pay the full cost of instruction. However, the universities may grant case-by-case waivers to students who exceed the cap due to factors beyond their control, allowing them to continue to pay the subsidized tuition level. The universities would not receive any additional state funding for these students.

- For community colleges, students will be allowed to take no more than 90 semester credit units (150 percent of the standard 60 semester credit units required to earn an associate's degree or credits for transfer) starting in 2013-14. If students enroll in credit courses that exceed these unit caps, students will be required to pay the full cost of instruction. Community colleges may grant case-by-case waivers to students who exceed the cap due to factors beyond their control, allowing them to continue to pay the subsidized tuition level. However, the community colleges will not receive any state funding for these students.

This policy will encourage students to identify an educational goal and reach it in a timely and efficient way, focusing on the courses necessary to complete their educational goals, while still allowing for some exploration of other subject areas.

University of California

Drawing from the top 12.5 percent of the state's high school graduates, the University of California (UC) educates approximately 239,500 undergraduate and graduate students at its ten campuses and is the primary institution authorized to independently award doctoral degrees and professional degrees in law, medicine, business, dentistry, veterinary medicine, and other programs. UC manages one U.S. Department of Energy national laboratory, partners with private industry to manage two others, and operates five medical centers that support the clinical teaching programs of UC's medical and health sciences schools that handle more than 3.9 million patient visits each year.

Significant Adjustments:

- General Fund Increase—As discussed above, an ongoing increase of $125.1 million General Fund for core instructional costs. This includes the $10 million to increase the number of courses available to matriculated undergraduates through the use of technology. This funding should obviate the need for UC to increase student tuition and fees and can be used by the university to meet its most pressing needs. This increase is in addition to the $125 million General Fund that UC will receive in 2013-14 for not increasing tuition and fees in 2012-13, as required by the 2012 Budget Act.
- Debt Service Costs—Currently, the state separately funds general obligation and lease revenue debt service for UC capital improvement projects. The Budget proposes to shift these appropriations into UC's budget, which will require UC to factor these costs into the university's overall fiscal outlook and

decision-making process. Any new UC capital expenditures will be subject to approval by the Administration to ensure the funds are used for academic facilities to address seismic and life safety needs, enrollment growth, modernization, or for cogeneration and energy conservation projects. Further, there will be limits on the amount of the budget that can be spent on capital expenditures. If UC elects to restructure its debt as a result of this proposal, it is expected that it will make resources available for instruction.

California State University

Drawing students from the top one-third of the state's high school graduates, the California State University (CSU) provides undergraduate and graduate instruction through master's degrees and independently awards doctoral degrees in education, nursing practice, and physical therapy, or jointly with UC or private institutions in other fields of study. With 23 campuses and approximately 410,300 students, CSU is the largest and most diverse university system in the country. CSU plays a critical role in preparing the workforce of California; it grants more than one-half of the state's bachelor's degrees and one-third of the state's master's degrees. CSU prepares more graduates in business, engineering, agriculture, communications, health, and public administration than any other California institution of higher education. It also produces over 50 percent of California's teachers.

Significant Adjustments:

- General Fund Increase—As discussed above, an ongoing increase of $125.1 million General Fund for core instructional costs. This includes the $10 million to increase the number of courses available to matriculated undergraduates through the use of technology. This funding should obviate the need for CSU to increase student tuition and fees and can be used by the university to meet its most pressing needs. This increase is in addition to the $125 million General Fund that CSU will receive in 2013-14 for not increasing tuition and fees in 2012-13, as required by the 2012 Budget Act.
- Debt Service and Retirement Contribution Costs—Currently, the state separately funds general obligation and lease revenue debt service for CSU capital improvement projects. The state also annually adjusts funding for CSU's retirement obligations. The Budget proposes to fold debt service appropriations into CSU's budget. Any new CSU capital expenditures will be subject to approval by

the Administration to ensure the funds are used for academic facilities to address seismic and life safety needs, enrollment growth, or modernization. Further, there will be limits on the amount of the budget that can be spent on capital expenditures. The Budget also proposes that the state continue to fund retirement contributions for CSU employees, based on the number of 2012-13 employees. If CSU chooses to add employees or increase wages beyond 2012-13 levels, CSU will be responsible for the associated costs. These two changes will require CSU to factor these costs into the university's overall fiscal outlook and decision-making process.

- Provide CSU the Authority to Negotiate and Set Employee Health Benefit Rates with Represented and Non-Represented Employees—CSU will be provided the same statutory authority to negotiate or set employee health care benefit rates that is provided to the California Department of Human Resources for other state employees. Currently, CSU pays 100 percent of the health care premiums for its employees and 90 percent for employees' family members. However, for most other state employees, the state pays either 80 or 85 percent of employees' health care premiums and 80 percent for family members. This proposal will provide CSU a tool to better manage and negotiate the entirety of its personnel costs.

California Community Colleges

The California Community Colleges are publicly supported local educational agencies that provide educational, vocational, and transfer programs to approximately 2.4 million students. The California Community College system is the largest system of higher education in the world, with 72 districts, 112 campuses, and 70 educational centers. In addition to providing education, training, and services, the community colleges contribute to continuous workforce improvement. The community colleges also provide remedial instruction for hundreds of thousands of adults across the state through basic skills courses and adult non-credit instruction.

Significant Adjustments:

- Expand the Delivery of Courses through Technology—As discussed above, an augmentation of $16.9 million to increase the number of courses available to matriculated undergraduates through the use of technology.
- Reforms to Census Accounting Practices—Currently, community colleges are provided state funding based on the number of students enrolled at the 20-percent mark of the term. Under this construct, the fiscal incentives for

community colleges are to enroll students and not to ensure that students complete the term. When students withdraw after the 20-percent mark, the state is unnecessarily paying community colleges for students who are no longer in class. Enrollment-based funding lacks incentives for the colleges to focus on critical outcomes—affordability, timely completion rates, and quality programs. This proposal will more appropriately apportion funding by focusing on completion at the end of the term, as opposed to counting attendance at the early weeks of the term. It will be phased in over several years to help colleges adjust their policies and practices in a way that encourages appropriate student placement and good course management. This proposal will reinvest savings into higher apportionment rates for students that complete their courses and for student support services in those communities with higher non-completion rates.

- Board of Governor's Fee Waiver Program Reform—The Board of Governor Fee Waiver program provides hundreds of millions of state financial aid dollars annually to community colleges and their students. Approximately 60 percent of all credit course fees are waived annually by the community colleges, and the state backfills this lost community college revenue source with state funds. The fee system is designed to charge fees to those who can afford to pay them and provide waivers to students who need them. The current fee waiver program provides financial aid to students with limited verification of financial need. To ensure that only financially needy students are determined eligible for the fee waiver program and to ensure program integrity, students seeking financial aid will be required to fill out a Free Application for Federal Student Aid and include both parent and student income when determining fee waiver eligibility. Any savings that result will be reinvested to further increase course offerings and student services and allow students to move through the system more quickly. Additionally, this proposal will generate additional federal financial aid resources for students and colleges.

- Adult Education Realignment—As referenced in the K Thru 12 Education Chapter, K-12 school districts and community colleges are both currently authorized to provide adult education instruction. However, there is no statewide requirement or mechanism to coordinate the efforts of these two systems. As a result, the state has an inefficient and redundant system that is not always structured in the best interest of adult learners. Further, funding for the K-12 adult education program is currently flexible and available for any educational purpose. Many districts are eliminating their programs and redirecting this funding to support their core instructional programs.

- To create a more accountable and centralized adult education learning structure, the Budget proposes $315.7 million Proposition 98 General Fund to fund a comparable K-12 adult education service delivery system. It proposes an increase of $300 million to support the program within the community colleges. It also shifts $15.7 million and the responsibility for the Apprenticeship Program from school districts to the community colleges. The proposal eliminates the current bifurcated system and places community colleges in a position to improve coordination at the regional and statewide levels. Community colleges are better positioned to address the needs of adult learners because that is their core function. However, the colleges will be encouraged to leverage the capacity and expertise currently available at the K-12 district adult schools.
- Funding for adult education will be allocated from a new block grant based on the number of students served and only for core instructional areas such as vocational education, English as a Second Language, elementary and secondary education, and citizenship. This proposal will refocus apportionments away from non-mission areas and reinvest savings for additional courses in mission areas such as basic skills and workforce training. If community colleges offer non-mission courses, students will be required to pay the full cost of instruction. The funding level will be reassessed in the future based on program participation and effectiveness.

- Clean Energy Efficiency Projects—An increase of $49.5 million Proposition 98 General Fund for community colleges to undertake clean energy efficiency projects. Like school districts, community colleges are well positioned to undertake projects that reduce their current utility requirements and expand the use of renewable energy resources. Moreover, community colleges are in the unique position to make a substantial energy efficiency imprint throughout the state in terms of their scope (112 colleges and their related facilities) and emphasis on employment training. As a result, the Budget proposes to allocate all Proposition 39, the California Clean Energy Jobs Act, funding to schools and community colleges (see the K Thru 12 Education Chapter for further details on Proposition 39). Community colleges can use the funds to expand career technical educational training and on-the-job work experience training in partnership with the California Conservation Corps and participating community conservation corps programs.
- Deferrals—At the beginning of 2011-12, the state had accumulated $961 million of deferral debt owed to community colleges. The state successfully reduced the deferral balance to $801 million in 2012-13 and the Budget will reduce that balance

to $622 million through an increase of $179 million Proposition 98 General Fund in 2013-14. This funding is consistent with, and proportional to, the payment of deferred funding in K-12 education. The increase will reduce the substantial borrowing costs borne by the community colleges as a result of funding deferrals. Every dollar that colleges must now spend on borrowing is a dollar taken out of the classroom.

- Apportionments—An increase of $196.9 million Proposition 98 General Fund to base apportionments. This represents a 3.6-percent increase to general purpose community college funding.
- Property Tax Adjustment—An increase of $133.2 million Proposition 98 General Fund in 2013-14 to reflect reduced property tax estimates. Current law intends that property taxes offset Proposition 98 General Fund costs for community college apportionments. Because property taxes are estimated to decline, General Fund costs are increased by a like amount. Additionally, the Budget includes an increase of $47.8 million Proposition 98 General Fund for 2012-13 to offset lower-than-anticipated property tax revenues from the elimination of redevelopment agencies.
- Student Fee Adjustment—A decrease of $12.6 million Proposition 98 General Fund to reflect revised estimates of student fee revenue, primarily resulting from lower-than-anticipated Board of Governors' fee waivers. Similar to property taxes, student fees are intended to offset the costs of apportionments.

Hastings College of the Law

Affiliated with the University of California, the Hastings College of the Law is the oldest and one of the largest public law schools in the West, providing instruction annually to approximately 1,100 students.

Significant Adjustments:

- General Fund Increase—An ongoing increase of $392,000 General Fund for core instructional costs. This funding will mitigate the need for Hastings to increase student tuition and fees and can be used by the college to meet its most pressing needs.
- Debt Service Costs—Currently, the state separately funds general obligation debt service for Hastings. The Budget proposes to shift these appropriations into

Hastings' budget, which will require the college to factor these costs into its overall fiscal outlook and decision-making process.

California Student Aid Commission

The California Student Aid Commission administers state financial aid to students attending all institutions of public and private postsecondary education through a variety of programs including the Cal Grant High School and Community College Transfer Entitlement programs, the Competitive Cal Grant program, and the Assumption Program of Loans for Education. Over 99,000 students received new Cal Grant awards, and over 150,000 students received renewal awards in 2011-12. These programs are a key way in which the state supports the public higher education infrastructure and does so to make college more affordable to the state's lower-income students.

Prior to 2001, the program offered a capped number of awards to students and award amounts were specified in the Budget. The program is now an entitlement and has been one of the fastest growing programs in the Budget. Costs for the program have increased dramatically due to an increased number of students participating in the program and UC and CSU tuition and fee increases in recent years. Over an eight-year period, participation in the program and costs have increased by 79,000 students and $915 million, from 177,000 students and $688 million in 2004-05 to an estimated 288,000 students and $1.7 billion in 2013-14. Absent tuition and fee increases at UC and CSU, the rate of growth in the program is expected to slow somewhat in future years.

The Cal Grant program is one of the most generous entitlement financial aid programs in the country. Only New York, Pennsylvania, Illinois, and Texas have need-based student financial aid programs comparable in size to California.

Significant Adjustments:

- Offset Cal Grant Costs with Federal Temporary Assistance for Needy Families (TANF) Reimbursements—A decrease of $139.2 million General Fund in 2013-14 to reflect increased TANF funds available through an interagency agreement with the Department of Social Services. This adjustment will bring the total TANF funds expended on the Cal Grant program to $942.9 million in 2013-14.
- Cal Grant Program Growth—An increase of $61 million General Fund in 2012-13 and $161.1 million General Fund in 2013-14 to reflect increased participation in the

Cal Grant program. Of the 2013-14 amount, $19.5 million is attributable to the first year of implementation of the California Dream Act.

- Offset of Cal Grant Program Costs with Student Loan Operating Fund—An increase of $60 million Student Loan Operating Fund and an offsetting decrease of $60 million General Fund to support Cal Grant program costs.

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Health Care Reform

Background

Enacted on March 23, 2010, the Affordable Care Act (ACA) increases access to private and public health care coverage through various programmatic, regulatory, and tax incentive mechanisms. Effective January 1, 2014, the ACA requires that health plans and insurers cover individuals regardless of their health status, cover a minimum set of services known as the Essential Health Benefits, and that generally all individuals obtain health care coverage or pay a penalty.

To expand coverage, the ACA provides for: (1) the health insurance exchange, a new marketplace in which individuals who do not have access to public coverage or affordable employer coverage can purchase insurance and access federal tax credits, and (2) two expansions of Medicaid—a mandatory expansion by simplifying rules affecting eligibility, enrollment, and retention; and an optional expansion to adults with incomes up to 138 percent of the federal poverty level (FPL).

Medi-Cal (California's Medicaid program) provides comprehensive health care services at no or low cost to approximately eight million low-income individuals including families with children, seniors, persons with disabilities, children in foster care, and pregnant women. The Medi-Cal caseload represents 21.7 percent of the state's total population. Eligibility for Medi-Cal varies depending on the coverage group, but most adults with incomes at or below 100 percent FPL are covered. Single, childless adults currently are not eligible for Medi-Cal unless they are disabled or aged. Today, many of

these adults not eligible for Medi-Cal receive services through county indigent health services programs.

Total spending from all sources on Medi-Cal is approximately $60 billion, about 27 percent of California's spending. The federal medical assistance percentage (FMAP) is the level of federal financial participation in the Medicaid program and varies by state. California's FMAP is 50 percent, below the national average of 57 percent. Despite the federal government funding only 50 percent of Medi-Cal costs, California covers a relatively greater share of its population through Medi-Cal than other large states or the national average.

The Medi-Cal program cost per case is lower than the national average. Total Medi-Cal costs have grown rapidly, generally between 7 and 11 percent annually during the last decade, due to a combination of health care inflation and caseload growth. Because costs are a function of the number of enrolled individuals, the level of benefits provided, and the rates paid to providers, efforts to control program costs have focused in these areas. While some cost control measures have been allowed, adverse court rulings have prevented the state from fully implementing various provider payment reductions or from providing services only to beneficiaries with the greatest need.

Under the ACA, the federal government promises to initially pay for 100 percent of the costs for newly eligible individuals with funding gradually decreasing to 90 percent by 2020. Other costs will be shared 50-50. California is awaiting guidance on the methodology for claiming federal funding for the expansion. This guidance is a critical factor in determining current and future General Fund obligations.

Private Insurance Market Reforms to Increase Access

Under the ACA, health plans and insurers offering products in the individual and small group markets cannot deny coverage for reasons like health status. This is known as "guaranteed issue". Individuals, with some exceptions, are required to obtain health care coverage—referred to as the "individual mandate". Health plans and insurers also cannot charge higher premiums based on health status or gender.

Health plans and insurers will be required to offer products in the individual and small group markets that provide coverage for ten Essential Health Benefits, similar to those of a typical employer plan. There will be multiple mechanisms to balance risk and protect plans against sick people being concentrated in particular plans (risk adjustment and reinsurance programs). Plans and insurers will be required to continue to spend a

majority of their resources on health care (known as the "medical loss ratio"); standardize coverage to facilitate comparisons of insurance products; standardize rating regions throughout the state; and narrow the range of premiums charged at different ages.

California has already adopted several private insurance market reforms contained in the ACA, including establishing Essential Health Benefits, allowing children up to age 26 to remain on their parents' insurance coverage, instituting guaranteed issue for children with pre-existing conditions, implementing rate review, and imposing medical loss ratio requirements on plans and insurers.

While every effort will be made to promote affordability, large rate increases in the individual insurance market are likely at the outset, due to the requirement to offer coverage to all individuals, provide a higher level of benefits, and due to a significant increase in enrollment which will increase demand for services.

California Health Benefit Exchange (Covered California)

Covered California is a new insurance marketplace that will offer an opportunity to purchase affordable health insurance using federally funded tax subsidies for millions of Californians with incomes up to 400 percent FPL. The open enrollment period will begin October 1, 2013 and coverage begins January 1, 2014. Covered California has many program elements focused on ensuring its premiums are as affordable as possible.

Under the ACA, there will be low-income individuals who will transition back and forth between Medi-Cal and private insurance. To allow these individuals to remain with the same insurance plan and provider network, and to maximize the opportunity for affordable coverage, the Administration, in partnership with Covered California, is proposing to establish a Medicaid Bridge Program. Covered California will negotiate contracts with Medi-Cal Managed Care Plans that have robust local safety net provider networks to offer a plan option with a very low or zero premium for those earning between 138 percent and 200 percent FPL.

Mandatory Medicaid Expansion

The ACA requires a Medicaid expansion to currently eligible populations through eligibility and enrollment simplifications. Currently, Medicaid eligibility is based on several factors, including linkage to a specific coverage group, income eligibility (including allowable deductions), assets, residency status, and citizenship status. Major changes include the following:

- Establishing a new standard for determining income eligibility, based on Modified Adjusted Gross Income (MAGI), consistent with the standard used to determine eligibility for premium tax credits.
- Eliminating the asset test for individuals whose eligibility determination is based on MAGI.
- Conducting an "ex parte" review when making a redetermination of eligibility. Redeterminations must be made based on available information with a primary reliance on electronic data. The number of individuals who currently lose eligibility at the time of renewal is estimated to be in the range of 20 percent to 35 percent. While many of these individuals re-enroll in the program, under these changes, they would remain in the program for a longer period of time.

Due to a number of factors, including the requirement that most individuals obtain coverage, enrollment and eligibility simplifications, and marketing and outreach activities, Medi-Cal enrollment will increase.

The Budget includes $350 million General Fund as a placeholder for the costs of the mandatory expansion until a more refined estimate can be developed. Given the outstanding federal guidance, the sheer number of changes, and the interactions between the various policies, developing a more refined estimate will take additional time. As a point of comparison, the state has experienced a significant increase in General Fund costs related to similar eligibility and enrollment simplifications, such as de-linking Medi-Cal eligibility from CalWORKs, allowing individuals who work more than 100 hours to qualify for Medi-Cal services, and eliminating reporting requirements.

Medi-Cal "Bridge to Reform" Waiver

The state initiated an early "Bridge to Reform" Medi-Cal expansion by enacting the Low Income Health Program (LIHP) under a federal waiver in 2010. The waiver permits counties to provide a Medicaid-like expansion to individuals with incomes up to 138 percent FPL through 2013. The purpose of the LIHP is to expand health care coverage to low-income adults prior to the effective date of the ACA. The LIHP is a voluntary, county-run program that is financed with 50 percent county and 50 percent federal funds. Currently, 17 LIHPs are operational and provide coverage to approximately 500,000 individuals in 51 counties. Of the remaining counties, four intend to start programs. Three have opted to not run LIHPs—Fresno, Merced, and San Luis Obispo. This early expansion has resulted in substantial savings for

participating counties by providing new federal funding for costs that were previously borne exclusively by counties.

The LIHPs structure and administer their programs differently—through a consortium of counties or through county health departments. The LIHP expansion contained waivers of several Medicaid requirements, allowing enrollment caps, limited networks mainly based on county-operated providers, and other requirements to limit county obligations.

Implementing the Optional Expansion

California has been and will continue to be a leader in the implementation of federal health care reform, building on the early establishment of the Exchange and the early expansion to adults through the Bridge to Reform waiver. As described below, the Budget outlines two alternatives to the optional expansion—a state-based approach or a county-based approach. Each approach has its own set of strengths, challenges, risks, and benefits. Expansion of health care under either approach will have a substantive effect on both state and county finances for the foreseeable future.

Increased coverage will generate substantial savings for the counties which pay for care for adults who are not currently eligible for Medi-Cal through their local indigent health care services programs. Counties currently meet this responsibility by operating facilities—hospitals and clinics—and/or by contracting with private providers. The state provides funding from the 1991 health realignment to partially fund these costs. To receive these funds, counties also have a required maintenance of effort to spend their own county funding. Currently, counties are spending between $3 billion and $4 billion annually on health care costs, though spending varies significantly by county. Counties that own and operate hospitals also use local funds to fund the non-federal share of the Medi-Cal program for inpatient Medi-Cal services provided in their facilities.

Implementing federal health care reform will require an assessment of how much funding currently spent by counties should be redirected to pay for the shift in health care costs to the state. The state will also need to consider how these changes would impact remaining county obligations to provide care to those individuals who remain uninsured, as well as public health programs. As such, the implementation of health care reform will require a broader discussion about the future of the state-county relationship with the goal to strengthen local flexibility, fairly allocate risk, and clearly delineate the respective responsibilities of the state and the counties.

State-Based Expansion

A state-based Medicaid expansion would build upon the existing state-administered Medicaid program and managed care delivery system. The state would offer a standardized, statewide benefit package comparable to that available today in Medi-Cal, but would exclude long-term care coverage.

This option would require a discussion with the counties around the appropriate state and local relationship in the funding and delivery of health care, and what additional programs the counties should be responsible for if the state assumes the majority of health care costs. To finance the expansion, the state would need to capture county savings and continue to use those funds to pay for health care coverage for this previously medically indigent population. The counties would assume programmatic and fiscal responsibility for various human services programs, including subsidized child care.

County-Based Expansion

A county-based expansion of Medicaid would build upon the existing Low Income Health Program. Counties would maintain their current responsibilities for indigent health care services. Under this option, counties would meet statewide eligibility requirements, and a statewide minimum in health benefits consistent with benefits offered through Covered California. Counties could offer additional benefits, except for long-term care.

Under a county-operated Medicaid expansion, the counties would act as the fiscal and operational entity responsible for the expansion. Counties would build upon their existing LIHP and/or county indigent health care services programs as the basis for operating the Medicaid expansion.

The key operational and fiscal responsibilities of the counties in designing and running such a Medicaid expansion would include developing provider networks, setting rates, and processing claims. As was the case when implementing LIHP, implementation of this option would require approval of waivers of specified federal requirements.

Outstanding Issues

There are several key aspects of ACA implementation for which federal guidance has not yet been issued. The most significant is the methodology for claiming enhanced federal funding. Guidance is also required with respect to the scope of benefits that

will be required for individuals covered under the optional expansion. In addition, while Medicaid was exempted from the federal Budget Control Act sequester, it is possible that federal funding for Medicaid could be affected by comprehensive budget deficit reduction in the future.

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Health and Human Services

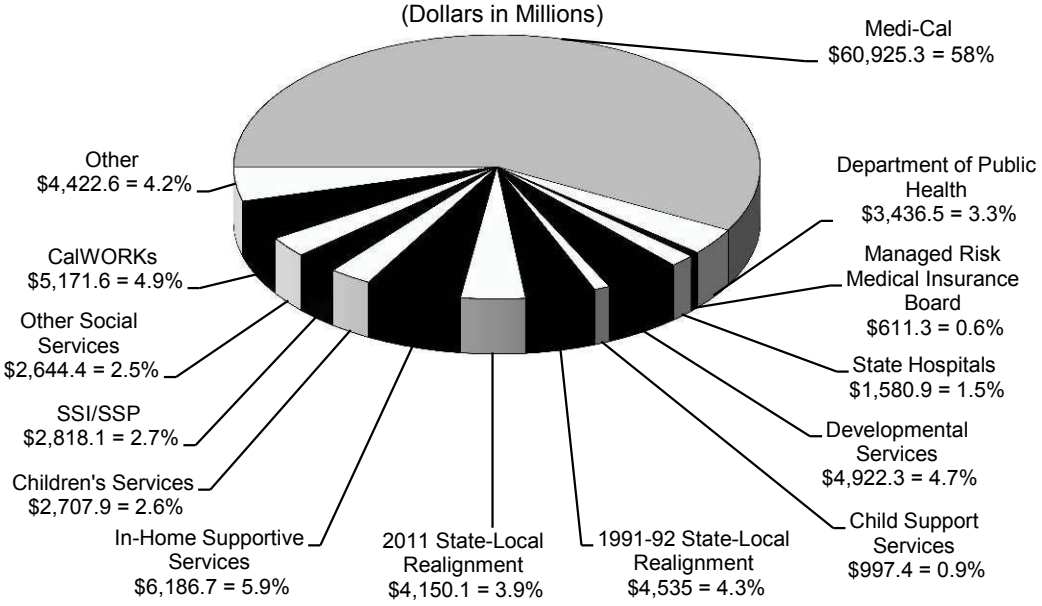
The Health and Human Services Agency oversees departments and other state entities such as boards, commissions, councils, and offices that provide health and social services to California's vulnerable and at-risk residents. The Budget includes $105.1 billion ($28.4 billion General Fund and $76.7 billion other funds) for these programs. Figure HHS-01 displays expenditures for each major program area and Figure HHS-02 displays program caseload.

Information on California's implementation of the Affordable Care Act is included in the Health Care Reform Chapter.

Agency Reorganization

The Budget transfers all substance use disorder programs from the Department of Alcohol and Drug Programs (DADP) to the Department of Health Care Services (DHCS) to better coordinate the licensing, certification, and program management of substance use disorders services statewide. Among other benefits, this reorganization maintains programmatic expertise, enhances oversight, and promotes opportunities for health care delivery improvement. DADP's Office of Problem Gambling will be transferred to the Department of Public Health. The Budget also transfers mental health licensing and quality improvement functions from the Department of Social Services to DHCS to further consolidate and streamline licensing and certification functions for these programs within a single department.

Figure HHS-01
Health and Human Services Proposed 2013-14 Funding[/1]
All Funds
(Dollars in Millions)



[/1] Totals $105,110.1 million for support, local assistance, and capital outlay. This figure includes reimbursements of $9,898.4 million and excludes $5.6 million in Proposition 98 funding in the Department of Developmental Services budget and county funds that do not flow through the state budget.

DEPARTMENT OF HEALTH CARE SERVICES

Medi-Cal, California's Medicaid program, is administered by DHCS. Medi-Cal is a public health insurance program that provides comprehensive health care services at no or low cost for low-income individuals including families with children, seniors, persons with disabilities, children in foster care, and pregnant women. The federal government mandates basic services including physician services, family nurse practitioner services, nursing facility services, hospital inpatient and outpatient services, laboratory and radiology services, family planning, and early and periodic screening, diagnosis, and treatment services for children. In addition to these mandatory services, the state provides optional benefits such as outpatient drugs, home and community-based services, and medical equipment. DHCS also operates the California Children's Services program, the Primary and Rural Health program, and oversees county operated community mental health programs.

Since 2006-07, total Medi-Cal benefit costs grew 10.6 percent annually (approximately $3.8 billion per year) to $55.9 billion in 2012-13 because of a combination of health care

Figure HHS-02

Major Health and Human Services Program Caseloads

	2012-13 Revised	2013-14 Estimate	Change
Medi-Cal enrollees	8,195,000	8,678,300	483,300
Healthy Families Program [a]	200,464	4,002	-196,462
California Children's Services (CCS) [b]	35,801	19,643	-16,158
CalWORKs	563,505	572,133	8,628
Non cash-assistance CalFresh households	1,603,911	1,829,310	225,399
SSI/SSP (support for aged, blind, and disabled)	1,291,022	1,308,026	17,004
Child Welfare Services [c]	138,590	136,973	-1,617
Foster Care	43,522	40,030	-3,492
Adoption Assistance	85,580	86,494	914
In-Home Supportive Services	422,945	418,890	-4,055
Services for persons with developmental disabilities			
Regional Centers	256,872	266,100	9,228
Developmental Centers [d]	1,552	1,304	-248
State Hospitals			
Mental health patients [e]	6,521	6,560	39
Alcohol and Drug Programs [f]	247,987	257,678	9,691
Vocational Rehabilitation	28,318	28,318	0

[a] Current year represents the year-end population. Budget year represents the remaining average monthly caseload not included in Medi-Cal.

[b] Represents unduplicated quarterly caseload in the CCS Program. Does not include Medi-Cal CCS clients.

[c] Represents Emergency Response, Family Maintenance, Family Reunification, and Permanent Placement service areas on a monthly basis. Due to transfers between each service area, cases may be reflected in more than one services area.

[d] Represents average in-center population.

[e] Represents the year-end population. Includes population at Vacaville and Salinas Valley Psychiatric Programs, and the California Health Care Facility - Stockton.

[f] Represents Drug Medi-Cal Clients.

cost inflation, rate increases, and caseload growth. Medi-Cal General Fund spending is projected to increase 3.9 percent from $15 billion General Fund in 2012-13 to $15.6 billion General Fund in 2013-14 because of enacted and proposed program changes. Absent these changes, costs would grow by 8.3 percent to $16.3 billion General Fund. Growth in Medi-Cal General Fund expenditures has been reduced through cost shifting to other funding sources, including the Gross Premium Tax (first authorized in 2009-10), Hospital Quality Assurance Fee (first authorized in 2011-12), and Medicaid waivers that allow claiming of federal funds for state-only health care costs.

The Budget assumes caseload will increase approximately 5.9 percent from 2012-13 to 2013-14 (from 8.2 million to 8.7 million), largely because of the shift of children from Healthy Families to Medi-Cal. Caseload would increase by 1.2 percent absent

the shift. Base caseload growth is slightly higher than the 1-percent growth rate of the total California population over the same period. The Medi-Cal caseload represents approximately 21.7 percent of the state's total population. The implementation of federal health care reform will further increase Medi-Cal program caseload.

The Federal Medical Assistance Percentage (FMAP) determines the level of federal financial support for the Medi-Cal program. With the exception of temporary increases, California has had a federal medical assistance percentage of 50 percent (the minimum percentage authorized under federal law) since the inception of the Medicaid program in 1965. California's percentage is lower than the national average and is lower than those of neighboring states. Oregon, Nevada, and Arizona currently have percentages of 62 percent, 60 percent, and 66 percent, respectively. The state's percentage is also substantially lower than Mississippi's 73 percent federal medical assistance percentage, currently the highest in the country.

The Medi-Cal program cost per case is lower than the national average. California's cost per case of $4,539 in 2012-13 is substantially lower than other low FMAP states, such as Massachusetts ($7,579) and New York ($8,960), according to data from federal fiscal year 2009.

California is relatively generous in its eligibility rules compared with other states. Parents are typically eligible for full scope benefits at 100 percent of the federal poverty level (FPL) which is 15th highest in the nation, 185 percent of FPL for pregnant women which is 8th highest in the nation, and 100 percent of FPL for non-working disabled beneficiaries, which is 7th highest in the nation.

Significant program developments have affected both costs and caseload in recent years including:

- Expansion of Medi-Cal Managed Care into counties formerly operating under the fee-for-service model, including the expansion of managed care into rural counties.
- Shifting Children from Healthy Families to Medi-Cal. Approximately 860,000 children began transitioning to the Medi-Cal program January 1, 2013. The state will continue to utilize the Children's Health Insurance Program federal match of 65 percent for the Healthy Families caseload within the Medi-Cal program.
- Expansion of Medi-Cal Managed Care to seniors and persons with disabilities formerly covered under the fee-for-service model. Approximately 380,000 beneficiaries have transitioned.

- Provider rate reductions enacted through Chapter 3, Statutes of 2011 (AB 97). These reductions will result in General Fund savings of $488.4 million in 2013-14.
- The Coordinated Care Initiative (CCI) was authorized by Chapter 33, Statutes of 2012 (SB 1008) and Chapter 45, Statutes of 2012 (SB 1036). CCI will better coordinate the care of 560,000 Medi-Cal and Medicare dual eligible beneficiaries from fee-for-service to managed care beginning in 2013-14. Please see below for additional information on the CCI.

Significant Adjustments:

- Hospital Quality Assurance Fee Extension—A savings of $310 million General Fund in 2013-14 as a result of extending the hospital fee, which will sunset on December 31, 2013. The fee provides funds for supplemental payments to hospitals and also provides some funding to offset the costs of health care coverage for children.
- Gross Premiums Tax—The Budget proposes to reauthorize the Gross Premiums Tax on Medi-Cal managed care plans permanently. Continuing the tax will generate General Fund savings of $85.9 million in 2012-13 (included in the Managed Risk Medical Insurance Board budget) and $217.3 million in 2013-14.
- Managed Care Efficiencies—A decrease of $135 million General Fund in 2013-14 as a result of implementing additional efficiencies in managed care. DHCS is looking for new ways to improve the quality and efficiency of the health care delivery system and develop payment systems that promote quality, not quantity, of care and improve health outcomes.
- Annual Open Enrollment—A decrease of $1 million General Fund in 2013-14 and ongoing as a result of having beneficiaries select their Medi-Cal health plan each year and receive care through that health plan for the entire year. This open enrollment process will align Medi-Cal with the industry best practice of other third-party health benefit payers.
- Coordinated Care Initiative—Under the CCI, persons eligible for both Medicare and Medi-Cal (dual eligibles) will receive medical, behavioral health, long-term supports and services, and home and community-based services coordinated through a single health plan. The CCI will also enroll all dual eligibles in managed care plans for their Medi-Cal benefits. Dual eligibles will enroll in the CCI in specified counties participating in the demonstration.

The following changes have occurred to the structure of the CCI since enactment of the 2012 Budget Act:

- The Budget has been revised to reflect the size and scope of the demonstration as enacted. The Budget reflects the population participating in the demonstration and accounts for individuals excluded from the program by statute including beneficiaries enrolled in the Developmentally Disabled waiver, beneficiaries enrolled in a Kaiser Plan, and beneficiaries with other health coverage.
- The Budget changes the scheduled phasing for beneficiaries enrolling in the CCI. Beneficiaries in participating counties will enroll for their Medi-Cal benefits beginning in September 2013. Los Angeles County will phase-in beneficiaries over 18 months. San Mateo County will enroll all beneficiaries at once. Orange, San Diego, San Bernardino, Riverside, Alameda, and Santa Clara counties will phase-in over 12 months. The 2012 Budget Act assumed beneficiaries in all counties would phase into the CCI over a 12-month period beginning in March 2013.
- The Budget projects revised General Fund savings for the CCI of $170.7 million in 2013-14. Savings are projected to grow to $523.3 million General Fund annually. DHCS is working to reach agreement with the federal government on a shared savings methodology to achieve the budgeted savings. Statutory changes will be needed to reflect the aforementioned changes and the agreement with the federal government.

Managed Risk Medical Insurance Board

The Managed Risk Medical Insurance Board (MRMIB) currently administers five programs that provide health coverage through commercial health plans, local initiatives, and county organized health systems to eligible individuals who do not have health insurance. Two of those programs will continue to be administered by MRMIB: the Access for Infants and Mothers Program, which provides comprehensive health care to pregnant women, and the County Health Initiative Matching Fund Program, which provides comprehensive health benefits through county-sponsored insurance programs.

Of the three remaining programs, the Healthy Families Program (HFP), which provides comprehensive health benefits to children, began transitioning beneficiaries to Medi-Cal on January 1, 2013. The Managed Risk Medical Insurance Program and the Pre-Existing Condition Insurance Program, health coverage programs for individuals with pre-existing

conditions, will phase-out with the implementation of the federal Affordable Care Act in 2014.

The Budget includes $611.3 million ($21.7 million General Fund) for MRMIB, a decrease of $143.9 million General Fund from the Budget Act of 2012. This significant decrease is primarily due to the transition of HFP beneficiaries to Medi-Cal.

Department of Public Health

The Department of Public Health (DPH) is charged with protecting and promoting the health status of Californians through programs and policies that use population-wide interventions. Funding for 2012-13 is $3.5 billion ($130.6 million General Fund), and proposed funding for 2013-14 is $3.4 billion ($114.5 million General Fund).

Significant Adjustments:

- Zero-Base Budget Review—Executive Order B-13-11 directs the Department of Finance to modify the state budget process to increase efficiency and focus on accomplishing program goals. Pursuant to this Executive Order, DPH has begun the process of implementing zero-base budgeting for its contracting activities, the Baby BIG program, and the Women, Infants and Children program. Initial findings from these efforts will be provided in the spring of 2013. This represents the first phase of implementing zero-base budgeting throughout the Department.
- AIDS Drug Assistance Program (ADAP)—The ADAP provides uninsured and under-insured people living with HIV and AIDS access to medication. Californians over 18 years of age whose income does not exceed $50,000 annually are eligible for the program. In January 2012, the program began screening and transitioning eligible ADAP clients to county Low-Income Health Programs (LIHPs). Caseload is projected to decrease by 8 percent and expenditures by $61.9 million compared to fiscal year 2011-12 primarily due to the transition of clients to county LIHPs. The program reflects a net decrease of $12.7 million in 2013-14 ($16.9 million General Fund decrease and $4.2 million other fund increase) to reflect updated caseload estimates.

Department of Developmental Services

The Department of Developmental Services (DDS) provides consumers with developmental disabilities a variety of services and supports that allow them to live and work independently, or in supported environments. Recent changes in the delivery of services and eligibility for additional federal funds have reduced the growth in regional center General Fund costs. These costs had been increasing significantly as consumers moved from developmental centers into the community, utilization of services increased, and more consumers were diagnosed with autism spectrum disorders.

California is the only state providing developmental services as an entitlement. DDS serves approximately 260,000 individuals with developmental disabilities in the community and 1,550 individuals in state-operated facilities. The Budget includes $4.9 billion ($2.8 billion General Fund) for support of the Department. Services are provided through developmental centers, one community facility, and the regional center system.

In December 2012, federal decertification and state license revocation actions were initiated for the Intermediate Care Facility (ICF) at the Sonoma Developmental Center (SDC), which provides services for approximately 290 individuals. The Nursing Facility and General Acute Care services at SDC were not impacted by these actions. DDS has filed appeals and will work with DPH and the federal Centers for Medicare and Medicaid Services to quickly resolve licensing issues and minimize any loss of federal funds. The ICF will continue to operate during the appeal process. No adjustment for the potential loss of federal funding has been included in the Budget pending the outcome of the appeal.

Significant Adjustments:

- Regional Center Caseload Adjustment—An increase of $36.1 million (a decrease of $3 million General Fund) in 2012-13 and an increase of $177.5 million ($89.2 million General Fund) in 2013-14 to reflect increases in caseload and utilization of services.
- Sunset Operations and Provider Payment Reduction—An increase of $46.7 million ($32 million General Fund) in 2013-14 to reflect the sunset of the 1.25-percent regional center operations and provider payment reduction.
- Proposition 10 Funding—An increase of $40 million General Fund to backfill the one-time support provided by the First 5 California Children and Families Commission for programs serving children birth through five in the 2012 Budget Act.

- Annual Family Program Fee—The Budget permanently continues the Annual Family Program Fee, scheduled to sunset June 30, 2013, which assesses a fee of $150 or $200 per family. The fee is based on family size and additional criteria and assessed to families whose adjusted gross family income is at, or above, 400 percent of the federal poverty level. This fee offsets developmental services General Fund costs by $7.2 million.

Department of State Hospitals

The Department of State Hospitals (DSH) was established in July 2012 to administer the state mental health hospital system, the Forensic Conditional Release Program, the Sex Offender Commitment Program, and the evaluation and treatment of judicially and civilly committed and voluntary patients. DSH continues to evaluate operations to improve treatment, safety and security of staff and patients, and fiscal accountability and transparency. The Budget includes $1.6 billion ($1.5 billion General Fund) in 2013-14 for support of DSH. The patient population is projected to reach a total of 6,560 in 2013-14.

Significant Adjustments:

- Stockton Activation and Bed Migration—An increase of $100.9 million General Fund in 2013-14 to activate 514 beds at the California Health Care Facility (CHCF). This includes $67.5 million General Fund for additional staff to complete the activation of CHCF and $33.4 million General Fund for the full year costs of positions approved in the Budget Act of 2012. The Budget does not include an adjustment for the transfer of inmate-patients from existing Psychiatric Programs at Salinas Valley State Prison and the California Medical Facility at Vacaville to the CHCF. DSH will continue to evaluate inmate-patients for transfer to the CHCF and develop a transition plan to reduce the number of DSH-operated beds at Salinas and Vacaville.
- Safety and Security—Upon the successful implementation of the personal duress alarm system (PDAS) upgrade at Napa State Hospital in November 2012, the PDAS project schedule was updated for Metropolitan and Patton State Hospitals. The revised schedule resulted in a reduction of $5.6 million General Fund in 2013-14. The Budget maintains funding to continue the PDAS upgrade at Atascadero and Coalinga State Hospitals.
- Emerging Population Trends—The Budget includes $20.1 million Reimbursements for the estimated increase in civil commitments. No adjustment is included in the

Budget for pending commitments. DSH maintains wait lists of patients awaiting admission to its five hospitals and two psychiatric programs. Since June 30, 2012, the DSH has seen a steady increase in its wait list numbers for Incompetent to Stand Trial and Mentally Disordered Offender commitments. DSH will continue to monitor the pending commitments and, if necessary, develop options to address these wait lists.

Department of Social Services

The Department of Social Services (DSS) serves, aids, and protects needy and vulnerable children and adults in ways that strengthen and preserve families, encourage personal responsibility, and foster independence.

The Budget includes $19.5 billion ($7.6 billion General Fund) for DSS, an increase of $577.4 million General Fund from the revised 2012-13 budget, and an increase of $623.9 million General Fund from the Budget Act of 2012.

State funds for Foster Care, the Adoption Assistance Program, Child Welfare Services, Child Abuse Prevention, and Agency Adoptions were realigned to counties as part of 2011 Realignment. Funding for those programs can be found in the 2011 Realignment Estimate display in Item 5196 in the Governor's Budget.

The Budget includes $1 million ($482,000 General Fund) and 9 positions in 2013-14 for DSS to support and oversee the Child Welfare System-New System project through the procurement phase. This approach is consistent with the Child Welfare Services Automation Study released in April 2012.

California Work Opportunity and Responsibility to Kids

The CalWORKs program, California's version of the federal Temporary Assistance for Needy Families (TANF) program, provides temporary cash assistance to low-income families with children to meet basic needs. It also provides welfare-to-work services so that families may become self-sufficient. Eligibility requirements and benefit levels are established by the state. Counties have flexibility in program design, services, and funding to meet local needs.

Total CalWORKs expenditures of $7.1 billion (state, local, and federal funds) are proposed for 2013-14, including TANF Block Grant and maintenance-of-effort countable expenditures. The amount budgeted includes $5.4 billion for CalWORKs

program expenditures and $1.7 billion in other programs. Other programs primarily include expenditures for Cal Grants, Department of Education child care, Child Welfare Services, Foster Care, DDS programs, the Statewide Automated Welfare System, California Community Colleges child care and education services, and the Department of Child Support Services.

Average monthly CalWORKs caseload is estimated to be 572,000 families in 2013-14, a 0.7-percent increase over the 2012 Budget Act projection.

Background

In 1994-95, California's welfare caseload reached its highest point with 921,000 families receiving aid. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 fundamentally reformed the nation's welfare system and created a block grant program with work requirements and lifetime time limits. Consistent with this federal welfare reform law, CalWORKs contains time limits on the receipt of aid and linked eligibility for aided adults to work participation requirements. California is also one of only nine states that included a safety net program to provide monthly assistance payments to children whose parents are not eligible for aid. In 2005, federal welfare reform was modified to further restrict countable work activities and to require states to have 50 percent of the program's caseload meeting federal work participation levels.

In the early years of CalWORKs, the program was successful in getting many of the most readily employable parents to enter the labor market, with caseload reaching an all-time low of 460,000 in cases in 2006-07. Since then, and coinciding with the severe economic downturn, the program experienced significant growth, increasing to nearly 586,000 cases in 2010-11. Over this same period, budgetary constraints required expenditure reductions. Major reductions to the program in recent years have consisted of the following:

- Funding for work support services—From 2009-10 through 2011-12, annual funding for welfare-to-work and child care services was reduced by over $375 million. To allow counties to absorb this substantial reduction, additional exemptions from work participation requirements were authorized for families with very young children.
- Time limits—Since the program's inception, work-eligible adults were generally limited to 60 months of eligibility for cash assistance. Effective July 2011, eligibility for adult recipients is limited to 48 months.

- Monthly grant levels—Maximum Aid Payment (MAP) levels were reduced by 4 percent in July 2009, followed by an additional 8 percent reduction in July 2011. For a family of three living in a high-cost county, this equates to an $85 per month reduction in cash assistance from 2008 MAP levels. Current grant levels are only slightly above 1987-88 levels. Compared to other states, California's grant levels are eighth highest in the nation and second highest among the ten largest states.
- Income disregard—Beginning in July 2011, the amount of monthly earnings disregarded for purposes of determining a family's grant level was reduced from disregarding the first $225 of income and 50 percent of the remainder to $112 and 50 percent.

During unprecedented levels of unemployment and resulting caseload growth, resources for CalWORKs families were reduced and the work focus of the program was substantially eroded. Additionally, the TANF program modifications enacted by Congress in 2005 exposed the state to potentially significant fiscal penalties due to the low work participation levels. Continuing the program under the existing structure severely undermined the program's primary goal—helping families achieve self-sufficiency.

Redesigning CalWORKs

To refocus CalWORKs on the primary goal of moving families to self-sufficiency, major programmatic changes were enacted in 2012. Chapter 47, Statutes of 2012 (SB 1041) restores the program's focus on work through the following changes:

- Creates a prospective 24-month time limit on cash assistance and employment services for adults. After two years, adults must meet federal work participation requirements to remain eligible for cash aid for up to 24 additional months.
- Provides counties some flexibility by allowing up to 20 percent of the adults to extend their time beyond 24 months to complete their educational goals or find a job.
- Provides up to two years for clients to transition to the new program and be provided the skills necessary to find employment as the economy continues to recover.
- Restores the earned income disregard to the pre-July 2011 level effective October 1, 2013, which increases the incentive to find and maintain employment by allowing families to keep more of their income without a reduction in their monthly grant.

Because SB 1041 requires significant changes to CalWORKs, stakeholder involvement and input are critical components for ensuring the redesigned program leads to

better outcomes for families. As such, DSS convened a stakeholder workgroup shortly after SB 1041 was signed into law to develop protocols for implementation. The workgroup includes representatives of advocacy groups, counties, the Legislature, and the Administration.

Significant Adjustment:

- CalWORKs Employment Services—An increase of $142.8 million General Fund in 2013-14 to support the CalWORKs refocusing measures enacted by SB 1041. The additional resources are necessary to maximize successful outcomes under the new program structure. Counties will need to enhance and expand their array of employment services and job development activities for program participants, and intensify case management efforts for individuals not currently participating in activities that will eventually lead to self-sufficiency.

Other highlights:

- Child Care—CalWORKs subsidized child care is provided in three stages. County welfare departments administer CalWORKs Stage One child care while the Department of Education administers Stages Two and Three. The three-stage structure was created to ensure recipients of aid are able to participate in work activities, and continue to participate as they transition off cash aid. Additionally, the Department of Education administers all other subsidized child care programs to support low-income families so they may remain gainfully employed. The current subsidized child care system is fragmented by design. The various programs operate under different rules and administrative structures that suggest potential efficiencies can be gained through a closer of examination of the current system. DSS will convene a stakeholder group to assess the current child care structure and opportunities for streamlining and other improvements.

Supplemental Security Income/State Supplementary Payment

The federal Supplemental Security Income (SSI) program provides a monthly cash benefit to eligible aged, blind, and disabled persons who meet the program's income and resource requirements. In California, the SSI payment is augmented with a State Supplementary Payment (SSP) grant. These cash grants assist recipients with basic needs and living expenses. The federal Social Security Administration (SSA) administers the SSI/SSP program, making eligibility determinations, grant computations, and issuing combined monthly checks to recipients. The state-only Cash Assistance Program for

Immigrants (CAPI) provides monthly cash benefits to aged, blind, and disabled legal non-citizens who are ineligible for SSI/SSP due solely to their immigration status.

Effective January 2012, maximum SSI/SSP grant levels are $854 per month for individuals and $1,444 per month for couples. SSA applies an annual cost-of-living adjustment to the SSI portion of the grant equivalent to the year-over-year increase in the Consumer Price Index (CPI). The current projected CPI growth factors are 1.7 percent for 2013 and 1.1 percent for 2014. Maximum SSI/SSP monthly grant levels would increase by $20 and $30 for individuals and couples, respectively. CAPI benefits are equivalent to SSI/SSP benefits, less $10 per month for individuals and $20 per month for couples.

The Budget includes $2.8 billion General Fund for the SSI/SSP program in 2013-14. This represents a 1.9-percent increase from the revised 2012-13 budget. The caseload in this program is estimated to be 1.3 million recipients in 2013-14, a 1.3-percent increase over the 2012-13 projected level. The SSI/SSP caseload consists of 27 percent aged, 2 percent blind, and 71 percent disabled persons.

In-Home Supportive Services

The In-Home Supportive Services (IHSS) program provides domestic services such as housework, transportation, and personal care services to eligible low-income aged, blind, and disabled persons. These services are provided to assist individuals to remain safely in their homes and prevent institutionalization.

The Budget includes $1.8 billion General Fund for the IHSS program in 2013-14, a 4.9-percent increase over the revised 2012-13 budget and 6.5-percent increase from the 2012 Budget Act. Average monthly caseload in this program is estimated to be 419,000 recipients in 2013-14, a 1-percent decrease from the 2012-13 projected level.

Significant Adjustments:

- An increase of $92.1 million associated with more restrictive federal requirements to draw down enhanced federal matching funds for the IHSS program under the federal Community First Choice Option. Beginning July 2013, only recipients who meet the standards for nursing home level of care will be eligible for the enhanced federal match.
- An increase of $59.1 million to reflect restoration of the 3.6-percent across-the-board reduction to recipient hours, which is scheduled to sunset on June 30, 2013.

- An increase of $47.1 million related to the recently enacted county maintenance-of-effort (MOE) requirement. Effective July 1, 2012, counties' share of the non-federal portion of IHSS costs is based on actual expenditures by counties in fiscal year 2011-12. The counties' MOE requirement will increase by 3.5 percent annually, beginning in 2014-15, except for years in which 1991-92 realignment revenues decrease from the immediate prior year.
- A decrease of $30.2 million associated with the health care certification requirement enacted in 2011-12.
- A decrease of $113.2 million to reflect implementation of the 20-percent across-the-board reduction to recipient hours on November 1, 2013. A court injunction prevented the state from implementing this reduction, which was originally required to become effective in January 2012. The Budget assumes successful resolution and implementation in 2013-14. The savings amount identified reflects fully restoring hours for severely impaired recipients, who would otherwise be placed in nursing homes.

The IHSS program is also a key component of the Coordinated Care Initiative (CCI). Beginning in September of 2013, certain Medi-Cal beneficiaries residing in a county authorized to participate in the CCI demonstration will begin transitioning from the traditional fee-for-service model to a managed care model for receiving health care services, including IHSS recipients. Under CCI, the fundamental structure of the IHSS program will remain as it is today, with eligibility determination, assessment of hours, and program administration conducted by county social workers and administrative staff. For additional information on CCI, refer to the Department of Health Care Services section.

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Corrections and Rehabilitation

The California Department of Corrections and Rehabilitation (CDCR) incarcerates the most serious and violent felons, supervises them when they are released on parole, and provides rehabilitation programs to help them reintegrate into the community. CDCR provides safe and secure detention facilities and necessary support services to inmates, including food, clothing, academic and vocational training, as well as health care services.

The Budget proposes total funding of $9 billion ($8.7 billion General Fund and $252 million other funds) for CDCR in 2013-14.

Continued Commitment to Implementation of Realignment

The Budget reflects the continued implementation of 2011 Public Safety Realignment, which, through Chapter 15, Statutes of 2011 (AB 109), created a community-based correctional program where lower-level offenders remain under local jurisdictions. Funding for those programs can be found in the 2011 Realignment Estimate display in Item 5196 of the Governor's Budget. The Administration continues to work collaboratively with counties and other stakeholders to address implementation issues associated with Realignment.

In April 2012, the Administration released its plan for the future of California's prison system (known as the Blueprint) to achieve significant General Fund savings, satisfy

court orders to relieve prison overcrowding, and provide a constitutionally required level of health care to inmates. The Administration continues to implement the Blueprint as approved by the Legislature, which includes key components such as reclassifying inmates based on the updated inmate classification system, improving access to rehabilitative programs, returning inmates housed in out-of-state contract facilities to California, standardizing staffing, and maintaining health care services.

- Health Care Continues to Improve—Inmates continue to receive mental health, medical and dental care that is consistent with the standards and scope of services appropriate within a custodial environment. At the request of the court appointed federal Receiver that oversees California's prison medical care program, the Office of the Inspector General (OIG) evaluates and monitors the progress of medical care delivery to inmates in the institutions. Based on these inspections, the OIG issues a score rating each institution's compliance with the various components of medical delivery. The OIG has reported significant improvements since it began its inspections in 2008, with the most recent round of monitoring resulting in an average score of 85 percent across the 20 institutions that have gone through the third round of monitoring, up from an average score of 79 percent from the second round of monitoring for all 33 institutions that was completed in December 2011. The federal court stated that it would remove the Receiver and return control to the state once the system is stable and provides for constitutionally adequate medical care. The improvements cited by OIG are an indication that the state is meeting federal court requirements and will assist the state in extricating itself from the class-action lawsuits that govern prison health care.

- Monitoring Implementation of Plan—The Blueprint also outlined a plan to improve transparency, and increase program oversight and fiscal accountability. The Department of Finance's Office of State Audits and Evaluations and the OIG are monitoring CDCR's implementation of the plan, including an assessment of inmate programs, position control, fiscal management, and overall adherence to the Blueprint. Annual reports will be submitted to the Legislature, with the first report being released in the spring of 2013.

While the adult inmate population continues to decline as a result of Realignment, new admissions are currently trending higher than the 2012 Budget Act projections. The Budget Act projected an adult inmate average daily population of 129,961 in the current year. The current year adult inmate population is projected to exceed Budget Act projections by 2,262 inmates, a 1.7-percent increase, for a total population of 132,223. The budget year adult inmate population is projected to be 128,605, a 2.7-percent

decrease of 3,618 inmates. The current projections also reflect a decrease in the parolee population of 4,052 in 2012-13 compared to Budget Act projections, for a total average daily population of 57,640. The parolee population is projected to be 42,958 in 2013-14, a decrease of 14,682.

Three-Judge Panel

In November 2006, plaintiffs filed a motion to convene a three-judge panel in the *Plata* lawsuit under the 1996 Prison Litigation Reform Act, claiming that overcrowded conditions in California's prisons resulted in unconstitutional medical care. The second lawsuit joined in the three-judge panel, *Coleman*, involves mental health services for inmates. Both lawsuits claim that care for inmates violates the Eighth Amendment of the U.S. Constitution, which prohibits cruel and unusual punishment of the incarcerated.

In 2007, a three-judge panel was convened to address claims that overcrowding in state prisons results in unconstitutional medical care. In 2009, the panel ordered the state to reduce its adult institution population to 137.5 percent of design capacity within two years, equivalent to a reduction of about 40,000 inmates. The state appealed this decision, but in 2011, the U.S. Supreme Court upheld the panel's finding.

Since 2007, California has taken numerous actions to reduce overcrowding. The most significant ongoing actions are realigning lower-level offenders and parole violators to local jurisdictions, and increasing prison health care bed and treatment capacity. These actions have been effective in reducing the prison population while maintaining public safety, eliminating the use of all non-traditional beds, and allowing CDCR to focus on providing rehabilitation programs to reduce recidivism.

The three-judge panel issued another order in October 2012 requiring the state to develop two plans to reduce the prison population to 137.5 percent of design capacity by June 27, 2013 and December 27, 2013. The plans were submitted to the Court on January 7, 2013, as ordered.

The Administration believes that implementation of the Blueprint will enable the state to deliver health care to inmates at a level that meets or exceeds constitutional standards and ultimately lead to the end of federal court oversight. As noted above, recent OIG reviews indicate that the medical delivery system is improving. In addition, 12 of the 20 institutions that have been inspected by the OIG in the third round of monitoring have population densities higher than 137.5 percent. These 12 institutions received an

average score of 84 percent, and half of them received a score of 85 percent or higher. An institution with a score of 85 percent or higher is designated by the OIG as having high adherence to policies and procedures.

Division of Juvenile Justice

The Division of Juvenile Justice's (DJJ) average daily ward population is decreasing when compared to the 2012 Budget Act projections. Specifically, the ward population is projected to decrease by 120 in 2012-13, for a total population of 871 in 2012-13 and 913 in 2013-14. The ward population has decreased significantly in recent years, due primarily to fewer parole violators being housed by DJJ as a result of Chapter 729, Statutes of 2010 (AB 1628), which shifted supervision responsibility for wards released from DJJ to the counties beginning in January 2011.

Pursuant to Chapter 41, Statutes of 2012 (SB 1021), juvenile parole ended on January 1, 2013 and all juveniles remaining on parole as of December 31, 2012 were discharged. Savings resulting from the elimination of juvenile parole will be realized in the Division of Adult Parole Operations, which assumed responsibility for juvenile parolees in 2011-12.

Tax Relief and Local Government

This part of the Budget contains state and federal funds used for tax relief provided to local governments. The main component is the Homeowers' Property Tax Relief Program, which is budgeted at $425 million in 2013-14. This part of the Budget also includes information related to state mandates and the dissolution of redevelopment agencies.

Redevelopment Agencies

Chapter 5, Statutes of 2011 (ABx1 26) eliminated the state's approximately 400 redevelopment agencies (RDAs). Given the current economic environment, it no longer made sense to continue diverting $5 billion in local property tax revenue to RDAs. The elimination of RDAs allows local governments to protect core public services by returning property tax money to the cities, counties, special districts, and K-14 schools. This funding can now be used by local governments to fund police, fire, or other critical public services that may have been significantly cut back due to difficult economic conditions. In those areas that contained RDAs, it is estimated that over the current year and budget year, approximately $1.6 billion will be distributed back to counties, $1.2 billion will be distributed back to cities, and $400 million will be distributed back to special districts. This will be a steady source of funding in the future for these entities and will provide significant relief to stretched budgets at the local level.

Each RDA was replaced with a locally organized successor agency that is tasked with retiring the RDA's debts and other legal obligations. Each successor agency was

then provided an oversight board to supervise its work. Chapter 26, Statutes of 2012 (AB 1484) provided additional tools for successor agencies, oversight boards, and the Department of Finance to facilitate the orderly wind down of RDA activities. AB 1484 creates a process to transfer former RDA housing assets to housing successor entities, requires audits of various RDA funds and accounts to identify unencumbered funds that should be remitted to local taxing entities, and requires the completion of a long-range property management plan to facilitate the disposition of RDA properties. Much of this workload is one-time in nature and should be completed no later than the summer of 2013.

Ongoing workload related to the winding down of RDAs involves the generation, submittal, and review of Recognized Obligation Payment Schedules (ROPS). Every six months, successor agencies submit to Finance their ROPS, which delineates their proposed payments for the upcoming payment cycle. Finance reviews each ROPS to determine whether the identified payments are enforceable obligations, as defined by law. Once Finance has completed its review, the successor agencies are provided property tax allocations to pay the approved enforceable obligations. Any property tax revenue remaining after the enforceable obligations are paid is distributed to the affected taxing entities based on their property tax share. The additional property tax revenue received by K-14 schools generally offsets the state's Proposition 98 General Fund costs on a dollar-for-dollar basis.

Accurately estimating the property tax revenue available for the affected taxing entities after the payment of enforceable obligations has been a challenge. This is mainly because comprehensive information concerning the amount of property tax expended by RDAs for purposes that qualify as enforceable obligations was not available prior to the enactment of ABx1 26. Now that three payment cycles worth of information is available, Finance can more accurately estimate the future Proposition 98 General Fund savings stemming from the RDA dissolution process. As such, the Budget includes Proposition 98 General Fund savings totaling $2.1 billion in 2012-13 and $1.1 billion in 2013-14. This is revised downward from the 2012 Budget Act estimate of $3.2 billion in 2012-13 and $1.6 billion in 2013-14. A portion of the savings generated is one-time and is generated from the distribution of unencumbered funds being held in various RDA funds and accounts.

As each ROPS cycle passes, the obligations of the former RDAs will continue to decline as debts are paid off. As a result, ongoing savings to the state will grow over time. It is estimated that by 2016-17 approximately $1 billion in ongoing savings could be achieved. Additionally, over the next several years, the workload related to the dissolution of

the former RDAs will become more routine for successor agencies, oversight boards, and Finance. No final payment date related to the RDA dissolution process can be determined at this time, but a point will be reached in the next several years where the only obligations remaining for biannual payment will be debt service.

Commission on State Mandates

Frequently, statutes are enacted to codify requirements on local government that are best practices. Given constitutional requirements, the effect is often that the state incurs costs to reimburse local governments for activities that were already occurring without state funds. The Commission on State Mandates is the quasi-judicial agency that hears test claims to decide whether local agencies and school districts are entitled to reimbursement for increased costs mandated by such statutes.

Another problem with the mandates process is that determinations about activities eligible for reimbursement and funding levels are not made until years after the activities have been performed and local governments have incurred costs. During this intervening time, the state incurs millions of dollars of costs and local entities face uncertainty about the extent to which they will be reimbursed for undertaking activities mandated at the state level.

State mandates should be minimized and local flexibility should be maximized. Local decision makers should determine whether activities are implemented within their communities. Consistent with the success in utilizing the block grant incentive program to improve the K-12 mandate process, the Administration will be exploring ways to improve the mandate process. In the near term, however, the Administration will pursue a course similar to previous Budget Acts—suspend all mandates except certain ones related to law enforcement and property tax collection.

The Constitution requires the Legislature to either fund or suspend specified mandates in the annual Budget Act. The 2012 Budget Act continued the suspension of numerous mandates. Many of the activities required by these mandates have become common practice and should not be mandated by the state. The 2012 Budget Act also deferred the 2012-13 payment for mandate costs incurred prior to 2004-05 and provided that the payment deferral would be continued through 2014-15. Accordingly, the Budget reflects the previous actions to suspend certain mandates and defer the pre-2004 mandate costs.

Additionally, the Budget proposes to suspend four mandates for a General Fund savings of $103.8 million in 2013-14. The Commission recently adopted Statewide Cost Estimates for these mandated activities which reflect functions that local entities have inherent reasons to preserve without reimbursement from the General Fund. The Budget also proposes to suspend five mandates recently determined by the Commission on State Mandates to be reimbursable activities. These activities are best practices that local agencies should be providing their citizens as a matter of course. Savings will result from suspending the five mandates, but since the State Controller has yet to collect local agency claims necessary to develop statewide cost estimates, the amount is unknown.

The Budget provides $48.4 million for mandates that remain in effect.

Environmental Protection

The California Environmental Protection Agency works to restore, protect, and enhance environmental quality. The agency coordinates state environmental regulatory programs and ensures fair and consistent enforcement of the law.

The Budget proposes total funding of $2.9 billion ($42.2 million General Fund and $2.89 billion other funds) for all programs included in this Agency.

Air Resources Board

The Air Resources Board has primary responsibility for protecting air quality in California as well as implementation of the California Global Warming Solutions Act of 2006 (AB 32). The Budget includes $437.6 million and 1,278.2 positions for the Board.

Reducing Greenhouse Gas Emissions through the Investment of Cap and Trade Auction Proceeds

AB 32 established California as a global leader in reducing greenhouse gas emissions (GHGs). To meet the goals of AB 32, the state has adopted a three-pronged approach to reducing greenhouse gas emissions, including adopting standards and regulations, providing emission reduction incentives via grant programs, and establishing a market-based compliance mechanism known as Cap and Trade. The Cap and Trade program, as one component of the state's comprehensive approach, provides assurance that state goals will be achieved by setting a statewide limit on the GHG sources responsible for 85 percent of California GHG emissions. It establishes a financial incentive

for industries subject to the statewide limit or cap to make long-term investments in cleaner fuels, more efficient energy use, and transformational technological and scientific innovations. The Cap and Trade program provides GHG emitters the flexibility to implement the most efficient options to reduce GHG emissions. Based on the latest estimate in 2010, the Cap and Trade program is responsible for approximately 23 percent of the required GHG emission reductions to meet the AB 32 2020 goal.

The Air Resources Board (ARB) held the first of three 2012-13 auctions on November 14, 2012, resulting in $55.8 million in proceeds to the state. The auction of allowances directly allocated to independently operated electric utilities resulted in proceeds of $233.3 million, which will be credited to customers. The other two auctions will occur on February 19, 2013 and May 16, 2013.

In recognition of the state's initial experience with the first auction, the Budget only addresses the expenditure of auction proceeds of $200 million in 2012-13 and $400 million in 2013-14. Total revenues from the auctions may exceed these amounts.

Chapter 807, Statutes of 2012 (AB 1532) requires Finance to provide three-year investment plans for auction proceeds, beginning with the 2013-14 May Revision, while Chapter 830, Statutes of 2012 (SB 535) requires that at least 10 percent of the proceeds received by the state be devoted to the most impacted and disadvantaged communities to ensure the provision of economic and health benefits.

The first plan, when completed, will prioritize programs that significantly advance the goals of AB 32. While the specific details will be developed by the Administration after receiving input through the stakeholder process, the following areas are best suited for investment. Transportation is the single largest contributor to GHGs in California (38 percent), and reducing transportation emissions should be a top priority (including mass transit, high speed rail, electrification of heavy duty and light duty vehicles, sustainable communities, and electrification and energy projects that complement high speed rail). The electricity and commercial/residential energy is the second largest contributor of GHG emissions (30 percent), and the water sector is one of the largest users of electricity in the state. Encouraging energy efficiency projects with financing incentives such as the Property-Assessed Clean Energy (PACE) program will help individuals and families who need longer timeframes and simpler terms than traditional financing to pay for home energy improvements. Programs that reduce the energy used in the supply, conveyance and treatment of water throughout the state can significantly reduce GHGs while also saving water. Other areas to be examined

during the planning process include sustainable agriculture practices (including the development of bioenergy), forest management and urban forestry, and the diversion of organic waste to bioenergy and composting. The investment plan will assure benefits to disadvantaged communities.

State Water Resources Control Board

The State Water Resources Control Board and the nine Regional Water Quality Control Boards preserve and enhance the quality of California water resources and ensure proper allocation and effective use of state water. The Budget includes $674.8 million ($14.7 million General Fund) and 1,503.9 positions for the Department.

Safer Drinking Water

The Administration is reviewing the State's activities related to the provision of safe drinking water and to recommend efficiencies and alignments to maximize the state's ability to ensure that all members of the public have access to safer water. In addition, the State Water Resources Control Board will recommend potential funding mechanisms to provide disadvantaged communities with safe, affordable, and reliable water. Stakeholders will be consulted in the development of a proposal to improve the administration of the water programs and to implement sustainable funding mechanisms.

Department of Toxic Substances Control

The Department of Toxic Substances Control protects California residents and the environment from the harmful effects of toxic substances through restoring contaminated resources, enforcement, regulation, and pollution prevention. The Budget includes $189.1 million ($21.1 million General Fund) and 941.1 positions for the Department.

Hazardous Waste Control Account Reform

The Department of Toxic Substances Control's hazardous waste fee system is complex and difficult to administer. It has also yielded inconsistent revenues, which has resulted in expenditures exceeding revenues for a number of years, requiring program reductions and significantly reducing the available fund balance. Later this spring, the Administration will propose to streamline the hazardous waste fee system, modify the fees to ensure long-term stability of the Hazardous Waste Control Account, and align the fees with program objectives.

Department of Resources Recycling and Recovery

The Department of Resources Recycling and Recovery (CalRecycle) protects public health, safety, and the environment by regulating solid waste facilities and promoting recycling. The Budget includes $1.5 billion and 686.6 positions for the Department.

Beverage Container Recycling Fund Reform

Expenditures from the Beverage Container Recycling Fund exceed revenues by approximately $100 million as a result of a combination of historically high recycling rates and mandated program payments. All General Fund loans are planned to be repaid to the fund by 2014-15.

The Administration anticipates introducing budget-related reform measures in the spring. In anticipation of that proposal, the Department has been meeting with stakeholders since July 2012. Important topics discussed with the group include addressing fraud, reviewing program operations, and ensuring cash flow and revenues support the long-term viability of the recycling program.

Natural Resources

The Natural Resources Agency consists of 26 departments, boards, commissions, and conservancies responsible for administering programs to conserve, protect, restore, and enhance the natural, historical, and cultural resources of California.

The Budget proposes total funding of $7.7 billion ($2.1 billion General Fund) and 19,125 positions for all programs included in this Agency.

Timber Harvest Plans

Existing law requires an interdisciplinary review of timber harvest plans by various departments. These plans serve as the equivalent of preparing an environmental impact report under the California Environmental Quality Act. Chapter 289, Statutes of 2012 (AB 1492) established a 1 percent assessment on lumber and other building wood products sold in California, with the assessment revenue used to fund specified activities, including existing and additional timber harvest plan reviews. The legislation allowed the elimination of fees that had been assessed on in-state timber producers (which had given an advantage to out-of-state producers) and made possible an expansion of the number of plans reviewed annually.

The Budget includes an increase of $6.6 million Timber Regulation and Forest Restoration Fund and 49.3 positions in the California Natural Resources Agency, the Department of Conservation, the Department of Forestry and Fire Protection, the Department of Fish and Wildlife, and the State Water Resources Control Board to increase review of timber harvest plans.

The new resources will increase the state's capacity to review and process timber harvest plans in a coordinated and timely manner, while ensuring that all applicable environmental regulations are closely enforced and followed.

Delta Stewardship Council

The Delta Stewardship Council furthers the state's coequal goals in the Sacramento-San Joaquin Delta of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The Council is required to develop and periodically update a legally enforceable Delta Plan to guide state and local agency activities related to the Delta. Under state law, agencies are required to coordinate their actions pursuant to the Delta Plan with the Council and the other relevant agencies. The Budget includes $11.6 million ($5.6 million General Fund) and 55.5 positions for the Council.

The Council released a final draft of the Delta Plan and a corresponding draft Programmatic Environmental Impact Report in the fall of 2012. After the Council receives and considers written comments on the draft Report, and holds public hearings regarding proposed regulations to implement the Delta Plan, the Plan will be adopted formally in the spring of 2013. The resources necessary to oversee and implement the Plan will be evaluated during the spring budget process.

Department of Forestry and Fire Protection

The Department provides resources management and wildland fire protection services covering over 31 million acres. It operates 228 fire stations and, on average, responds to over 5,600 wildfires annually. The Department also staffs local fire departments through reimbursement agreements with local governments. In six counties, the Department contracts with county agencies to provide fire protection and prevention services on the Department's behalf. Among other responsibilities, the Department develops and enforces fire safety standards through the Office of the State Fire Marshal and regulates and enforces timber harvesting operations. The Budget includes $1.3 billion ($678.7 million General Fund) and 6,885.7 positions for the Department.

Significant Adjustment:

- State Responsibility Area Fire Prevention Fees—An increase of $11.7 million and 65.1 positions in 2013-14 to implement the provisions of Chapter 311, Statutes of

2012 (SB 1241) and engage in other fire prevention activities. The Department will assist in the review and updating of safety elements pertaining to fire hazards in local general plans required by SB 1241. In addition, funding is proposed to meet the demand for fuel treatment through the Vegetation Management Program, and educate homeowners on ways to prevent the ignition and spread of fires by hiring seasonal defensible space inspectors.

Department of Fish and Wildlife

The Department manages California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. This includes the management of recreational, commercial, scientific, and educational programs. The Budget includes $366.3 million ($62.7 million General Fund) and 2,527.2 positions for the Department.

Significant Adjustment:

- Salton Sea Restoration—An increase of $12.1 million from Proposition 84 funds dedicated to Salton Sea Restoration for the restoration of between 800 and 1,200 acres of habitat. The proposal will implement a pilot project to create habitat through the construction of ponds at sites where the sea bed is exposed because of evaporation. Because other sources of water for the Sea are being phased out, the pilot project is designed to demonstrate the feasibility of having the ponds permanently sustained solely with agricultural runoff. The Natural Resources Agency will spearhead an effort to develop additional restoration measures at the Salton Sea.

Department of Parks and Recreation

The Department operates the state park system to preserve and protect the state's most valued natural, cultural, and historical resources. The park system includes 280 parks, beaches, trails, wildlife areas, open spaces, off-highway vehicle areas, and historic sites. It consists of approximately 1.56 million acres, including over 315 miles of coastline, 974 miles of lake, reservoir and river frontage, approximately 15,000 campsites and alternative camping facilities, and 4,249 miles of non-motorized trails. The Budget includes $576.3 million ($114.6 million General Fund) and 3,877.5 positions for the Department.

Reforming Parks

In July 2012, the California Natural Resources Agency announced that the Department had not reported $20.5 million in the State Parks and Recreation Fund and $34 million in the Off-Highway Vehicle Trust Fund to the Department of Finance. In September, Chapter 530, Statutes of 2012 (AB 1478) appropriated $20.5 million from the State Parks and Recreation Fund to the Department to improve the park system and to keep parks open.

A Department of Finance audit made the following findings: 1) the governance structure over budgeting functions needs improvement; 2) risks over the State Park Contingent Fund exist; and 3) key controls over procurement activities need improvement. The Department concurred with each of these findings and has already reformed or begun systematic changes to its policies, procedures, communication, and training in each area. The Governor has appointed a new Director to oversee implementation of the necessary changes and lead the Department in carrying out its important mission.

Although the Department intentionally concealed the existence of the funding in the State Parks and Recreation Fund, the difference in the Off-Highway Vehicle Trust Fund between the State Controller's Office's records and the Governor's Budget was due to timing of when the balances were reported. The Department of Finance has conducted reconciliation for the Off-Highway Vehicle Trust Fund and estimated a $59 million balance at the end of the current fiscal year. The Budget includes a $5 million augmentation in local assistance grants, which will bring grants up to $26 million, the level before budget reductions in recent years. A larger augmentation is not sustainable due to a declining fund balance.

The Administration has been working with stakeholders to develop a sustainable funding model for the parks system. The 2012 Budget Act proposed the creation of an Enterprise Fund, designed to foster and reward entrepreneurial and revenue-generating activities in the park system. Additional efforts to develop new revenues and balance available resources with expenditures are continuing.

Significant Adjustments:

Boating-Parks Merger—Pursuant to Governor's Reorganization Plan No. 2, the Budget reflects the merger of the Department of Boating and Waterways into the Department of Parks and Recreation. Effective July 1, 2013, Boating and Waterways will become a new

division within Parks. The merger will result in permanent savings of $1.1 million and a reduction of seven positions.

Americans with Disabilities Act—An increase of $3.7 million from Proposition 12 and Proposition 84 funds to fund additional projects to meet the requirements of the federal consent decree resulting from *Tucker v. California Department of Parks and Recreation*. The decree requires Parks to remove physical and programmatic barriers to provide equal access to people with disabilities in accordance with the ADA.

Department of Water Resources

The Department of Water Resources protects, conserves, develops, and manages California's water. The Department evaluates existing water resources, forecasts water needs, and explores potential solutions to meet growing needs for personal use, irrigation, industry, recreation, power generation, and fish and wildlife. The Department also works to prevent and minimize flood damage, ensure the safety of dams, and educate the public about the importance of water and its efficient use.

The Budget includes $3.6 billion ($97.4 million General Fund) and 3,495.7 positions for support of the Department.

Significant Adjustment:

- Lake Perris Dam—An increase of $11.3 million Proposition 84 funds for the Perris Dam rehabilitation project. Proposition 84 provides $54 million for recreation, fish and wildlife enhancement costs associated with the State Water Project.

Energy Resources Conservation and Development Commission

The Energy Resources Conservation and Development Commission is responsible for ensuring a reliable supply of energy to meet state needs while protecting public health, safety, and the environment.

The Budget includes $485.7 million and 662.1 positions for support of the Commission.

Significant Adjustment:

- Electricity Program Investment Charge Program—The Budget includes an increase of $192.2 million Electric Program Investment Charge funds and 58.5 positions to implement the program. The program is intended to support cost-effective energy efficiency and conservation activities, renewable energy resources, and public interest research and development within the operating area of the investor-owned utilities.

Statewide Expenditures

This Chapter describes items in the Budget related to statewide expenditures.

Infrastructure

Debt Service

General Obligation (GO) and lease revenue bonds, approved by the voters and the Legislature, are used to fund major infrastructure improvements. Since 2000, voters have approved over $100 billion of new GO bonds. The state has issued nearly $28 billion of new GO bonds since 2009 to fund major projects and programs, such as new road construction, flood control levees, new schools, and other public infrastructure. As the state issues the remaining voter-authorized bonds, debt service costs will continue to grow.

General Fund debt service expenditures, after various other funding offsets, will increase by $872.4 million (17.6 percent), to a total of $5.8 billion, over the current year expenditures. This increase is comprised of $779.7 million for GO debt service ($5.1 billion total) and $92.7 million for lease revenue bonds ($766.2 million total). The greater than normal year-over-year increase in GO debt service is the result of lower than normal current year debt service because the State Treasurer's Office was able to structure prior bond sales to accommodate the $1.9 billion Proposition 1A financing obligation that is due June 2013.

The Administration has taken actions to better manage this growing area of the Budget, such as requiring GO bond programs to demonstrate they have an immediate need for the additional bond proceeds prior to the issuance of new bonds. These efforts have helped reduce the amount of unspent bond proceeds in the state treasury from approximately $13.9 billion, as of December 2010, to just over $5 billion by the end of November 2012, excluding the fall 2012 GO bond sale. In addition, only the most critical new lease revenue bond funded projects have been approved. The Budget continues this approach.

The Budget proposes to lower the debt-service cost of transportation-related GO bonds by implementing a new weight fee revenue bond program that will authorize the direct payment of GO bond debt service from weight fees. Weight fees are supplemental vehicle registration charges applied to trucks. Currently, weight fees reimburse the General Fund for transportation GO bond debt service. This proposal will result in a higher-rated credit and thereby reduced debt service costs for transportation bonds. Finally, the Budget proposes extending the current use of miscellaneous State Highway Account revenues to offset qualified General Fund debt service costs for transportation projects (see the Transportation Chapter).

California Five-Year Infrastructure Plan

The Administration will release the 2013 Five-Year Infrastructure Plan later this year. The Plan will outline the Administration's infrastructure priorities for the next five years for the major state infrastructure programs, including high-speed rail and other transportation, resource programs, higher education, and K-12 education. Given the state's increased debt burden and General Fund constraints, the Plan will examine agencies' reported needs assessments, the use of General Fund-backed debt, and place less of a reliance on future voter-authorized GO bonds.

Employee Compensation

State Workforce

The 2013-14 state workforce is estimated at 348,045.8 positions, of which 215,972.9 are in the Executive Branch, 750 are in the Legislative Branch, 2,001.9 are in the Judicial Branch, and 129,321 are in Higher Education. Between 2010-11 and 2012-13, state government shrank by more than 30,000 positions. The Budget reflects the growth of 6,279.9 positions, primarily in higher education.

From February 2009 through June 2013, most state employees within the Executive Branch have been subject to unpaid leave days through furloughs and/or Personal Leave Programs, ranging from one to three days per month, totaling between 70 and 94 unpaid leave days. The unpaid days equate to a pay reduction of approximately 5 to 14 percent per month. In addition, state employees are contributing an additional amount toward retirement costs equal to 2 to 5 percent of their salary. These changes have provided savings of approximately $6 billion ($3.1 billion General Fund) to date.

In 2013-14, state employee salaries within the Executive Branch are projected to cost $15.7 billion ($7.4 billion General Fund), including the top step adjustment identified below. The state also provides pensions and contributions to health care benefits to its retired employees. Pay and benefits for rank-and-file employees are negotiated through the collective bargaining process. The state will begin engaging employee organizations in early 2013 to negotiate successor contracts. Contracts for 19 of the state's 21 bargaining units expire during the June 30-July 2, 2013 period.

Significant Adjustment:

- Current Labor Contracts and Excluded Employees—An increase of $502.1 million ($247 million General Fund) in 2013-14 for previously negotiated top step adjustments and health care benefit contribution increases for active employees. For most employees, the adjustment offsets the ongoing higher contribution for retirement costs previously implemented.

Pensions

Chapter 296, Statutes of 2012 (AB 340) established the Public Employees' Pension Reform Act of 2013 (PEPRA). PEPRA provides lower pension benefits and requires higher retirement ages for new employees in state and local government and schools hired after January 1, 2013. Additionally, state employees in designated bargaining units and associated excluded employees will make additional payroll contributions to their pension plans beginning July 1, 2013. Among other reforms, PEPRA eliminates pension spiking, limits post-retirement employment, and prohibits the purchase of non-qualified service credit (airtime).

Significant Adjustment:

- Pension Contributions—An increase of $95.2 million ($48.7 million General Fund) in 2013-14 for pension contributions. The 2013-14 total includes an additional $63.2 million ($42.2 million General Fund) directed toward the state's

unfunded pension liability to reflect the savings resulting from increased employee contributions under PEPRA. This additional payment comes on top of significant savings already achieved due to prior-year increases in employee pension contributions. The state also makes separate pension contributions on behalf of school teachers and judges.

Figure SWE-01 below provides an historic overview of contributions to the California Public Employees' Retirement System (CalPERS), the California State Teachers' Retirement System (CalSTRS), the Judges' Retirement System (JRS), and the Judges' Retirement System II (JRS II) for pensions and retiree health care benefits.

Figure SWE-01

State Retirement Contributions

(dollars in millions)

	CalPERS Total	CalPERS GF	Retiree Health & Dental Total	Retiree Health & Dental GF	CalSTRS Total	CalSTRS GF	JRS Total	JRS GF	JRS II Total	JRS II GF
2004-05	2,480	1,364	801	801	1,149	1,149	127	126	21	21
2005-06	2,403	1,322	887	887	1,081	1,081	121	119	24	24
2006-07	2,765	1,521	1,006	1,006	959	959	129	129	27	27
2007-08	2,999	1,650	1,114	1,051	1,623	1,623 [1]	162	160	37	37
2008-09	3,063	1,685	1,183	1,147	1,133	1,133	189	186	40	40
2009-10	2,861	1,573	1,182	1,146	1,191	1,191	184	182	32	32
2010-11	3,230	1,777	1,387	1,351	1,200	1,200	166	164	54	54
2011-12	3,174	1,746	1,504	1,466	1,259	1,259	195	193	58	58
2012-13[3]	3,449	1,761 [2]	1,351	1,315 [2]	1,303	1,303	161	159	53	53
2013-14[3]	3,537	1,803	1,517	1,513	1,358	1,358	189	187	57	57

1/ Includes repayment of $500 million from 2003-04 Supplemental Benefit Maintenance Account withholding/lawsuit loss (interest payments not included).

2/ Beginning in 2012-13, California State University pension and health care costs are only included in the Higher Education section and not in this table.

3/ Estimated as of the 2013-14 Governor's Budget.

Improving the Budget Process Through Zero-Basing and Other Tools

Executive Order B-13-11 directed the Department of Finance to modify the state budget process to increase efficiency and focus on accomplishing program goals. The Administration completed several zero-base reviews—for the state hospitals and the state prisons—which led to significant changes being included in the 2012 Budget. The Budget reflects continued implementation of the Executive Order, including:

- The Department of Consumer Affairs is requiring each of its boards, bureaus, and divisions to determine appropriate enforcement and licensing performance measures, with updated data to be provided in each year's budget.
- The California Department of Human Resources is implementing streamlined services for departments. The Department has also expanded the use of consortium examinations, accelerated the approval process for routine personnel issues, streamlined the selection process for career executive assignments, and modernized the training classes and resources available online.
- Both the Department of Transportation (Caltrans) and the Department of Public Health (DPH) are undertaking a multiyear process to zero-base their budgets. The Budget reflects changes to the Local Assistance and Planning Programs within Caltrans, including the consolidation of five programs into a single Active Transportation Program which will simplify and enhance funding for pedestrian and bicycle projects. The results of the first year of the DPH review will be provided this spring.

Additional departments will be undertaking reviews in the coming months, including the Department of Veterans Affairs, the Department of Resources Recycling and Recovery, and the Department of Toxic Substances Control.

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Transportation

The Transportation Agency is responsible for addressing mobility, safety, and air quality issues as they relate to transportation. Key priorities include developing and integrating the high-speed rail project into California's existing transportation system and supporting regional agencies in achieving the greenhouse gas emission reductions and environmental sustainability objectives required by state law.

The Agency consists of the following six state entities responsible for administering programs that support the state's transportation system:

- Department of Transportation
- California Transportation Commission
- High-Speed Rail Authority
- Department of Motor Vehicles
- California Highway Patrol
- Board of Pilot Commissioners

The Office of Traffic Safety operates within the Office of the Secretary for Transportation.

The Budget includes total funding of $21.1 billion ($0.2 billion General Fund and $20.9 billion other funds) for all programs administered within the Agency.

The Agency, established as part of the Governor's 2012 Reorganization Plan, becomes operational on July 1, 2013.

Statewide Transportation Infrastructure Needs Assessment

The California Transportation Commission recently published the "2011 Statewide Transportation System Needs Assessment" to identify all transportation funding needs over the next decade. The report identified $538.1 billion in total infrastructure needs, including $172.3 billion in highway and intercity rail needs.

This Needs Assessment identified approximately $24 billion of annual revenues dedicated to transportation infrastructure statewide. Over $10 billion in state and federal funds flow through the annual state budget. Of this budgeted amount, approximately 37 percent supports local transportation needs, including local streets and roads and public mass transit systems. The remaining 63 percent is used for state transportation purposes, primarily the operation, maintenance, and construction of the state highway system. In addition to the amounts provided in the state budget, local agencies receive a $1.4 billion share of state sales tax revenue for transportation purposes, another $1.4 billion in federal support for local transit systems, and 19 counties have exercised the option of passing local sales tax measures which generate another $3.6 billion in revenue for transportation purposes. Local agencies may choose to use some of these local funds for state highway improvements within their jurisdictions. The remaining revenues are from local transit fares and other local sources, such as property taxes, developer fees and local bond proceeds.

Over the past decade, the voters have approved almost $30 billion of general obligation bonds for transportation purposes, including $19.9 billion for Proposition 1B, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, and $9.9 billion for Proposition 1A, the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century. As a result, approximately 13 percent of annual state transportation revenues will continue to be dedicated to offsetting debt service costs. These debt service costs are expected to total over $1 billion in 2013-14 and are projected to grow in future years, significantly exceeding the amount of existing transportation funds legally available to offset these costs and therefore creating General Fund expenses.

Beginning in the spring of 2013, the Agency will convene a workgroup consisting of state and local transportation stakeholders to refine the transportation infrastructure needs

assessment, explore long-term, pay-as-you-go funding options, and evaluate the most appropriate level of government to deliver high-priority investments to meet the state's infrastructure needs.

Department of Transportation

The Department of Transportation (Caltrans) has almost 20,000 employees and a budget of $12.8 billion. Caltrans designs and oversees the construction of state highways, operates and maintains the highway system, funds three intercity passenger rail routes, and provides funding for local transportation projects. The Department also maintains 50,000 road and highway lane miles and 12,559 state bridges, and inspects 402 public-use and special-use airports and heliports. The largest sources of funding for transportation projects are excise taxes paid on fuel consumption, federal funds also derived from fuel taxes, and weight fees on trucks.

In the summer of 2012, the new federal Surface Transportation Act (Moving Ahead for Progress in the 21st Century, or MAP-21) was enacted. MAP-21 consolidates several existing transportation programs and provides additional flexibility to allocate federal funds based on state priorities. The Budget maintains the existing federal funding split between state and local transportation agencies. Maintaining the status quo will ensure that existing projects already scheduled for construction will continue.

Significant Adjustments:

- Zero-Base Budget Review—Executive Order B-13-11 directs the Department of Finance to modify the state budget process to increase efficiency and focus on accomplishing program goals. Pursuant to this Executive Order, Finance and Caltrans developed a four-year plan to conduct a zero-base analysis of all Caltrans' programs. The Local Assistance and Planning Programs were reviewed in the fall of 2012. The Budget includes the following proposals that reflect the outcome of the zero-base review:
    - Active Transportation Program—A shift of $134.2 million in state and federal resources and a reduction of five positions in 2014-15 to consolidate five existing programs into a single Active Transportation Program. Active transportation refers to any method of travel that is human-powered, such as walking and bicycling. Currently, there are five separate programs that fund bicycle, pedestrian, and mitigation projects, including the federal Transportation Alternatives Program (which also includes the Recreational Trails Program),

federal and state Safe Routes to Schools Programs, state Environmental Enhancement and Mitigation Program, and the state Bicycle Transportation Account program. Currently, some projects are eligible for grants under several programs, and project sponsors often find it necessary to submit multiple applications for the same project. The new consolidated Active Transportation Program will streamline this process and fund high-priority projects that reduce greenhouse gas emissions consistent with the objectives of Chapter 728, Statutes of 2008 (SB 375), as well as provide safety benefits.

- Local Assistance Program—A reduction of $1.5 million and 20 positions associated with the implementation of various efficiency measures. The Budget proposes to establish staffing levels that are consistent across 12 district offices, shift $13.4 million from state funds to local federal funds for state costs that support local transportation projects, and conduct an audit by the California Department of Human Resources to ensure position classifications are appropriate for the work being performed. In addition, the California Transportation Commission intends to revise performance measures in the 2014 State Transportation Improvement Program guidelines to improve the effectiveness of the state's transportation investments for mobility and greenhouse gas emission goals, as well as align with the federal performance measures currently being developed by the U.S. Department of Transportation.

- Planning Program—An increase of $8.4 million and ten positions to address additional workload and implement various efficiency measures. The Budget proposes to streamline and standardize Caltrans planning documents, reduce administrative costs for existing grant programs, conduct a position classification audit by the Department of Human Resources, and add additional positions to complete necessary project initiation documents. Beginning July 1, 2013, the Planning Program will implement a task-based timesheet to ensure that workload tasks are fully captured and charging practices are appropriately tracked and maintained. As more accurate workload information becomes available and efficiency measures are implemented, Finance and Caltrans will reevaluate the resources needed to support the Planning Program.

- Continue Miscellaneous State Highway Account Revenues for Transportation Debt Service—A transfer of $67 million in special fund revenue to partially offset General Fund transportation debt service costs. The State Highway Account generates a portion of its revenue from sources other than excise taxes on gasoline, such as rental income and the sale of surplus property. Since 2010-11, this revenue

source has been used to offset General Fund debt service costs on specified general obligation transportation bonds. The use of non-excise tax revenue is statutorily authorized for this purpose through 2012-13. The Budget proposes to continue to offset transportation debt service costs with this revenue source on a permanent basis.

High-Speed Rail

The High-Speed Rail Authority is responsible for the development and construction of a high-speed passenger train service between San Francisco and Los Angeles/Anaheim (Phase I), with extensions to San Diego and Sacramento and points in-between (Phase II). Proposition 1A, enacted in November 2008, authorizes $9 billion in bond proceeds for the rail lines and equipment, and an additional $950 million for state and local feeder lines. The federal government has also awarded the Authority nearly $3.5 billion, most of which has been designated to fund portions of the project in the Central Valley.

The 2012 Budget Act appropriated approximately $8 billion for the high-speed rail project for the following purposes:

- $5.8 billion for the first phase of the Initial Operating Section from Madera to Bakersfield.
- $1.1 billion for early improvement projects to upgrade existing rail lines in Northern and Southern California, which will lay the foundation for future high-speed rail service as it expands into these areas.
- $819.3 million for connectivity projects to enhance local transit and intercity rail systems that will ultimately link to the future high speed rail system.

Since the enactment of the Budget Act, significant progress on the project has been made:

- In September, the Federal Railroad Administration approved the necessary environmental impact assessments for the Merced to Fresno alignment.
- The public comment period for the draft environmental assessments for the Fresno to Bakersfield alignment concluded in October.
- The Authority has started to solicit bids from private contractors to begin the right-of-way land acquisition phase of the project.

- The Authority is continuing to identify early "bookend" investments that will generate immediate benefits and, through blended service, enhance future high-speed rail ridership. Projects currently being evaluated include the electrification of the Caltrain corridor in Northern California and regional rail improvement projects, such as grade separations, in Southern California. Final selection of specific projects and lead agencies will be completed by the end of the current fiscal year.
- Initial construction work is scheduled to begin in the Central Valley during the summer of 2013.

As noted in the Authority's revised 2012 Business Plan, additional funding will be necessary to complete the Initial Operating Section from Merced to the San Fernando Valley. Cap and Trade funds will be available as a fiscal backstop. For more discussion on the Administration's Cap and Trade investment plan, see the Cap and Trade section in the Environmental Protection Chapter.

Department of Motor Vehicles

The Department of Motor Vehicles (DMV) promotes driver safety by licensing drivers, and protects consumers and ownership security by issuing vehicle titles and regulating vehicle sales. The Budget proposes $991.5 million, all from non-General Fund sources, and 8,209 positions for support of DMV.

Significant Adjustment:

- The Budget proposes $980,000 and two positions for start-up costs related to the implementation of Chapter 570, Statutes of 2012 (SB 1298), which authorizes the operation of autonomous vehicles on public roads. SB 1298 requires DMV to adopt regulations for approval of applications to operate an autonomous vehicle by 2015. These regulations will include any testing, equipment, and performance standards the Department concludes are necessary to ensure the safe operation of autonomous vehicles with or without the presence of a driver inside the vehicle. This proposal includes a $750,000 contract with the University of California, Berkeley to assist in the development of the regulations.

Legislative, Judicial, and Executive

Governmental entities classified under the Legislative, Judicial, and Executive section are either established as independent entities under the California Constitution or are departments that operate outside the agency structure. Constitutionally established bodies include the Legislature, the Judicial Branch, Governor's Office, and Constitutional Officers.

The Budget includes total funding of $7.6 billion ($2.5 billion General Fund and $5.1 billion other funds) in 2013-14 for all programs included in this area.

Judicial Branch

The Judicial Branch consists of the Supreme Court, courts of appeal, trial courts, and the Judicial Council. The state-level judiciary receives most of its funding from the General Fund. The trial courts are funded with a combination of funding from the General Fund, county maintenance-of-effort requirements, fines, fees, and other charges.

Since 2007-08, ongoing state General Fund support for the Judicial Branch has been reduced. However, the Administration, the Legislature, and the Judicial Council have mitigated these reductions through a mix of permanent and one-time offsets, including transfers from special funds, fee increases, and use of trial court reserves. Further, 2011 Realignment removed a fast growing program from the trial court budget—trial court security. Expenditures for the trial courts have remained relatively flat as illustrated in Figure LJE-01.

Figure LJE-01
Judicial Branch Expenditures, State Funds
Since 2007-08
(Dollars in Thousands)

Judicial Branch Expenditures by Program	2007-08 Actual	2010-11 Actual	2011-12 Actual	2012-13 Estimated	2013-14 Governor's Budget	2007-08 vs. 2013-14
Supreme Court	$44,397	$43,953	$40,706	$43,773	43,500	-2.0%
Courts of Appeal	200,706	206,760	199,112	202,492	204,886	2.1%
Judicial Council	130,396	137,456	120,601	148,862	150,795	15.6%
Habeas Corpus Resource Center	12,553	13,570	12,425	13,576	13,576	8.1%
Facility Program	(49,965)	(200,949)	(173,796)	(224,312)	(263,083)	
Staff and OE&E	*22,634*	*25,518*	*26,534*	*28,582*	*30,826*	54.6%
Trial Court Facility Expenses	*27,331*	*175,431*	*147,262*	*195,730*	*232,257*	
Trial Courts	3,288,873	3,218,101	2,680,140	2,267,631	2,430,566	
Total	**$3,726,890**	**$3,820,789**	**$3,226,780**	**$2,900,646**	**$3,106,406**	
Adjustments to Trial Courts [1]	**$3,288,873**	**$3,218,101**	**$2,680,140**	**$2,267,631**	**$2,430,566**	
Trial Court Facility Expenses	*$27,331*	*$175,431*	*$147,262*	*$195,730*	*$232,257*	
Offsets:						
Reserves and Redirections				*402,000*	*200,000*	
Transfers and Redirections		*(166,000)*	*(302,400)*	*(440,000)*	*(357,000)*	
Sub-total, Trial Courts	**$3,316,204**	**$3,393,532**	**$2,827,402**	**$2,865,361**	**$2,862,823**	
Trial Court Security Costs [2]	*-444,901*	*-480,999*	*(496,400)*	*(496,400)*	*(496,400)*	
Adjusted Total, Trial Courts	**$2,871,303**	**$2,912,533**	**$2,827,402**	**$2,865,361**	**$2,862,823**	-0.3%

[1] Due to availability of data, all offsets may not be displayed.

[2] For comparison purposes, court security costs for 2007-08 through 2010-11 are removed from trial court expenditure totals due to the realignment of court security costs in 2011-12 and ongoing.

The 2012 Budget Act limited trial courts to a 1 percent reserve by the end of fiscal year 2013-14. The Trial Court Funding Workgroup, called for in the May Revision to examine the state's progress in achieving the goals outlined in the Trial Court Funding Act of 1997, has begun its evaluation.

The Budget continues the practice of mitigating General Fund reductions through offsets and redirections of available resources. However, beginning in 2014-15, reserves and fund balances will mostly be exhausted, which will require trial courts to make permanent changes to achieve roughly $200 million in savings needed to achieve structural balance.

Significant Adjustments:

- The 2012 Budget Act limited trial court reserves to 1 percent beginning on July 1, 2014. The spending down of court reserves offsets General Fund spending on a dollar-for-dollar basis. The state's fiscal condition necessitates continued

prudence; therefore, the Budget uses a $200 million transfer from the Immediate and Critical Needs Account to support trial court operations as the courts adapt to the new reserve policy. This transfer will delay additional courthouse construction projects up to one year, but will allow some of the most critical projects to continue, as determined by the Judicial Council.

- Long Beach Courthouse—An increase of $34.8 million Immediate and Critical Needs Account in 2013-14 to fund the new Long Beach Courthouse service fee payment.
- Trial Court Efficiencies—The Budget includes a range of statutory changes that will reduce workload through administrative efficiencies, increase user fees to support ongoing workload at the trial courts, and assist the Judicial Branch in effectively managing monthly trial court cash flow issues.

California School Finance Authority

The California School Finance Authority provides facilities and working capital financing to school districts, community college districts, county offices of education, and charter schools.

Significant Adjustment:

- Charter Schools—An increase of $92 million Proposition 98 General Fund local assistance, $12.4 million Charter School Revolving Loan Fund, and $175,000 non-Proposition 98 General Fund to reflect the realignment of the Charter School Facility Grant Program and the Charter School Revolving Loan Program from the Department of Education to the Authority. Since the Authority successfully administers similar programs, this consolidation will create efficiencies by taking advantage of the Authority's expertise and proven effectiveness in administering these types of programs.

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Business, Consumer Services, and Housing

The Business, Consumer Services, and Housing Agency's mission is to assist, educate, and protect consumers, as well as regulate businesses. Among its many responsibilities, the Agency oversees the following departments that license more than 3.3 million Californians in more than 250 different professions:

- Department of Consumer Affairs
- Housing and Community Development
- Department of Fair Employment and Housing
- Department of Business Oversight
- Department of Alcoholic Beverage Control
- Alcoholic Beverage Control Appeals Board
- California Horse Racing Board
- Alfred E. Alquist Seismic Safety Commission

The Budget includes total funding of $1.1 billion ($20 million General Fund and $1.1 billion various funds) for the Agency.

The Agency, established as part of the Governor's 2012 Reorganization Plan, becomes operational on July 1, 2013.

Department of Consumer Affairs

The Department of Consumer Affairs (DCA) oversees a wide variety of Boards and Bureaus that certify, register, and license individuals and entities that provide goods and/or services in the state. The overall purpose of DCA is to promote a fair and competitive marketplace in which consumers are protected. DCA provides exams and licensing as well as mediation and enforcement of consumer complaints. When appropriate, cases are referred to the Attorney General's office or other law enforcement authorities for administrative action, civil and/or criminal prosecution.

There are currently 26 boards, 9 bureaus, 2 committees, a certification program, and a commission under the broad authority of DCA.

Performance-Based Budgeting

Executive Order B-13-11 directs the Department of Finance to modify the state budget process to increase efficiency and focus on accomplishing program goals. Pursuant to this Executive Order, Finance and DCA developed a multi-year plan to evaluate the performance of DCA's programs. As part of the plan, DCA will:

- Require that all of its boards, bureaus, and divisions undergo a program evaluation to determine appropriate enforcement and licensing performance measures. DCA has already begun a pilot program to conduct such evaluations of two of its programs—the Bureau of Security and Investigative Services and the Dental Board of California.
- Require that all of its boards, bureaus, and divisions have well-developed and up-to-date strategic plans.
- Include additional information in the 2013-14 Governor's Budget which highlights DCA's enforcement targets and provides two years of actual enforcement performance data. This will track the amount of time it takes between a complaint being received by a board or bureau and its resolution. Once DCA's licensing and enforcement information technology program, BreEZe, begins implementation in March 2013, DCA will be able to uniformly track the licensing data of its boards and bureaus. DCA plans to include the licensing performance categories and targets in the 2014-15 Governor's Budget and will begin displaying licensing data in the 2015-16 Governor's Budget.
- Focus on those programs that are unable to reach their performance targets and identify processes that can be streamlined and improved.

Labor and Workforce Development

The Labor and Workforce Development Agency addresses issues relating to California workers and their employers. The Agency is responsible for labor law enforcement, workforce development, and benefit payment and adjudication. The Agency works to combat the underground economy and to help legitimate businesses and workers in California.

The Budget includes total funding of $17.5 billion ($329 million General Fund and $17.2 billion various other funds) for the Agency.

Employment Development Department

The Employment Development Department (EDD) administers the Unemployment Insurance (UI), Disability Insurance (DI), and Paid Family Leave programs and collects payroll taxes from employers, including the Personal Income Tax. EDD connects job seekers with employers through job services programs and one-stop service centers and provides employment training programs through the Employment Training Panel and the Workforce Investment Act of 1998. To support the Department, the Budget includes $16.9 billion ($313.3 million General Fund), which reflects a net decrease of $1.5 billion as compared to the 2012 Budget Act. This change is due primarily to a $1.6 billion reduction in UI benefits as a result of the end of the federal UI extensions in December 2013 and a reduction in the unemployment rate, as well as $42.4 million in other adjustments, including an increase in Disability Insurance benefit payments.

Unemployment Insurance Program

The UI program is a federal-state program that provides weekly payments to eligible workers who lose their jobs through no fault of their own. Benefits range from $40 to $450 per week for up to 26 weeks depending on earnings during a 12-month base period. To be eligible, an applicant must have received enough wages during the base period to establish a claim, be totally or partially unemployed, be unemployed through no fault of his or her own, be physically able to work, be seeking work, be immediately available to accept work, and meet eligibility requirements for each week of benefits claimed.

As a result of the recession, the federal government authorized the Emergency Unemployment Compensation Program, which provided payments to unemployed individuals who had exhausted their regular unemployment benefits. When the first tier of federally funded extension benefits became available in California in July 2008, a person could qualify for up 99 weeks of benefits when combining the federal extensions with the state's regular 26 weeks of benefits. As of November 2012, more than 900,000 unemployed workers in the state had already exhausted their available unemployment benefits. The U.S. Congress and the President have agreed to extend the Emergency Unemployment Compensation Program through 2013, benefiting approximately 400,000 jobless Californians.

The UI program's financing structure was designed to build sufficient reserves during times of economic expansion so that the fund balance could be drawn against during periods of economic contraction. However, as benefit levels were increased starting in the early 2000s with no changes to the underlying revenue structure, the financing structure has not been robust enough to build sufficient reserves. As of January 2009, the state's UI Fund was exhausted due to this imbalance between benefit payments and annual employer contributions. To continue to make UI benefit payments without interruption, EDD began borrowing funds from the Federal Unemployment Account. The UI Fund deficit was $9.9 billion at the end of 2011 and is projected to be $10.2 billion at the end of 2013.

While annual interest payments were waived under the American Recovery and Reinvestment Act for 2010, interest payments of $303.5 million and $308.2 million were paid in 2011 and 2012, respectively. The interest payment must come from state funds. Given the General Fund condition in those years, loans were authorized from the Unemployment Compensation Disability Fund to the General Fund to pay for the UI expense. The interest payment for September 2013 is estimated to be $291.2 million.

Interest will continue to accrue and be payable annually until the principal on the UI loan is repaid.

The UI program's financing structure has not been modified since 1984. Since then, the state's taxable wage ceiling has remained at the federal minimum of $7,000 while the average weekly wage and minimum wage have more than doubled. At $7,000, California is among the lowest in the nation, well below the median taxable wage ceiling of $12,000. When the state's maximum tax rate of 6.2 percent is applied to its taxable wage ceiling of $7,000, its maximum tax liability per employee of $434 is the second lowest in the nation. The state's maximum weekly benefit was increased from $230 to its current level of $450 in 2005, and is in the top one-third of the nation. California's average weekly benefit amount of $294 remains at the national median. With the high rate of employment, more unemployed workers are getting higher benefits while employer contributions have remained static, creating the UI Fund imbalance.

Pursuant to federal law, a reduction in the employer tax credit was triggered in 2012 as a mechanism to begin repaying the federal loan. The federal employer tax credit was reduced from 5.4 percent to 5.1 percent because of the UI Fund deficit and will continue to decrease by 0.3 percent each year that the state maintains an outstanding federal loan balance. To address this deficit, the Secretary for Labor and Workforce Development will begin a series of meetings to bring together key stakeholders, including business and labor by February 1, 2013. This effort will identify preferred alternatives to meet annual federal interest obligations, repay the federal loan, and return the state's UI Fund to solvency.

Significant Adjustments:

- Revised UI Benefit Payments—Total benefit payments will be $12.9 billion in 2012-13 and $9.5 billion in 2013-14, which reflect the recent extension of federal benefits through December 2013 and a reduction in the unemployment rate.
- Revised DI Benefit Payments—The Budget includes an increase of $66.7 million in 2012-13 and $225.9 million in 2013-14 for DI benefit payments.
- Enhanced Data Sharing—As part of a review of revenue collection functions of the Franchise Tax Board and EDD, additional data-sharing opportunities have been identified in the near term that will increase revenues. The Budget includes an increase totaling $2 million in various payroll taxes, including increased penalty assessments and interest of $649,000 as a result of these data sharing efforts.

Department of Industrial Relations

The Department works to improve working conditions, enforces laws relating to wages, hours, conditions of employment, and workers' compensation, and adjudicates workers' compensation claims. The Budget includes $586.1 million ($2.5 million General Fund) to support the Department, which reflects an increase of $153.6 million compared to the 2012 Budget, primarily attributed to workers' compensation reform efforts, including a $120 million increase for permanent disability payments as part of the return-to-work program.

Significant Adjustments:

- Workers' Compensation Reform Implementation—An increase of $152.9 million in the Workers' Compensation Administration Revolving Fund and 82 positions to implement the reforms prescribed in Chapter 363, Statutes of 2012 (SB 863). This includes a $120 million increase for permanent disability payments as part of the Special Earnings Loss Supplement program, also known as the return-to-work program. These resources will support the reforms to medical provider networks, workers' compensation liens, fee schedules, medical care administrative procedures, permanent disability benefits, the Special Earnings Loss Supplement program, and independent medical and bill review processes.
- Workers' Safety and Labor Standards Enforcement—The Budget proposes the elimination of the July 1, 2013 sunset date for the employer surcharge for the Occupational Safety and Health Fund and the Labor Enforcement and Compliance Fund to permanently fund these programs. These programs, which include investigations, inspections, and audits, protect lawful employers from unfair competition while ensuring employees are not required or permitted to work under unlawful conditions.
- Elimination of the Targeted High Hazard Assessment—This proposal replaces the $9.1 million in revenues from this assessment with a $9.1 million increase in the Occupational Safety and Health Fund assessment. This will result in all safety, workplace injury prevention, and enforcement efforts being funded through this single assessment.
- Compliance Monitoring Unit—The unit was created in 2009 to ensure prevailing wages are paid by contractors on public works projects. The monitoring costs were to be paid from specified bond funds that support projects. These revenues have not been sufficient to meet program requirements. The Budget includes various

strategies to stabilize the unit, including (1) a redirection of $2.5 million General Fund to the unit from worker's safety and labor standards enforcement activities, with a corresponding backfill to those programs from the employer surcharge, (2) a $5 million loan from the Targeted Inspection and Consultation Fund, and (3) cost recovery from other sources that support these public works projects.

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Government Operations

The Government Operations Agency's mission is to improve management and accountability of government programs, increase efficiency, and promote better and more coordinated operational decisions.

The Agency oversees the following nine entities:

- Department of General Services
- Department of Human Resources
- Department of Technology
- Office of Administrative Law
- Franchise Tax Board
- State Personnel Board
- Victim Compensation and Government Claims Board
- California Public Employees' Retirement System
- California State Teachers' Retirement System

The Budget proposes total funding of $36 billion ($741.7 million General Fund) and 14,810.7 positions for all programs included in this Agency.

The Agency, established as part of the Governor's 2012 Reorganization Plan, becomes operational on July 1, 2013.

Franchise Tax Board

The Franchise Tax Board (FTB) is tasked with administration of the state's personal income tax and corporations tax. Activities include tax return processing, filing enforcement, audit, and collection of delinquent amounts owed.

Significant Adjustments:

- Enterprise Data to Revenue (EDR) Project—An increase of $152.2 million General Fund and 184 positions in 2013-14 and $88 million and 220 positions in 2014-15 to continue implementation of the EDR project. EDR is entering the third year of a six year benefits-based IT project with projected total fixed costs of $479 million. FTB has expended approximately $61 million to date. The project generated revenues of $115.7 million in 2011-12, nearly double the initial estimate of $63 million. FTB estimates the project will generate additional General Fund revenues of $4.9 billion through 2017. Ongoing revenues are estimated to be in excess of $1 billion annually when the project is fully implemented.
- Enhanced Data Sharing—As part of a review of the revenue collection functions of FTB and the Employment Development Department (EDD), additional data-sharing opportunities have been identified in the near term that will increase revenues. The Budget includes an increase in Personal Income Tax collections of $3 million General Fund by FTB and $800,000 General Fund by EDD as a result of these efforts.

Department of General Services

The Department of General Services (DGS) provides centralized services and oversight activities to state agencies over a broad spectrum of areas, including: management of state-owned and leased real estate, maintenance of state-owned buildings, approval of architectural designs for local schools and other state-owned buildings, a quasi-judicial court that hears administrative disputes, publishing services, management of the state's fleet, and procurement of commodities, services, and equipment. These activities are largely funded through fees that are charged to the client departments.

In 2012-13, DGS implemented better business practices and efficiencies that resulted in either cost avoidance or savings for client departments. In 2013-14, DGS continues these efforts by making further significant adjustments to various programs to maximize the state's resources and promote budgetary savings. As part of these efforts, DGS has taken steps to reduce rental costs for state departments in leased space by renegotiating building leases. Since 2009, DGS has executed 333 leases that result in over $152 million of reduced rent. DGS also led the Governor's effort to reduce the state's fleet by over 7,000 vehicles and is working to build a more sustainable state government fleet by utilizing zero-emission vehicles and providing electric vehicle charging stations.

Significant Adjustments:

- Program Reductions—A decrease of $5.6 million and 22.5 positions to reflect operational efficiencies and the elimination of non-mission critical services.
- Office of Public School Construction (OPSC) Reduction—A decrease of $1.6 million state bond funds and 20 positions to align administrative resources with expected workload for the School Facilities Program. State bond fund authority in the core new construction and modernization School Facilities Programs will be fully exhausted in 2012-13. Additionally, the OPSC has been directed by the State Allocation Board to no longer fully process school district applications for the new construction and modernization of school facilities. However, there is still workload for OPSC moving forward associated with active project closeouts, processing project appeals, reporting for subcommittees, processing fund releases, and project expenditure reviews.
- Special Repairs—An increase of $11 million for various deferred maintenance projects in state-owned buildings to enable DGS to consolidate agencies and departments into state-owned facilities instead of leased facilities and to comply with the Americans with Disabilities Act.

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General Government

The General Government Section includes multiple departments, commissions, and offices responsible for the operation of various government programs. The Budget includes total funding of $4 billion ($470.2 million General Fund and $3.5 billion various funds) for these entities.

California Department of Veterans Affairs

The California Department of Veterans Affairs promotes and delivers services for California veterans and their families. Specifically, the Department provides aid and assistance to veterans and their families for presenting claims for federal veterans' benefits, provides California veterans with direct low-cost loans to acquire farms and homes, and provides the state's aged and disabled veterans with rehabilitative, residential, and medical care services in the California Veterans Homes. California owns and operates eight veterans homes located in Yountville, Chula Vista, Barstow, Lancaster, Ventura, West Los Angeles, Redding, and Fresno. These homes provide residential and medical care services to honorably discharged California veterans who served on active duty and are over the age of 55 or disabled. The recently completed homes in Redding and Fresno will begin admitting residents in the fall of 2013. The Budget includes 2,428.9 positions and total funding of $406 million ($316 million General Fund and $90 million various funds) for the Department.

Significant Adjustment:

- Continuing Activation of Redding and Fresno—The Budget includes $27 million for the continuing activation of the veterans homes in Redding and Fresno, both of which will begin admitting residents in the fall of 2013. This proposal will be refined in the spring to reflect the detailed operational requirements for the homes.

Public Utilities Commission

The Public Utilities Commission (PUC) regulates critical and essential services such as privately owned telecommunications, electric, natural gas, and water companies, in addition to overseeing railroad/rail transit and moving and transportation companies. The Budget includes $1.4 billion and 1,052.9 positions for the PUC.

Audit of PUC

As a result of the statewide review of special funds, the Department of Finance conducted an audit of PUC budgeting practices and procedures. Some of the observations in the audit include:

- Policies and procedures are not adequate.
- Lines of authority, reporting, and responsibility are unclear.
- Forecasting methodologies need improvement.
- The budget office is insufficiently staffed.
- Staff performing budget functions are not properly trained.

A corrective action plan needs to be developed to remedy variances between the PUC's, the Governor's Budget's, and the State Controller's Office's records. The Department of Finance will be working closely with the PUC to address the observations in the audit and ensure the PUC's financial records are accurate and reliable. The Budget includes the addition of three positions and $210,000 from various special funds to develop and implement improvements to PUC budget administration.

Demographic Information

California has long been a destination state for both domestic and international migrants. Growth due to migration, combined with natural increases (more births than deaths), has historically resulted in substantial population gains. California added more residents than any other state in every decade between 1920 and 2000. The phenomenal growth that occurred in California between 1980 and 1990 was the largest for any state in the history of the United States, both in additional residents (6.1 million) and in terms of the state's share of US growth for a single decade; California accounted for 27.5 percent of total US population growth that decade. California also had the second largest numerical growth in a decade for any state in the country, when the state added 5.1 million people during the 1950's. Between 2000 and 2010, California's population growth slowed somewhat, but still added the second largest number of people, 3.4 million, behind Texas, which added 4.3 million.

The population growth in the United States also slowed between 2000 and 2010 compared to the previous decade, as demographic and economic issues contributed to slower growth rates. Although interstate migration does not affect the total US population, a national decline in interstate migration contributes to less growth in some states, including California. The reduction in interstate migration is especially noticeable among young adults between 18 and 34 years of age, who are traditionally the largest segment of interstate migrants. The decline in housing-related employment also had a ripple effect on domestic and international migration, affecting California and other states where reduced construction was most severe. The influence of some of these recent factors contributing to slower growth may already be waning, but other issues may be

more structural and long-term. The economic downturn has reversed, unemployment is gradually shrinking and employment is growing. These factors will reduce out-migration and increase net in-migration; however, declines in the "total fertility rate" (average births per woman) have led to fewer total births each year in California since 2007. Given the lower rates and the aging population structure in the United States and California, any future periods of rapid growth will likely depend on increases in migration. Nevertheless, California continues to experience overall population growth and maintains its potential for more growth relative to most other states in the coming years.

Part of California's population growth is connected to its location. The state not only has a common border with Mexico, but shares space on the Pacific Rim with several countries which have been key in California's historical development and continue as a source of immigration. Immigration contributes to California's racial and cultural diversity and will help infuse the labor force as baby-boomers retire.

Population Forecast

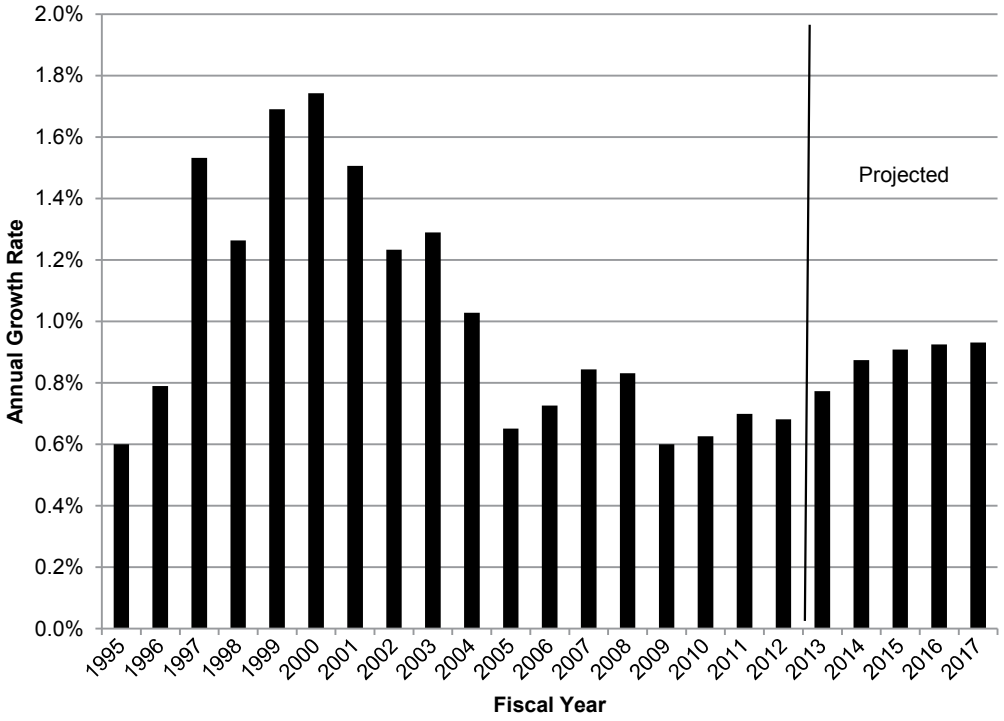
There were an estimated 37.8 million people residing in California as of mid-2012. California continues to experience a moderate growth rate, adding 0.7 percent in the last fiscal year. During the year, the United States also added 0.7 percent to the population. Half of all states grew 0.6 percent or less, with nine either losing population or growing by less than 0.2 percent. Although the rate of growth was not large in comparison with California's historical rates, the state experienced the second largest total population increase of any state in the nation:

- The estimate of the population on July 1, 2012 is 37,826,000.
- The population is projected to be 38,118,000 by July 2013 and 38,452,000 by July 2014, reflecting short-term growth rates of 0.8 percent in 2013 and 0.9 percent in 2014.

The forecast assumes that through the next five years, the state will grow at a slightly higher rate than over the last few years, averaging 340,000 residents annually through 2017. Natural increase will account for most of the growth during this time. Net migration (people moving to California from other states and countries, less those moving out) is projected to gradually increase as economic conditions continue to improve. By July 2017, California will have added 1.7 million people and have a population of over 39.5 million, a five-year growth rate of 4.5 percent.

Figure DEM-01 displays the projected annual growth rates through 2017.

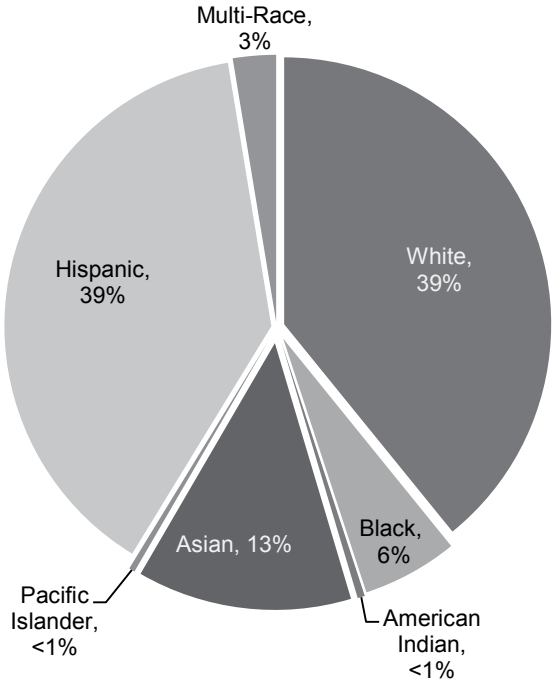
Figure DEM-01
California's Annual Population Growth Rate



As the state's growth patterns change, the age and race distribution of California's population continue to transform. It is projected that in July 2013, the non-Hispanic White and the Hispanic population will each represent 39 percent of California's population. Later in the fiscal year, for the first time since California became a state, the Hispanic population will become the largest group in California. This shift is due primarily to variations in demographic patterns, including fertility, age structure, and migration. In July 2013, of the non-Hispanic White population, 43 percent will be at least 50 years of age, while 19 percent of Hispanics will be 50 or older.

Figure DEM-02 shows the racial/ethnic composition in California in 2013.

Figure DEM-02
Race & Ethnicity Distribution, July 2013



Population growth rates vary significantly by age group. The state's projected total five-year growth rate of 4.5 percent is lower than the anticipated 6.2 percent growth in the preschool-age group. The school-age group will decline by 0.9 percent, and the college-age group will increase by 0.2 percent. The working-age population will grow by 700,000 or 3.6 percent. The population of the retirement-age group, those 65 and older, will expand rapidly (19.3 percent). The retirement-age growth will be concentrated in the 65 through 74 year olds, with a growth rate of 27 percent.

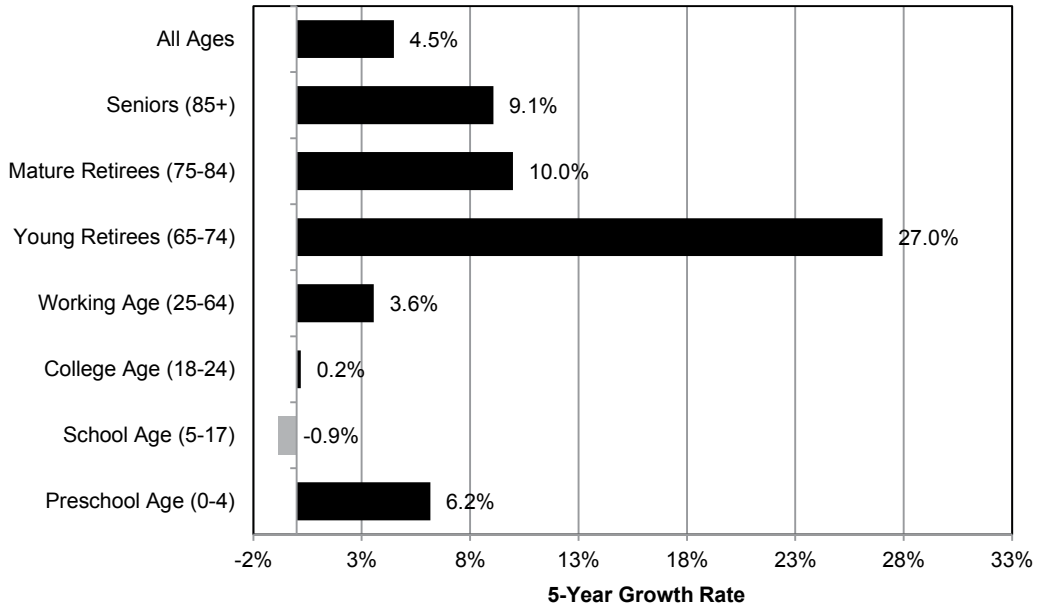
Figure DEM-03 shows the projected cumulative growth by age group through 2017.

California's Demographic and Economic Futures Are Linked

The United States is beginning to undergo some of the most dramatic demographic changes since the nation was founded. Increasing life expectancies and declining birth rates are changing the age structure of the population. Growth patterns and aging will vary by race and ethnicity. Immigration and the somewhat higher birth rates of

Figure DEM-03

Projected California Population Growth Rate by Age Group (2012-2017)



immigrants will prevent a declining population, but will not stop the effect of the aging of the baby-boomers. As baby-boomers entered schools and then the workforce, society adapted to their requirements and boomers helped frame the current workforce and culture. Further adaptations will be necessary to accommodate an increasingly large number of retirees.

The demographic shifts California is experiencing are significant and part of the demographic evolution of the United States. As the primary gateway to the United States, California enjoys a younger population than most states. In 2010, only five states had a lower percentage of the population who were at least 65 years old. Despite this relative youth, California's first baby-boomers turned 65 in 2011 and the state is growing older. The age structure of the workforce has aged along with the baby-boomers.

California is still the agricultural capital of the United States, but agricultural employment is a smaller part of California's occupational picture than 50 years ago. Manufacturing is a vital part of California, but many manufacturing jobs require far more training because of technological innovations. The economy and demography in California are linked and sustaining economic progress will require that all components of the workforce be prepared for the jobs that will drive California's economic future.

As a substantial proportion of Californians enter their retirement years, baby-boomers will benefit from medical research and training of the younger population. The future age distribution will not be evenly split between races or those of Hispanic origin. One of the positive attributes of California's cultural diversity is that not everyone gets old at once. That also means the workplace will change, as many in the non-Hispanic White population retire, they will be replaced by a more diverse workforce. For California to continue its role as the gateway to America and to continue to attract migrants seeking a better future, California policies must maintain leadership in developing employment and educational opportunities.

Economic Outlook

While the current economic recovery is slower than previous recoveries, many sectors of the economy are improving. Home values are rising, credit conditions are improving, and household spending—typically the principal driver of economic recovery—is strengthening. Job creation, while still modest, also continues to improve.

However, as 2012 came to a close, uncertainty was building over domestic fiscal policies and global economic developments that tempered business investment. The effects of Hurricane Sandy also softened economic growth at the end of 2012.

This outlook assumes the economy will not incur sharp across-the-board federal tax increases or spending cuts in 2013 and that income tax rates rise only for higher income households.

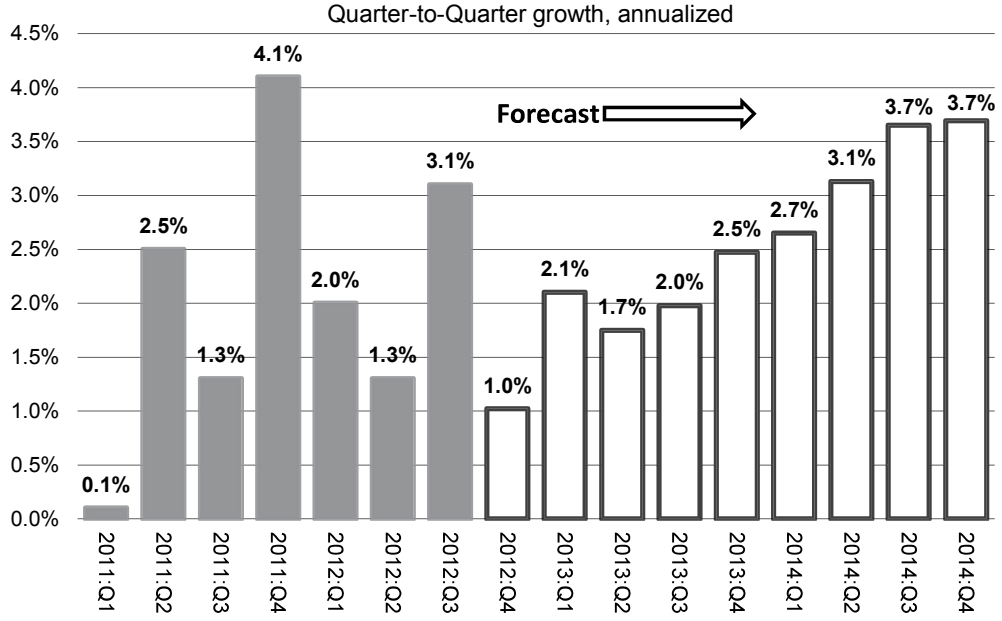
The Nation—Improving Amid Considerable Uncertainty

The nation continues to recover at a slow but steady pace. In addition to real estate, improvements are evident in such sectors as business services, leisure and hospitality, and natural resource extraction. Household formation is recovering in spite of modest employment growth. The demand for housing has spread from rental housing to owner-occupied homes. Home prices have improved in nearly all of the nation's major metropolitan areas. This improvement has improved consumer attitudes.

Job growth accelerated after a mid-year slowdown. The nation added nearly 158,000 jobs each month on average from July through November of 2012, compared to adding 153,000 jobs per month on average during 2011. In light of this modest improvement, the nation's unemployment rate fell toward the end of the year.

Consumer confidence improved steadily in the latter months of 2012. In November, consumer confidence was lifted to its highest level since February 2008.
This improvement translated into stronger consumer spending. In the third quarter of 2012, consumer spending rose by 1.6 percent and contributed 1.1 percentage points to overall Gross Domestic Product growth (Figure ECO-01). In November, retail sales were 3.7 percent above the level a year ago.

Figure ECO-01
U.S. Real Gross Domestic Product
Quarter-to-Quarter growth, annualized



Source: U.S. Bureau of Economic Analysis; CA Department of Finance Governor's Budget Forecast

In contrast to these positive developments, the outlook of many businesses became more cautious in the latter half of the year due to a weaker global economy and rising uncertainty about federal fiscal policy changes. Capital equipment spending is expected to remain an important driver of economic growth, but its momentum weakened toward the end of 2012. For example, spending on equipment and software fell slightly in the

third quarter. The growth of industrial output slowed throughout 2012 and by the year's end was only growing modestly. After rebounding from the effects of Hurricane Sandy, industrial production in November rose 2.5 percent from a year earlier—a much weaker gain than occurred in 2011. Facing a slowing global economy and a strengthening dollar, export growth slowed in 2012. Near the end of the year, there were declines in exports of industrial supplies and materials, computers, motor vehicles and parts, and consumer durable goods.

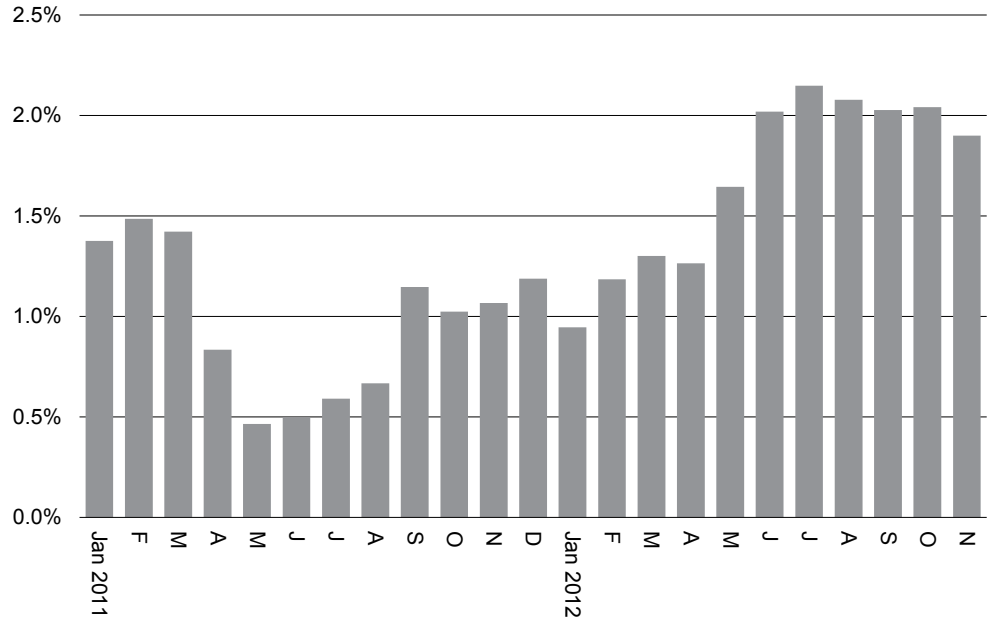
California—A Recovery for Housing

Similar to the nation, California is also in the midst of an economic recovery that is modest by historical standards. However, the state's recovery has also gathered momentum because of better real estate conditions, faster job growth, and improved consumer attitudes. The state's housing market recovery effectively began early in 2012. The median sales price of existing single-family homes sold during the first 10 months of 2012 rose nearly 9 percent from the same months of 2011. The pace of existing home sales also trended up during 2012. These gains were supported by significant reductions in foreclosure activity and limited inventories of homes available for sale. During the third quarter of 2012, the number of Notices of Default recorded on residential properties in California was down over 31 percent from a year earlier and was at the lowest level since the first quarter of 2007.

Employment gains improved in 2012, as shown in Figure ECO-02. During the first 11 months of the year, the state gained an average of 21,200 jobs per month, which is the strongest pace of job growth since 2005. Job growth came entirely from the private sector as government employment continued to decline throughout the year. Even though job gains included high-wage, high-technology industries such as computer systems design and scientific research and consulting, income growth moderated beginning with the last quarter of 2011. Total California personal income is projected to grow from $1,645 billion in 2011 to $1,728 billion in 2012. The growth in personal income included approximately $7 billion in additional wages from the Facebook Initial Public Offering, which accounts for more than 8 percent of personal income growth in 2012.

California personal income has historically grown slightly faster than the nation's as a whole. From 1980 to 2011, California's total personal income grew 6.1 percent per year on average, while the national income grew 6 percent. Over that time, California's personal income has become more concentrated. In 2010, the wealthiest 1 percent of income earners accounted for 21 percent of adjusted gross income compared to 10 percent in 1980.

Figure ECO-02
California Nonfarm Employment
Year-Over-Year Change in Nonfarm Employment



Source: California Employment Development Department

Consumer spending in California also improved in 2012. Taxable retail sales during the first half of 2012 grew 8.8 percent from the same period in 2011. New motor vehicle registrations issued during the first 10 months of 2012 increased over 25 percent from the same months of 2011.

Since the recovery began in 2009, California's economic growth has been dominated by high-technology and export-oriented industries located predominantly in major coastal metropolitan areas. However, in 2012, growth spread to other sectors and regions, thus improving economic conditions throughout the state. During the first 10 months of 2012, 23 of the state's 28 metropolitan areas added jobs. By contrast, only one area posted a job gain in 2010 and only 19 did in 2011. Home prices are recovering in most regions, including many of those that were hardest hit by the housing collapse, such as the Inland Empire and the Central Valley.

California's recovery was initially driven by growing business activity and investment. This trend slowed in 2012 due to China's economic slowdown, concerns about European economic troubles, and rising uncertainty about federal fiscal policies. This has been counterbalanced, however, by better consumer spending and attitudes that resulted from improvements in real estate conditions and modest but consistent job growth.

The Forecast

Both the national and state economies will continue to grow at moderate paces. This forecast assumes that a recession potentially caused by federal fiscal policies is avoided, economic growth in Europe stabilizes, and China and other emerging market economies improve.

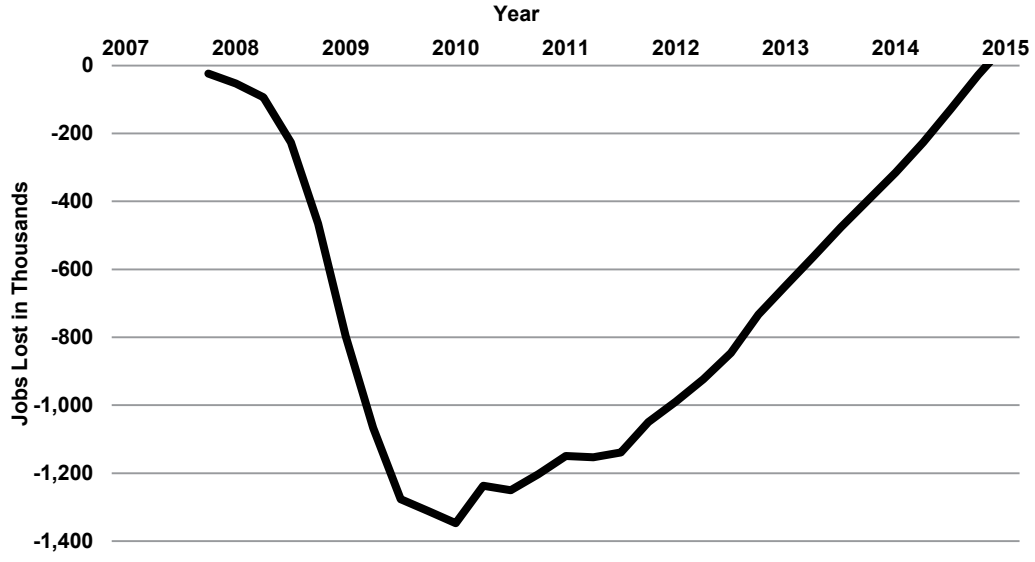
According to the Index of Leading Indicators, the economy should continue to expand at a moderate pace in the near future. The Index is a widely followed economic indicator based on the average of ten economic statistics used to predict the direction of the economy over the next six to nine months. It is generally considered to be a good predictor of recessions and recoveries.

The turnaround of the nation's housing markets coupled with accelerating job growth has strengthened the recovery. As uncertainty over fiscal policy lessens, national economic growth is expected to reaccelerate in the latter half of 2013. Real Gross Domestic Product is forecast to grow 1.8 percent in 2013, 2.8 percent in 2014, and 3.4 percent in 2015.

California's recovery is also expected to improve, with home building and job growth. Nonfarm employment is projected to grow 2.1 percent in 2013, 2.4 percent in 2014, and 2.5 percent in 2015. As shown in Figure ECO-03, California should recover the jobs lost during the recession in the second quarter of 2015, which is two quarters earlier than

Figure ECO-03

Jobs Lost During Recession Not Recovered Until 2015



projected in the prior forecast. Total California personal income is projected to grow by $83 billion or 5.1 percent in 2012.

The principal risk to this outlook is the potential impact of a series of automatic federal tax increases and spending cuts that were set to take effect early in 2013 and the effect of federal actions regarding the debt limit. The forecast, developed in early December, assumed that the federal income tax rate for households earning more than $250,000 per year would return to pre-tax cut levels in 2013 and that payroll tax rates would not be raised at the beginning of 2013. Any effects of federal actions in early 2013 will be incorporated in the May Revision.

See Figure ECO-04 for highlights of the national and California forecasts.

Figure ECO-04

Selected Economic Data

United States	2012 (Estimated)	2013 (Projected)	2014 (Projected)
Real gross domestic product (percent change)	2.1	1.8	2.8
Personal consumption expenditures	1.9	2.0	2.6
Gross private domestic investment	9.1	6.4	10.0
Government purchases of goods and services	-1.5	-1.3	-1.2
GDP deflator (percent change)	1.8	1.7	1.5
GDP (current dollar, percent change)	4.0	3.5	4.3
Federal funds rate (percent)	0.1	0.1	0.1
Personal income (percent change)	3.5	3.8	4.8
Corporate profits before taxes (percent change)	5.9	0.3	0.7
Nonfarm wage and salary employment (millions)	133.3	135.2	137.4
(percent change)	1.4	1.5	1.6
Unemployment rate (percent)	8.1	7.8	7.4
Housing starts (millions)	0.8	1.0	1.3
(percent change)	25.3	27.9	31.4
New car sales (millions)	14.4	15.0	15.6
(percent change)	12.8	4.6	3.7
Consumer price index (1982-84=100)	229.8	234.0	238.6
(percent change)	2.1	1.9	2.0
California			
Civilian labor force (thousands)	18,437.4	18,562.6	18,757.8
(percent change)	0.3	0.7	1.1
Civilian employment (thousands)	16,488.9	16,780.0	17,117.6
(percent change)	1.6	1.8	2.0
Unemployment (thousands)	1,948.6	1,782.6	1,640.1
(percent change)	-9.8	-8.5	-8.0
Unemployment rate (percent)	10.6	9.6	8.7
Nonfarm wage and salary employment (thousands)	14,371.3	14,673.9	15,020.1
(percent change)	2.0	2.1	2.4
Personal income (billions)	1,728.4	1,802.0	1,900.3
(percent change)	5.1	4.3	5.5
Housing units authorized (thousands)	56.9	81.2	123.0
(percent change)	21.7	42.7	51.6
Corporate profits before taxes (billions)	168.3	180.1	185.7
(percent change)	4.6	7.0	3.1
New auto registrations (thousands)	1,352.3	1,441.3	1,542.9
(percent change)	15.2	6.6	7.0
Total taxable sales (billions)	558.5	592.7	634.6
(percent change)	7.8	6.1	7.1
Consumer price index (1982-84=100)	238.4	243.2	248.3
(percent change)	2.3	2.0	2.1

Note: Percentage changes calculated from unrounded data.

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Revenue Estimates

Continued moderate growth in California's economy is expected to produce an improvement in General Fund revenue through the period covered by the Budget. In addition to improving economic conditions, the passage of Proposition 30, The Schools and Local Public Safety Protection Act of 2012, and Proposition 39, The California Clean Energy Jobs Act, increased revenue since the 2012 Budget Act. Together, Propositions 30 and 39 are expected to generate $3.2 billion of General Fund revenue in 2012-13, or 3.3 percent of total General Fund revenue, and a total of $5.8 billion of General Fund revenue in 2013-14, or 5.9 percent of total General Fund revenue.

- Proposition 30 is estimated to increase Personal Income Tax revenues by $3.2 billion in 2011-12, $4.8 billion in 2012-13, and $4.9 billion in 2013-14. It is estimated to increase Sales and Use Tax revenues by $611 million in 2012-13 and $1.3 billion in 2013-14.
- Proposition 39 is estimated to increase Corporation Tax revenue by $440 million in 2012-13 and $900 million in 2013-14.

Figure REV-01 displays the forecast changes between the 2012 Budget Act and the 2013 budget forecast. Revenue is expected to be $95.4 billion in 2012-13 and $98.5 billion in 2013-14. Over the budget window, this is an increase of $2.1 billion, due primarily to a higher forecast for Personal Income Tax. Sales Tax revenue is projected to increase slightly relative to the 2012 Budget Act, while expected Corporate Tax revenues have dropped, even with the additional revenue from Proposition 39. Revenue for 2012-13

Figure REV-01
2013-14 Governor's Budget
General Fund Revenue Forecast
Summary Table
Reconciliation with the 2012-13 Budget Act
(Dollars in Millions)

Source	Budget Act	Governor's Budget (a)	Change From Budget Act Forecast	
Fiscal 11-12: *Preliminary*				
Personal Income Tax	$52,958	$53,836	$878	1.7%
Sales & Use Tax	18,921	18,652	-$269	-1.4%
Corporation Tax (b)	8,208	7,949	-$259	-3.2%
Insurance Tax	2,148	2,165	$17	0.8%
Vehicle License Fees	70	70	$0	0.0%
Alcoholic Beverage	331	346	$15	4.5%
Cigarette	93	95	$2	2.2%
Other Revenues	2,316	2,448	$132	5.7%
Transfers	1,784	1,509	-$275	-15.4%
Total	**$86,830**	**$87,071**	**241**	0.3%
Fiscal 12-13				
Personal Income Tax	$60,268	$60,647	$379	0.6%
Sales & Use Tax	20,605	20,714	$109	0.5%
Corporation Tax (b)	8,488	7,580	-$908	-10.7%
Insurance Tax	2,089	2,022	-$67	-3.2%
Vehicle License Fees	3	4	$1	33.3%
Alcoholic Beverage	337	320	-$17	-5.0%
Cigarette	90	91	$1	1.1%
Other Revenues (c)	2,419	2,216	-$202	-8.4%
Transfers	1,588	1,800	$212	13.3%
Total	**$95,887**	**$95,394**	**-493**	-0.5%
Change from Fiscal 11-12	$9,057	$8,323		
% Change from Fiscal 11-12	10.4%	9.6%		
Fiscal 13-14				
Personal Income Tax	$60,234	$61,747	$1,513	2.5%
Sales & Use Tax	23,006	23,264	$258	1.1%
Corporation Tax (b)	8,931	9,130	$199	2.2%
Insurance Tax	2,110	2,198	$88	4.2%
Vehicle License Fees	0	0	$0	---
Alcoholic Beverage	343	326	-$17	-5.0%
Cigarette	87	89	$2	2.3%
Other Revenues (c)	2,709	1,770	-$939	-34.7%
Transfers	-1,303	-23	$1,280	-98.2%
Total	**$96,117**	**$98,501**	**2,384**	2.5%
Change from Fiscal 12-13	$230	$3,106		
% Change from Fiscal 12-13	0.2%	3.3%		
Three-Year Total			**$2,132**	

(a) For purposes of this table, and throughout this chapter, revenue raised through Proposition 30 and transferred into the Education Protection Account are counted as part of General Fund revenue.

(b) The Corporation Tax forecast for the Governor's Budget includes the impact of Proposition 39, which requires multi-state corporations to use the single sales factor method of apportionment. The proposition is expected to generate additional revenue of $440 million in 2012-13 and $900 million in 2013-14. This revenue was not included in the Budget Act forecast.

(c) Other Revenues includes revenue from the state's pick-up estate tax. The Federal Estate Tax, to which the state's tax is linked, was presumed to be reinstated on January 1, 2013. As such the estate tax was estimated to generate $45 million of General Fund revenue in 2012-13 and $290 million of General Fund revenue in 2013-14. However, given federal uncertainty, the Budget did not assume any net revenue from the estate tax.

is forecast to be lower than was previously forecast by $493 million. If the additional revenue from Proposition 39 is backed out, the 2012-13 General Fund revenue forecast is $933 million below the previous forecast. Revenue for 2013-14 is forecast to be about $2.4 billion greater than the amount forecast at the time of the 2012 Budget Act. When the revenue from Proposition 39 is backed out, the 2013-14 General Fund revenue forecast is $1.5 billion above the amount forecast for the 2012 Budget Act. The $98.5 billion in General Fund revenue forecast for 2013-14 is still $4 billion less than the General Fund revenue of $102.6 billion received in 2007-08, the state's peak revenue year.

The forecast includes a shift of capital gains, dividends, and wages from 2013 into 2012 as a result of the expected increase in federal tax rates. The Budget forecast was prepared in early December, before individuals and corporations made final withholding and estimated payments for the 2012 tax year, and before consumers completed their December purchases. The timing of these receipts, coupled with newly enacted changes to the tax system, including Propositions 30 and 39, can have a large impact on state revenues. Additionally, this forecast was finalized before any steps were taken at the federal level to address the pending automatic federal tax increases and automatic spending reductions. The manner in which that situation is resolved could have a significant impact on the nation's and the state's economic recovery, and on expected revenue. The May Revision forecast will reflect more current information, including April tax receipts.

Long-Term Forecast

Figure REV-02 shows the forecast for the three largest General Fund revenues from 2011-12 through 2016-17. Total General Fund revenue from these sources is expected to grow from $80.4 billion in 2011-12 to $113.2 billion in 2016-17. The average year-over-year growth rate for this period is 4.8 percent.

The economic forecast reflects modest but steady growth over the next five years. The projected average growth rate in Gross Domestic Product over the next five years is 2.7 percent, a slightly slower rate than normal for an economic expansion. With the exception of a decrease in the forecast of proprietors' income and national corporate profits, most key drivers of the revenue forecast, such as total personal income, unemployment rate, wages, and the S&P 500, are projected to be slightly improved in both the short- and long-term compared to projected levels or growth rates for the Budget Act forecast.

Figure REV-02
Long-Term Revenue Forecast - Three Largest Sources
(General Fund Revenue - Dollars in Billions)

	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	average year over year growth
Personal Income Tax	$53.8	$60.6	$61.7	$67.6	$72.0	$75.3	7.3%
Sales and Use Tax (a)	$18.7	$20.7	$23.3	$24.9	$26.7	$27.3	1.5%
Corporation Tax	$7.9	$7.6	$9.1	$9.7	$10.2	$10.6	2.3%
Total	**$80.4**	**$88.9**	**$94.1**	**$102.1**	**$108.9**	**$113.2**	4.8%
Growth	-6.5%	10.6%	5.8%	8.5%	6.6%	4.0%	

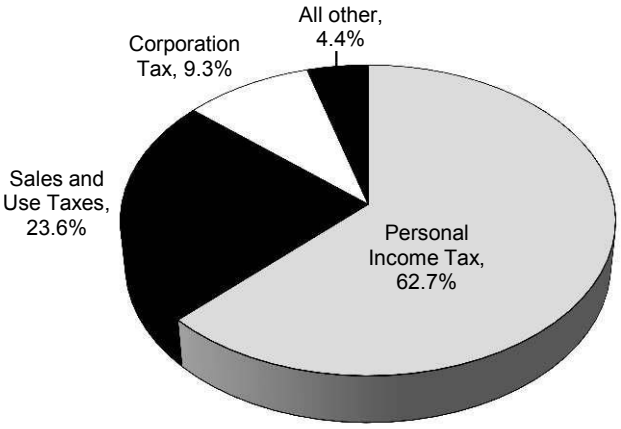
(a) Includes 2011 Realignment of General Fund revenues to locals.

The total revenue generated by these three sources has grown at an average annual rate of 4.5 percent since 1987. This forecast estimates an increase in General Fund revenue of 10.6 percent in 2012-13, 5.8 percent in 2013-14, 8.5 percent in 2014-15, and 6.6 percent in 2015-16. This year-to-year growth pattern reflects, in part, the expiration of temporary taxes and the potential behavioral impact of federal tax law changes, as well as the phase-in of recent tax law changes.

GENERAL FUND REVENUE

In 2013-14, General Fund revenues and transfers represent 71 percent of total revenues reported in the Budget. Figure REV-03 shows the breakdown of General Fund revenues by taxation type. The remaining 29 percent consists of special fund revenues dedicated to specific programs.

Figure REV-03
2013-14 General Fund Revenues and Transfers = $98.5 Billion



Personal Income Tax

The Personal Income Tax (PIT) is the state's largest single revenue source, accounting for 62.7 percent of all General Fund revenues and transfers in 2013-14.

Proposition 30 created three new income tax brackets for families with rates of 10.3 percent for taxable income above $500,000, 11.3 percent for taxable income above $600,000, and 12.3 percent for taxable income above $1,000,000. These new tax brackets are scheduled to be in effect for seven years—tax years 2012 to 2018. Modeled closely on the federal income tax law, California's PIT is imposed on net taxable income—gross income less exclusions and deductions. The tax rate structure is progressive over much of the income spectrum. For the 2011 tax year, the marginal rates ranged from 1 percent to 9.3 percent. From 2012 to 2018, the highest marginal rate will be 12.3 percent.

Income ranges for all tax rates are adjusted annually by the change in the California Consumer Price Index. This prevents taxpayers from moving into higher tax brackets because of inflation without an increase in real income. For the 2012 tax year, this adjustment was a 1.9 percent increase. For the 2013 tax year, the adjustment is projected to be an increase of 2.1 percent. The largest income source for the PIT is wages and salaries. In 2010, taxes attributable to wages and salaries accounted for over 63 percent of PIT revenues. Based on the economic forecast, wages and salaries are expected to rise by an average of 6.2 percent in 2012, followed by 4.6 percent growth in 2013, and 5.7 percent in 2014.

The highest income Californians pay a large share of the state's PIT taxes. For the 2010 tax year, the top 1 percent of income earners paid 40.9 percent of PIT taxes, down from the recent high of 48.1 percent in 2007. The share of total adjusted gross income for this top 1 percent group has increased from 13.8 percent in 1993, to 21.3 percent in 2010. Changes in the income of a relatively small group of taxpayers can have a significant impact on state revenues. In particular, capital gains income is concentrated among the high income earners and can fluctuate significantly from year to year. In the period from 2003 to 2007, capital gains realizations almost tripled from $45.6 billion to $132 billion. Over the next two years they fell to $28.8 billion. Gains from that low point increased 92 percent in 2010 and are estimated to have increased another 23 percent to $68 billion in 2011, just over half of what they were at the peak. Capital gains are expected to see continued growth in the coming years, rising to $83 billion by 2014. Figure REV-04 shows the portion of General Fund revenues from capital gains.

Figure REV-04
Capital Gains
As a Percent of General Fund Revenues
(Dollars in Billions)

	2003	2004	2005	2006	2007	2008	2009	2010	2011 [p]	2012 [e]	2013 [e]
Capital Gains Realizations	$45.6	$75.5	$112.4	$117.9	$132.0	$56.3	$28.8	$55.3	$68.0	$87.1	$62.7
Capital Gains Tax	$4.1	$6.8	$10.1	$10.6	$11.9	$5.1	$2.6	$5.0	$6.1	$8.7	$6.3
	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14
Total General Fund Revenues and Transfers	$74.9	$82.2	$93.5	$95.5	$99.2	$82.8	$87.0	$93.4	$87.1	$95.4	$98.5
Capital Gains Tax as Percent of General Fund Revenues & Transfers	5.5%	8.3%	10.8%	11.1%	12.0%	6.1%	3.0%	5.3%	7.0%	9.1%	6.4%

[p] Preliminary

[e] Estimated

Note: Totals may not add due to rounding and exclude revenues from economic recovery bonds.

Consistent with current law, the Budget reflects the potential behavioral impacts of federal tax law changes. The federal Economic Growth and Tax Relief Reconciliation Act of 2001 reduced taxes for dividend income, capital gains, and other income. These tax reductions were set to expire after 2010. However, late in 2010, they were extended through 2012. In addition, a 3.8 percent surtax on specified unearned income will go into effect on January 1, 2013. The Budget assumes that in 2012 some taxpayers will respond to the potential rate changes by accelerating 20 percent of 2013 capital gains into 2012. It is also assumed that 10 percent of 2013 dividends and 1.1 percent of wages will be accelerated to 2012. These changes are projected to increase 2012-13 revenues by $1.8 billion and to reduce 2013-14 revenues by a similar amount.

On May 18, 2012, Facebook, a California corporation, had an initial public offering (IPO) and began trading on the public market. As a result of the Facebook IPO, the Department of Finance prepared estimates for the California PIT revenues related to the sales of stock at the IPO by early investors, the exercise of options at the IPO, the vesting of restricted stock units beginning about six months following the IPO, and the potential exercise of certain stock options following the IPO. Revenues from these sources is estimated to be around $1.3 billion over the three fiscal years from 2011-12 to 2013-14, with the majority in 2012-13 and already received. Sales of stock by early investors, insiders, and employees occurring after the expiration of lock-up periods following the IPO are not included in this $1.3 billion estimate. Based on lower than expected share prices, this estimate is down from the $1.9 billion estimated at the time of the Budget Act.

A portion of PIT revenue is for dedicated purposes and deposited into a special fund instead of the General Fund. Proposition 63, passed in November 2004, imposes a surcharge of 1 percent on taxable income over $1 million. Revenue from the surcharge is transferred to the Mental Health Services Fund and used to fund mental health service programs. Revenues of $1.2 billion are estimated for the 2011-12 fiscal year. Annual revenues of $1.3 billion for 2012-13, and $1.2 billion for 2013-14 are projected. The General Fund and the Mental Health Services Fund shares of PIT revenues for 2011-12 through 2013-14 are shown in Figure REV-05.

Figure REV-05

Personal Income Tax Revenue

(Dollars in Thousands)

	2011-12 Preliminary	2012-13 Forecast	2013-14 Forecast
General Fund	$53,836,409	$60,647,000	$61,746,816
Mental Health Services Fund	1,188,026	1,349,000	1,194,000
Total	**$55,024,435**	**$61,996,000**	**$62,940,816**

Sales and Use Tax

The Sales and Use Tax (sales tax) is expected to generate General Fund revenues of $20.7 billion in 2012-13 and $23.3 billion in 2013-14. Receipts from the sales tax, the state's second largest revenue source, are expected to contribute 23.6 percent of all General Fund revenues and transfers in 2013-14.

- Beginning in fiscal year 2012-13, the figures include forecasted revenue related to the recent passage of Proposition 30, which increased the sales tax rate by 0.25 percentage point from January 1, 2013, to December 31, 2016.
- Effective September 15, 2012, the state modified the application of the use tax by expanding the definition of a "retailer engaged in business in this state". Specifically, this law imposes a use tax collection responsibility for certain out-of-state retailers, particularly internet retailers, who meet specified criteria. The Budget assumes $107 million in General Fund revenue for 2012-13, and $150 million for 2013-14 due to this law change.

Figure REV-06 displays total Sales and Use Tax revenues for the General Fund, and various special funds, for 2011-12 through 2013-14.

Figure REV-06
Sales Tax Revenue
(Dollars in Thousands)

	2011-12 Preliminary	2012-13 Forecast	2013-14 Forecast
General Fund	$18,652,000	$20,714,000	$23,264,000
Sales and Use Tax-1991 Realignment	2,696,778	2,858,693	3,057,816
Sales and Use Tax-2011 Realignment	5,286,295	5,508,134	5,924,240
Public Transportation Account	588,803	635,759	610,777
Economic Recovery Fund	1,312,362	1,399,700	1,496,100
Total	**$28,536,238**	**$31,116,286**	**$34,352,933**

Figure REV-07 displays the individual elements of the state and local sales tax rates.

Figure REV-08 shows combined state and local tax rates for each county including special rates for certain cities within those counties.

General Fund revenues beginning in 2010-11 do not include any sales taxes collected from the sale of gasoline because of the fuel tax swap implemented on July 1, 2010, which exempted fuel sales from the General Fund portion of the sales tax (see the Motor Vehicles Fuel Tax section).

Taxable sales, including sales of gasoline, increased by 7.7 percent in 2010-11. Based on preliminary data, it is estimated that taxable sales have increased by 8.3 percent in 2011-12. Growth is expected to continue at 6 percent in 2012-13, followed by 7 percent in 2013-14.

Through the first two quarters of calendar year 2011, the largest contributors to the sales tax base were wholesale trade at 11.5 percent, gasoline stations at 11 percent, and food services and establishments serving alcoholic beverages at 10.8 percent. Other significant contributors to the sales tax base include sales by motor vehicle and parts dealers at 10.5 percent and general merchandise stores at 8.8 percent.

Approximately two-thirds of the sales tax is related to consumer spending and paid by households. Such purchases are influenced by employment trends and interest rates. Given that much of the sales tax base is comprised of nonessential purchases that can be postponed or cancelled, consumer confidence can have a significant impact on sales tax revenues. The remaining approximately one-third of the sales tax is paid on purchases by businesses. This component, too, is governed by businesses' perceptions of economic

Figure REV-07

2012-13 State and Local Sales and Use Tax Rates (as of January 1, 2013)

State Rates		
General Fund	4.19%	The permanent rate of 3.94% may be temporarily reduced by 0.25% if General Fund reserves exceed specified levels. As of January 1, 2013, Proposition 30 temporarily adds 0.25 percent to the General Fund rate.
Local Revenue Fund 2011	1.06%	Revenues attributable to a rate of 1.0625 percent is dedicated to the Local Revenue Fund 2011.
Local Revenue Fund	0.50%	Dedicated to local governments to fund health and social services programs transferred to counties as part of 1991 state-local realignment.
Economic Recovery Fund	0.25%	Beginning on July 1, 2004, a temporary 0.25% state sales tax rate was imposed, with a corresponding decrease in the Bradley-Burns rate. These revenues are dedicated to repayment of Economic Recovery Bonds. Once these bonds are repaid, this tax will sunset and the Bradley-Burns rate will return to 1%.
Local Uniform Rates[1]		
Bradley-Burns	0.75%[2]	Imposed by city and county ordinance for general purpose use.[3]
Transportation Rate	0.25%	Dedicated for county transportation purposes.
Local Public Safety Fund	0.50%	Dedicated to cities and counties for public safety purposes. This rate was imposed temporarily by statute in 1993 and made permanent by the voters later that year through passage of Proposition 172.
Local Add-on Rates[4]		
Transactions and Use Taxes	up to 2.00%	May be levied in 0.125% or 0.25% increments[5] up to a combined maximum of 2.00% in any county.[6] Any ordinance authorizing a transactions and use tax requires approval by the local governing board and local voters.

[1] These locally-imposed taxes are collected by the state for each county and city and are not included in the state's revenue totals.

[2] The 1 percent rate was temporarily decreased by 0.25 percent on July 1, 2004, and a new temporary 0.25 percent tax imposed to repay Economic Recovery Bonds. Cities and counties will receive additional property tax revenues equal to the 0.25 percent local sales tax reduction.

[3] The city tax constitutes a credit against the county tax. The combined rate is never more than 1 percent in any area (or 0.75 percent during the period when Economic Recovery Bonds are being repaid).

[4] These taxes may be imposed by voters in cities, counties, or special districts. The revenues are collected by the state for each jurisdiction and are not included in the state's revenue totals.

[5] Increments imposed at 0.125 percent are only allowed when revenues are dedicated for library purposes.

[6] An exception to the 2 percent maximum is Los Angeles County, which may impose up to 2.5 percent.

conditions and the need for additional equipment acquisitions and other capital purchases. Sales and Use Tax revenues are forecast by relating taxable sales to economic factors such as income, employment, housing starts, new vehicle sales, and inflation.

Figure REV-08

Combined State and Local Sales and Use Tax Rates by County

(Rates in Effect on January 1, 2013)

County	Tax Rate	County	Tax Rate	County	Tax Rate
Alameda [1/]	9.00%	Madera	8.00%	San Joaquin [23/]	8.00%
Alpine	7.50%	Marin [11/]	8.25%	San Luis Obispo [24/]	7.50%
Amador	8.00%	Mariposa	8.00%	San Mateo [25/]	8.50%
Butte	7.50%	Mendocino [12/]	7.625%	Santa Barbara [26/]	8.00%
Calaveras	7.50%	Merced [13/]	7.50%	Santa Clara [27/]	8.625%
Colusa [2/]	7.50%	Modoc	7.50%	Santa Cruz [28/]	8.25%
Contra Costa [3/]	8.50%	Mono [14/]	7.50%	Shasta	7.50%
Del Norte	7.50%	Monterey [15/]	7.50%	Sierra	7.50%
El Dorado [4/]	7.50%	Napa	8.00%	Siskiyou [29/]	7.50%
Fresno [5/]	8.225%	Nevada [16/]	7.625%	Solano [30/]	7.625%
Glenn	7.50%	Orange [17/]	8.00%	Sonoma [31/]	8.25%
Humboldt [6/]	7.50%	Placer	7.50%	Stanislaus [32/]	7.625%
Imperial [7/]	8.00%	Plumas	7.50%	Sutter	7.50%
Inyo	8.00%	Riverside [18/]	8.00%	Tehama	7.50%
Kern [8/]	7.50%	Sacramento [19/]	8.00%	Trinity	7.50%
Kings	7.50%	San Benito [20/]	7.50%	Tulare [33/]	8.00%
Lake [9/]	7.50%	San Bernardino [21/]	8.00%	Tuolumne [34/]	7.50%
Lassen	7.50%	San Diego [22/]	8.00%	Ventura [35/]	7.50%
Los Angeles [10/]	9.00%	San Francisco	8.75%	Yolo [36/]	7.50%
				Yuba [37/]	7.50%

[1/] 9.25% for sales in the City of San Leandro and 9.50% for sales in the City of Union City.
[2/] 8.00% for sales in the City of Williams.
[3/] 9.00% for sales in the Cities of Concord, Hercules, Pinole, Pittsburg, Richmond and San Pablo and 9.50% in the City of El Cerrito.
[4/] 8.00% for sales in the Cities of Placerville and South Lake Tahoe.
[5/] 8.725% for sales in the Cities of Reedley and Selma and 8.975% for sales in the City of Sanger.
[6/] 8.25% for sales in the Cities of Arcata, Eureka and Trinidad.
[7/] 8.50% for sales in the City of Calexico.
[8/] 8.25% for sales in Ridgecrest and 8.50% for sales in the Cities of Arvin and Delano
[9/] 8.00% for sales in the City of Clearlake and the City of Lakeport.
[10/] 9.50% for sales in the Cities of Avalon, El Monte, Inglewood, Santa Monica, and South El Monte and 10.00% for sales in Pico Rivera and South Gate.
[11/] 8.75% for sales in the Cities of Fairfax, Novato, and San Rafael.
[12/] 8.125% for sales in the Cities of Point Arena, Ukiah, and Willits and 8.625% for sales in the City of Fort Bragg.
[13/] 8.00% for sales in the Cities of Gustine, Los Banos, and Merced.
[14/] 8.00% for sales in the City of Mammoth Lakes.
[15/] 8.00% for sales in the Cities of Salinas and Sand City and 8.50% in the Cities of Del Rey Oaks, Greenfield, Marina, Pacific Grove, Seaside, and Soledad.
[16/] 8.125% for sales in the Cities of Nevada City and Truckee.
[17/] 8.50% for sales in the City of La Habra.
[18/] 9.00% for sales in the Cities of Cathedral City and Palm Springs.
[19/] 8.50% for sales in the City of Galt.
[20/] 8.25% for sales in the City of San Juan Bautista and 8.50% for sales in the City of Hollister.
[21/] 8.25% for sales in the City of Montclair and the City of San Bernardino.
[22/] 8.50% for sales in the City of Vista, 8.75% for the City of La Mesa, and 9.00% for sales in the Cities of El Cajon and National City.
[23/] 8.25% for sales in the City of Stockton and 8.50% for sales in the Cities of Manteca and Tracy.
[24/] 8.00% for sales in the Cities of Arroyo Grande, Grover Beach, Morro Bay, Pismo Beach, and San Luis Obispo.
[25/] 8.75% for sales in the City San Mateo.
[26/] 8.25% for sales in the City of Santa Maria.
[27/] 8.875% for sales in the City of Campbell.
[28/] 8.50% for sales in the Cities of Capitola and Watsonville and 8.75% for sales in the City of Santa Cruz.
[30/] 8.625% for sales in the City of Vallejo.
[31/] 8.50% for sales in the City of Sebastopol and 8.75% for Cotati, Rohnert Park, Santa Rosa, and Sonoma.
[32/] 8.125% for sales in the City of Ceres and Oakdale.
[33/] 8.25% for sales in the City of Visalia, 8.50% for sales in the Cities of Farmersville, Porterville, and Tulare as well as 8.750% for sales in the city of Dinuba.
[34/] 8.00% for sales in the City of Sonora.
[35/] 8.00% for sales in the Cities of Oxnard and Port Huememe.
[36/] 8.00% for sales in the Cities of West Sacramento and Davis and 8.25% for sales in the City of Woodland.
[37/] 8.00% for sales in the City of Wheatland.

Corporation Tax

Corporation Tax revenues are expected to contribute 9.3 percent of all General Fund revenues and transfers in 2013-14. Corporation Tax revenues were $7.9 billion in 2011-12 and are expected to decline by 4.6 percent to $7.6 billion in 2012-13. In 2013-14, they are expected to increase by 20.5 percent to $9.1 billion. The 2013-14 revenues show more growth, in part, because of the passage of Proposition 39 (discussed below). Corporation Tax revenue is significantly affected by various tax law changes – primarily tax credits and income apportionment rules – that have been adopted in the last 25 years.

Most recently, the ability of taxpayers to elect single sales factor apportionment became operative for tax years beginning on or after January 1, 2011. Multi-state businesses could determine California taxable income based on one of two methods that they deem most advantageous to them: (1) an apportioning formula which factors in their sales, property, and employees in this state, or (2) one based only on sales in California—frequently referred to as the single sales factor formula. The ability of corporations to use this election has had a significant negative impact on Corporation Tax revenue. Under Proposition 39, beginning in January 2013, most multi-state businesses are required to determine taxable income attributable to California using the single sales factor formula. Proposition 39 also removes a loophole that allowed some corporations to source their sales of services and intangibles to the state in which the majority of the work to produce that service or intangible was performed. Under Proposition 39, almost all taxpayers are required to source their sales of services and intangibles to the state into which the service or intangible is sold.

From 1943 through 1985, Corporation Tax liability as a percentage of profits closely tracked the corporation tax rate. Since 1986, increasing S-corporation activity and use of credits have been contributing to a divergence between profits and tax liability growth. Businesses that elect to form as S-corporations pay a reduced corporate rate, with the income and tax liability on that income passed through to owners and thus shifted to the personal income tax.

Enterprise Zone Regulatory Reform

The Budget includes savings relating to new regulations for the Enterprise Zone program. The proposed regulations will accomplish the following reforms:

- Limit retrovouchering by requiring all voucher applications to be made within one year of the date of hire.

- Require third party verification of employee residence within a Targeted Employment Area.
- Streamline the vouchering process for hiring veterans and recipients of public assistance.
- Create stricter zone audit procedures and audit failure procedures.

These regulatory reforms will primarily affect Corporation Tax revenue, but will also have an impact on Personal Income Tax revenue. The regulations, in total, are expected to increase General Fund revenue by $10 million in 2012-13 and $50 million in 2013-14. The Administration will be pursuing further Enterprise Zone reform through legislation.

Insurance Tax

Most insurance policies written in California are subject to a 2.35 percent gross premiums tax. This premium tax takes the place of all other state and local taxes except those on real property and motor vehicles. In general, the basis of the tax is the amount of "gross premiums" received, less return premiums.

To provide funding for the Healthy Families and Medi-Cal programs, Chapter 11, Statutes of 2011 (AB 21) expanded the 2.35 percent gross premiums tax to the Medi-Cal managed care plans through June 30, 2012. The Budget proposes to reauthorize this tax on Medi-Cal managed care plans permanently, retroactive to July 1, 2012. Additionally, the Budget proposes to extend the Hospital Quality Assurance Fee until December 31, 2016. The fee, which is set to expire on December 31, 2013, provides funds for supplemental payments to hospitals and also provides some funding to offset the costs of health care coverage for children in the Medi-Cal program.

Figure REV-09 displays the distribution of total Insurance Tax revenues from 2011-12 through 2013-14.

The Department of Finance conducts an annual survey to project insurance premium growth. Responses were received this year from a sample representing about 46 percent of the dollar value of premiums written in California.

In 2011, $120.2 billion in taxable premiums were reported, representing an increase of 5 percent from 2010. The most recent survey indicates that total premiums will increase by 2 percent and 2.8 percent in 2012 and 2013, respectively. Survey respondents also reported 10.6 percent and 6.4 percent growth for taxable premiums from workers'

compensation insurance in 2012 and 2013 respectively. The primary reason for the decline in the Insurance Tax revenue estimate from 2011-12 to 2012-13 is refunds that are expected to be paid pursuant to a Board of Equalization decision in the *California Automobile Insurance Company* case. These refunds are also expected to dampen 2013-14 revenue. The California Department of Insurance estimates that the refunds resulting from this decision will equal $233 million in 2012-13 and $149 million in 2013-14.

Figure REV-09

Insurance Tax Revenue

(Dollars in Millions)

	2011-12 Preliminary	2012-13 Forecast	2013-14 Forecast
General Fund	$2,165.0	$2,022.0	$2,198.0
Children's Health and Human Services Special Fund	251.1	364.3	484.7
Total	**$2,416.1**	**$2,386.3**	**$2,682.7**

Alcoholic Beverage Taxes

In addition to the sales tax paid by retail purchasers, California levies an excise tax on distributors of beer, wine, and distilled spirits. The tax rates per gallon are applied as follows: (1) $0.20 for beer, dry wine, and sweet wine, (2) $0.30 for sparkling wine, and (3) $3.30 for distilled spirits.

Alcoholic beverage revenue estimates are based on projections of total and per capita consumption for each type of beverage. Consumption of alcoholic beverages is expected to decline by about 7 percent in 2012-13 before returning to an almost 2 percent increase in 2013-14. Revenues from this tax were $346 million in 2011-12 and are forecasted to be $320 million in 2012-13 and $326 million in 2013-14.

Cigarette Tax

The state imposes an excise tax of 87 cents per pack of 20 cigarettes on distributors selling cigarettes in California. An excise tax is also imposed on the distribution of other tobacco products such as cigars, chewing tobacco, pipe tobacco, and snuff. The rate on other tobacco products is calculated annually by the Board of Equalization based on the wholesale price of cigarettes and the excise tax on cigarettes.

Revenues from the tax on cigarettes and other tobacco products are distributed as follows:

- Ten cents of the per-pack tax is allocated to the General Fund.

- Fifty cents of the per-pack tax, and an equivalent rate levied on non-cigarette tobacco products, goes to the California Children and Families First Trust Fund for distribution according to the provisions of Proposition 10 of 1998.
- Twenty-five cents of the per-pack tax, and an equivalent rate levied on non-cigarette tobacco products, is allocated to the Cigarette and Tobacco Products Surtax Fund for distribution as determined by Proposition 99 of 1988.
- Two cents of the per-pack tax is deposited into the Breast Cancer Fund.

Projections of Cigarette Tax revenues are based on projected per capita consumption of cigarettes and population growth, while revenue estimates for other tobacco products also rely on wholesale price data. The cumulative effect of product price increases, the increasingly restrictive environments for smokers, state anti-smoking campaigns funded by Proposition 99 Tobacco Tax and Health Protection Act revenues and revenues from the Master Tobacco Settlement, and the 2009 federal cigarette tax rate increase have reduced cigarette consumption considerably. This declining trend is expected to continue. Annual per capita consumption (based on population ages 18-64) declined from 123 packs in 1989-90 to 84 packs in 1997-98 and 41 packs in 2011-12. This forecast assumes an annual decline in total consumption of approximately 3.6 percent.

Figure REV-10

Tobacco Tax Revenue

(Dollars in Millions)

	2011-12 Preliminary	2012-13 Forecast	2013-14 Forecast
General Fund	$95.0	$91.0	$89.0
Cigarette and Tobacco Products Surtax Fund	283.4	272.0	264.0
Breast Cancer Fund	18.8	18.0	18.0
California Children and Families First Trust Fund	498.5	481.0	466.0
Total	**$895.7**	**$862.0**	**$837.0**

Figure REV-10 shows the distribution of tax revenues for the General Fund and various special funds for 2011-12 through 2013-14.

Property Taxes

Although the property tax is a local revenue source, the amount of property tax generated each year has a substantial impact on the state budget because local property tax revenues allocated to K-14 schools generally offset General Fund expenditures.

Assessed value growth is estimated based on twice-yearly surveys of county assessors and evaluations of real estate trends. Sales volumes and prices of new and existing homes and condominiums rose moderately from 2011 to 2012 (with activity in the 2012 calendar year driving fiscal year 2013-14 property tax revenues). This is the first time since 2005 that both sales volumes and prices have moved in a positive direction. This turnaround, coupled with a decline in the number of homes in foreclosure, indicates that the state's overall real estate market has stabilized, although there are still areas where sales volumes and property values continue to be flat or decline.

Statewide property tax revenues are estimated to increase 1 percent in 2012-13 and 2.5 percent in 2013-14. The base 1 percent rate is expected to generate roughly $48.2 billion in revenue in 2013-14, of which roughly half ($24.7 billion) will go to K-14 schools. Of this amount, approximately $1.5 billion is shifted from schools to cities and counties to replace sales and use tax revenues redirected from those entities to repay the Economic Recovery Bonds, and approximately $6.1 billion is shifted from schools to cities and counties to replace Vehicle License Fee (VLF) revenue losses stemming from the reduced VLF rate of 0.65 percent. The $24.7 billion figure does not include additional property tax revenue that schools are expected to receive in 2013-14 from the former redevelopment agencies pursuant to Chapter 5, Statutes of 2011 (ABx1 26).

Estate/Inheritance/Gift Taxes

Proposition 6, adopted in June 1982, repealed the inheritance and gift taxes and imposed a tax known as "the pick-up tax," because it was designed to pick up the maximum state credit allowed against the federal estate tax without increasing total taxes paid by the estate.

The federal Economic Growth and Tax Relief Reconciliation Act of 2001 phased out the federal estate tax by 2010. This Act reduced the state pick-up tax by 25 percent in 2002, 50 percent in 2003, 75 percent in 2004, and eliminated it beginning in 2005. The state "pick-up tax" was scheduled to resume in 2011. At the time the budget revenue forecst was developed, this issue was still being debated by Congress. There was substantial uncertainty as to whether the federal estate tax law would remain or be modified to eliminate or substantially reduce the state pick-up tax. The Budget does not reflect net revenues from the state pick-up tax.

Other Revenues

Indian Gaming

The Budget reflects General Fund revenues from tribal gaming of $369 million in 2011-12 and $337 million in 2012-13 and 2013-14. This revenue includes approximately $101 million that is transferred annually from a special deposit fund to the General Fund for certain transportation programs that would otherwise be funded with revenues from a bond sale yet to occur. Absent a bond sale, the Administration proposes to continue this funding arrangement through 2015-16.

Loans and Transfers from Special Funds

The Budget reflects the repayment of loans, based on the operational needs of the programs requiring these repayments. In 2012-13, repayments are expected to be $184.3 million, and repayments in 2013-14 are expected to be $561.4 million.

Special Fund Revenue

The California Constitution and state statutes specify into which funds certain revenues must be deposited and how they are to be spent.

Total special fund revenues are estimated to be $38.1 billion in 2013-14. Taxes and fees related to motor vehicles are expected to comprise about 31 percent of all special fund revenue in 2013-14. The principal sources are motor vehicle fees (registration, weight, and vehicle license fees) and motor vehicle fuel taxes. During 2013-14, it is expected that about $12 billion in revenues will be derived from the ownership or operation of motor vehicles. About 33 percent of all motor vehicle taxes and fees will be allocated to local governments, and the remaining portion will be used for state transportation programs.

Motor Vehicle Fees

Motor vehicle fees and taxes consist of vehicle license, registration, weight, driver's license, and other charges related to vehicle operation. Figure REV-11 displays revenue from these sources from 2011-12 through 2013-14.

The Vehicle License Fee (VLF) is imposed on vehicles that travel on public highways in California. This tax is imposed in lieu of a local personal property tax on automobiles and is administered by the Department of Motor Vehicles. Chapter 87, Statutes of 1991

(AB 758) required the Department of Motor Vehicles to reclassify used vehicles based on their actual purchase price each time ownership is transferred. Also under this chapter, VLF revenues, other than administrative costs and fees on trailer coaches and mobile homes, are transferred to the Local Revenue Fund for state-local program realignment. Between 1948 and 1998, the VLF was set at 2 percent of the assessed value of a vehicle. Beginning in 1999, vehicle owners received discounts on the amount of VLF. To maintain revenue for local governments, the General Fund made deposits to offset the revenue lost from the discount.

Figure REV-11

Motor Vehicle Fees Special Fund Revenue

(Dollars in Thousands)

	2011-12 Preliminary	2012-13 Forecast	2013-14 Forecast
Vehicle License Fees	$1,978,751	$1,934,821	$1,964,397
Registration, Weight, and Other Fees	3,836,019	3,829,317	3,920,648
Total	**$5,814,770**	**$5,764,138**	**$5,885,045**

Chapter 211, Statutes of 2004 (SB 1096) eliminated the VLF offset and established the VLF tax rate at 0.65 percent. Local governments now receive property tax revenue to compensate them for the loss of VLF revenue. In 2013-14 the estimated value of the VLF backfill to cities and counties is $6 billion. The value of the reduction from 2 percent to 0.65 percent is $4.1 billion.

The number of vehicles in the state, the ages of those vehicles, and their most recent sales price affect the amount of VLF collected. The total number of vehicles in California —autos, trucks, trailers, and motorcycles including vehicles registered in multiple states —is estimated to be 29,043,559 in 2012-13 and is expected to decline to 28,895,995 in 2013-14. The year-to-year decline is due primarily to the cyclical nature of trailer registrations which renew every five years. Consistent with expected increases in national new vehicle sales due to the availability of consumer credit, an improving employment picture, and projected increases to after-tax income, the forecast projects that there will be 1,744,766 new vehicles registered in 2012-13, increasing to 1,856,112 in 2013-14.

The Department of Motor Vehicles administers the VLF for trailer coaches that are not installed on permanent foundations. Those that are installed on permanent foundations (mobile homes) are subject to either local property taxes or the VLF. Generally, mobile homes purchased new prior to July 1, 1980, are subject to the VLF. All trailer coach license fees are deposited in the General Fund.

In addition to the VLF, commercial truck owners pay a fee based on vehicle weight. Due partly to the expected increase in truck sales reflecting an improving business climate, weight fee revenues are expected to be $932 million in 2012-13 and to increase by 1.5 percent to $946 million in 2013-14.

Motor Vehicle Fuel Taxes

The Motor Vehicle Fuel Tax, Diesel Fuel Tax, and Use Fuel Tax are the major sources of funds for maintaining, replacing, and constructing state highway and transportation facilities. Just over one-third of these revenues are apportioned to local jurisdictions for a broad range of local road projects, including both maintenance of existing roads and construction of new roads. In addition, some jurisdictions choose to spend a portion of their allocation on improvements to the state highway system in their region to decrease traffic congestion.

The gallons of gasoline consumed were down 1.1 percent in 2011-12 when compared to the prior fiscal year. However, gasoline consumption is expected to increase 1 percent in 2012-13 and then increase 1.3 percent in 2013-14. Because most diesel fuel is consumed by the commercial trucking industry, the gallons consumed are affected most significantly by general economic conditions. A recovering economy is expected to contribute to growth of 2.6 percent in diesel consumption in 2012-13 followed by 2.1 percent growth in 2013-14.

Motor Vehicle Fuel Tax collections are shown in Figure REV-12.

The Motor Vehicle Fuel Tax (gas tax) is collected from distributors when fuel is loaded into ground transportation for transport to retail stations. This fuel is taxed at a rate of 36 cents per gallon under current law. Fuels subject to the gas tax include gasoline, natural gas, and blends of gasoline and alcohol sold for use on public streets and highways.

Figure REV-12

Motor Vehicle Fuel Tax Revenue

(Dollars in Thousands)

	2011-12 Preliminary	2012-13 Forecast	2013-14 Forecast
Gasoline [1]	$5,179,071	$5,320,062	$5,736,243
Diesel	362,994	296,207	287,645
Total	**$5,542,065**	**$5,616,269**	**$6,023,888**

[1] Does not include jet fuel.

Distributors pay the Diesel Fuel Tax, which applies to both pure diesel fuel and blends, at the fuel terminal. Diesel fuel for highway use is taxed at a rate of 10 cents per gallon

in 2012-13. Dyed diesel fuel, which is used for off-highway purposes such as farm equipment, is not taxed.

Beginning in 2010-11, the fuel tax swap eliminated the General Fund portion of the sales tax on gasoline and replaced it with an excise tax of 17.3 cents per gallon. The Board of Equalization is required to adjust the excise tax rates for both motor vehicle fuel and diesel fuel annually so that the total amount of tax revenue generated is equal to what would have been generated had the sales and use tax and excise tax rates remained unchanged. To maintain revenue neutrality for gasoline, the excise tax rate for 2012-13 is set at 36 cents per gallon. The Budget forecasts that the excise tax on gasoline will be 38 cents per gallon in 2013-14.

Beginning in 2011-12, the fuel tax swap increased the sales tax add-on for diesel fuel to the statutorily mandated 1.87 percent, while it decreased the excise tax to 13 cents to maintain revenue neutrality. For 2012-13, to achieve neutrality, the excise tax rate was reduced by 3 cents and to 10 cents per gallon. However, under current law the sales tax rate add-on will increase to 1.94 percent in 2013-14, and the Budget forecasts that the excise tax on diesel fuel will be adjusted to 10.5 cents per gallon.

The Use Fuel Tax is levied on sales of kerosene, liquefied petroleum gas (LPG), liquid natural gas (LNG), compressed natural gas (CNG), and alcohol fuel (ethanol and methanol containing 15 percent or less gasoline and diesel fuel). These fuels are taxed only when they are dispensed into motor vehicles used on the highways. Current Use Fuel Tax rates are 18 cents per gallon for kerosene, 6 cents per gallon for LPG and LNG, 7 cents per 100 cubic feet for CNG, and 9 cents per gallon for alcohol fuel. Users of LPG, LNG, or CNG may elect to pay a flat rate of tax based on vehicle weight instead of the per-gallon tax.

An excise tax of 2 cents per gallon is levied on aircraft jet fuel sold at the retail level. This tax does not apply to commercial air carriers, aircraft manufacturers and repairers, and the U.S. armed forces.

Local transit systems, school and community college districts, and certain common carriers pay 1 cent per gallon on the fuel they use instead of the tax rates described above.

Summary of State Tax System

The state's tax system is outlined at the end of this section in Figure REV-13. Tax collections per capita and per $100 of personal income are displayed in Schedule 2 in

the Appendix. The revenue generated from each state tax from 1970-71 through 2013-14 is displayed in Schedule 3 in the Appendix.

Figure REV-13
Outline of State Tax System as of January 1, 2013

Major Taxes and Fees	Base or Measure	Rate	Administering Agency	Fund
Alcoholic Beverage Excise Taxes:				
Beer	Gallon	$0.20	Equalization	General
Distilled Spirits	Gallon	$3.30	Equalization	General
Dry Wine/Sweet Wine	Gallon	$0.20	Equalization	General
Sparkling Wine	Gallon	$0.30	Equalization	General
Hard Cider	Gallon	$0.20	Equalization	General
Corporation:				
General Corporation	Net income	8.84% [1]	Franchise	General
Bank and Financial Corp.	Net income	10.84%	Franchise	General
Alternative Minimum Tax	Alt. Taxable Income	6.65%	Franchise	General
Tobacco:				
Cigarette	Package	$0.87 [2]	Equalization	See below [2]
Other Tobacco Products	Wholesale cost	30.68% [3]	Equalization	See below [3]
Estate	Taxable Fed. Estate	0% [4]	Controller	General
Insurance				
Insurers	Gross Premiums	2.35% [5]	Insurance Dept.	General
Medi-Cal managed care plans	Gross Premiums	2.35%	Health Care Services	See below [6]
Liquor License Fees	Type of license	Various	Alc. Bev. Control	General
Motor Vehicle:				
Vehicle License Fees (VLF)	Market value	0.65%	DMV	Motor VLF, Local Revenue [7]
Fuel—Gasoline	Gallon	$0.360 [8]	Equalization	Motor Vehicle Fuel [9]
Fuel—Diesel	Gallon	$0.10 [10]	Equalization	Motor Vehicle Fuel
Registration Fees	Vehicle	$69.00	DMV	Motor Vehicle [11]
Weight Fees	Gross Vehicle Wt.	Various	DMV	State Highway
Personal Income	Taxable income	1.0-12.3% [12]	Franchise	General
Proposition 63 Surcharge	Taxable income > $1 million	1.0%	Franchise	Mental Health Services
Alternative Minimum Tax	Alt. Taxable Income	7.0%	Franchise	General
Retail Sales and Use	Sales or lease of taxable items	7.50% [13]	Equalization	See below [13]

[1] Minimum Tax is $800 per year for existing corporations. New corporations are exempt for the first two years.

[2] This tax is levied at the combined rate of 10 cents/pack of 20 cigarettes for the General Fund, 25 cents/pack for the Cigarette and Tobacco Products Surtax Fund, 2 cents/pack for the Breast Cancer Fund, and 50 cents/pack for the California Children and Families First Trust Fund.

[3] The surtax rate is determined annually by the BOE and is equivalent to the combined rate of tax applied to cigarettes, with funding for the Cigarette and Tobacco Products Surtax Fund and California Children and Families First Trust Fund. Effective July 1, 2012, through June 30, 2013, the rate is 30.68 percent of the wholesale cost.

[4] Since 2005 and through the end of 2012, federal estate tax law is structured such that California will receive none of the "state pick-up" estate tax for those years. However, under current law, starting in January 1, 2013, the federal estate tax will return to its pre-2011 structure and California will, again, begin to receive estate tax payments for estates for which the death occurred on or after January 1, 2013.

[5] Ocean marine insurance is taxed at the rate of 5 percent of underwriting profit attributable to California business. Special rates also apply to certain pension and profit sharing plans, surplus lines, and nonadmitted insurance.

[6] Insurance tax on Medi-Cal managed care plans through June 30, 2012, pursuant to Chapter 11, Statutes of 2011 (X1 AB 21), to provide interim funding for the Healthy Families and Medi-Cal programs. The Governor's Budget proposes to reauthorize this tax permanently, retroactive to July 1, 2012.

[7] For return to cities and counties. Trailer coach license fees are deposited in the General Fund.

[8] As part of the fuel tax swap implemented beginning July 1, 2010, this rate was increased from 18 cents and will be adjusted each year to maintain revenue neutrality with the elimination of the General Fund portion of the sales tax on gasoline.

[9] For administrative expenses and apportionment to State, counties and cities for highways, airports, and small craft harbors.

[10] As part of the fuel tax swap, this rate will be decreased by an estimated 3 cents on July 1, 2012, and will be adjusted each year thereafter to maintain revenue neutrality with the 2.17% increase in sales tax on diesel beginning July 1, 2012.

[11] For support of State Department of Motor Vehicles, California Highway Patrol, other agencies, and motor vehicle related programs.

[12] Proposition 30 (The Schools and Local Public Safety Protection Act of 2012) was passed by the California voters in November 2012. Proposition 30, for tax years 2012 through 2018, created three new income tax brackets with rates of 10.3 percent for taxable income over $250,000, 11.3 percent for taxable income over $300,000, and 12.3 percent for taxable income over $500,000.

[13] The 7.50 percent rate includes the rates for General Fund, Special Funds, and uniform local rates. Additionally, cities and counties may generally assess up to an additional 2.00 percent to the statewide rate. This rate includes the passage of Proposition 30 (The Schools and Local Public Safety Protection Act of 2012), effective beginning January 1, 2013.

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Appendices and Schedules

Budget Process Overview

The Governor's Budget is the result of a process that begins more than one year before the Budget becomes law. When presented to the Legislature on January 10 of each year, the Governor's Budget incorporates revenue and expenditure estimates based upon the most current information available through mid December. In the event that the Governor wants to change the Budget presented to the Legislature, including adjustments resulting from changes in population, caseload, or enrollment estimates, the Department of Finance (Finance) proposes adjustments to the Legislature during budget hearings through Finance Letters. During late spring, usually in May, Finance submits revised revenue and expenditure estimates for both the current and budget years to the Legislature. This update process is referred to as the May Revision. Finance also prepares monthly economic and cash revenue updates during the fiscal year. Listed below are the key documents used in the budget process.

Title	Purpose	Prepared/Issued by	When
Budget Letters and Management Memos	Convey the Administration's guidelines for budget preparation to agencies and departments.	Governor/Finance	January through December
Budget Change Proposals	Documents that propose to modify or change the existing level of service, propose new programs, or delete existing programs.	Agencies and departments submit to Finance analysts	July through September
Governor's Budget	Governor's proposed budget for the upcoming fiscal year.	Governor/Finance	January 10
Governor's Budget Summary	A summary of the Governor's Budget.	Governor/Finance	January 10
Budget Bill	Requests spending authorization to carry out the Governor's expenditure plan (legislative budget decision document).	Finance/Legislature	January 10
Analysis of the Budget	Analysis of the Budget, including recommendations for changes to the Governor's Budget.	Legislative Analyst	February
May Revision	Update of General Fund revenues, expenditures, and reserve estimates based on the latest economic forecast and changes in population, caseload, or enrollment estimates.	Finance	Mid-May
Budget Act	The primary annual expenditure authorization as approved by the Governor and Legislature, including a listing of the Governor's vetoes.	Legislature/Governor	Late June or enactment of the Budget
Final Budget Summary	Update of the individual Budget Act items with changes by the Governor's vetoes, including certain budget summary schedules.	Finance	Late July - August or 1-2 months after Budget enactment
Final Change Book	Update of changes to the detailed fiscal information in the Governor's Budget.	Finance	Late July - August or 1-2 months after Budget enactment

Adjustments in Accounting Methods and Prior Year Fund Balances

AB 1487 (Chapter 343, Statutes of 2012) requires the Department of Finance (Finance) to clearly note in the Governor's Budget or related documents any adjustments of prior year fund balances and accounting methods. This requirement is to ensure the closest possible comparability of the Governor's Budget with the State Controller's Budgetary-Legal Basis Annual Report (Annual Report).

Accounting Methods

Main Funds for Caltrans—Beginning with the 2013-14 Governor's Budget (including 2011-12 actuals, 2012-13 revised, and 2013-14 proposed), the displays have changed slightly in budget documents for the following five funds administered by the Department of Transportation : State Highway Account, Public Transportation Account, Transportation Investment Fund, Transportation Deferred Investment Fund, and Traffic Congestion Relief Fund. Fund balances of these funds operate on a cash basis of accounting. The changes better reflect the adjustments to convert the modified accrual basis of revenues and expenditures into cash basis.

Other Funds—The year-end financial statements submitted to the State Controller's Office for several funds were not prepared in a manner that is consistent with the Budget's methods and basis. The fund administrators of these funds have been directed to prepare their year-end financial statements in a manner that ensures the Annual Report accounts for the funds on the same basis as the Governor's Budget and the Budget Act, as required by Government Code Section 12460. The major funds include the Mental Health Services Fund and the Fiscal Recovery Fund.

Revenue Accruals—Consistent with the 2012 Budget Act and current practice, the net final payment accrual methodology will be used to accrue revenues associated with ballot initiatives beginning with those passed by the voters in 2012 for the 2013-14 and future budgets.

Prior Year Fund Balances

As announced on August 3, 2012, Finance has implemented enhanced efforts to reconcile special funds between the Governor's Budget documents provided to Finance and the year-end financial statements provided to the State Controller's Office by departments. Departments that are the designated fund administrators continue to be primarily responsible for the reconciliation, and Finance works very closely with the departments to ensure this is completed for all special funds. Special fund balances were reconciled using the best information available. However, final balances for the Annual Report are not available during the preparation of the Governor's Budget. Therefore, there will be some remaining variances in the spring when final balances become available.

Statewide Financial Information

Provides various statewide displays of financial information included in the Budget that may be the most useful to the public, private sector, or other levels of government. Each statewide display includes a description of the information included.

Schedule 1 ***General Budget Summary*****—**Total statewide revenues and expenditures for the General Fund and special funds, and expenditure totals for selected bond funds.

Schedule 2 ***Summary of State Tax Collections*****—***S*tate tax collections per capita and per $100 of personal income.

Schedule 3 ***Comparative Yield of State Taxes*****—**Revenues for major state taxes from 1970-71 through 2013-14.

Schedule 4 ***Positions and Salary Cost Estimates*****—**Position data and corresponding dollar amounts.

Schedule 5A ***Statement of Estimated Accounts Payable and Accounts Receivable*****—**Actual payable and receivable amounts as of June 30, 2012, and estimated amounts for June 30, 2013, and June 30, 2014.

Schedule 5B ***Actual 2011-12 Fiscal Year Cashflow*****—**Actual receipts, disbursements, borrowable resources, and cashflow loan balances for the 2011-12 fiscal year.

Schedule 5C ***Estimated 2012-13 Fiscal Year Cashflow*****—**Projected receipts, disbursements, borrowable resources, and cashflow loan balances for the 2012-13 fiscal year.

Schedule 5D ***Estimated 2013-14 Fiscal Year Cashflow*****—**Projected receipts, disbursements, borrowable resources, and cashflow loan balances for the 2013-14 fiscal year.

Schedule 6 ***Summary of State Population, Employees, and Expenditures*****—**Historical data of state population, employees, personal income, revenues, and expenditures.

Schedule 7 ***General Fund Statement of Fund Balance*****—**Available upon request. Contact the Department of Finance, Budget Operations Support Unit at (916) 445-5332.

Schedule 8 ***Comparative Statement of Revenues*****—**Detail of General and special fund revenues by source for the past, current, and budget years within the following categories: (1) major taxes and licenses, (2) minor revenues, and (3) transfers and loans.

Schedule 9 ***Comparative Statement of Expenditures*****—**Detail of General Fund, special fund, selected bond fund, and federal fund expenditures included in the Governor's Budget by the following categories: (1) State Operations, (2) Local Assistance, (3) Capital Outlay, and (4) Unclassified.

Schedule 10 ***Summary of Fund Condition Statements*****—**A listing in alphabetical order of the beginning reserve, revenues, expenditures, and ending reserve for the General Fund and each special fund for the past, current, and budget years.

Schedule 11 ***Statement of General Obligation Bond and Commercial Paper Debt of the State of California*****—**List of all general obligation bonds including: maturity dates, authorized amount of bond issues, amounts of unissued bonds, redemptions, and outstanding issues, as well as authorized and outstanding commercial paper issued in-lieu of general obligation bonds.

Schedule 12A ***State Appropriations Limit Summary*****—**Summary of Schedules 12B through 12E provides a calculation of the appropriations subject to the State Appropriations Limit and the Limit Room or Surplus.

Schedule 12B ***Revenues to Excluded Funds*****—**List of revenues to special funds NOT included in the calculation of total appropriations subject to the State Appropriations Limit.

Schedule 12C ***Non-Tax Revenues in Funds Subject to Limit*****—**Total of non-tax General and special fund

revenues deposited in funds that are otherwise included in the calculation of total appropriations subject to the State Appropriations Limit.

Schedule 12D *State Appropriations Limit Transfer from Other Funds to Included Funds*—Detail of transfers between funds that are used in calculating the appropriations subject to the State Appropriations Limit.

Schedule 12E *State Appropriations Limit Excluded Appropriations*—Exclusions from appropriations subject to the State Appropriations Limit.

SCHEDULE 1
GENERAL BUDGET SUMMARY[1]
(In Thousands)

	Reference to Schedule	General Fund	Special Funds	Selected Bond Fund Expenditures	Expenditure Totals
2011-12					
Prior year resources available	10	-$2,282,311	$8,633,649		
Revenues and transfers	8	87,070,787	32,006,023		
Expenditures	9	86,403,523	33,853,308	$6,104,227	$126,361,058
Fund Balance [2]	10	-$1,615,047	$6,786,364		
Reserve for Liquidation of Encumbrances [3]		*618,108*	--		
Reserves for Economic Uncertainties [4]		--	*6,786,364*		
Special Fund for Economic Uncertainties [4]		*-2,233,155*	--		
2012-13					
Prior year resources available	10	-$1,615,047	$6,786,364		
Revenues and transfers	8	95,394,242	39,007,531		
Expenditures	9	92,993,839	39,648,369	$12,294,798	$144,937,006
Fund Balance [2]	10	$785,356	$6,145,526		
Reserve for Liquidation of Encumbrances [3]		*618,108*	--		
Reserves for Economic Uncertainties [4]		--	*6,145,526*		
Special Fund for Economic Uncertainties [4]		*167,248*	--		
2013-14					
Prior year resources available	10	$785,356	$6,145,526		
Revenues and transfers	8	98,500,613	40,173,951		
Expenditures	9	97,650,244	40,927,826	$7,248,480	$145,826,550
Fund Balance [2]	10	$1,635,725	$5,391,651		
Reserve for Liquidation of Encumbrances [3]		*618,108*	--		
Reserves for Economic Uncertainties [4]		--	*5,391,651*		
Special Fund for Economic Uncertainties [4]		*1,017,617*	--		

[1] The General Budget Summary includes the revenues and expenditures of all state funds that reflect the cost of state government and selected bond fund expenditures. The transactions involving other nongovernmental cost funds are excluded. The amounts included in this schedule for expenditures and revenues may not agree with those shown in Schedules 8, 9 and 10 due to rounding.

[2] The General Fund unencumbered balances of continuing appropriations at the end of the 2011-12, 2012-13, and 2013-14 fiscal years are $207,663; $172,215; and $102,449 (in thousands), respectively. The special funds unencumbered balances of continuing appropriations at the end of the 2011-12, 2012-13, and 2013-14 fiscal years are $16,534,945; $6,109,601; and $10,497,097 (in thousands), respectively. Unencumbered balances of continuing appropriations reflect remaining expenditure authorizations from these appropriations.

[3] The Reserve for Liquidation of Encumbrances represents an amount which will be expended in the future for state obligations for which goods and services have not been received at the end of the fiscal year. This reserve treatment is consistent with accounting methodology prescribed by Generally Accepted Accounting Principles (GAAP) and Government Code Sections 13306 and 13307.

[4] The Special Fund for Economic Uncertainties and the Reserves for Economic Uncertainties are reserve accounts for the General and special funds as provided by Section 5 of Article XIIIB of the California Constitution.

SCHEDULE 2
SUMMARY OF STATE TAX COLLECTIONS

(Excludes Departmental, Interest, and Miscellaneous Revenue)

Fiscal Year Beginning	Per Capita Personal Income [1, 2]	State Tax Collections (Dollars in Millions)		Taxes per Capita [1]		Taxes per $100 of Personal Income [3]	
		General Fund	Total	General Fund	Total	General Fund	Total
1967	$3,878	$3,558	$4,676	$185.55	$243.86	$4.78	$6.29
1968	4,199	3,963	5,173	203.94	266.21	4.86	6.34
1969	4,525	4,126	5,409	208.96	273.94	4.62	6.05
1970	4,797	4,290	5,598	214.08	279.36	4.46	5.82
1971	5,027	5,213	6,597	256.22	324.24	5.10	6.45
1972	5,451	5,758	7,231	279.72	351.28	5.13	6.44
1973	5,943	6,377	7,877	305.57	377.45	5.14	6.35
1974	6,557	8,043	9,572	379.85	452.06	5.79	6.89
1975	7,136	9,050	10,680	420.19	495.87	5.89	6.95
1976	7,835	10,781	12,525	491.48	570.98	6.27	7.29
1977	8,571	12,951	14,825	579.41	663.25	6.76	7.74
1978	9,573	14,188	16,201	621.30	709.45	6.49	7.41
1979	10,718	16,904	19,057	726.83	819.41	6.78	7.64
1980	11,938	17,808	20,000	748.80	840.97	6.27	7.04
1981	13,148	19,053	21,501	784.78	885.62	5.97	6.74
1982	13,750	19,567	22,359	788.83	901.39	5.74	6.56
1983	14,531	22,300	25,674	880.14	1,013.30	6.06	6.97
1984	15,931	25,515	29,039	988.34	1,124.85	6.20	7.06
1985	16,801	26,974	30,898	1,021.63	1,170.25	6.08	6.97
1986	17,559	31,331	35,368	1,158.18	1,307.41	6.60	7.45
1987	18,487	31,228	35,611	1,126.67	1,284.81	6.09	6.95
1988	19,564	35,647	40,613	1,255.49	1,430.39	6.42	7.31
1989	20,502	37,248	43,052	1,278.16	1,477.32	6.23	7.21
1990	21,474	36,828	43,556	1,234.66	1,460.21	5.75	6.80
1991	21,743	40,072	48,856	1,315.62	1,604.01	6.05	7.38
1992	22,429	39,197	48,230	1,264.93	1,556.44	5.64	6.94
1993	22,716	38,351	48,941	1,224.72	1,562.90	5.39	6.88
1994	23,419	41,099	50,648	1,303.75	1,606.67	5.57	6.86
1995	24,486	44,825	54,805	1,413.51	1,728.20	5.77	7.06
1996	25,833	47,955	58,400	1,500.33	1,827.10	5.81	7.07
1997	27,090	53,859	64,826	1,659.61	1,997.56	6.13	7.37
1998	29,306	58,199	69,724	1,770.96	2,121.65	6.04	7.24
1999	30,753	70,027	81,773	2,095.45	2,446.93	6.81	7.96
2000	33,392	75,668	88,147	2,225.47	2,592.50	6.66	7.76
2001	33,864	62,679	73,295	1,816.12	2,123.70	5.36	6.27
2002	33,984	64,879	75,420	1,856.95	2,158.65	5.46	6.35
2003	34,841	70,229	81,628	1,984.49	2,306.60	5.70	6.62
2004	36,703	80,070	93,764	2,239.55	2,622.57	6.10	7.15
2005	38,562	90,468	105,860	2,514.02	2,941.74	6.52	7.63
2006	41,260	93,237	109,390	2,572.28	3,017.93	6.23	7.31
2007	42,853	95,290	111,778	2,606.95	3,058.01	6.08	7.14
2008	43,702	79,398	95,020	2,154.26	2,578.12	4.93	5.90
2009	40,906	84,537	99,284	2,280.02	2,677.76	5.57	6.55
2010	41,925	89,910	106,942	2,409.86	2,866.35	5.75	6.84
2011 [p]	43,788	83,135	106,636	2,212.79	2,838.30	5.05	6.48
2012 [e]	45,694	91,446	115,731	2,417.53	3,059.55	5.29	6.70
2013 [e]	47,273	97,068	122,510	2,546.48	3,213.94	5.39	6.80

[1] Per capita computations are based on July 1 populations estimates, benchmarked to the 2010 Census.

[2] Personal income data are on a calendar year basis (e.g., 2010 for 2010-11).

[3] Taxes per $100 personal income computed using calendar year personal income (e.g. 2010 income related to 2010-11 tax collections).

[p] Preliminary.

[e] Estimated.

SCHEDULE 3

COMPARATIVE YIELD OF STATE TAXES, 1970-71 THROUGH 2013-14

Includes both General and Special Funds

(Dollars in Thousands)

Fiscal Year Beginning	Sales and Use (a)	Personal Income (b)	Corporation (c)	Tobacco (d)	Estate Inheritance and Gift (e)	Insurance (f)	Alcoholic Beverage (g)	Motor Vehicle Fuel (h)	Vehicle Fees (i)
1970	$1,808,052	$1,264,383	$532,091	$239,721	$185,699	$158,423	$106,556	$674,635	$513,202
1971	2,015,993	1,785,618	662,522	247,424	220,192	170,179	112,091	712,426	547,845
1972	2,198,523	1,884,058	866,117	253,602	260,119	179,674	114,884	746,196	596,922
1973	2,675,738	1,829,385	1,057,191	258,921	231,934	201,697	119,312	742,702	644,448
1974	3,376,078	2,579,676	1,253,673	261,975	242,627	202,991	120,749	752,234	664,453
1975	3,742,524	3,086,611	1,286,515	268,610	316,648	241,224	125,313	766,555	749,936
1976	4,314,201	3,761,356	1,641,500	269,384	367,964	322,476	127,485	810,321	807,782
1977	5,030,438	4,667,887	2,082,208	273,658	365,092	387,560	132,060	850,181	924,410
1978	5,780,919	4,761,571	2,381,223	268,816	416,955	420,184	140,059	896,591	1,021,856
1979	6,623,521	6,506,015	2,510,039	290,043	465,611	446,228	138,940	852,752	1,096,640
1980	7,131,429	6,628,694	2,730,624	278,161	530,185	460,926	142,860	839,994	1,127,293
1981	7,689,023	7,483,007	2,648,735	276,824	482,300	454,984	139,523	833,446	1,373,354
1982	7,795,488	7,701,099	2,536,011	271,621	517,875	736,929	136,209	928,633	1,614,993
1983	8,797,865	9,290,279	3,231,281	263,231	236,452	457,490	137,433	1,213,167	1,906,290
1984	9,797,564	10,807,706	3,664,593	262,868	296,805	643,139	135,786	1,159,637	2,137,326
1985	10,317,930	11,413,040	3,843,024	258,141	252,810	839,939	132,262	1,194,172	2,515,295
1986	10,904,022	13,924,527	4,800,843	255,076	273,089	1,008,804	131,288	1,245,881	2,692,835
1987	11,650,531	12,950,346	4,776,388	250,572	304,148	1,158,321	128,734	1,293,254	2,966,334
1988	12,650,893	15,889,179	5,138,009	559,617	335,091	1,317,630	128,264	1,320,512	3,142,484
1989	13,917,771	16,906,568	4,965,389	787,076	388,527	1,167,684	128,524	1,349,146	3,305,711
1990	13,839,573	16,852,079	4,544,783	745,074	498,774	1,287,152	129,640	1,999,771	3,513,159
1991	17,458,521	17,242,816	4,538,451	726,064	446,696	1,167,307	321,352	2,457,229	4,369,862
1992	16,598,863	17,358,751	4,659,950	677,846	458,433	1,188,181	292,107	2,412,574	4,470,321
1993	16,857,369	17,402,976	4,809,273	664,322	552,139	1,196,921	275,797	2,547,633	4,518,795
1994	16,273,800	18,608,181	5,685,618	674,727	595,238	998,868	268,957	2,685,731	4,749,594
1995	17,466,584	20,877,687	5,862,420	666,779	659,338	1,131,737	269,227	2,757,289	5,009,319
1996	18,424,355	23,275,990	5,788,414	665,415	599,255	1,199,554	271,065	2,824,589	5,260,355
1997	19,548,574	27,927,940	5,836,881	644,297	780,197	1,221,285	270,947	2,853,846	5,660,574
1998	21,013,674	30,894,865	5,724,237	976,513	890,489	1,253,972	273,112	3,025,226	5,610,374
1999	23,451,570	39,578,237	6,638,898	1,216,651	928,146	1,299,777	282,166	3,069,694	5,263,245
2000	24,287,928	44,618,532	6,899,322	1,150,869	934,709	1,496,556	288,450	3,142,142	5,286,542
2001	23,816,406	33,046,665	5,333,036	1,102,807	915,627	1,596,002	292,627	3,295,903	3,836,904
2002	24,899,025	32,709,761	6,803,559	1,055,505	647,372	1,879,784	290,564	3,202,511	3,889,602
2003	26,506,911	36,398,983	6,925,916	1,081,588	397,848	2,114,980	312,826	3,324,883	4,415,126
2004	29,967,136	42,992,007	8,670,065	1,096,224	213,036	2,232,955	314,252	3,366,141	4,873,705
2005	32,201,082	51,219,823	10,316,467	1,088,703	3,786	2,202,327	318,276	3,393,381	5,078,529
2006	32,669,175	53,348,766	11,157,898	1,078,536	6,348	2,178,336	333,789	3,432,527	5,147,341
2007	31,972,874	55,745,970	11,849,097	1,037,287	6,303	2,172,936	327,260	3,418,413	5,212,811
2008	28,972,302	44,355,959	9,535,679	1,000,456	245	2,053,850	323,934	3,180,112	5,566,642
2009	31,197,154	45,650,901	9,114,589	922,986	0	2,180,786	311,242	3,163,694	6,726,967
2010	30,996,372	50,507,989	9,613,594	905,245	0	2,307,022	334,178	5,705,527	6,558,121
2011 [p]	28,536,238	55,024,435	7,949,000	895,677	0	2,416,073	346,000	5,544,530	5,907,866
2012 *	31,116,286	61,996,000	7,580,000	862,000	45,000	2,386,348	320,000	5,618,575	5,792,244
2013 *	34,352,933	62,940,816	9,130,000	837,000	290,000	2,682,718	326,000	6,026,194	5,910,065

(a) Includes the 0.5 percent Local Revenue Fund, the 1.0625 percent Local Revenue Fund 2011, the 0.25 percent sales tax, effective July 1, 2004, for repayment of economic recovery bonds, and the state sales tax rate of 6 percent from April 1, 2009 to June 30, 2011. Additionally, these revenues include passage of Proposition 30, which increases the General Fund sales tax rate by 0.25 percent from January 1, 2013, to December 31, 2016.

(b) Includes the revenue for a 1-percent surcharge on taxable incomes over $1 million, with proceeds funding mental health programs. Also includes the 0.25 percent surcharge and reduced dependent exemption credit effective for tax years 2009 and 2010. Includes the impact of Proposition 30, which establishes three additional tax brackets for tax years 2012 through 2018.

(c) Includes the corporation income tax and, from 1989 through 1997, the unitary election fee. Also includes impact of Proposition 39 beginning in tax year 2012.

(d) Proposition 99 (November 1988) increased the cigarette tax to $0.35 per pack and added an equivalent tax to other tobacco products. The Breast Cancer Act added $0.02 per pack effective 1/1/94. Proposition 10 (November 1998) increased the cigarette tax to $0.87 per pack and added the equivalent of $1.00 tax to other tobacco products.

(e) Proposition 6, an initiative measure adopted by the voters in June 1982, repealed the inheritance and gift taxes and imposed instead an estate tax known as "the pick-up tax," because it is designed to pick up the maximum credit allowed against the federal estate tax. The Economic Growth and Tax Relief Reconciliation Act of 2001 phases out the federal estate tax by 2010. The Act reduced the state pick-up tax by 25 percent in 2002, 50 percent in 2003, 75 percent in 2004, and eliminated it beginning in 2005. The EGTRRA sunsets after 2010. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, however, made changes to the estate tax for 2011 and 2012. One of those changes was an extension of the elimination of the state estate tax credit, which had been in effect since 2005, for 2011 and 2012.

(f) Includes insurance tax on Medi-Cal managed care plans through June 30, 2012, pursuant to Chapter 11, Statutes of 2011 (X1 AB 21), to provide interim funding for the Healthy Families and Medi-Cal programs. The Governor's Budget proposes to reauthorize this tax permanently, retroactive to July 1, 2012. A Board of Equalization decision regarding the taxation of premiums on a cash versus accrued basis has resulted in refunds of $0 million in 2011-12 and estimated refunds of $233 million and $149 million in 2012-13 and 2013-14, respectively.

(g) Alcoholic beverage excise taxes were increased effective July 15, 1991.

(h) Motor vehicle fuel tax (gasoline), use fuel tax (diesel and other fuels), and jet fuel. As part of he fuel tax swap implemented beginning July 1, 2010, this rate on gasoline was increased from 18 cents and will be adjusted each year to maintain revenue neutrality with the elimination of the General Fund portion of the sales tax on gasoline. Also as part of the fuel tax swap, this rate on diesel was decreased to 10 cents on July 1, 2012, and will be adjusted each year thereafter to maintain revenue neutrality with the 2.17-percent increase in 2012-13 and various increases planned for the out-years.

(i) Registration and weight fees, motor vehicle license fees, and other fees. Beginning January 1, 1999, vehicle owners paid 75 percent of the calculated tax, and the remaining 25 percent (offset) was paid by the General Fund. Chapter 74, Statutes of 1999, increased the offset to 35 percent on a one-time basis for the 2000 calendar year. Chapters 106 and 107, Statutes of 2000, and Chapter 5, Statutes of 2001, extended the 35-percent offset through June 30, 2001, and provided for an additional 32.5-percent VLF reduction, which was returned to taxpayers in the form of a rebate. Beginning July 1, 2001, the VLF offset was set at 67.5 percent. From June 30, 2003, through November 18, 2003, the VLF reduction was suspended. On November 17, 2003, the suspension was rescinded, thereby reinstating the offset. Effective January 1, 2005, the VLF rate is 0.65 percent. In February 2009 the VLF rate increased to 1.15 percent from May 19, 2009, to June 30, 2011. Effective July 1, 2011, the VLF rate returned to 0.65 percent.

[p] Preliminary.

* Estimated.

SCHEDULE 4
POSITIONS AND SALARY COST ESTIMATES
(Excludes Staff Benefits[1/])
(Dollars in Thousands)

	Positions			Dollars		
	Actuals 2011-12	Estimated 2012-13	Proposed 2013-14	Actuals 2011-12	Estimated 2012-13	Proposed 2013-14
Executive						
Executive	15,024.7	14,448.5	14,457.8	$964,817	$928,328	$987,893
Business, Consumer Services, and Housing	6,235.7	5,395.1	5,423.6	372,564	321,043	340,258
Transportation	41,758.4	39,222.0	39,144.3	3,093,160	2,873,428	3,024,849
Natural Resources	19,041.7	18,838.8	19,078.3	1,211,874	1,189,391	1,274,752
California Environmental Protection	5,157.3	4,957.6	4,921.5	382,728	373,441	393,809
Health and Human Services	32,891.1	30,938.0	31,850.5	2,236,642	2,052,178	2,233,131
Corrections and Rehabilitation	62,472.0	58,677.3	59,817.0	4,460,348	4,106,542	4,432,920
Education						
K thru 12 Education	2,960.9	2,854.1	2,855.1	182,899	172,884	183,474
Community Colleges/Other	329.7	317.2	315.2	27,149	26,007	26,986
Labor and Workforce Development	13,540.3	12,516.3	11,844.6	779,207	707,403	722,823
Government Operations	14,943.7	14,661.5	14,793.7	918,459	892,799	957,360
General Government	11,794.8	11,379.1	11,471.3	741,894	666,632	720,966
SUBTOTAL, EXECUTIVE	**226,150.3**	**214,205.5**	**215,972.9**	**$15,371,741**	**$14,310,076**	**$15,299,221**
Higher Education						
University of California	86,029.9	87,600.2	87,600.2	$6,772,867	$7,034,740	$7,034,740
Hastings College of Law	264.4	247.7	247.7	25,087	25,375	25,375
California State University	41,453.8	41,473.1	41,473.1	2,476,778	2,474,033	2,474,033
SUBTOTAL, HIGHER EDUCATION	**127,748.1**	**129,321.0**	**129,321.0**	**$9,274,732**	**$9,534,148**	**$9,534,148**
Legislative [1/]	759.0	750.0	750.0	$57,591	$59,049	$59,130
Judicial	2,150.3	2,002.2	2,001.9	211,063	197,397	200,296
GRAND TOTALS	**356,807.7**	**346,278.7**	**348,045.8**	**$24,915,127**	**$24,100,670**	**$25,092,795**

[1/] The numbers of positions include 120 legislators and staff at the Legislative Counsel Bureau. They do not include the Legislature's staff and Legislative Analyst's Office. Legislative members' staff benefits are included in the dollars.

SCHEDULE 5A
STATEMENT OF ESTIMATED ACCOUNTS PAYABLE AND ACCOUNTS RECEIVABLE
GENERAL FUND
(Dollars In Thousands)

	Actual 2011-12 Fiscal Year Accruals [1/]			Estimated 2012-13 Fiscal Year Accruals [2/]			Estimated 2013-14 Fiscal Year Accruals [2/]		
	Accounts payable June 30, 2012	*Accounts receivable June 30, 2012*	*Net accruals June 30, 2012*	*Accounts payable June 30, 2013*	*Accounts receivable June 30, 2013*	*Net accruals June 30, 2013*	*Accounts payable June 30, 2014*	*Accounts receivable June 30, 2014*	*Net accruals June 30, 2014*
STATE OPERATIONS									
Legislative/Judicial/Executive	$375,386	$345,628	$29,758	$386,648	$355,997	$30,651	$398,247	$366,677	$31,570
State and Consumer Services	103,524	84,592	18,932	106,630	87,130	19,500	109,829	89,744	20,085
Business, Transportation and Housing	50,407	986	49,421	51,919	1,016	50,903	53,477	1,046	52,431
Natural Resources	589,353	460,591	128,762	607,034	474,409	132,625	625,245	488,641	136,604
California Environmental Protection	14,032	95	13,937	14,453	98	14,355	14,887	101	14,786
Health and Human Services:									
Health Care Services	1,174	1,407	-233	1,209	1,449	-240	1,245	1,492	-247
Developmental Services	131,721	169,864	-38,143	135,673	174,960	-39,287	139,743	180,209	-40,466
State Hospitals	264,877	196,737	68,140	272,823	202,639	70,184	281,008	208,718	72,290
Other Health and Human Services	161,423	247,855	-86,432	166,266	255,291	-89,025	171,254	262,950	-91,696
Corrections and Rehabilitation	1,238,954	1,176,708	62,246	1,276,123	1,212,009	64,114	1,314,407	1,248,369	66,038
Education:									
Department of Education	151,858	23,330	128,528	156,414	24,030	132,384	161,106	24,751	136,355
University of California	0	0	0	0	0	0	0	0	0
California State University	0	0	0	0	0	0	0	0	0
Other Education	27,990	6,562	21,428	28,830	6,759	22,071	29,695	6,962	22,733
General Government/Labor	305,980	1,104,810	-798,830	315,159	1,137,954	-822,795	324,614	1,172,093	-847,479
Totals, State Operations	**$3,416,679**	**$3,819,165**	**-$402,486**	**$3,519,181**	**$3,933,741**	**-$414,560**	**$3,624,757**	**$4,051,753**	**-$426,996**
LOCAL ASSISTANCE									
Public Schools K-12	$2,017,543	$309,949	$1,707,594	$2,078,069	$319,247	$1,758,822	$2,140,411	$328,824	$1,811,587
California Community Colleges	4,811	34,950	-30,139	4,955	35,999	-31,044	5,104	37,079	-31,975
Other Education	61,784	2,671	59,113	63,638	2,751	60,887	65,547	2,834	62,713
Alcohol and Drug Abuse	13,165	26,963	-13,798	13,560	27,772	-14,212	13,967	28,605	-14,638
Health Care Services (Non-Medi-Cal)	116,211	139,334	-23,123	119,697	143,514	-23,817	123,288	147,819	-24,531
Developmental Services	987,694	1,281,645	-293,951	1,017,325	1,320,094	-302,769	1,047,845	1,359,697	-311,852
State Hospitals	0	0	0	0	0	0	0	0	0
Social Services	281,582	1,081,491	-799,909	290,029	1,113,936	-823,907	298,730	1,147,354	-848,624
Other Health and Human Services	82,935	79,403	3,532	85,423	81,785	3,638	87,986	84,239	3,747
Tax Relief	0	0	0	0	0	0	0	0	0
Other Local Assistance	12,241	7,757	4,484	12,608	7,990	4,618	12,986	8,230	4,756
Totals, Local Assistance	**$3,577,966**	**$2,964,163**	**$613,803**	**$3,685,304**	**$3,053,088**	**$632,216**	**$3,795,864**	**$3,144,681**	**$651,183**
TOTALS, ALL CHARACTERS	**$6,994,645**	**$6,783,328**	**$211,317**	**$7,204,485**	**$6,986,829**	**$217,656**	**$7,420,621**	**$7,196,434**	**$224,187**

[1/] Information per the State Controller's Office.

[2/] 2012-13 and 2013-14 reflect an Agency display based on the organization prior to the Governor's Reorganization Plan 2, which becomes operational July 1, 2013.

Note: Numbers may not add due to rounding.

SCHEDULE 5B
ACTUAL 2011-12 FISCAL YEAR CASH FLOW
GENERAL FUND
(Dollars in Millions)

	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
BEGINNING CASH BALANCE	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
RECEIPTS:													
Alcoholic Beverage Excise Tax	$35	$24	$27	$29	$28	$30	$36	$22	$25	$29	$31	$23	$339
Corporation Tax	291	138	925	275	166	1,332	134	85	1,405	1,385	250	1,664	8,050
Cigarette Tax	8	15	9	8	5	4	15	1	12	1	14	8	100
Inheritance, Gift and Estate Taxes	0	0	1	-1	0	0	0	1	0	1	0	0	2
Insurance Tax	10	156	363	20	148	340	12	20	64	542	165	348	2,188
Personal Income Tax	3,155	3,265	4,375	3,051	3,236	4,785	7,818	1,659	2,293	7,170	2,977	6,914	50,698
Retail Sales and Use Tax	978	3,139	1,084	694	2,291	1,607	810	2,426	1,450	373	2,806	1,781	19,439
Vehicle License Fees (.5%)	23	29	8	5	4	3	2	3	2	2	2	1	84
Income from Pooled Money Investments	1	1	6	2	2	1	1	0	3	2	2	5	26
Transfer from Special Fund for Economic Uncertainties	0	0	0	0	0	0	648	0	0	0	68	0	716
Other	978	528	1,026	208	389	146	392	569	175	228	440	1,049	6,128
TOTAL, Receipts	**$5,478**	**$7,295**	**$7,823**	**$4,291**	**$6,269**	**$8,250**	**$9,869**	**$4,786**	**$5,429**	**$9,732**	**$6,754**	**$11,794**	**$87,770**
DISBURSEMENTS:													
State Operations:													
University of California	$56	$21	$51	$211	$219	$166	$3	$331	$200	$183	$186	$652	$2,279
Debt Service (GO, Net GF Costs)	-76	333	496	795	698	162	-120	484	650	607	283	432	4,744
Other State Operations	2,008	1,579	2,206	1,419	1,250	1,539	1,246	1,205	1,300	1,589	1,105	963	17,409
Social Services	972	767	725	543	568	503	449	579	487	509	452	515	7,069
Medi-Cal Assistance for DHCS	925	1,220	1,613	1,033	1,391	1,634	1,075	1,002	1,638	1,553	1,433	579	15,096
Other Health and Human Services	434	518	42	557	218	243	126	73	291	2	-123	149	2,530
Schools	3,947	4,991	6,210	1,751	2,808	3,044	7,126	1,270	660	2,432	1,096	704	36,039
Teachers' Retirement	194	0	0	475	0	172	0	0	0	475	0	0	1,316
Transfer to Special Fund for Economic Uncertainties	0	0	0	0	0	0	0	0	0	0	0	0	0
Transfer to Budget Stabilization Account	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	-59	312	508	254	262	376	136	245	109	12	157	405	2,717
TOTAL, Disbursements	**$8,401**	**$9,741**	**$11,851**	**$7,038**	**$7,414**	**$7,839**	**$10,041**	**$5,189**	**$5,335**	**$7,362**	**$4,589**	**$4,399**	**$89,199**
EXCESS RECEIPTS/(DEFICIT)	**-$2,923**	**-$2,446**	**-$4,028**	**-$2,747**	**-$1,145**	**$411**	**-$172**	**-$403**	**$94**	**$2,370**	**$2,165**	**$7,395**	**-$1,429**
NET TEMPORARY LOANS:													
Special Fund for Economic Uncertainties	$0	$0	$0	$0	$0	$0	-$648	$0	$0	$0	-$68	$0	-$716
Budget Stabilization Account	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Internal Sources	-2,477	2,446	4,028	2,747	1,145	-411	820	-597	-94	-2,370	-1,597	-1,495	2,145
External Borrowing	5,400	0	0	0	0	0	0	1,000	0	0	-500	-5,900	0
TOTAL, Net Temporary Loans	**$2,923**	**$2,446**	**$4,028**	**$2,747**	**$1,145**	**-$411**	**$172**	**$403**	**-$94**	**-$2,370**	**-$2,165**	**-$7,395**	**$1,429**
ENDING CASH BALANCE	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
AVAILABLE/BORROWABLE RESOURCES:													
Special Fund for Economic Uncertainties	$1,191	$1,191	$1,191	$1,191	$1,191	$1,191	$543	$543	$543	$543	$475	$475	$475
Budget Stabilization Account	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Internal Sources	16,319	16,660	16,895	17,764	18,233	19,782	20,414	22,876	22,469	22,692	22,115	20,349	20,349
External Borrowing	5,400	5,400	5,400	5,400	5,400	5,400	5,400	6,400	6,400	6,400	5,900	0	0
TOTAL, Available/Borrowable Resources	**$22,910**	**$23,251**	**$23,486**	**$24,355**	**$24,824**	**$26,373**	**$26,357**	**$29,819**	**$29,412**	**$29,635**	**$28,490**	**$20,824**	**$20,824**
CUMULATIVE LOAN BALANCES:													
Special Fund for Economic Uncertainties	$1,191	$1,191	$1,191	$1,191	$1,191	$1,191	$543	$543	$543	$543	$475	$475	$475
Budget Stabilization Account	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Internal Sources	4,497	6,943	10,971	13,718	14,863	14,453	15,273	14,676	14,582	12,211	10,614	9,119	9,119
External Borrowing	5,400	5,400	5,400	5,400	5,400	5,400	5,400	6,400	6,400	6,400	5,900	0	0
TOTAL, Cumulative Loan Balances	**$11,088**	**$13,534**	**$17,562**	**$20,309**	**$21,454**	**$21,044**	**$21,216**	**$21,619**	**$21,525**	**$19,154**	**$16,989**	**$9,594**	**$9,594**
UNUSED BORROWABLE RESOURCES	**$11,822**	**$9,717**	**$5,924**	**$4,046**	**$3,370**	**$5,329**	**$5,141**	**$8,200**	**$7,887**	**$10,481**	**$11,501**	**$11,230**	**$11,230**
Cash and Unused Borrowable Resources	**$11,822**	**$9,717**	**$5,924**	**$4,046**	**$3,370**	**$5,329**	**$5,141**	**$8,200**	**$7,887**	**$10,481**	**$11,501**	**$11,230**	**$11,230**

Note: Numbers may not add due to rounding.

SCHEDULE 5C
ESTIMATED 2012-13 FISCAL YEAR CASHFLOW
GENERAL FUND
(Dollars in Millions)

	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
BEGINNING CASH BALANCE	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
RECEIPTS:													
Alcoholic Beverage Excise Tax	$8	$33	$27	$31	$29	$28	$33	$21	$23	$27	$27	$28	$315
Corporation Tax	265	41	774	148	-100	984	25	118	1,419	1,417	158	2,280	7,529
Cigarette Tax	2	8	8	14	8	8	8	7	7	8	7	7	92
Inheritance, Gift and Estate Taxes	1	0	0	0	0	0	0	0	0	0	0	1	2
Insurance Tax	-5	207	323	18	202	351	12	16	70	415	69	345	2,023
Personal Income Tax	3,311	3,644	4,406	3,941	3,603	6,513	8,696	2,368	2,185	12,746	3,258	8,130	62,801
Retail Sales and Use Tax	587	2,505	1,468	684	2,677	473	2,159	2,630	1,657	426	3,142	2,073	20,481
Vehicle License Fee	1	1	1	1	1	0	0	0	0	0	0	-1	4
Income from Pooled Money Investments	1	4	2	2	2	2	3	1	3	2	1	4	27
Transfer from Special Fund for Economic Uncertainties	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	346	483	568	263	790	209	127	302	170	326	386	884	4,854
TOTAL, Receipts	**$4,517**	**$6,926**	**$7,577**	**$5,102**	**$7,212**	**$8,568**	**$11,063**	**$5,463**	**$5,534**	**$15,367**	**$7,048**	**$13,752**	**$98,128**
DISBURSEMENTS:													
State Operations:													
University of California	$3	$17	$106	$206	$220	$176	$178	$192	$200	$200	$219	$680	$2,397
Debt Service	-31	353	472	786	411	105	-180	508	577	714	286	185	4,186
Other State Operations	1,521	1,338	1,756	2,196	793	1,564	1,584	1,280	1,325	1,712	1,540	1,213	17,822
Social Services	752	585	904	-188	699	637	649	558	504	583	389	351	6,423
Medi-Cal Assistance for DHCS	1,224	1,544	1,147	1,233	2,186	961	1,505	1,340	1,559	274	1,595	398	14,966
Other Health and Human Services	624	636	-5	241	394	222	275	165	-252	241	24	-6	2,559
Schools	8,472	5,439	3,771	2,353	2,672	3,790	2,714	2,046	1,264	661	777	8,271	42,230
Teachers' Retirement	225	0	0	476	0	183	0	0	0	476	0	2	1,362
Transfer to Special Fund for Economic Uncertainties	0	0	0	0	0	0	473	0	0	0	0	0	473
Transfer to Budget Stabilization Account	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	191	357	350	129	64	338	125	74	136	205	136	2,592	4,696
TOTAL, Disbursements	**$12,981**	**$10,269**	**$8,501**	**$7,432**	**$7,439**	**$7,976**	**$7,323**	**$6,163**	**$5,313**	**$5,066**	**$4,966**	**$13,686**	**$97,114**
EXCESS RECEIPTS/(DEFICIT)	**-$8,464**	**-$3,343**	**-$924**	**-$2,330**	**-$227**	**$592**	**$3,741**	**-$700**	**$221**	**$10,301**	**$2,082**	**$65**	**$1,014**
NET TEMPORARY LOANS:													
Special Fund for Economic Uncertainties	$0	$0	$0	$0	$0	$0	$473	$0	$0	-$222	$222	$0	$473
Budget Stabilization Account	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Internal Sources	8,464	-6,657	924	2,330	227	-592	-4,214	700	-221	-10,080	197	7,435	-1,487
External Borrowing	0	10,000	0	0	0	0	0	0	0	0	-2,500	-7,500	0
TOTAL, Net Temporary Loans	**$8,464**	**$3,343**	**$924**	**$2,330**	**$227**	**-$592**	**-$3,741**	**$700**	**-$221**	**-$10,302**	**-$2,081**	**-$65**	**-$1,014**
ENDING CASH BALANCE	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
AVAILABLE/BORROWABLE RESOURCES:													
Special Fund for Economic Uncertainties	$475	$475	$475	$475	$475	$475	$948	$948	$948	$948	$948	$948	$948
Budget Stabilization Account	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Internal Sources	21,815	22,540	23,458	22,377	21,836	21,976	20,544	21,909	22,337	18,864	18,685	18,663	18,663
External Borrowing	0	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	7,500	0	0
TOTAL, Available/Borrowable Resources	**$22,290**	**$33,015**	**$33,933**	**$32,852**	**$32,311**	**$32,451**	**$31,492**	**$32,857**	**$33,285**	**$29,812**	**$27,133**	**$19,612**	**$19,612**
CUMULATIVE LOAN BALANCES:													
Special Fund for Economic Uncertainties	$475	$475	$475	$475	$475	$475	$948	$948	$948	$727	$948	$948	$948
Budget Stabilization Account	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Internal Sources	17,582	10,925	11,849	14,179	14,406	13,814	9,600	10,300	10,080	0	197	7,631	7,631
External Borrowing	0	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	7,500	0	0
TOTAL, Cumulative Loan Balances	**$18,057**	**$21,400**	**$22,324**	**$24,654**	**$24,881**	**$24,289**	**$20,548**	**$21,249**	**$21,028**	**$10,727**	**$8,645**	**$8,580**	**$8,580**
UNUSED BORROWABLE RESOURCES	**$4,233**	**$11,615**	**$11,608**	**$8,198**	**$7,430**	**$8,162**	**$10,943**	**$11,609**	**$12,257**	**$19,086**	**$18,489**	**$11,032**	**$11,032**
Cash and Unused Borrowable Resources	**$4,233**	**$11,615**	**$11,608**	**$8,198**	**$7,430**	**$8,162**	**$10,943**	**$11,609**	**$12,257**	**$19,086**	**$18,489**	**$11,032**	**$11,032**

Note: Numbers may not add due to rounding.

SCHEDULE 5D
ESTIMATED 2013-14 FISCAL YEAR CASHFLOW
GENERAL FUND
(Dollars in Millions)

	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
BEGINNING CASH BALANCE	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
RECEIPTS:													
Alcoholic Beverage Excise Tax	$32	$26	$28	$28	$28	$28	$33	$21	$23	$27	$27	$27	$328
Corporation Tax	248	53	952	217	26	1,355	260	117	1,460	1,559	335	2,302	8,884
Cigarette Tax	8	8	8	7	8	7	7	7	7	7	7	8	89
Inheritance, Gift and Estate Taxes	0	0	0	0	0	0	0	0	0	0	0	0	0
Insurance Tax	16	124	412	16	116	417	14	19	83	492	82	407	2,198
Personal Income Tax	3,868	3,747	4,641	3,752	3,067	5,768	9,798	2,602	2,362	10,095	3,382	8,707	61,789
Retail Sales and Use Tax	787	2,776	1,746	774	3,018	2,010	1,122	2,912	1,764	461	3,504	2,210	23,084
Vehicle License Fee	0	0	0	0	0	0	0	0	0	0	0	0	0
Income from Pooled Money Investments	1	4	2	3	3	2	3	2	3	2	1	6	32
Transfer from Special Fund for Economic Uncertainties	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	143	360	177	113	478	109	148	331	144	131	416	744	3,294
TOTAL, Receipts	**$5,103**	**$7,098**	**$7,966**	**$4,910**	**$6,744**	**$9,696**	**$11,385**	**$6,011**	**$5,846**	**$12,774**	**$7,754**	**$14,410**	**$99,698**
DISBURSEMENTS:													
State Operations:													
University of California	$57	$24	$3	$225	$226	$199	$199	$228	$219	$221	$238	$696	$2,535
Debt Service	18	240	565	828	391	154	18	431	635	1,333	243	215	5,071
Other State Operations	1,617	1,558	1,842	1,889	1,410	1,684	1,486	1,332	1,372	1,769	1,555	1,476	18,990
Social Services	1,101	585	634	535	701	617	625	619	499	673	388	379	7,356
Medi-Cal Assistance for DHCS	1,463	1,589	1,324	1,219	1,204	1,485	1,273	914	1,414	1,229	1,588	521	15,223
Other Health and Human Services	267	260	473	231	468	206	195	198	280	106	19	61	2,764
Schools	7,385	3,637	5,027	2,861	3,078	4,395	2,911	2,811	4,243	1,514	685	1,775	40,322
Teachers' Retirement	194	0	0	484	0	194	0	0	0	484	0	4	1,360
Transfer to Special Fund for Economic Uncertainties	0	0	0	0	0	0	69	0	0	0	0	0	69
Transfer to Budget Stabilization Account	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	380	222	208	196	197	347	59	88	74	197	135	946	3,048
TOTAL, Disbursements	**$12,482**	**$8,115**	**$10,076**	**$8,468**	**$7,675**	**$9,281**	**$6,835**	**$6,621**	**$8,736**	**$7,526**	**$4,851**	**$6,073**	**$96,738**
EXCESS RECEIPTS/(DEFICIT)	**-$7,379**	**-$1,017**	**-$2,110**	**-$3,558**	**-$930**	**$415**	**$4,549**	**-$610**	**-$2,891**	**$5,249**	**$2,903**	**$8,337**	**$2,960**
NET TEMPORARY LOANS:													
Special Fund for Economic Uncertainties	$0	$0	$0	$0	$0	$0	$69	$0	$0	$0	$0	$0	$69
Budget Stabilization Account	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Internal Sources	7,379	-5,983	2,110	3,558	930	-415	-4,619	610	2,891	-5,249	-2,903	-1,337	-3,029
External Borrowing	0	7,000	0	0	0	0	0	0	0	0	0	-7,000	0
TOTAL, Net Temporary Loans	**$7,379**	**$1,017**	**$2,110**	**$3,558**	**$930**	**-$415**	**-$4,550**	**$610**	**$2,891**	**-$5,249**	**-$2,903**	**-$8,337**	**-$2,960**
ENDING CASH BALANCE	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**
AVAILABLE/BORROWABLE RESOURCES:													
Special Fund for Economic Uncertainties	$948	$948	$948	$948	$948	$948	$1,018	$1,018	$1,018	$1,018	$1,018	$1,018	$1,018
Budget Stabilization Account	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Internal Sources	18,681	20,059	20,865	19,021	19,636	19,993	20,360	20,286	20,702	19,414	20,303	19,659	19,659
External Borrowing	0	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	0	0
TOTAL, Available/Borrowable Resources	**$19,629**	**$28,007**	**$28,813**	**$26,970**	**$27,584**	**$27,941**	**$28,378**	**$28,304**	**$28,719**	**$27,432**	**$28,321**	**$20,676**	**$20,676**
CUMULATIVE LOAN BALANCES:													
Special Fund for Economic Uncertainties	$948	$948	$948	$948	$948	$948	$1,018	$1,018	$1,018	$1,018	$1,018	$1,018	$1,018
Budget Stabilization Account	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Internal Sources	15,010	9,027	11,136	14,694	15,624	15,209	10,590	11,200	14,091	8,842	5,939	4,602	4,602
External Borrowing	0	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	0	0
TOTAL, Cumulative Loan Balances	**$15,958**	**$16,975**	**$19,085**	**$22,642**	**$23,573**	**$23,157**	**$18,608**	**$19,218**	**$22,108**	**$16,860**	**$13,957**	**$5,620**	**$5,620**
UNUSED BORROWABLE RESOURCES	**$3,671**	**$11,033**	**$9,729**	**$4,327**	**$4,011**	**$4,784**	**$9,770**	**$9,086**	**$6,611**	**$10,572**	**$14,364**	**$15,057**	**$15,057**
Cash and Unused Borrowable Resources	**$3,671**	**$11,033**	**$9,729**	**$4,327**	**$4,011**	**$4,784**	**$9,770**	**$9,086**	**$6,611**	**$10,572**	**$14,364**	**$15,057**	**$15,057**

Note: Numbers may not add due to rounding.

SCHEDULE 6
SUMMARY OF STATE POPULATION, EMPLOYEES, AND EXPENDITURES

Year	Population [1] (Thousands)	Employees	Employees per 1,000 Population	Personal Income (Billions)	Revenue		Expenditures		Expenditures per Capita		Expenditures per $100 of Personal Income	
					General Fund (Millions)	Total (Millions)	General Fund [2] (Millions)	Total [3] (Millions)	General Fund [2]	Total [3]	General Fund [2]	Total [3]
1950-51	10,643	61,000	5.7	$20.0	$672	$994	$587	$1,006	$55.15	$94.52	$2.94	$5.03
1951-52	11,130	63,860	5.7	23.1	734	1,086	635	1,068	57.05	95.96	2.75	4.62
1952-53	11,638	65,720	5.6	25.7	774	1,151	714	1,177	61.35	101.13	2.78	4.58
1953-54	12,101	69,928	5.8	27.5	798	1,271	809	1,381	66.85	114.12	2.94	5.02
1954-55	12,517	74,099	5.9	28.4	879	1,434	852	1,422	68.07	113.61	3.00	5.01
1955-56	13,004	77,676	6.0	31.3	1,005	1,578	923	1,533	70.98	117.89	2.95	4.90
1956-57	13,581	88,299	6.5	34.2	1,079	1,834	1,030	1,732	75.84	127.53	3.01	5.06
1957-58	14,177	98,015	6.9	36.8	1,111	1,751	1,147	1,891	80.91	133.39	3.12	5.14
1958-59	14,741	101,982	6.9	38.6	1,210	1,925	1,246	1,932	84.53	131.06	3.23	5.01
1959-60	15,288	108,423	7.1	42.4	1,491	2,198	1,435	2,086	93.86	136.45	3.38	4.92
1960-61	15,863	115,737	7.3	44.8	1,598	2,338	1,678	2,525	105.78	159.18	3.75	5.64
1961-62	16,412	122,339	7.5	47.5	1,728	2,451	1,697	2,406	103.40	146.60	3.57	5.07
1962-63	16,951	128,981	7.6	51.3	1,866	2,668	1,881	2,703	110.97	159.46	3.67	5.27
1963-64	17,530	134,721	7.7	54.8	2,137	3,057	2,064	3,182	117.74	181.52	3.77	5.81
1964-65	18,026	143,896	8.0	59.4	2,245	3,295	2,345	3,652	130.09	202.60	3.95	6.15
1965-66	18,464	151,199	8.2	63.4	2,509	3,581	2,580	4,059	139.73	219.83	4.07	6.40
1966-67	18,831	158,404	8.4	68.9	2,895	4,073	3,017	4,659	160.21	247.41	4.38	6.76
1967-68	19,175	162,677	8.5	74.2	3,682	4,927	3,273	5,014	170.69	261.49	4.41	6.76
1968-69	19,432	171,655	8.8	81.4	4,136	5,450	3,909	5,673	201.16	291.94	4.80	6.97
1969-70	19,745	179,583	9.1	89.3	4,330	5,743	4,456	6,302	225.68	319.17	4.99	7.06
1970-71	20,039	181,581	9.1	96.1	4,534	5,919	4,854	6,556	242.23	327.16	5.05	6.82
1971-72	20,346	181,912	8.9	102.3	5,395	6,897	5,027	6,684	247.08	328.52	4.91	6.53
1972-73	20,585	188,460	9.2	112.2	5,780	7,366	5,616	7,422	272.82	360.55	5.01	6.61
1973-74	20,869	192,918	9.2	124.0	6,978	8,715	7,299	9,311	349.75	446.16	5.89	7.51
1974-75	21,174	203,548	9.6	138.8	8,630	10,405	8,349	10,276	394.30	485.31	6.02	7.40
1975-76	21,538	206,361	9.6	153.7	9,639	11,567	9,518	11,452	441.92	531.71	6.19	7.45
1976-77	21,936	213,795	9.7	171.9	11,381	13,463	10,467	12,632	477.16	575.86	6.09	7.35
1977-78	22,352	221,251	9.9	191.6	13,695	15,962	11,686	14,003	522.82	626.48	6.10	7.31
1978-79	22,836	218,530	9.6	218.6	15,219	17,711	16,251	18,745	711.64	820.85	7.43	8.58
1979-80	23,257	220,193	9.5	249.3	17,985	20,919	18,534	21,488	796.92	923.94	7.43	8.62
1980-81	23,782	225,567	9.5	283.9	19,023	22,104	21,105	24,511	887.44	1,030.65	7.43	8.63
1981-82	24,278	228,813	9.4	319.2	20,960	23,601	21,693	25,022	893.53	1,030.65	6.80	7.84
1982-83	24,805	228,489	9.2	341.1	21,233	24,291	21,751	25,330	876.88	1,021.17	6.38	7.43
1983-84	25,337	226,695	8.9	368.2	23,809	27,626	22,869	26,797	902.59	1,057.62	6.21	7.28
1984-85	25,816	229,845	8.9	411.3	26,536	31,570	25,722	30,961	996.36	1,199.30	6.25	7.53
1985-86	26,403	229,641	8.7	443.6	28,072	33,558	28,841	34,977	1,092.34	1,324.74	6.50	7.88
1986-87	27,052	232,927	8.6	475.0	32,519	37,767	31,469	38,079	1,163.28	1,407.62	6.63	8.02
1987-88	27,717	237,761	8.6	512.4	32,534	38,773	33,021	40,452	1,191.36	1,459.47	6.44	7.89
1988-89	28,393	248,173	8.7	555.5	36,953	43,322	35,897	44,634	1,264.29	1,572.01	6.46	8.03
1989-90	29,142	254,589	8.7	597.5	38,750	46,453	39,456	48,594	1,353.92	1,667.49	6.60	8.13
1990-91	29,828	260,622	8.7	640.5	38,214	47,024	40,264	51,446	1,349.87	1,724.76	6.29	8.03
1991-92	30,459	261,713	8.6	662.3	42,026	53,117	43,327	56,280	1,422.47	1,847.73	6.54	8.50
1992-93	30,987	260,939	8.4	695.0	40,946	52,526	40,948	56,480	1,321.46	1,822.70	5.89	8.13
1993-94	31,314	265,035	8.5	711.3	40,095	52,384	38,958	53,083	1,244.11	1,695.18	5.48	7.46
1994-95	31,524	269,004	8.5	738.3	42,710	54,942	41,961	54,613	1,331.08	1,732.43	5.68	7.40
1995-96	31,712	271,076	8.5	776.5	46,296	59,266	45,393	59,870	1,431.41	1,887.93	5.85	7.71
1996-97	31,963	271,966	8.5	825.7	49,220	62,831	49,088	64,523	1,535.78	2,018.68	5.95	7.81
1997-98	32,453	264,551	8.2	879.2	54,973	69,424	52,874	68,528	1,629.25	2,111.61	6.01	7.79
1998-99	32,863	282,860	8.6	963.1	58,615	74,281	57,827	75,260	1,759.64	2,290.11	6.00	7.81
1999-00	33,419	296,076	8.9	1,027.7	71,931	87,536	66,494	84,864	1,989.71	2,539.39	6.47	8.26
2000-01	34,001	311,239	9.2	1,135.3	71,428	88,419	78,053	96,382	2,295.61	2,834.68	6.88	8.49
2001-02	34,513	322,277	9.3	1,168.7	72,239	89,780	76,752	99,220	2,223.86	2,874.86	6.57	8.49
2002-03	34,938	321,394	9.2	1,187.3	80,564	95,794	77,482	106,779	2,217.70	3,056.24	6.53	8.99
2003-04	35,389	316,860	9.0	1,233.0	76,774	96,365	78,345	104,223	2,213.82	2,945.07	6.35	8.45
2004-05	35,753	313,684	8.8	1,312.2	82,209	104,462	79,804	107,591	2,232.09	3,009.29	6.08	8.20
2005-06	35,986	317,593	8.8	1,387.7	93,427	118,331	91,592	119,612	2,545.21	3,323.85	6.60	8.62
2006-07	36,247	335,384	9.3	1,495.5	95,415	120,663	101,413	129,968	2,797.83	3,585.62	6.78	8.69
2007-08	36,553	343,118	9.4	1,566.4	102,574	127,194	102,986	138,065	2,817.44	3,777.12	6.57	8.81
2008-09	36,856	350,609	9.5	1,610.7	82,772	106,319	90,940	122,386	2,467.44	3,320.65	5.65	7.60
2008-09 [4]	-	-	-	-	-	-	94,777	126,223	2,571.55	3,424.76	5.88	7.84
2009-10	37,077	345,777	9.3	1,516.7	87,041	109,989	87,237	117,001	2,352.86	3,155.62	5.75	7.71
2009-10 [4]	-	-	-	-	-	-	96,389	126,153	2,599.70	3,402.46	6.36	8.32
2010-11	37,309	371,959 [5]	10.0	1,564.2	93,443	122,463	91,549	130,981	2,453.80	3,510.71	5.85	8.37
2010-11 [4]	-	-	-	-	-	-	96,470	135,902	2,585.70	3,642.61	6.17	8.69
2011-12	37,570	356,808 [5]	9.5	1,645.1	87,071	119,077	86,404	126,361	2,299.81	3,363.35	5.25	7.68
2011-12 [4]	-	-	-	-	-	-	87,641	127,598	2,332.74	3,396.28	5.33	7.76
2012-13	37,826	346,279 [5]	9.2	1,728.4	95,394	134,402	92,994	144,937	2,458.46	3,831.68	5.38	8.39
2012-13 [4]	-	-	-	-	-	-	95,616	147,559	2,527.78	3,900.99	5.53	8.54
2013-14	38,118	348,046 [5]	9.1	1,802.0	98,501	138,675	97,650	145,827	2,561.79	3,825.66	5.42	8.09
2013-14 [4]	-	-	-	-	-	-	98,767	146,944	2,591.09	3,854.97	5.48	8.15

[1] Population as of July 1, the beginning of the fiscal year.
[2] Includes Special Accounts in General Fund from 1973-74 to 1976-77.
[3] Expenditures include payments from General Fund, Special Funds and Selected Bond Funds beginning in 1963-64.
[4] Excludes expenditure offsets from the receipt of federal funds, Proposition 1A securitization, and property tax shifts.
[5] Beginning with the 2010-11 fiscal year, "Employees" displays positions, as opposed to prior years that show personnel years.

SCHEDULE 8
COMPARATIVE STATEMENT OF REVENUES
(Dollars In Thousands)

Sources	Actual 2011-12			Estimated 2012-13			Proposed 2013-14		
	General Fund	Special Funds	Total	General Fund	Special Funds	Total	General Fund	Special Funds	Total
MAJOR TAXES AND LICENSES									
Alcoholic Beverage Taxes and Fees	$346,000	-	$346,000	$320,000	-	$320,000	$326,000	-	$326,000
Corporation Tax	7,949,000	-	7,949,000	7,580,000	-	7,580,000	9,130,000	-	9,130,000
Cigarette Tax	95,000	800,677	895,677	91,000	771,000	862,000	89,000	748,000	837,000
Horse Racing (Parimutuel) License Fees	1,150	14,688	15,838	1,200	13,340	14,540	1,200	13,388	14,588
Estate, Inheritance and Gift Tax	-	-	-	45,000	-	45,000	290,000	-	290,000
Insurance Gross Premiums Tax	2,165,000	251,073	2,416,073	2,022,000	364,348	2,386,348	2,198,000	484,718	2,682,718
Trailer Coach License (In-Lieu) Fees	20,698	2,398	23,096	21,718	2,388	24,106	22,632	2,388	25,020
Motor Vehicle License (In-Lieu) Fees	70,000	1,978,751	2,048,751	4,000	1,934,821	1,938,821	-	1,964,397	1,964,397
Motor Vehicle Fuel Tax (Gasoline)	-	5,181,536	5,181,536	-	5,322,368	5,322,368	-	5,738,549	5,738,549
Motor Vehicle Fuel Tax (Diesel)	-	362,994	362,994	-	296,207	296,207	-	287,645	287,645
Motor Vehicle Registration	-	3,836,019	3,836,019	-	3,829,317	3,829,317	-	3,920,648	3,920,648
Personal Income Tax	53,836,409	1,188,026	55,024,435	60,647,000	1,349,000	61,996,000	61,746,816	1,194,000	62,940,816
Retail Sales and Use Tax-Realignment	-	7,983,073	7,983,073	-	8,366,827	8,366,827	-	8,982,056	8,982,056
Retail Sales and Use Taxes	18,652,000	588,803	19,240,803	20,714,000	635,759	21,349,759	23,264,000	610,777	23,874,777
Retail Sales and Use Tax-Fiscal Recovery	-	1,312,362	1,312,362	-	1,399,700	1,399,700	-	1,496,100	1,496,100
TOTALS, MAJOR TAXES AND LICENSES	**$83,135,257**	**$23,500,400**	**$106,635,657**	**$91,445,918**	**$24,285,075**	**$115,730,993**	**$97,067,648**	**$25,442,666**	**$122,510,314**
MINOR REVENUES									
REGULATORY TAXES AND LICENSES									
General Fish and Game Taxes	-	1,155	1,155	-	1,181	1,181	-	1,214	1,214
Energy Resource Surcharge	-	646,500	646,500	-	673,104	673,104	-	858,076	858,076
Quarterly Public Utility Commission Fees	-	119,859	119,859	-	129,057	129,057	-	129,057	129,057
Penalties on Pub Util Comm Qtrly Fees	-	2	2	-	-	-	-	-	-
Hwy Carrier Uniform Business License Tax	-	-	-	153	-	153	153	-	153
Off-Highway Vehicle Fees	-	24,262	24,262	-	23,500	23,500	-	23,500	23,500
Liquor License Fees	-	53,169	53,169	-	54,228	54,228	-	55,309	55,309
Genetic Disease Testing Fees	-	112,298	112,298	-	114,730	114,730	-	119,529	119,529
Other Regulatory Taxes	-	83,284	83,284	-	95,451	95,451	-	101,347	101,347
New Motor Vehicle Dealer License Fee	-	1,056	1,056	-	1,487	1,487	-	1,622	1,622
General Fish and Game Lic Tags Permits	-	97,685	97,685	-	102,529	102,529	-	105,938	105,938
Duck Stamps	-	11	11	-	-	-	-	11	11
Elevator and Boiler Inspection Fees	-	28,047	28,047	-	28,150	28,150	-	28,860	28,860
Industrial Homework Fees	1	-	1	-	-	-	-	-	-
Employment Agency License Fees	662	4,464	5,126	550	4,458	5,008	580	4,458	5,038
Employment Agency Filing Fees	93	-	93	79	-	79	79	-	79
Teacher Credential Fees	-	12,001	12,001	-	15,177	15,177	-	14,711	14,711
Teacher Examination Fees	-	3,732	3,732	-	4,692	4,692	-	4,462	4,462
Insurance Co License Fees & Penalties	-	37,624	37,624	-	39,258	39,258	-	44,169	44,169
Insurance Company Examination Fees	-	20,443	20,443	-	20,011	20,011	-	20,112	20,112
Real Estate Examination Fees	-	2,636	2,636	-	2,540	2,540	-	2,540	2,540
Real Estate License Fees	-	36,615	36,615	-	31,864	31,864	-	33,106	33,106
Subdivision Filing Fees	-	4,374	4,374	-	4,502	4,502	-	4,720	4,720
Building Construction Filing Fees	-	5,718	5,718	-	4,962	4,962	-	4,474	4,474
Domestic Corporation Fees	-	8,281	8,281	-	7,453	7,453	-	7,453	7,453
Foreign Corporation Fees	-	1,052	1,052	-	947	947	-	947	947

SCHEDULE 8 -- Continued
COMPARATIVE STATEMENT OF REVENUES
(Dollars In Thousands)

	Actual 2011-12			Estimated 2012-13			Proposed 2013-14		
Sources	**General Fund**	**Special Funds**	**Total**	**General Fund**	**Special Funds**	**Total**	**General Fund**	**Special Funds**	**Total**
Notary Public License Fees	-	892	892	-	892	892	-	892	892
Filing Financing Statements	-	2,217	2,217	-	2,217	2,217	-	2,217	2,217
Candidate Filing Fee	795	-	795	18	-	18	1,100	-	1,100
Beverage Container Redemption Fees	-	1,152,469	1,152,469	-	1,151,635	1,151,635	-	1,150,635	1,150,635
Explosive Permit Fees	-	1	1	-	18	18	-	18	18
Processing Fees	-	325	325	-	262	262	-	325	325
Environmental and Hazardous Waste Fees	-	74,883	74,883	-	74,903	74,903	-	74,453	74,453
Other Regulatory Fees	524,935	1,889,126	2,414,061	552,504	7,523,101	8,075,605	53,901	5,952,864	6,006,765
Other Regulatory Licenses and Permits	5,091	494,960	500,051	4,872	495,182	500,054	4,972	511,515	516,487
Renewal Fees	-	244,206	244,206	-	241,753	241,753	-	244,176	244,176
Delinquent Fees	-	6,792	6,792	-	6,180	6,180	-	6,147	6,147
Private Rail Car Tax	8,041	-	8,041	8,041	-	8,041	8,041	-	8,041
Insurance Department Fees, Prop 103	-	23,791	23,791	-	27,233	27,233	-	28,612	28,612
Insurance Department Fees, General	-	19,879	19,879	-	19,642	19,642	-	29,463	29,463
Insurance Fraud Assessment, Workers Comp	-	47,163	47,163	-	49,562	49,562	-	49,629	49,629
Insurance Fraud Assessment, Auto	-	47,249	47,249	-	48,195	48,195	-	49,400	49,400
Insurance Fraud Assessment, General	-	6,132	6,132	-	8,790	8,790	-	13,653	13,653
Totals, REGULATORY TAXES AND LICENSES	**$539,618**	**$5,314,353**	**$5,853,971**	**$566,217**	**$11,008,846**	**$11,575,063**	**$68,826**	**$9,679,614**	**$9,748,440**
REVENUE FROM LOCAL AGENCIES									
Architecture Public Building Fees	-	34,074	34,074	-	32,691	32,691	-	32,691	32,691
Penalties on Traffic Violations	-	77,431	77,431	-	74,903	74,903	-	72,595	72,595
Penalties on Felony Convictions	2	53,381	53,383	4	57,001	57,005	4	57,001	57,005
Fines-Crimes of Public Offense	60	12,372	12,432	60	6,000	6,060	64	6,000	6,064
Fish and Game Violation Fines	-	1,429	1,429	-	1,005	1,005	-	838	838
Penalty Assessments on Fish & Game Fines	-	626	626	-	609	609	-	565	565
Interest on Loans to Local Agencies	126	982	1,108	60	1,200	1,260	60	1,192	1,252
Addt'l Assmnts on Fish & Game Fines	-	66	66	-	66	66	-	64	64
Narcotic Fines	1,885	-	1,885	1,000	-	1,000	1,000	-	1,000
Fingerprint ID Card Fees	-	64,643	64,643	-	69,995	69,995	-	69,995	69,995
Misc Revenue From Local Agencies	241,788	1,076,231	1,318,019	242,234	1,422,145	1,664,379	210,498	1,461,727	1,672,225
Open Space Cancelation Fee Deferrd Taxes	-	2,385	2,385	-	2,500	2,500	-	1,500	1,500
Rev Local Govt Agencies-Cost Recoveries	14,005	8,258	22,263	17,018	8,341	25,359	19,018	8,424	27,442
Totals, REVENUE FROM LOCAL AGENCIES	**$257,866**	**$1,331,878**	**$1,589,744**	**$260,376**	**$1,676,456**	**$1,936,832**	**$230,644**	**$1,712,592**	**$1,943,236**
SERVICES TO THE PUBLIC									
Pay Patients Board Charges	17,000	-	17,000	11,503	-	11,503	10,239	-	10,239
State Beach and Park Service Fees	-	92,413	92,413	-	85,000	85,000	-	85,000	85,000
Parking Lot Revenues	-	9,001	9,001	-	8,892	8,892	-	8,912	8,912
Emergency Telephone Users Surcharge	-	83,320	83,320	-	80,700	80,700	-	78,100	78,100
Sales of Documents	35	4,330	4,365	58	4,661	4,719	58	4,674	4,732
General Fees--Secretary of State	92	26,128	26,220	182	26,627	26,809	262	26,777	27,039
Parental Fees	-	5,155	5,155	-	10,140	10,140	-	9,553	9,553
Miscellaneous Services to the Public	2,444	154,370	156,814	2,008	161,541	163,549	2,008	166,999	169,007
Medicare Receipts Frm Federal Government	18,123	-	18,123	15,966	-	15,966	15,587	-	15,587
Personalized License Plates	-	57,233	57,233	-	57,574	57,574	-	57,512	57,512
Totals, SERVICES TO THE PUBLIC	**$37,694**	**$431,950**	**$469,644**	**$29,717**	**$435,135**	**$464,852**	**$28,154**	**$437,527**	**$465,681**

SCHEDULE 8 -- Continued
COMPARATIVE STATEMENT OF REVENUES
(Dollars In Thousands)

Sources	Actual 2011-12			Estimated 2012-13			Proposed 2013-14		
	General Fund	Special Funds	Total	General Fund	Special Funds	Total	General Fund	Special Funds	Total
USE OF PROPERTY AND MONEY									
Income From Pooled Money Investments	25,000	345	25,345	30,000	342	30,342	34,000	293	34,293
Income From Surplus Money Investments	1,864	32,933	34,797	1,640	142,114	143,754	1,540	92,921	94,461
Interest Income From Loans	4,951	3,470	8,421	4,021	4,365	8,386	3,996	4,098	8,094
Interest Income From Interfund Loans	186	29,730	29,916	-	8,855	8,855	-	42,810	42,810
Income From Condemnation Deposits Fund	-	170	170	-	1,223	1,223	-	1,109	1,109
Federal Lands Royalties	-	95,347	95,347	-	95,347	95,347	-	95,347	95,347
Oil & Gas Lease-1% Revenue City/County	793	-	793	750	-	750	750	-	750
Geothermal Resource Well Fees	-	5,096	5,096	-	3,950	3,950	-	3,950	3,950
Rentals of State Property	20,487	48,908	69,395	21,530	51,079	72,609	21,921	51,534	73,455
Misc Revenue Frm Use of Property & Money	793	21,259	22,052	2,249	23,502	25,751	2,249	22,204	24,453
School Lands Royalties	-	43	43	-	50	50	-	50	50
State Lands Royalties	478,525	-	478,525	324,018	-	324,018	296,697	-	296,697
Totals, USE OF PROPERTY AND MONEY	**$532,599**	**$237,301**	**$769,900**	**$384,208**	**$330,827**	**$715,035**	**$361,153**	**$314,316**	**$675,469**
MISCELLANEOUS									
Attorney General Proceeds of Anti-Trust	-	1,906	1,906	-	1,905	1,905	-	1,905	1,905
Penalties & Interest on UI & DI Contrib	-	129,793	129,793	-	104,403	104,403	-	91,430	91,430
Sale of Fixed Assets	5	42,094	42,099	-	199	199	-	46,828	46,828
Sale of Confiscated Property	6,543	39	6,582	6,560	20	6,580	6,560	20	6,580
Sale of State's Public Lands	-	9,092	9,092	-	21,686	21,686	-	13,436	13,436
Proceeds From Estates of Deceased Person	830	-	830	830	-	830	830	-	830
Revenue-Abandoned Property	401,257	-	401,257	307,674	-	307,674	320,530	-	320,530
Escheat of Unclaimed Checks & Warrants	29,888	6,946	36,834	32,131	7,677	39,808	32,023	7,780	39,803
Miscellaneous Revenue	177,639	363,176	540,815	171,664	436,631	608,295	169,120	410,928	580,048
Penalties & Intrst on Personal Income Tx	-	18,841	18,841	-	14,705	14,705	-	14,927	14,927
Other Revenue - Cost Recoveries	36,877	118,849	155,726	33,261	113,324	146,585	36,057	116,340	152,397
Tribal Gaming Revenues	268,188	42,170	310,358	236,600	43,000	279,600	236,600	45,476	282,076
Delinquent Receivables-Cost Recoveries	9,641	126	9,767	9,641	-	9,641	9,641	-	9,641
Settlements/Judgments(not Anti-trust)	24,038	2,398	26,436	104,797	4,310	109,107	203,014	4,210	207,224
Uninsured Motorist Fees	1,349	339	1,688	1,423	343	1,766	1,423	346	1,769
Traffic Violations	-	41,547	41,547	-	42,229	42,229	-	41,512	41,512
Parking Violations	15,922	1,262	17,184	15,922	1,060	16,982	15,922	1,060	16,982
Penalty Assessments	82,553	228,772	311,325	28,968	268,615	297,583	22,118	229,114	251,232
Civil & Criminal Violation Assessment	357	186,536	186,893	175	168,536	168,711	150	157,442	157,592
Fines and Forfeitures	3,296	214,040	217,336	3,290	208,388	211,678	3,290	208,789	212,079
Court Filing Fees and Surcharges	-	606,431	606,431	-	662,297	662,297	-	660,759	660,759
Penalty Assessments on Criminal Fines	-	268,550	268,550	-	268,084	268,084	-	268,133	268,133
Donations	9	745	754	-	624	624	-	720	720
Auction Proceeds for Carbon Allowances	-	-	-	-	200,000	200,000	-	400,000	400,000
Miscellaneous Tax Revenue	-	-	-	-45,000	-	-45,000	-290,000	-	-290,000
Cash Adjustment for Transportation Funds	-	-76,955	-76,955	-	-20,000	-20,000	-	-62,000	-62,000
Cash Adjustment for Transportation Funds	-	180,516	180,516	-	70,000	70,000	-	62,000	62,000
Totals, MISCELLANEOUS	**$1,058,392**	**$2,387,213**	**$3,445,605**	**$907,936**	**$2,618,036**	**$3,525,972**	**$767,278**	**$2,721,155**	**$3,488,433**
TOTALS, MINOR REVENUES	**$2,426,169**	**$9,702,695**	**$12,128,864**	**$2,148,454**	**$16,069,300**	**$18,217,754**	**$1,456,055**	**$14,865,204**	**$16,321,259**
TOTALS, REVENUES	**$85,561,426**	**$33,203,095**	**$118,764,521**	**$93,594,372**	**$40,354,375**	**$133,948,747**	**$98,523,703**	**$40,307,870**	**$138,831,573**

SCHEDULE 8 -- Continued
COMPARATIVE STATEMENT OF REVENUES
(Dollars In Thousands)

Sources	Actual 2011-12			Estimated 2012-13			Proposed 2013-14		
	General Fund	Special Funds	Total	General Fund	Special Funds	Total	General Fund	Special Funds	Total
TRANSFERS AND LOANS									
General Fund	-339,652	338,989	-663	-185,633	182,585	-3,048	-568,972	468,972	-100,000
Property Acquisition Law Money Account	1,900	-1,900	-	2,708	-2,708	-	1,500	-1,500	-
Motor Vehicle Parking Facil Moneys Acct	-	-184	-184	-	-	-	-	-	-
Fingerprint Fees Account	24,000	-24,000	-	-	-	-	-	-	-
Motor Vehicle Insurance Account, State	25,000	-25,000	-	-	-	-	-	-	-
Unified Program Account	8,700	-8,700	-	-	-	-	-	-	-
Special Account for Capital Outlay	-	-	-	93	-93	-	-	-	-
Highway Account, State, STF	207,570	-207,570	-	777,431	-777,431	-	38,685	-38,685	-
Motor Vehicle Account, STF	71,624	-71,624	-	366,100	-366,110	-10	66,100	-66,110	-10
Motor Vehicle Fuel Account, TTF	11,662	-72,040	-60,378	100,732	-131,286	-30,554	109,752	-140,306	-30,554
Motor Vehicle Trans Tax Account, TTF	-	-	-	-	-	-	1,751	-1,751	-
Corporations Fund, State	-	-	-	-	-	-	15,000	-15,000	-
Barbering & Cosmetology Contingent Fund	11,000	-11,000	-	-	-	-	-	-	-
Childhood Lead Poisoning Prevention Fund	9,062	-9,062	-	-	-	-	-	-	-
Used Oil Recycling Fund, California	2,500	-2,500	-	-	-	-	-	-	-
Acupuncture Fund	5,000	-5,000	-	-	-	-	-	-	-
Department of Agriculture Account, Ag Fd	-	-	-	38,655	-38,655	-	38,655	-38,655	-
Hospital Building Fund	75,000	-75,000	-	-	-	-	-	-	-
AIDS Vaccine Research Develop Grant Fd	27	-27	-	-	-	-	-	-	-
Driving Under-the-Influence Prog Lic Trs	1,500	-1,500	-	-	-	-	-	-	-
Driver Training Penalty Assessment Fund	6,384	-6,384	-	3,531	-3,531	-	8,472	-8,472	-
Employment Developmnt Dept Benefit Audit	17,748	-17,748	-	14,232	-14,232	-	514	-514	-
Employment Development Contingent Fund	57,114	-57,114	-	32,630	-32,630	-	44,517	-44,517	-
Business Fees Fund, Secty of State's	5,124	-5,124	-	9,083	-9,083	-	7,314	-7,314	-
Private Security Services Fund	4,000	-4,000	-	-	-	-	-	-	-
Off-Highway Vehicle Trust Fund	-	-	-	103,767	-103,767	-	-	-	-
Osteopathic Medical Bd of Calif Contn Fd	1,500	-1,500	-	-	-	-	-	-	-
Physician Assistant Fund	1,500	-1,500	-	-	-	-	-	-	-
Private Postsecondary Education Admin Fd	3,000	-3,000	-	-	-	-	-	-	-
Collins-Dugan Calif Conserv Corps Reimb	10,000	-10,000	-	-	-	-	-	-	-
Indian Gaming Special Distribution Fund	-	-27,100	-27,100	-	-33,500	-33,500	-	-40,000	-40,000
Speech-Language Pathology Audio Hearing	1,150	-1,150	-	-	-	-	-	-	-
False Claims Act Fund	20,000	-20,000	-	7,700	-7,700	-	-	-	-
Renewable Resource Trust Fund	-	-1,011	-1,011	-	-	-	-	-	-
Victim - Witness Assistance Fund	11,000	-11,000	-	-	-	-	-	-	-
Olympic Training Account,California	128	-128	-	92	-92	-	92	-92	-
Occupancy Compliance Monitoring Account	22,000	-22,000	-	-	-	-	-	-	-
Tax Credit Allocation Fee Account	13,000	-13,000	-	-	-	-	-	-	-
Dealers' Record of Sale Special Account	11,500	-11,500	-	-	-	-	-	-	-
Financial Responsibility Penalty Account	1,115	-1,115	-	1,000	-1,000	-	1,000	-1,000	-
Harbors and Watercraft Revolving Fund	-	1,740	1,740	56,848	11,200	68,048	-	10,775	10,775
Alternative Energy Authority Fund, Calif	-	1,398	1,398	-	-	-	-	-	-
Gambling Control Fund	19,000	-19,000	-	-	-	-	-	-	-
Uninsured Employers Benefits Trust Fund	-	2,200	2,200	-	-	-	-	-	-

SCHEDULE 8 -- Continued
COMPARATIVE STATEMENT OF REVENUES
(Dollars In Thousands)

Sources	Actual 2011-12			Estimated 2012-13			Proposed 2013-14		
	General Fund	Special Funds	Total	General Fund	Special Funds	Total	General Fund	Special Funds	Total
Unemployment Compensation Disability Fd	303,620	-	303,620	308,391	-	308,391	-	-	-
Ballot Paper Revolving Fund	313	-	313	-	-	-	-	-	-
Public Buildings Construction Fund	-	-	-	8,453	-	8,453	-	-	-
Service Revolving Fund	1,186	-	1,186	1,186	-	1,186	1,186	-	1,186
Prison Industries Revolving Fund	-	-	-	32,000	-	32,000	-	-	-
Accountancy Fund	1,000	-1,000	-	-	-	-	-	-	-
School Building Aid Fund, State	5,745	-	5,745	1,986	-	1,986	2,594	-	2,594
Home Furnish & Thermal Insulation Fund	1,500	-1,500	-	-	-	-	-	-	-
Contingent Fd of the Medical Board of CA	9,000	-9,000	-	-	-	-	-	-	-
Physical Therapy Fund	1,500	-1,500	-	-	-	-	-	-	-
Registered Nursing Fund, Board of	11,300	-11,300	-	-	-	-	-	-	-
Optometry Fund, State	1,000	-1,000	-	-	-	-	-	-	-
Private Investigator Fund	1,500	-1,500	-	-	-	-	-	-	-
Professional Engineer & Land Surveyor Fd	5,000	-5,000	-	-	-	-	-	-	-
Behavioral Science Examiners Fund	3,300	-3,300	-	-	-	-	-	-	-
Medi-Cal Inpatient Pymt Adjustment Fund	45,200	-	45,200	-	-	-	-	-	-
Birth Defects Research Fund	4	-	4	-	-	-	-	-	-
Special Deposit Fund	162	-	162	-	-	-	-	-	-
Rural CUPA Reimbursement Account	1,300	-1,300	-	-	-	-	-	-	-
Firearms Safety and Enforcement Specl Fd	4,900	-4,900	-	-	-	-	-	-	-
Missing Persons DNA Data Base Fund	4,000	-4,000	-	-	-	-	-	-	-
Antiterrorism Fund	1,000	-1,000	-	-	-	-	-	-	-
State Court Facilities Construction Fund	350,000	-350,000	-	-	-	-	-	-	-
Community Revitalization Fee Fund	-	-	-	1	-1	-	-	-	-
Registry of Charitable Trusts Fund	2,700	-2,700	-	-	-	-	-	-	-
Private Hospital Supplemental Fund	32,700	-32,700	-	17,500	-17,500	-	8,750	-8,750	-
Youthful Offender Block Grant Fund	-	-	-	643	-643	-	-	-	-
Managed Care Admin Fines & Penalties Fnd	-	-1,000	-1,000	-	-1,000	-1,000	-	-1,000	-1,000
Immediate and Critical Needs Acct, SCFCF	400,275	-400,275	-	-	-	-	200,000	-200,000	-
Wtr Pltn Cntrl Rvl Fnd Smll Cmty Cmt Fd	1,000	-1,000	-	-	-	-	-	-	-
Recreational Health Fund	-	-	-	341	-341	-	-	-	-
Enterprise Zone Fund	-	-	-	400	-400	-	-	-	-
Centrl Cst St Vet Cmtry Ft Ord Endow, CA	-	-	-	-	1,074	1,074	-	-	-
National Mortgage Special Deposit Fund	-	41,057	41,057	100,000	-	100,000	-	-	-
TOTALS, TRANSFERS AND LOANS	**$1,509,361**	**$-1,197,072**	**$312,289**	**$1,799,870**	**$-1,346,844**	**$453,026**	**$-23,090**	**$-133,919**	**$-157,009**
TOTALS, REVENUES AND TRANSFERS	**$87,070,787**	**$32,006,023**	**$119,076,810**	**$95,394,242**	**$39,007,531**	**$134,401,773**	**$98,500,613**	**$40,173,951**	**$138,674,564**

SCHEDULE 9
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
LEGISLATIVE, JUDICIAL, AND EXECUTIVE															
Legislative															
Legislature															
Senate															
State Operations	$109,350	-	-	$109,350	-	$109,350	-	-	$109,350	-	$109,350	-	-	$109,350	-
Assembly															
State Operations	146,716	-	-	146,716	-	146,716	-	-	146,716	-	146,716	-	-	146,716	-
Totals, Legislature	**$256,066**	**-**	**-**	**$256,066**	**-**	**$256,066**	**-**	**-**	**$256,066**	**-**	**$256,066**	**-**	**-**	**$256,066**	**-**
Legislative Counsel Bureau															
State Operations	74,616	-	-	74,616	-	73,065	-	-	73,065	-	75,303	-	-	75,303	-
Totals, Legislative	**$330,682**	**-**	**-**	**$330,682**	**-**	**$329,131**	**-**	**-**	**$329,131**	**-**	**$331,369**	**-**	**-**	**$331,369**	**-**
Judicial															
Judicial Branch															
State Operations	334,832	192,084	-	526,916	3,566	341,740	248,592	-	590,332	4,537	345,364	287,793	-	633,157	4,537
Local Assistance	880,100	1,619,121	-	2,499,221	898	413,187	1,791,682	-	2,204,869	2,275	809,655	1,558,970	-	2,368,625	2,275
Capital Outlay	-	103,154	-	103,154	-	-	21,410	-	21,410	-	-	48,339	-	48,339	-
Totals, Judicial Branch	**$1,214,932**	**$1,914,359**	**-**	**$3,129,291**	**$4,464**	**$754,927**	**$2,061,684**	**-**	**$2,816,611**	**$6,812**	**$1,155,019**	**$1,895,102**	**-**	**$3,050,121**	**$6,812**
Commission on Judicial Performance															
State Operations	3,897	-	-	3,897	-	4,199	-	-	4,199	-	4,199	-	-	4,199	-
Judges' Retirement System Contributions															
State Operations	3,799	-	-	3,799	-	3,515	-	-	3,515	-	3,498	-	-	3,498	-
Local Assistance	248,953	-	-	248,953	-	209,663	-	-	209,663	-	241,727	-	-	241,727	-
Totals, Judges' Retirement System Contribution	**$252,752**	**-**	**-**	**$252,752**	**-**	**$213,178**	**-**	**-**	**$213,178**	**-**	**$245,225**	**-**	**-**	**$245,225**	**-**
Totals, Judicial	**$1,471,581**	**$1,914,359**	**-**	**$3,385,940**	**$4,464**	**$972,304**	**$2,061,684**	**-**	**$3,033,988**	**$6,812**	**$1,404,443**	**$1,895,102**	**-**	**$3,299,545**	**$6,812**
Executive/Governor															
Governor's Office															
State Operations	7,946	-	-	7,946	-	10,208	-	-	10,208	-	10,609	-	-	10,609	-
Governor's Office of Bus & Econ Developm															
State Operations	-	-	-	-	-	3,695	-	-	3,695	-	7,163	114	-	7,277	-
State & Consumer Services, Secy															
State Operations	164	-	-	164	-	-	-	-	-	-	-	-	-	-	-
Business Transportation & Housing, Secy															
State Operations	2,415	1,287	-	3,702	-	2,476	1,536	-	4,012	-	-	-	-	-	-
Office of the Inspector General															
State Operations	15,187	-	-	15,187	-	14,964	-	-	14,964	-	15,496	-	-	15,496	-
Office of Planning & Research															
State Operations	1,839	-	-	1,839	19,054	1,956	-	-	1,956	2,136	2,090	-	-	2,090	1,800
Local Assistance	-	-	-	-	25,392	-	-	-	-	28,000	-	-	-	-	28,000
Totals, Office of Planning & Research	**$1,839**	**-**	**-**	**$1,839**	**$44,446**	**$1,956**	**-**	**-**	**$1,956**	**$30,136**	**$2,090**	**-**	**-**	**$2,090**	**$29,800**
Office of Emergency Services															
State Operations	41,737	2,772	2,038	46,547	53,248	41,139	3,726	2,555	47,420	72,091	41,414	4,255	2,650	48,319	71,565
Local Assistance	71,557	29,489	100,000	201,046	805,706	71,597	22,239	100,000	193,836	939,494	61,597	22,324	100,000	183,921	936,194
Totals, Office of Emergency Services	**$113,294**	**$32,261**	**$102,038**	**$247,593**	**$858,954**	**$112,736**	**$25,965**	**$102,555**	**$241,256**	**$1,011,585**	**$103,011**	**$26,579**	**$102,650**	**$232,240**	**$1,007,759**
Totals, Executive/Governor	**$140,845**	**$33,548**	**$102,038**	**$276,431**	**$903,400**	**$146,035**	**$27,501**	**$102,555**	**$276,091**	**$1,041,721**	**$138,369**	**$26,693**	**$102,650**	**$267,712**	**$1,037,559**
Executive/Constitutional Offices															

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
Office of the Lieutenant Governor															
State Operations	927	-	-	927	-	1,001	-	-	1,001	-	1,023	-	-	1,023	-
Department of Justice															
State Operations	101,377	242,416	-	343,793	26,280	166,746	257,091	-	423,837	34,030	174,261	270,503	-	444,764	35,197
Local Assistance	-	4,883	-	4,883	-	-	4,883	-	4,883	-	-	4,883	-	4,883	-
Totals, Department of Justice	**$101,377**	**$247,299**	**-**	**$348,676**	**$26,280**	**$166,746**	**$261,974**	**-**	**$428,720**	**$34,030**	**$174,261**	**$275,386**	**-**	**$449,647**	**$35,197**
State Controller															
State Operations	75,031	28,057	1,443	104,531	1,108	87,237	32,664	1,613	121,514	1,102	41,996	6,890	1,674	50,560	1,127
Local Assistance	-194	-	-	-194	-	-183	-	-	-183	-	-180	-	-	-180	-
Totals, State Controller	**$74,837**	**$28,057**	**$1,443**	**$104,337**	**$1,108**	**$87,054**	**$32,664**	**$1,613**	**$121,331**	**$1,102**	**$41,816**	**$6,890**	**$1,674**	**$50,380**	**$1,127**
Department of Insurance															
State Operations	-	163,512	-	163,512	423	-	164,588	-	164,588	721	-	173,971	-	173,971	721
Local Assistance	-	57,028	-	57,028	-	-	57,037	-	57,037	-	-	62,498	-	62,498	-
Totals, Department of Insurance	**-**	**$220,540**	**-**	**$220,540**	**$423**	**-**	**$221,625**	**-**	**$221,625**	**$721**	**-**	**$236,469**	**-**	**$236,469**	**$721**
Gambling Control Commission															
State Operations	-	8,854	-	8,854	-	-	12,209	-	12,209	-	-	6,589	-	6,589	-
Local Assistance	-	9,047	-	9,047	-	-	9,100	-	9,100	-	-	-	-	-	-
Totals, Gambling Control Commission	**-**	**$17,901**	**-**	**$17,901**	**-**	**-**	**$21,309**	**-**	**$21,309**	**-**	**-**	**$6,589**	**-**	**$6,589**	**-**
State Board of Equalization															
State Operations	274,093	62,071	-	336,164	139	297,215	76,089	-	373,304	439	313,483	79,404	-	392,887	440
Secretary of State															
Secretary of State															
State Operations	9,771	41,472	-	51,243	5,243	26,579	34,893	-	61,472	16,682	26,619	36,785	-	63,404	29,647
Local Assistance	-	-	-	-	61,286	-	-	-	-	2,463	-	-	-	-	1,307
Totals, Secretary of State	**$9,771**	**$41,472**	**-**	**$51,243**	**$66,529**	**$26,579**	**$34,893**	**-**	**$61,472**	**$19,145**	**$26,619**	**$36,785**	**-**	**$63,404**	**$30,954**
Citizens Redistricting Initiative															
State Operations	3,488	-	-	3,488	-	93	-	-	93	-	71	-	-	71	-
State Treasurer															
State Operations	2,723	-	-	2,723	-	4,531	-	-	4,531	-	4,736	-	-	4,736	-
Debt & Investment Advisory Commission															
State Operations	-	2,220	-	2,220	-	-	2,778	-	2,778	-	-	2,869	-	2,869	-
Debt Limit Allocation Committee															
State Operations	-	1,095	-	1,095	-	-	1,387	-	1,387	-	-	1,337	-	1,337	-
Industrial Dvlmt Financing Advisory Comm															
State Operations	-	34	-	34	-	-	261	-	261	-	-	268	-	268	-
Tax Credit Allocation Committee															
State Operations	-	4,736	-	4,736	-	-	5,747	-	5,747	-	-	6,055	-	6,055	-
Local Assistance	-	186	-	186	-	-	190	-	190	-	-	190	-	190	-
Totals, Tax Credit Allocation Committee	**-**	**$4,922**	**-**	**$4,922**	**-**	**-**	**$5,937**	**-**	**$5,937**	**-**	**-**	**$6,245**	**-**	**$6,245**	**-**
Alt Energy & Advanced Trans Fin Auth															
State Operations	-	156	-	156	-	-	170	-	170	-	-	170	-	170	-
Local Assistance	-	-	-	-	-	-	5,000	-	5,000	-	-	5,000	-	5,000	-
Totals, Alt Energy & Advanced Trans Fin Auth	**-**	**$156**	**-**	**$156**	**-**	**-**	**$5,170**	**-**	**$5,170**	**-**	**-**	**$5,170**	**-**	**$5,170**	**-**
Pollution Control Financing Authority															
Local Assistance	-	-	-	-	-	-	-	-	-	27,823	-	-	-	-	28,666

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
Health Facilities Financing Authority															
State Operations	-	-	399	399	-	-	-	471	471	-	-	-	488	488	-
Local Assistance	-	-	109,507	109,507	-	-	-	262,000	262,000	-	-	-	169,000	169,000	-
Totals, Health Facilities Financing Authority	**-**	**-**	**$109,906**	**$109,906**	**-**	**-**	**-**	**$262,471**	**$262,471**	**-**	**-**	**-**	**$169,488**	**$169,488**	**-**
School Finance Authority															
State Operations	-	-	669	669	87	-	-	1,013	1,013	136	175	-	1,039	1,214	140
Local Assistance	-	-	-	-	19,999	-	-	-	-	20,000	92,031	-	-	92,031	20,000
Totals, School Finance Authority	**-**	**-**	**$669**	**$669**	**$20,086**	**-**	**-**	**$1,013**	**$1,013**	**$20,136**	**$92,206**	**-**	**$1,039**	**$93,245**	**$20,140**
Totals, Executive/Constitutional Offices	**$467,216**	**$625,767**	**$112,018**	**$1,205,001**	**$114,565**	**$583,219**	**$664,087**	**$265,097**	**$1,512,403**	**$103,396**	**$654,215**	**$657,412**	**$172,201**	**$1,483,828**	**$117,245**
Statewide Distributed Costs															
General Obligation Bonds-LJE															
State Operations	13,272	-	-	13,272	-	12,957	-	-	12,957	-	17,984	-	-	17,984	-
Totals, Statewide Distributed Costs	**$13,272**	**-**	**-**	**$13,272**	**-**	**$12,957**	**-**	**-**	**$12,957**	**-**	**$17,984**	**-**	**-**	**$17,984**	**-**
TOTALS, LEGISLATIVE, JUDICIAL, AND EXECUTIVE	**$2,423,596**	**$2,573,674**	**$214,056**	**$5,211,326**	**$1,022,429**	**$2,043,646**	**$2,753,272**	**$367,652**	**$5,164,570**	**$1,151,929**	**$2,546,380**	**$2,579,207**	**$274,851**	**$5,400,438**	**$1,161,616**
State Operations	1,223,180	750,766	4,549	1,978,495	109,148	1,349,382	841,731	5,652	2,196,765	131,874	1,341,550	877,003	5,851	2,224,404	145,174
Local Assistance	1,200,416	1,719,754	209,507	3,129,677	913,281	694,264	1,890,131	362,000	2,946,395	1,020,055	1,204,830	1,653,865	269,000	3,127,695	1,016,442
Capital Outlay	-	103,154	-	103,154	-	-	21,410	-	21,410	-	-	48,339	-	48,339	-
BUSINESS, CONSUMER SERVICES, & HOUSING															
Business, Consumer Svcs, & Housing, Secy															
State Operations	-	-	-	-	-	-	-	-	-	-	106	592	-	698	-
Department of Consumer Affairs, Boards															
State Operations	-	239,409	-	239,409	-	-	268,431	-	268,431	-	-	285,732	-	285,732	-
Department of Consumer Affairs, Bureaus															
State Operations	-	207,503	-	207,503	-	-	214,430	-	214,430	-	-	279,534	-	279,534	-
Seismic Safety Commission, A. E. Alquist															
State Operations	-	1,068	-	1,068	-	630	283	-	913	-	-	1,122	-	1,122	-
Department of Fair Employment & Housing															
State Operations	11,989	-	-	11,989	4,432	12,735	-	-	12,735	5,506	13,191	-	-	13,191	5,467
Business Oversight															
State Operations	-	-	-	-	-	-	-	-	-	-	-	78,303	-	78,303	-
Fair Employment & Housing Commission															
State Operations	780	-	-	780	-	491	-	-	491	-	-	-	-	-	-
Horse Racing Board															
State Operations	-	11,560	-	11,560	-	-	11,488	-	11,488	-	-	11,639	-	11,639	-
State Personnel Board															
State Operations	2,889	-	-	2,889	-	-	-	-	-	-	-	-	-	-	-
General Obligation Bonds-BCH															
State Operations	243,908	-	-	243,908	-	195,968	-	-	195,968	-	624,921	-	-	624,921	-
Department of Alcoholic Beverage Control															
State Operations	-	44,849	-	44,849	324	-	51,055	-	51,055	313	-	52,784	-	52,784	-
Local Assistance	-	1,996	-	1,996	-	-	3,000	-	3,000	-	-	3,000	-	3,000	-
Totals, Department of Alcoholic Beverage Contr	**-**	**$46,845**	**-**	**$46,845**	**$324**	**-**	**$54,055**	**-**	**$54,055**	**$313**	**-**	**$55,784**	**-**	**$55,784**	**-**
Alcoholic Beverage Control Appeals Board															
State Operations	-	907	-	907	-	-	1,009	-	1,009	-	-	1,028	-	1,028	-

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
Department of Financial Institutions															
State Operations	-	31,884	-	31,884	-	-	33,452	-	33,452	-	-	-	-	-	-
Department of Corporations															
State Operations	-	35,703	-	35,703	-	-	44,594	-	44,594	-	-	-	-	-	-
Dept of Housing & Community Development															
State Operations	1,691	24,707	4,788	31,186	10,290	1,410	26,167	7,586	35,163	10,153	1,493	27,493	7,308	36,294	9,518
Local Assistance	5,629	-	69,237	74,866	126,921	5,629	-	76,575	82,204	140,496	5,629	-	60,138	65,767	121,996
Totals, Dept of Housing & Community Developmen	**$7,320**	**$24,707**	**$74,025**	**$106,052**	**$137,211**	**$7,039**	**$26,167**	**$84,161**	**$117,367**	**$150,649**	**$7,122**	**$27,493**	**$67,446**	**$102,061**	**$131,514**
Office of Real Estate Appraisers															
State Operations	-	4,831	-	4,831	-	-	4,971	-	4,971	-	-	-	-	-	-
Department of Real Estate															
State Operations	-	46,441	-	46,441	-	-	46,177	-	46,177	-	-	-	-	-	-
Department of Managed Health Care															
State Operations	-	40,200	-	40,200	4,307	-	-	-	-	-	-	-	-	-	-
TOTALS, BUSINESS, CONSUMER SERVICES, & HOUSING	**$266,886**	**$691,058**	**$74,025**	**$1,031,969**	**$146,274**	**$216,863**	**$705,057**	**$84,161**	**$1,006,081**	**$156,468**	**$645,340**	**$741,227**	**$67,446**	**$1,454,013**	**$136,981**
State Operations	261,257	689,062	4,788	955,107	19,353	211,234	702,057	7,586	920,877	15,972	639,711	738,227	7,308	1,385,246	14,985
Local Assistance	5,629	1,996	69,237	76,862	126,921	5,629	3,000	76,575	85,204	140,496	5,629	3,000	60,138	68,767	121,996
TRANSPORTATION															
Transportation															
Transportation, Secy															
State Operations	-	-	-	-	-	-	-	-	-	-	-	2,530	-	2,530	59,942
Local Assistance	-	-	-	-	-	-	-	-	-	-	-	-	-	-	36,993
Totals, Transportation, Secy	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**$2,530**	**-**	**$2,530**	**$96,935**
California Transportation Commission															
State Operations	-	2,112	668	2,780	-	-	2,120	855	2,975	-	1	2,208	879	3,088	-
Local Assistance	-	-	50,034	50,034	-	-	-	25,000	25,000	-	-	-	25,000	25,000	-
Totals, California Transportation Commission	**-**	**$2,112**	**$50,702**	**$52,814**	**-**	**-**	**$2,120**	**$25,855**	**$27,975**	**-**	**$1**	**$2,208**	**$25,879**	**$28,088**	**-**
State Transit Assistance															
Local Assistance	-	396,017	766,972	1,162,989	-	-	415,173	598,170	1,013,343	-	-	391,972	479,717	871,689	-
Department of Transportation															
State Operations	-	2,883,286	100,881	2,984,167	735,929	-	2,632,274	179,960	2,812,234	847,100	-	2,685,577	184,173	2,869,750	836,115
Local Assistance															
Aeronautics Program	-	5,067	-	5,067	-	-	565	-	565	-	-	565	-	565	-
Highway Transportation Program	-	232,170	199,773	431,943	1,712,566	-	232,938	587,617	820,555	1,387,612	-	833,970	453,069	1,287,039	1,859,111
Mass Transportation Program	-	176,750	197,728	374,478	23,617	-	116,636	365,081	481,717	99,472	-	127,686	207,881	335,567	60,201
Transportation Planning Program	-	11,909	-	11,909	62,997	-	12,000	-	12,000	67,700	-	12,000	-	12,000	71,100
Totals, Local Assistance	-	425,896	397,501	823,397	1,799,180	-	362,139	952,698	1,314,837	1,554,784	-	974,221	660,950	1,635,171	1,990,412
Capital Outlay	-	534,014	1,204,667	1,738,681	2,185,354	-	848,845	2,633,572	3,482,417	2,075,568	-	420,218	1,452,812	1,873,030	1,770,691
Unclassified	83,416	-83,416	-	-	-	83,416	-83,416	-	-	5,000	83,416	-83,416	-	-	5,000
Totals, Department of Transportation	**$83,416**	**$3,759,780**	**$1,703,049**	**$5,546,245**	**$4,720,463**	**$83,416**	**$3,759,842**	**$3,766,230**	**$7,609,488**	**$4,482,452**	**$83,416**	**$3,996,600**	**$2,297,935**	**$6,377,951**	**$4,602,218**
High-Speed Rail Authority															
State Operations	-	-	14,720	14,720	-	-	-	23,817	23,817	660	-	-	21,106	21,106	18
Local Assistance	-	-	-	-	-	-	-	-	-	-	-	-	100,000	100,000	-
Capital Outlay	-	-	59,517	59,517	37,572	-	-	49,711	49,711	2,358,048	-	-	2,160,661	2,160,661	958,453

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
Totals, High-Speed Rail Authority	**-**	**-**	**$74,237**	**$74,237**	**$37,572**	**-**	**-**	**$73,528**	**$73,528**	**$2,358,708**	**-**	**-**	**$2,281,767**	**$2,281,767**	**$958,471**
Board of Pilot Commissioners															
State Operations	-	1,759	-	1,759	-	-	2,219	-	2,219	-	-	2,214	-	2,214	-
Office of Traffic Safety															
State Operations	-	418	-	418	62,371	-	431	-	431	59,839	-	-	-	-	-
Local Assistance	-	-	-	-	36,747	-	-	-	-	57,207	-	-	-	-	-
Totals, Office of Traffic Safety	**-**	**$418**	**-**	**$418**	**$99,118**	**-**	**$431**	**-**	**$431**	**$117,046**	**-**	**-**	**-**	**-**	**-**
Dept of the California Highway Patrol															
State Operations	-	1,700,472	-	1,700,472	13,718	-	1,766,652	-	1,766,652	18,347	-	1,819,068	-	1,819,068	18,407
Capital Outlay	-	3,151	-	3,151	-	-	42,790	-	42,790	-	-	22,858	-	22,858	-
Totals, Dept of the California Highway Patrol	**-**	**$1,703,623**	**-**	**$1,703,623**	**$13,718**	**-**	**$1,809,442**	**-**	**$1,809,442**	**$18,347**	**-**	**$1,841,926**	**-**	**$1,841,926**	**$18,407**
Department of Motor Vehicles															
State Operations	1	877,878	-	877,879	2,457	-	927,103	-	927,103	7,482	-	967,568	-	967,568	5,129
Capital Outlay	-	15,688	-	15,688	-	-	16,218	-	16,218	-	-	6,513	-	6,513	-
Totals, Department of Motor Vehicles	**$1**	**$893,566**	**-**	**$893,567**	**$2,457**	**-**	**$943,321**	**-**	**$943,321**	**$7,482**	**-**	**$974,081**	**-**	**$974,081**	**$5,129**
General Obligation Bonds-Transportation															
State Operations	131,469	755,153	-	886,622	-	99,132	658,734	-	757,866	-	123,644	974,353	-	1,097,997	-
Totals, Transportation	**$214,886**	**$7,512,428**	**$2,594,960**	**$10,322,274**	**$4,873,328**	**$182,548**	**$7,591,282**	**$4,463,783**	**$12,237,613**	**$6,984,035**	**$207,061**	**$8,185,884**	**$5,085,298**	**$13,478,243**	**$5,681,160**
TOTALS, TRANSPORTATION	**$214,886**	**$7,512,428**	**$2,594,960**	**$10,322,274**	**$4,873,328**	**$182,548**	**$7,591,282**	**$4,463,783**	**$12,237,613**	**$6,984,035**	**$207,061**	**$8,185,884**	**$5,085,298**	**$13,478,243**	**$5,681,160**
State Operations	131,470	6,221,078	116,269	6,468,817	814,475	99,132	5,989,533	204,632	6,293,297	933,428	123,645	6,453,518	206,158	6,783,321	919,611
Local Assistance	-	821,913	1,214,507	2,036,420	1,835,927	-	777,312	1,575,868	2,353,180	1,611,991	-	1,366,193	1,265,667	2,631,860	2,027,405
Capital Outlay	-	552,853	1,264,184	1,817,037	2,222,926	-	907,853	2,683,283	3,591,136	4,433,616	-	449,589	3,613,473	4,063,062	2,729,144
Unclassified	83,416	-83,416	-	-	-	83,416	-83,416	-	-	5,000	83,416	-83,416	-	-	5,000
NATURAL RESOURCES															
Secretary of the Natural Resources															
State Operations	-	3,050	28,773	31,823	4,672	-	3,742	11,278	15,020	9,052	-	5,132	7,127	12,259	9,276
Local Assistance	-	-	68,435	68,435	-	-	-	66,409	66,409	-	-	-	-	-	-
Totals, Secretary of the Natural Resources	**-**	**$3,050**	**$97,208**	**$100,258**	**$4,672**	**-**	**$3,742**	**$77,687**	**$81,429**	**$9,052**	**-**	**$5,132**	**$7,127**	**$12,259**	**$9,276**
Science Center															
State Operations	20,010	7,293	-	27,303	-	20,183	7,656	-	27,839	-	20,633	7,922	-	28,555	-
Special Resources Programs															
State Operations	-	200	-	200	-	-	203	-	203	-	-	205	-	205	-
Local Assistance	-	4,866	-	4,866	-	-	4,838	-	4,838	-	-	4,838	-	4,838	-
Totals, Special Resources Programs	**-**	**$5,066**	**-**	**$5,066**	**-**	**-**	**$5,041**	**-**	**$5,041**	**-**	**-**	**$5,043**	**-**	**$5,043**	**-**
Tahoe Conservancy															
State Operations	-	4,233	309	4,542	118	-	4,406	83	4,489	218	-	4,470	23	4,493	227
Local Assistance	-	-	3,517	3,517	-	-	-	4,680	4,680	-	-	-	-	-	-
Capital Outlay	-	689	729	1,418	333	-	2,467	9,935	12,402	14,667	-	575	-	575	-
Totals, Tahoe Conservancy	**-**	**$4,922**	**$4,555**	**$9,477**	**$451**	**-**	**$6,873**	**$14,698**	**$21,571**	**$14,885**	**-**	**$5,045**	**$23**	**$5,068**	**$227**
California Conservation Corps															
State Operations	33,574	31,676	4,033	69,283	-	32,355	38,401	5,157	75,913	-	35,419	30,874	5	66,298	-
Local Assistance	-	-	2,428	2,428	-	-	-	7,646	7,646	-	-	-	-	-	-
Totals, California Conservation Corps	**$33,574**	**$31,676**	**$6,461**	**$71,711**	**-**	**$32,355**	**$38,401**	**$12,803**	**$83,559**	**-**	**$35,419**	**$30,874**	**$5**	**$66,298**	**-**
Energy Resource Conservation/Dvlmt Comm															
State Operations	-	299,650	-	299,650	21,122	-	446,719	-	446,719	51,956	-	280,924	-	280,924	16,688

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
Local Assistance	-	54	-	54	-	-	500	-	500	-	-	186,105	-	186,105	-
Totals, Energy Resource Conservation/Dvlmt Com	**-**	**$299,704**	**-**	**$299,704**	**$21,122**	**-**	**$447,219**	**-**	**$447,219**	**$51,956**	**-**	**$467,029**	**-**	**$467,029**	**$16,688**
Renewable Resources Investment Program															
State Operations	-	1,801	-	1,801	-	-	1,200	-	1,200	-	-	1,200	-	1,200	-
Department of Conservation															
State Operations	4,411	40,661	3,176	48,248	2,585	3,625	50,297	4,139	58,061	2,870	2,883	58,699	1,853	63,435	2,081
Local Assistance	-	-	34,284	34,284	-	-	-	44,693	44,693	-	-	-	-	-	-
Totals, Department of Conservation	**$4,411**	**$40,661**	**$37,460**	**$82,532**	**$2,585**	**$3,625**	**$50,297**	**$48,832**	**$102,754**	**$2,870**	**$2,883**	**$58,699**	**$1,853**	**$63,435**	**$2,081**
Department of Forestry & Fire Protection															
State Operations	649,555	62,400	894	712,849	17,519	765,480	74,941	426	840,847	19,000	678,738	95,059	-	773,797	19,763
Local Assistance	-	-	2,398	2,398	-	-	-	566	566	-	-	-	-	-	-
Capital Outlay	1,400	-	-	1,400	-	6,815	-	-	6,815	-	-	-	-	-	-
Totals, Department of Forestry & Fire Protecti	**$650,955**	**$62,400**	**$3,292**	**$716,647**	**$17,519**	**$772,295**	**$74,941**	**$992**	**$848,228**	**$19,000**	**$678,738**	**$95,059**	**-**	**$773,797**	**$19,763**
State Lands Commission															
State Operations	9,139	13,454	-	22,593	-	9,502	16,111	-	25,613	-	10,405	16,368	-	26,773	-
Department of Fish & Wildlife															
State Operations	60,563	168,633	23,452	252,648	59,656	60,483	188,226	84,071	332,780	77,992	62,107	185,275	20,231	267,613	42,000
Local Assistance	573	1,156	4,780	6,509	-	576	1,341	15,100	17,017	-	576	1,341	-	1,917	20,000
Capital Outlay	-	2,369	-	2,369	-	-	-	-	-	-	-	-	-	-	-
Totals, Department of Fish & Wildlife	**$61,136**	**$172,158**	**$28,232**	**$261,526**	**$59,656**	**$61,059**	**$189,567**	**$99,171**	**$349,797**	**$77,992**	**$62,683**	**$186,616**	**$20,231**	**$269,530**	**$62,000**
Wildlife Conservation Board															
State Operations	-	1,669	1,105	2,774	-	-	2,274	2,094	4,368	-	-	2,334	2,149	4,483	-
Local Assistance	-	24,436	74,511	98,947	-	-	-	-	-	-	-	-	-	-	-
Capital Outlay	-	-316	-9,424	-9,740	19,878	-	-4,806	637,867	633,061	35,000	16,568	5,095	-	21,663	35,000
Totals, Wildlife Conservation Board	**-**	**$25,789**	**$66,192**	**$91,981**	**$19,878**	**-**	**$-2,532**	**$639,961**	**$637,429**	**$35,000**	**$16,568**	**$7,429**	**$2,149**	**$26,146**	**$35,000**
Department of Boating & Waterways															
State Operations	-	-	-	-	6,388	-	-	-	-	9,968	-	-	-	-	-
Local Assistance	-	1,738	-	1,738	8,745	-	1,200	-	1,200	5,350	-	-	-	-	-
Totals, Department of Boating & Waterways	**-**	**$1,738**	**-**	**$1,738**	**$15,133**	**-**	**$1,200**	**-**	**$1,200**	**$15,318**	**-**	**-**	**-**	**-**	**-**
Coastal Commission															
State Operations	10,526	798	-	11,324	2,788	10,355	1,244	-	11,599	2,733	10,796	1,287	-	12,083	2,576
Local Assistance	-	541	-	541	-	-	798	-	798	-	-	816	-	816	-
Totals, Coastal Commission	**$10,526**	**$1,339**	**-**	**$11,865**	**$2,788**	**$10,355**	**$2,042**	**-**	**$12,397**	**$2,733**	**$10,796**	**$2,103**	**-**	**$12,899**	**$2,576**
State Coastal Conservancy															
State Operations	-	1,928	6,975	8,903	99	-	1,541	7,512	9,053	127	-	200	6,888	7,088	139
Local Assistance	-	814	49,216	50,030	2,746	-	10	-	10	-	-	-	-	-	-
Capital Outlay	-	-234	11,611	11,377	-	-	6,070	182,264	188,334	10,558	4,000	758	16,155	20,913	6,000
Totals, State Coastal Conservancy	**-**	**$2,508**	**$67,802**	**$70,310**	**$2,845**	**-**	**$7,621**	**$189,776**	**$197,397**	**$10,685**	**$4,000**	**$958**	**$23,043**	**$28,001**	**$6,139**
Native American Heritage Commission															
State Operations	530	-	-	530	-	669	-	-	669	-	835	-	-	835	-
Department of Parks & Recreation															
State Operations	121,219	211,327	23,575	356,121	3,885	110,591	237,508	85,006	433,105	8,619	114,552	216,472	20,862	351,886	15,737
Local Assistance	-	29,536	238,044	267,580	5,135	-	39,531	195,310	234,841	53,279	-	30,275	-	30,275	7,800
Capital Outlay	-	3,469	11,558	15,027	100	-	27,012	31,628	58,640	-	-	11,974	58,448	70,422	6,218

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
Totals, Department of Parks & Recreation	**$121,219**	**$244,332**	**$273,177**	**$638,728**	**$9,120**	**$110,591**	**$304,051**	**$311,944**	**$726,586**	**$61,898**	**$114,552**	**$258,721**	**$79,310**	**$452,583**	**$29,755**
Santa Monica Mountains Conservancy															
State Operations	-	259	660	919	-	-	276	681	957	-	-	304	510	814	-
Local Assistance	-	-	1,555	1,555	-	-	-	-	-	-	-	-	-	-	-
Capital Outlay	-	-	-	-	-	-	-	9,726	9,726	-	-	-	43	43	-
Totals, Santa Monica Mountains Conservancy	**-**	**$259**	**$2,215**	**$2,474**	**-**	**-**	**$276**	**$10,407**	**$10,683**	**-**	**-**	**$304**	**$553**	**$857**	**-**
SF Bay Conservation & Development Comm															
State Operations	3,812	-	-	3,812	-	3,864	-	-	3,864	-	4,006	-	-	4,006	-
San Gabriel/Lower LA River/Mtns Consvcy															
State Operations	-	256	505	761	-	-	319	687	1,006	-	-	339	397	736	-
Capital Outlay	-	-	805	805	-	-	-	17,345	17,345	-	-	-	-	-	-
Totals, San Gabriel/Lower LA River/Mtns Consvc	**-**	**$256**	**$1,310**	**$1,566**	**-**	**-**	**$319**	**$18,032**	**$18,351**	**-**	**-**	**$339**	**$397**	**$736**	**-**
San Joaquin River Conservancy															
State Operations	-	333	196	529	-	-	393	237	630	-	-	407	237	644	-
Baldwin Hills Conservancy															
State Operations	-	345	85	430	-	-	343	210	553	-	-	351	216	567	-
Local Assistance	-	-	2,886	2,886	-	-	-	-	-	-	-	-	-	-	-
Capital Outlay	-	-	-	-	-	-	-	16,709	16,709	-	-	-	-	-	-
Totals, Baldwin Hills Conservancy	**-**	**$345**	**$2,971**	**$3,316**	**-**	**-**	**$343**	**$16,919**	**$17,262**	**-**	**-**	**$351**	**$216**	**$567**	**-**
Delta Protection Commission															
State Operations	-	621	-	621	-	-	990	-	990	-	-	1,005	-	1,005	-
San Diego River Conservancy															
State Operations	-	310	-	310	-	-	322	-	322	-	-	331	-	331	-
Coachella Valley Mountains Conservancy															
State Operations	-	243	22	265	-	-	269	60	329	-	-	269	60	329	-
Local Assistance	-	-	4,915	4,915	-	-	-	-	-	-	-	-	-	-	-
Capital Outlay	-	-	-52	-52	-	-	-	15,855	15,855	-	-	-	-	-	-
Totals, Coachella Valley Mountains Conservancy	**-**	**$243**	**$4,885**	**$5,128**	**-**	**-**	**$269**	**$15,915**	**$16,184**	**-**	**-**	**$269**	**$60**	**$329**	**-**
Sierra Nevada Conservancy															
State Operations	-	4,051	367	4,418	-	-	4,093	516	4,609	-	-	4,212	532	4,744	-
Local Assistance	-	-	-270	-270	-	-	-	17,831	17,831	-	-	-	-	-	-
Totals, Sierra Nevada Conservancy	**-**	**$4,051**	**$97**	**$4,148**	**-**	**-**	**$4,093**	**$18,347**	**$22,440**	**-**	**-**	**$4,212**	**$532**	**$4,744**	**-**
Department of Water Resources															
State Operations	89,615	13,618	46,479	149,712	4,618	97,558	24,610	492,341	614,509	11,183	97,426	25,085	222,986	345,497	11,293
Local Assistance	-	-	466,337	466,337	-	-	-	941,858	941,858	-	-	-	718,059	718,059	-
Capital Outlay	1	-	110,852	110,853	-	1,065	-	539,072	540,137	-	-	-	131,214	131,214	-
Totals, Department of Water Resources	**$89,616**	**$13,618**	**$623,668**	**$726,902**	**$4,618**	**$98,623**	**$24,610**	**$1,973,271**	**$2,096,504**	**$11,183**	**$97,426**	**$25,085**	**$1,072,259**	**$1,194,770**	**$11,293**
Sacramento-San Joaquin Delta Conservancy															
State Operations	724	82	-	806	-	762	71	-	833	140	795	71	-	866	140
General Obligation Bonds-Natural Res															
State Operations	897,701	-	-	897,701	-	892,487	-	-	892,487	-	997,086	-	-	997,086	-
Delta Stewardship Council															
State Operations	5,498	582	3,316	9,396	434	5,486	710	2,117	8,313	2,919	5,626	717	1,314	7,657	2,919

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
TOTALS, NATURAL RESOURCES	**$1,908,851**	**$938,591**	**$1,223,037**	**$4,070,479**	**$160,821**	**$2,021,856**	**$1,185,826**	**$3,451,109**	**$6,658,791**	**$315,631**	**$2,062,451**	**$1,181,289**	**$1,209,309**	**$4,453,049**	**$197,857**
State Operations	1,906,877	869,473	143,922	2,920,272	123,884	2,013,400	1,106,865	696,615	3,816,880	196,777	2,041,307	939,512	285,390	3,266,209	122,839
Local Assistance	573	63,141	953,036	1,016,750	16,626	576	48,218	1,294,093	1,342,887	58,629	576	223,375	718,059	942,010	27,800
Capital Outlay	1,401	5,977	126,079	133,457	20,311	7,880	30,743	1,460,401	1,499,024	60,225	20,568	18,402	205,860	244,830	47,218
ENVIRONMENTAL PROTECTION															
Secretary for Environmental Protection															
State Operations	1,707	10,517	-	12,224	-	1,783	15,860	-	17,643	1,949	1,820	10,400	-	12,220	1,965
Air Resources Board															
State Operations	-	319,130	128,598	447,728	16,047	-	237,079	73,250	310,329	15,739	-	244,007	81,560	325,567	16,307
Local Assistance	-	10,111	-	10,111	-	-	79,111	-	79,111	-	-	79,111	-	79,111	-
Totals, Air Resources Board	**-**	**$329,241**	**$128,598**	**$457,839**	**$16,047**	**-**	**$316,190**	**$73,250**	**$389,440**	**$15,739**	**-**	**$323,118**	**$81,560**	**$404,678**	**$16,307**
Department of Pesticide Regulation															
State Operations	-	55,274	-	55,274	1,982	-	57,736	-	57,736	2,003	-	55,627	-	55,627	2,007
Local Assistance	-	21,084	-	21,084	-	-	22,432	-	22,432	-	-	23,030	-	23,030	-
Totals, Department of Pesticide Regulation	**-**	**$76,358**	**-**	**$76,358**	**$1,982**	**-**	**$80,168**	**-**	**$80,168**	**$2,003**	**-**	**$78,657**	**-**	**$78,657**	**$2,007**
State Water Resources Control Board															
State Operations	11,884	440,579	1,986	454,449	28,751	14,885	454,789	7,736	477,410	53,335	14,726	413,507	7,778	436,011	54,612
Local Assistance	-	21,053	49,781	70,834	143,547	-	13,000	129,342	142,342	90,000	-	9,000	37,911	46,911	90,000
Totals, State Water Resources Control Board	**$11,884**	**$461,632**	**$51,767**	**$525,283**	**$172,298**	**$14,885**	**$467,789**	**$137,078**	**$619,752**	**$143,335**	**$14,726**	**$422,507**	**$45,689**	**$482,922**	**$144,612**
Department of Toxic Substances Control															
State Operations	17,827	112,920	-	130,747	26,421	22,247	131,777	-	154,024	32,056	21,100	117,936	-	139,036	32,931
Local Assistance	-	-175	-	-175	818	-	-	-	-	4,000	-	1,000	-	1,000	4,000
Capital Outlay	1,634	-	-	1,634	-	-	-	-	-	-	-	-	-	-	-
Totals, Department of Toxic Substances Control	**$19,461**	**$112,745**	**-**	**$132,206**	**$27,239**	**$22,247**	**$131,777**	**-**	**$154,024**	**$36,056**	**$21,100**	**$118,936**	**-**	**$140,036**	**$36,931**
Resources Recycling and Recovery															
State Operations	-	1,418,585	-	1,418,585	-	-	1,429,448	-	1,429,448	-	-	222,816	-	222,816	-
Local Assistance	-	26,650	-	26,650	-	-	30,792	-	30,792	-	-	1,261,011	-	1,261,011	-
Totals, Resources Recycling and Recovery	**-**	**$1,445,235**	**-**	**$1,445,235**	**-**	**-**	**$1,460,240**	**-**	**$1,460,240**	**-**	**-**	**$1,483,827**	**-**	**$1,483,827**	**-**
Environmental Health Hazard Assessment															
State Operations	2,093	12,243	-	14,336	410	4,377	11,501	-	15,878	414	4,556	12,219	-	16,775	414
General Obligation Bonds-Environmental															
State Operations	4,895	-	-	4,895	-	3,959	-	-	3,959	-	4,221	-	-	4,221	-
TOTALS, ENVIRONMENTAL PROTECTION	**$40,040**	**$2,447,971**	**$180,365**	**$2,668,376**	**$217,976**	**$47,251**	**$2,483,525**	**$210,328**	**$2,741,104**	**$199,496**	**$46,423**	**$2,449,664**	**$127,249**	**$2,623,336**	**$202,236**
State Operations	38,406	2,369,248	130,584	2,538,238	73,611	47,251	2,338,190	80,986	2,466,427	105,496	46,423	1,076,512	89,338	1,212,273	108,236
Local Assistance	-	78,723	49,781	128,504	144,365	-	145,335	129,342	274,677	94,000	-	1,373,152	37,911	1,411,063	94,000
Capital Outlay	1,634	-	-	1,634	-	-	-	-	-	-	-	-	-	-	-
HEALTH AND HUMAN SERVICES															
Health & Human Services Agency, Secy															
State Operations	2,176	10,486	-	12,662	797	2,981	13,002	-	15,983	2,585	3,112	12,432	-	15,544	2,079
State Council-Developmental Disabilities															
State Operations	-	-	-	-	7,166	-	-	-	-	7,174	-	-	-	-	7,419
Emergency Medical Services Authority															
State Operations	1,145	3,070	-	4,215	1,349	1,137	3,176	-	4,313	1,850	1,199	3,619	-	4,818	1,901

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
Local Assistance	5,500	-	-	5,500	52	5,558	300	-	5,858	704	5,558	300	-	5,858	704
Totals, Emergency Medical Services Authority	**$6,645**	**$3,070**	**-**	**$9,715**	**$1,401**	**$6,695**	**$3,476**	**-**	**$10,171**	**$2,554**	**$6,757**	**$3,919**	**-**	**$10,676**	**$2,605**
Statewide Health Planning & Development															
State Operations	-	75,594	-	75,594	1,006	74	90,786	-	90,860	647	74	92,868	-	92,942	290
Local Assistance	-	7,017	-	7,017	3,418	-	34,923	-	34,923	1,000	-	19,306	-	19,306	1,000
Totals, Statewide Health Planning & Developmen	**-**	**$82,611**	**-**	**$82,611**	**$4,424**	**$74**	**$125,709**	**-**	**$125,783**	**$1,647**	**$74**	**$112,174**	**-**	**$112,248**	**$1,290**
Department of Managed Health Care															
State Operations	-	-	-	-	-	-	49,716	-	49,716	5,391	-	48,677	-	48,677	691
Department of Aging															
State Operations	3,300	226	-	3,526	5,288	3,525	226	-	3,751	8,001	3,646	230	-	3,876	7,730
Local Assistance	28,538	4,146	-	32,684	147,226	28,538	4,146	-	32,684	146,817	28,538	4,146	-	32,684	141,006
Totals, Department of Aging	**$31,838**	**$4,372**	**-**	**$36,210**	**$152,514**	**$32,063**	**$4,372**	**-**	**$36,435**	**$154,818**	**$32,184**	**$4,376**	**-**	**$36,560**	**$148,736**
Commission on Aging															
State Operations	-	-	-	-	343	-	-	-	-	377	-	-	-	-	382
Department of Alcohol & Drug Programs															
State Operations	3,415	9,683	-	13,098	18,890	166	9,488	-	9,654	21,205	-	-	-	-	-
Local Assistance	33,900	4,000	-	37,900	233,561	33,900	4,000	-	37,900	240,434	-	-	-	-	-
Totals, Department of Alcohol & Drug Programs	**$37,315**	**$13,683**	**-**	**$50,998**	**$252,451**	**$34,066**	**$13,488**	**-**	**$47,554**	**$261,639**	**-**	**-**	**-**	**-**	**-**
Children & Families Commission															
State Operations	-	6,019	-	6,019	-	-	4,569	-	4,569	-	-	4,415	-	4,415	-
Local Assistance	-	477,828	-	477,828	-	-	444,901	-	444,901	-	-	429,613	-	429,613	-
Totals, Children & Families Commission	**-**	**$483,847**	**-**	**$483,847**	**-**	**-**	**$449,470**	**-**	**$449,470**	**-**	**-**	**$434,028**	**-**	**$434,028**	**-**
Department of Health Care Services															
State Operations	131,174	1,878	-	133,052	217,895	155,129	16,215	-	171,344	281,517	159,382	21,802	-	181,184	308,083
Local Assistance															
Medical Care Services (Medi-Cal)	15,096,565	1,376,321	-	16,472,886	26,228,478	15,018,924	5,881,618	-	20,900,542	37,889,994	15,601,117	5,250,623	-	20,851,740	36,501,323
Children's Medical Services	59,325	8,000	-	67,325	113,876	136,048	9,022	-	145,070	211,265	130,489	9,024	-	139,513	104,512
Primary and Rural Health	-	-	-	-	388	-	-	-	-	426	-	-	-	-	426
Other Care Services	-	-	-	-	-	18,064	1,369,993	-	1,388,057	66,148	51,278	1,369,993	-	1,421,271	306,313
Totals, Local Assistance	15,155,890	1,384,321	-	16,540,211	26,342,742	15,173,036	7,260,633	-	22,433,669	38,167,833	15,782,884	6,629,640	-	22,412,524	36,912,574
Totals, Department of Health Care Services	**$15,287,064**	**$1,386,199**	**-**	**$16,673,263**	**$26,560,637**	**$15,328,165**	**$7,276,848**	**-**	**$22,605,013**	**$38,449,350**	**$15,942,266**	**$6,651,442**	**-**	**$22,593,708**	**$37,220,657**
Department of Public Health															
State Operations	81,599	221,837	4,643	308,079	234,836	81,197	274,986	6,119	362,302	264,640	82,542	288,450	6,330	377,322	275,971
Local Assistance	43,706	468,980	71,871	584,557	1,660,216	49,405	441,637	191,599	682,641	1,757,195	31,957	403,546	70,000	505,503	1,750,394
Totals, Department of Public Health	**$125,305**	**$690,817**	**$76,514**	**$892,636**	**$1,895,052**	**$130,602**	**$716,623**	**$197,718**	**$1,044,943**	**$2,021,835**	**$114,499**	**$691,996**	**$76,330**	**$882,825**	**$2,026,365**
California Medical Assistance Commission															
State Operations	1,049	-	-	1,049	-	-	-	-	-	-	-	-	-	-	-
Managed Risk Medical Insurance Board															
State Operations	2,006	1,412	-	3,418	7,864	2,340	1,720	-	4,060	10,908	2,425	1,654	-	4,079	11,479
Local Assistance	270,732	197,254	-	467,986	1,018,495	163,167	238,957	-	402,124	983,360	19,226	103,867	-	123,093	463,597
Totals, Managed Risk Medical Insurance Board	**$272,738**	**$198,666**	**-**	**$471,404**	**$1,026,359**	**$165,507**	**$240,677**	**-**	**$406,184**	**$994,268**	**$21,651**	**$105,521**	**-**	**$127,172**	**$475,076**
Department of Developmental Services															

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
State Operations	316,363	670	-	317,033	2,328	308,037	675	-	308,712	3,077	304,271	674	-	304,945	3,035
Local Assistance	2,246,395	6,666	-	2,253,061	51,866	2,296,105	10,157	-	2,306,262	52,006	2,455,125	10,157	-	2,465,282	52,006
Capital Outlay	5,972	-	-	5,972	-	16,029	-	-	16,029	-	-	-	-	-	-
Totals, Department of Developmental Services	**$2,568,730**	**$7,336**	**-**	**$2,576,066**	**$54,194**	**$2,620,171**	**$10,832**	**-**	**$2,631,003**	**$55,083**	**$2,759,396**	**$10,831**	**-**	**$2,770,227**	**$55,041**
Department of State Hospitals															
State Operations	1,310,124	12,601	-	1,322,725	3,005	1,320,858	-	-	1,320,858	-	1,457,306	-	-	1,457,306	-
Local Assistance	18,328	1,812,375	-	1,830,703	59,314	-	-	-	-	-	-	-	-	-	-
Capital Outlay	4,302	-	-	4,302	-	29,675	-	-	29,675	-	2,056	-	-	2,056	-
Totals, Department of State Hospitals	**$1,332,754**	**$1,824,976**	**-**	**$3,157,730**	**$62,319**	**$1,350,533**	**-**	**-**	**$1,350,533**	**-**	**$1,459,362**	**-**	**-**	**$1,459,362**	**-**
Mental Hlth Svcs Ovrst and Acntblty Comm															
State Operations	-	5,340	-	5,340	-	-	6,926	-	6,926	-	-	6,916	-	6,916	-
Dept of Community Services & Development															
State Operations	-	-	-	-	13,056	-	-	-	-	25,263	-	-	-	-	25,210
Local Assistance	-	-	-	-	238,606	-	-	-	-	236,689	-	-	-	-	236,689
Totals, Dept of Community Services & Developme	**-**	**-**	**-**	**-**	**$251,662**	**-**	**-**	**-**	**-**	**$261,952**	**-**	**-**	**-**	**-**	**$261,899**
California Health Benefit Exchange															
State Operations	-	-	-	-	30,148	-	-	-	-	348,691	-	-	-	-	366,498
Department of Rehabilitation															
State Operations	54,527	1,062	-	55,589	293,610	55,266	1,132	-	56,398	335,432	56,566	1,002	-	57,568	330,936
Local Assistance	-	-	-	-	15,607	-	-	-	-	15,736	-	-	-	-	15,736
Totals, Department of Rehabilitation	**$54,527**	**$1,062**	**-**	**$55,589**	**$309,217**	**$55,266**	**$1,132**	**-**	**$56,398**	**$351,168**	**$56,566**	**$1,002**	**-**	**$57,568**	**$346,672**
State Independent Living Council															
State Operations	-	-	-	-	295	-	-	-	-	149	-	-	-	-	149
Department of Child Support Services															
State Operations	41,233	-	-	41,233	94,170	45,506	-	-	45,506	105,052	46,374	-	-	46,374	106,545
Local Assistance	265,357	-	-	265,357	313,247	261,554	-	-	261,554	363,466	266,536	-	-	266,536	375,591
Totals, Department of Child Support Services	**$306,590**	**-**	**-**	**$306,590**	**$407,417**	**$307,060**	**-**	**-**	**$307,060**	**$468,518**	**$312,910**	**-**	**-**	**$312,910**	**$482,136**
Department of Social Services															
State Operations	91,835	23,173	-	115,008	337,998	97,057	29,645	-	126,702	367,300	106,255	29,440	-	135,695	377,830
Local Assistance															
CalWorks	1,156,851	-	-	1,156,851	3,093,684	1,590,329	-	-	1,590,329	3,221,272	1,930,793	-	-	1,930,793	3,207,225
Other Assistance Payments	75,970	626	-	76,596	645,624	82,809	596	-	83,405	743,697	100,762	618	-	101,380	758,837
SSI/SSP	2,721,555	-	-	2,721,555	-	2,764,805	-	-	2,764,805	-	2,817,383	-	-	2,817,383	-
County Admin and Automation Projects	569,407	-	-	569,407	862,800	699,558	-	-	699,558	1,023,574	769,378	-	-	769,378	1,116,591
IHSS	1,725,930	-	-	1,725,930	-	1,723,220	-	-	1,723,220	-	1,808,171	-	-	1,808,171	-
Children & Adult Services and Licensing	61,345	917	-	62,262	1,104,302	54,364	896	-	55,260	1,140,855	57,534	963	-	58,497	1,133,502
Other Programs	3,096	-	-	3,096	567,818	9,864	-	-	9,864	563,276	9,172	-	-	9,172	574,718
Totals, Local Assistance	6,314,154	1,543	-	6,315,697	6,274,228	6,924,949	1,492	-	6,926,441	6,692,674	7,493,193	1,581	-	7,494,774	6,790,873
Totals, Department of Social Services	**$6,405,989**	**$24,716**	**-**	**$6,430,705**	**$6,612,226**	**$7,022,006**	**$31,137**	**-**	**$7,053,143**	**$7,059,974**	**$7,599,448**	**$31,021**	**-**	**$7,630,469**	**$7,168,703**
State-Local Realignment															
Local Assistance	-	4,191,613	-	4,191,613	-	-	4,313,764	-	4,313,764	-	-	4,535,013	-	4,535,013	-
State-Local Realignment, 2011															
Local Assistance	-	2,889,411	-	2,889,411	-	-	3,916,993	-	3,916,993	-	-	4,150,075	-	4,150,075	-

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
General Obligation Bonds-H&HS															
State Operations	63,768	-	-	63,768	-	66,133	-	-	66,133	-	61,583	-	-	61,583	-
TOTALS, HEALTH AND HUMAN SERVICES	**$26,496,488**	**$11,818,205**	**$76,514**	**$38,391,207**	**$37,628,622**	**$27,121,322**	**$17,174,165**	**$197,718**	**$44,493,205**	**$50,447,173**	**$28,369,808**	**$16,799,423**	**$76,330**	**$45,245,561**	**$48,566,398**
State Operations	2,103,714	373,051	4,643	2,481,408	1,270,044	2,139,406	502,262	6,119	2,647,787	1,789,259	2,284,735	512,179	6,330	2,803,244	1,826,228
Local Assistance	24,382,500	11,445,154	71,871	35,899,525	36,358,578	24,936,212	16,671,903	191,599	41,799,714	48,657,914	26,083,017	16,287,244	70,000	42,440,261	46,740,170
Capital Outlay	10,274	-	-	10,274	-	45,704	-	-	45,704	-	2,056	-	-	2,056	-
CORRECTIONS AND REHABILITATION															
Corrections and Rehabilitation															
State Operations	8,993,875	2,375	-	8,996,250	2,870	8,491,687	-	-	8,491,687	4,602	8,645,220	-	-	8,645,220	4,649
Local Assistance															
Corrections Standards Authority	835	-	-	835	-	-	-	-	-	-	-	-	-	-	-
Juvenile Operations & Offender Programs	-	-	-	-	-	78	-	-	78	-	78	-	-	78	-
Juvenile Parole Operations	145	-	-	145	-	-	-	-	-	-	-	-	-	-	-
Transportation of Prisoners	65	-	-	65	-	278	-	-	278	-	278	-	-	278	-
Returning of Fugitives from Justice	1,532	-	-	1,532	-	2,593	-	-	2,593	-	2,593	-	-	2,593	-
County Charges	17,284	-	-	17,284	-	15,147	-	-	15,147	-	15,147	-	-	15,147	-
Parolee Detention	88,947	-	-	88,947	-	31,977	-	-	31,977	-	13,870	-	-	13,870	-
Juvenile Justice Grant	-	-	-	-	9,938	-	-	-	-	-	-	-	-	-	-
Corrections Training Fund	-	18,494	-	18,494	-	-	-	-	-	-	-	-	-	-	-
Community Corrections Performance	89,193	-615	-	88,578	-	138,905	-615	-	138,290	-	35,793	-1,000	-	34,793	-
AB109 Training Funds	33,849	-	-	33,849	-	-	-	-	-	-	-	-	-	-	-
Totals, Local Assistance	231,850	17,879	-	249,729	9,938	188,978	-615	-	188,363	-	67,759	-1,000	-	66,759	-
Capital Outlay	12,428	-	406	12,834	-	26,905	-	750	27,655	-	65,444	-	3,434	68,878	-
Totals, Corrections and Rehabilitation	**$9,238,153**	**$20,254**	**$406**	**$9,258,813**	**$12,808**	**$8,707,570**	**$-615**	**$750**	**$8,707,705**	**$4,602**	**$8,778,423**	**$-1,000**	**$3,434**	**$8,780,857**	**$4,649**
Board of State and Community Corrections															
State Operations	-	-	-	-	-	7,767	2,959	-	10,726	3,196	8,050	2,917	-	10,967	2,644
Local Assistance	-	-	-	-	-	33,735	28,680	-	62,415	56,994	36,235	28,680	-	64,915	50,298
Totals, Board of State and Community Correctio	**-**	**-**	**-**	**-**	**-**	**$41,502**	**$31,639**	**-**	**$73,141**	**$60,190**	**$44,285**	**$31,597**	**-**	**$75,882**	**$52,942**
Local Law Enforcement Services															
Local Assistance	-	489,900	-	489,900	-	-	489,900	-	489,900	-	-	489,900	-	489,900	-
Trial Court Security															
Local Assistance	-	529,448	-	529,448	-	-	506,743	-	506,743	-	-	518,712	-	518,712	-
Local Community Corrections															
Local Assistance	-	354,300	-	354,300	-	-	920,254	-	920,254	-	-	1,088,671	-	1,088,671	-
District Attorney & Public Defender Svcs															
Local Assistance	-	12,700	-	12,700	-	-	19,757	-	19,757	-	-	23,085	-	23,085	-
Juvenile Justice Programs															
Local Assistance	-	97,190	-	97,190	-	-	109,118	-	109,118	-	-	121,087	-	121,087	-
Corrections Reimbursements															
State Operations	-1,369,788	-	-	-1,369,788	-	-	-	-	-	-	-	-	-	-	-
Local Assistance	-	1,369,788	-	1,369,788	-	-	-	-	-	-	-	-	-	-	-
Totals, Corrections Reimbursements	**$-1,369,788**	**$1,369,788**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
Federal Immigration Funding-Incarceratn															
State Operations	-65,845	-	-	-65,845	65,845	-51,230	-	-	-51,230	51,230	-51,230	-	-	-51,230	51,230

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
General Obligation Bonds-DCR															
State Operations	76,161	-	-	76,161	-	54,711	-	-	54,711	-	33,766	-	-	33,766	-
TOTALS, CORRECTIONS AND REHABILITATION	**$7,878,681**	**$2,873,580**	**$406**	**$10,752,667**	**$78,653**	**$8,752,553**	**$2,076,796**	**$750**	**$10,830,099**	**$116,022**	**$8,805,244**	**$2,272,052**	**$3,434**	**$11,080,730**	**$108,821**
State Operations	7,634,403	2,375	-	7,636,778	68,715	8,502,935	2,959	-	8,505,894	59,028	8,635,806	2,917	-	8,638,723	58,523
Local Assistance	231,850	2,871,205	-	3,103,055	9,938	222,713	2,073,837	-	2,296,550	56,994	103,994	2,269,135	-	2,373,129	50,298
Capital Outlay	12,428	-	406	12,834	-	26,905	-	750	27,655	-	65,444	-	3,434	68,878	-
EDUCATION															
K thru 12 Education															
Scholarshare Investment Board															
State Operations	427	-	-	427	-	389	-	-	389	-	371	-	-	371	-
Department of Education															
Department of Education															
State Operations	127,324	2,645	2,291	132,260	132,296	127,829	2,890	2,615	133,334	160,893	133,916	2,822	2,727	139,465	158,031
Local Assistance															
Adult Education	634,805	-	-	634,805	86,244	634,805	-	-	634,805	91,296	45,896	-	-	45,896	85,702
Apportionments - District and County	18,884,249	-	-	18,884,249	-	21,604,857	-	-	21,604,857	-	30,161,569	-	-	30,161,569	-
Child Development	1,404,614	-	-	1,404,614	542,358	1,231,606	-	-	1,231,606	559,282	1,244,001	-	-	1,244,001	546,490
Child Nutrition	161,383	-	-	161,383	2,077,784	157,641	-	-	157,641	2,348,681	157,690	-	-	157,690	2,425,681
Categorical Programs	7,040,773	83,814	-	7,124,587	2,684,070	7,562,776	105,701	-	7,668,477	2,824,353	2,017,669	96,162	-	2,113,831	2,618,557
Pupil Assessment	72,494	-	-	72,494	22,541	83,361	-	-	83,361	24,483	72,688	-	-	72,688	25,129
Special Education	2,787,653	-	-	2,787,653	1,225,104	3,220,353	-	-	3,220,353	1,235,469	3,297,723	-	-	3,297,723	1,232,456
State-Mandated Local Programs	80,355	-	-	80,355	-	166,650	-	-	166,650	-	266,650	-	-	266,650	-
Totals, Local Assistance	31,066,326	83,814	-	31,150,140	6,638,101	34,662,049	105,701	-	34,767,750	7,083,564	37,263,886	96,162	-	37,360,048	6,934,015
Totals, Department of Education	**$31,193,650**	**$86,459**	**$2,291**	**$31,282,400**	**$6,770,397**	**$34,789,878**	**$108,591**	**$2,615**	**$34,901,084**	**$7,244,457**	**$37,397,802**	**$98,984**	**$2,727**	**$37,499,513**	**$7,092,046**
State Library															
State Operations	12,582	553	1,204	14,339	5,227	16,612	591	1,456	18,659	7,315	12,324	500	762	13,586	7,384
Local Assistance	-	552	-	552	9,695	4,700	552	-	5,252	12,518	4,700	552	1,395	6,647	12,518
Totals, State Library	**$12,582**	**$1,105**	**$1,204**	**$14,891**	**$14,922**	**$21,312**	**$1,143**	**$1,456**	**$23,911**	**$19,833**	**$17,024**	**$1,052**	**$2,157**	**$20,233**	**$19,902**
Education Audit Appeals Panel															
State Operations	653	-	-	653	-	1,091	-	-	1,091	-	1,109	-	-	1,109	-
Summer School for the Arts															
State Operations	1,366	-	-	1,366	-	1,363	-	-	1,363	-	1,380	-	-	1,380	-
Teachers Retirement System Contributions															
Local Assistance	1,316,108	-	-	1,316,108	-	1,359,675	-	-	1,359,675	-	1,357,694	-	-	1,357,694	-
Retirement Costs for Community Colleges															
Local Assistance	-102,836	-	-	-102,836	-	-107,693	-	-	-107,693	-	-109,815	-	-	-109,815	-
School Facilities Aid Program															
Local Assistance	-	15,066	1,212,632	1,227,698	-	-	3,046	3,167,449	3,170,495	-	-	-	-	-	-
Commission on Teacher Credentialing															
State Operations	-	19,394	-	19,394	-	-	18,582	-	18,582	-	-	19,236	-	19,236	-
Local Assistance	26,190	-	-	26,190	-	26,191	-	-	26,191	-	-	-	-	-	-
Totals, Commission on Teacher Credentialing	**$26,190**	**$19,394**	**-**	**$45,584**	**-**	**$26,191**	**$18,582**	**-**	**$44,773**	**-**	**-**	**$19,236**	**-**	**$19,236**	**-**
General Obligation Bonds-K-12															
State Operations	2,206,523	-	-	2,206,523	-	2,230,864	-	-	2,230,864	-	2,401,980	-	-	2,401,980	-
Totals, K thru 12 Education	**$34,654,663**	**$122,024**	**$1,216,127**	**$35,992,814**	**$6,785,319**	**$38,323,070**	**$131,362**	**$3,171,520**	**$41,625,952**	**$7,264,290**	**$41,067,545**	**$119,272**	**$4,884**	**$41,191,701**	**$7,111,948**

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
Higher Education-Community Colleges															
Board of Governors of Community Colleges															
State Operations	8,639	109	1,798	10,546	262	9,486	103	1,842	11,431	246	9,829	126	1,908	11,863	60
Local Assistance															
Apportionments	2,882,617	14,002	-	2,896,619	-	3,130,508	14,002	-	3,144,510	-	3,483,466	14,002	-	3,497,468	-
Apprenticeship	7,174	-	-	7,174	-	7,174	-	-	7,174	-	7,174	-	-	7,174	-
Apprenticeship Training and Instruction	-	-	-	-	-	-	-	-	-	-	15,694	-	-	15,694	-
Adult Education	-	-	-	-	-	-	-	-	-	-	300,000	-	-	300,000	-
Online Initiative	-	-	-	-	-	-	-	-	-	-	16,910	-	-	16,910	-
Student Success for Basic Skills Studnts	20,037	-	-	20,037	-	20,037	-	-	20,037	-	20,037	-	-	20,037	-
Student Financial Aid Administration	56,741	-	-	56,741	-	71,025	-	-	71,025	-	68,135	-	-	68,135	-
Extended Opportunity Programs and Srvcs	73,605	-	-	73,605	-	73,605	-	-	73,605	-	73,605	-	-	73,605	-
Disabled Students	69,223	-	-	69,223	-	69,223	-	-	69,223	-	69,223	-	-	69,223	-
Student Services for CalWORKS Recipients	26,695	-	-	26,695	-	26,695	-	-	26,695	-	26,695	-	-	26,695	-
Foster Care Education Program	5,254	-	-	5,254	-	5,254	-	-	5,254	-	5,254	-	-	5,254	-
Matriculation	49,183	-	-	49,183	-	49,183	-	-	49,183	-	49,183	-	-	49,183	-
Academic Senate for Community Colleges	318	-	-	318	-	318	-	-	318	-	318	-	-	318	-
Equal Employment Opportunity	767	-	-	767	-	767	-	-	767	-	767	-	-	767	-
Part-Time Faculty Health Insurance	490	-	-	490	-	490	-	-	490	-	490	-	-	490	-
Part-Time Faculty Compensation	24,907	-	-	24,907	-	24,907	-	-	24,907	-	24,907	-	-	24,907	-
Part-Time Faculty Office Hours	3,514	-	-	3,514	-	3,514	-	-	3,514	-	3,514	-	-	3,514	-
Telecommunications & Technology Infrstrc	15,290	-	-	15,290	-	15,290	-	-	15,290	-	15,290	-	-	15,290	-
Fund for Student Success	3,792	-	-	3,792	-	3,792	-	-	3,792	-	3,792	-	-	3,792	-
Economic Development	22,720	-	-	22,720	-	22,929	-	-	22,929	-	22,929	-	-	22,929	-
Transfer Education and Articulation	698	-	-	698	-	698	-	-	698	-	698	-	-	698	-
Campus Childcare Tax Bailout	3,350	-	-	3,350	-	3,350	-	-	3,350	-	3,350	-	-	3,350	-
Nursing Program Support	13,378	-	-	13,378	-	13,378	-	-	13,378	-	13,378	-	-	13,378	-
Solar Training Collaborative Program	-	-	-	-	-	-	-	-	-	713	-	-	-	-	200
Personal Care Training and Certification	-	-	-	-	673	-	-	-	-	855	-	-	-	-	-
State Trade and Export Promotion Program	-	-	-	-	2,320	-	-	-	-	-	-	-	-	-	-
Totals, Local Assistance	3,279,753	14,002	-	3,293,755	2,993	3,542,137	14,002	-	3,556,139	1,568	4,224,809	14,002	-	4,238,811	200
Capital Outlay	-	-	111,061	111,061	-	-	-	26,115	26,115	-	-	-	120,033	120,033	-
Totals, Board of Governors of Community Colleg	**$3,288,392**	**$14,111**	**$112,859**	**$3,415,362**	**$3,255**	**$3,551,623**	**$14,105**	**$27,957**	**$3,593,685**	**$1,814**	**$4,234,638**	**$14,128**	**$121,941**	**$4,370,707**	**$260**
General Obligation Bonds-Hi Ed-CC															
State Operations	201,404	-	-	201,404	-	250,418	-	-	250,418	-	268,528	-	-	268,528	-
Retirement Costs-Hi Ed-CC															
Local Assistance	102,836	-	-	102,836	-	107,693	-	-	107,693	-	109,815	-	-	109,815	-
Totals, Higher Education-Community Colleges	**$3,592,632**	**$14,111**	**$112,859**	**$3,719,602**	**$3,255**	**$3,909,734**	**$14,105**	**$27,957**	**$3,951,796**	**$1,814**	**$4,612,981**	**$14,128**	**$121,941**	**$4,749,050**	**$260**
Higher Education-UC, CSU and Other															
Postsecondary Education Commission															

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
State Operations	823	-	-	823	447	5	-	-	5	-	-	-	-	-	-
Local Assistance	-	-	-	-	6,682	-	-	-	-	-	-	-	-	-	-
Totals, Postsecondary Education Commission	**$823**	**-**	**-**	**$823**	**$7,129**	**$5**	**-**	**-**	**$5**	**-**	**-**	**-**	**-**	**-**	**-**
University of California															
State Operations	2,272,373	55,736	-	2,328,109	3,738,586	2,377,339	29,554	-	2,406,893	3,576,275	2,845,801	30,787	-	2,876,588	3,576,275
Capital Outlay	-	-	55,520	55,520	-	-	-	48,635	48,635	-	-	-	-	-	-
Totals, University of California	**$2,272,373**	**$55,736**	**$55,520**	**$2,383,629**	**$3,738,586**	**$2,377,339**	**$29,554**	**$48,635**	**$2,455,528**	**$3,576,275**	**$2,845,801**	**$30,787**	**-**	**$2,876,588**	**$3,576,275**
Institute for Regenerative Medicine															
State Operations	-	-	11,953	11,953	-	-	-	14,883	14,883	-	-	-	15,124	15,124	-
Local Assistance	-	-	233,600	233,600	-	-	-	222,474	222,474	-	-	-	242,598	242,598	-
Totals, Institute for Regenerative Medicine	**-**	**-**	**$245,553**	**$245,553**	**-**	**-**	**-**	**$237,357**	**$237,357**	**-**	**-**	**-**	**$257,722**	**$257,722**	**-**
Hastings College of the Law															
State Operations	6,935	-	-	6,935	-	7,849	-	-	7,849	-	9,510	-	-	9,510	-
California State University															
State Operations	1,999,927	-	-	1,999,927	1,144,884	2,063,550	-	-	2,063,550	1,177,861	2,531,063	-	-	2,531,063	1,177,861
Capital Outlay	-	-	32,395	32,395	-	-	-	12,354	12,354	-	-	-	3,639	3,639	-
Totals, California State University	**$1,999,927**	**-**	**$32,395**	**$2,032,322**	**$1,144,884**	**$2,063,550**	**-**	**$12,354**	**$2,075,904**	**$1,177,861**	**$2,531,063**	**-**	**$3,639**	**$2,534,702**	**$1,177,861**
CSU Health Benefits, Retired Annuitants															
State Operations	-	-	-	-	-	240,255	-	-	240,255	-	278,153	-	-	278,153	-
Student Aid Commission															
State Operations	9,922	-	-	9,922	258	10,665	-	-	10,665	259	10,476	-	-	10,476	258
Local Assistance	1,460,762	-	-	1,460,762	14,316	724,959	-	-	724,959	14,776	709,094	-	-	709,094	14,776
Totals, Student Aid Commission	**$1,470,684**	**-**	**-**	**$1,470,684**	**$14,574**	**$735,624**	**-**	**-**	**$735,624**	**$15,035**	**$719,570**	**-**	**-**	**$719,570**	**$15,034**
General Obligation Bonds-Hi Ed															
State Operations	522,910	-	-	522,910	-	442,045	-	-	442,045	-	111,496	-	-	111,496	-
Totals, Higher Education-UC, CSU and Other	**$6,273,652**	**$55,736**	**$333,468**	**$6,662,856**	**$4,905,173**	**$5,866,667**	**$29,554**	**$298,346**	**$6,194,567**	**$4,769,171**	**$6,495,593**	**$30,787**	**$261,361**	**$6,787,741**	**$4,769,170**
TOTALS, EDUCATION	**$44,520,947**	**$191,871**	**$1,662,454**	**$46,375,272**	**$11,693,747**	**$48,099,471**	**$175,021**	**$3,497,823**	**$51,772,315**	**$12,035,275**	**$52,176,119**	**$164,187**	**$388,186**	**$52,728,492**	**$11,881,378**
State Operations	7,371,808	78,437	17,246	7,467,491	5,021,960	7,779,760	51,720	20,796	7,852,276	4,922,849	8,615,936	53,471	20,521	8,689,928	4,919,869
Local Assistance	37,149,139	113,434	1,446,232	38,708,805	6,671,787	40,319,711	123,301	3,389,923	43,832,935	7,112,426	43,560,183	110,716	243,993	43,914,892	6,961,509
Capital Outlay	-	-	198,976	198,976	-	-	-	87,104	87,104	-	-	-	123,672	123,672	-
LABOR AND WORKFORCE DEVELOPMENT															
Labor & Workforce Development, Secy															
State Operations	-	364	-	364	-	-	329	-	329	-	-	232	-	232	-
Employment Development Department															
State Operations	344,218	61,802	-	406,020	810,973	329,876	78,780	-	408,656	865,242	313,314	68,695	-	382,009	781,402
Local Assistance	-	-	-	-	16,004,271	-	-	-	-	13,121,132	-	-	-	-	9,707,547
Totals, Employment Development Department	**$344,218**	**$61,802**	**-**	**$406,020**	**$16,815,244**	**$329,876**	**$78,780**	**-**	**$408,656**	**$13,986,374**	**$313,314**	**$68,695**	**-**	**$382,009**	**$10,488,949**
Workforce Investment Board															
State Operations	-	-	-	-	2,094	-	-	-	-	2,993	-	-	-	-	3,304
Agricultural Labor Relations Board															
State Operations	4,744	-	-	4,744	-	4,811	491	-	5,302	-	4,996	1,011	-	6,007	-
Public Employment Relations Board															
State Operations	6,095	-	-	6,095	-	8,126	-	-	8,126	-	8,426	-	-	8,426	-

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
Department of Industrial Relations															
State Operations	4,322	285,363	-	289,685	34,490	2,384	305,996	-	308,380	35,394	2,468	464,761	-	467,229	36,778
TOTALS, LABOR AND WORKFORCE DEVELOPMENT	**$359,379**	**$347,529**	**-**	**$706,908**	**$16,851,828**	**$345,197**	**$385,596**	**-**	**$730,793**	**$14,024,761**	**$329,204**	**$534,699**	**-**	**$863,903**	**$10,529,031**
State Operations	359,379	347,529	-	706,908	847,557	345,197	385,596	-	730,793	903,629	329,204	534,699	-	863,903	821,484
Local Assistance	-	-	-	-	16,004,271	-	-	-	-	13,121,132	-	-	-	-	9,707,547
GOVERNMENT OPERATIONS															
Department of Human Resources															
State Operations	6,102	-	-	6,102	-	8,064	100	-	8,164	-	7,162	100	-	7,262	-
Department of Technology															
State Operations	3,307	1,535	-	4,842	-	4,303	2,366	-	6,669	-	4,240	2,453	-	6,693	-
Local Assistance	-	92,463	-	92,463	1,931	-	109,490	-	109,490	1,931	-	110,619	-	110,619	1,931
Totals, Department of Technology	**$3,307**	**$93,998**	**-**	**$97,305**	**$1,931**	**$4,303**	**$111,856**	**-**	**$116,159**	**$1,931**	**$4,240**	**$113,072**	**-**	**$117,312**	**$1,931**
State Personnel Board															
State Operations	-	-	-	-	-	1,059	-	-	1,059	-	1,104	-	-	1,104	-
Government Operations, Secy															
State Operations	-	-	-	-	-	-	-	-	-	-	1,336	-	-	1,336	-
Franchise Tax Board															
State Operations	556,129	17,049	-	573,178	-	642,916	19,569	-	662,485	-	719,088	20,331	-	739,419	-
Department of General Services															
State Operations	5,313	89,580	13,209	108,102	-	2,690	109,716	14,025	126,431	-	7,079	96,292	13,326	116,697	-
Capital Outlay	-	-	168	168	-	-	-	5,452	5,452	-	-	-	-	-	-
Totals, Department of General Services	**$5,313**	**$89,580**	**$13,377**	**$108,270**	**-**	**$2,690**	**$109,716**	**$19,477**	**$131,883**	**-**	**$7,079**	**$96,292**	**$13,326**	**$116,697**	**-**
Victim Compensation/Government Claims Bd															
State Operations	-	26,937	-	26,937	685	-	32,373	-	32,373	1,851	-	32,422	-	32,422	1,853
Local Assistance	-	61,223	-	61,223	30,000	-	72,671	-	72,671	30,000	-	72,671	-	72,671	30,000
Totals, Victim Compensation/Government Claims	**-**	**$88,160**	**-**	**$88,160**	**$30,685**	**-**	**$105,044**	**-**	**$105,044**	**$31,851**	**-**	**$105,093**	**-**	**$105,093**	**$31,853**
Office of Administrative Law															
State Operations	1,376	-	-	1,376	-	1,627	-	-	1,627	-	1,697	-	-	1,697	-
TOTALS, GOVERNMENT OPERATIONS	**$572,227**	**$288,787**	**$13,377**	**$874,391**	**$32,616**	**$660,659**	**$346,285**	**$19,477**	**$1,026,421**	**$33,782**	**$741,706**	**$334,888**	**$13,326**	**$1,089,920**	**$33,784**
State Operations	572,227	135,101	13,209	720,537	685	660,659	164,124	14,025	838,808	1,851	741,706	151,598	13,326	906,630	1,853
Local Assistance	-	153,686	-	153,686	31,931	-	182,161	-	182,161	31,931	-	183,290	-	183,290	31,931
Capital Outlay	-	-	168	168	-	-	-	5,452	5,452	-	-	-	-	-	-
GENERAL GOVERNMENT															
General Administration															
Peace Officer Standards & Training Comm															
State Operations	-	36,481	-	36,481	-	-	38,051	-	38,051	-	-	38,621	-	38,621	-
Local Assistance	-	13,448	-	13,448	-	-	20,826	-	20,826	-	-	20,826	-	20,826	-
Totals, Peace Officer Standards & Training Com	**-**	**$49,929**	**-**	**$49,929**	**-**	**-**	**$58,877**	**-**	**$58,877**	**-**	**-**	**$59,447**	**-**	**$59,447**	**-**
State Public Defender															
State Operations	10,247	-	-	10,247	-	10,126	-	-	10,126	-	10,538	-	-	10,538	-
Arts Council															
State Operations	1,027	719	-	1,746	1,058	1,026	748	-	1,774	992	1,070	780	-	1,850	999
Local Assistance	-	2,075	-	2,075	100	-	2,075	-	2,075	100	-	2,075	-	2,075	100

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
Totals, Arts Council	**$1,027**	**$2,794**	**-**	**$3,821**	**$1,158**	**$1,026**	**$2,823**	**-**	**$3,849**	**$1,092**	**$1,070**	**$2,855**	**-**	**$3,925**	**$1,099**
Citizens' Compensation Commission															
State Operations	4	-	-	4	-	14	-	-	14	-	10	-	-	10	-
Board of Chiropractic Examiners															
State Operations	-	4,050	-	4,050	-	-	3,653	-	3,653	-	-	-	-	-	-
Department of Food & Agriculture															
State Operations	66,568	93,836	100	160,504	96,735	53,914	121,573	1,178	176,665	106,302	55,489	116,056	1,178	172,723	109,088
Local Assistance	9,321	33,982	-	43,303	-	6,405	34,429	-	40,834	-	6,405	33,597	-	40,002	-
Totals, Department of Food & Agriculture	**$75,889**	**$127,818**	**$100**	**$203,807**	**$96,735**	**$60,319**	**$156,002**	**$1,178**	**$217,499**	**$106,302**	**$61,894**	**$149,653**	**$1,178**	**$212,725**	**$109,088**
Fair Political Practices Commission															
State Operations	7,902	-	-	7,902	-	8,653	-	-	8,653	-	9,478	-	-	9,478	-
Political Reform Act of 1974															
State Operations	-	-	-	-	-	-	-	-	-	-	2,549	-	-	2,549	-
Public Utilities Commission															
State Operations	-	1,083,123	-	1,083,123	3,235	-	1,238,358	-	1,238,358	5,093	-	1,297,339	-	1,297,339	5,325
Milton Marks Little Hoover Commission															
State Operations	864	-	-	864	-	873	-	-	873	-	907	-	-	907	-
CA Commission on Disability Access															
State Operations	364	-	-	364	-	402	-	-	402	-	415	-	-	415	-
Comm on the Status of Women & Girls															
State Operations	264	-	-	264	-	265	-	-	265	-	-	-	-	-	-
California State Auditor's Office															
State Operations	13,517	-2,778	-	10,739	-	14,091	-	-	14,091	-	14,493	-	-	14,493	-
Department of Finance															
State Operations	19,792	629	173	20,594	-	35,112	-1,218	214	34,108	-	32,748	1,021	178	33,947	-
Financial Information System for CA															
State Operations	1,924	12,256	-	14,180	-	-	62,733	-	62,733	-	2,076	65,515	-	67,591	-
Commission on State Mandates															
State Operations	1,409	-	-	1,409	-	1,652	-	-	1,652	-	1,873	-	-	1,873	-
Local Assistance	38,177	1,975	-	40,152	-	48,786	2,536	-	51,322	-	48,359	2,637	-	50,996	-
Totals, Commission on State Mandates	**$39,586**	**$1,975**	**-**	**$41,561**	**-**	**$50,438**	**$2,536**	**-**	**$52,974**	**-**	**$50,232**	**$2,637**	**-**	**$52,869**	**-**
Military Department															
State Operations	42,872	627	-	43,499	72,561	43,945	734	-	44,679	94,266	44,858	1,525	-	46,383	97,695
Local Assistance	30	-	-	30	-	60	-	-	60	-	60	-	-	60	-
Capital Outlay	125	-	-	125	-	125	-	-	125	-	125	-	-	125	-
Totals, Military Department	**$43,027**	**$627**	**-**	**$43,654**	**$72,561**	**$44,130**	**$734**	**-**	**$44,864**	**$94,266**	**$45,043**	**$1,525**	**-**	**$46,568**	**$97,695**
Department of Veterans Affairs															
Department of Veterans Affairs															
State Operations	191,456	327	144	191,927	1,392	249,537	388	172	250,097	4,742	313,741	389	-	314,130	2,069
Local Assistance	2,600	1,209	-	3,809	-	2,600	1,313	-	3,913	-	2,600	1,020	-	3,620	-
Capital Outlay	672	211	-	883	100,733	-	1,074	433	1,507	43,857	-	-	1,695	1,695	12,701
Totals, Department of Veterans Affairs	**$194,728**	**$1,747**	**$144**	**$196,619**	**$102,125**	**$252,137**	**$2,775**	**$605**	**$255,517**	**$48,599**	**$316,341**	**$1,409**	**$1,695**	**$319,445**	**$14,770**
Federal Per Diem for Veterans Housing															
State Operations	-36,333	-	-	-36,333	36,333	-41,092	-	-	-41,092	41,092	-44,851	-	-	-44,851	44,851

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
General Obligation Bonds-Gen Govt															
State Operations	27,542	-	-	27,542	-	43,033	-	-	43,033	-	25,188	-	-	25,188	-
Totals, General Administration	**$400,344**	**$1,282,170**	**$417**	**$1,682,931**	**$312,147**	**$479,527**	**$1,527,273**	**$1,997**	**$2,008,797**	**$296,444**	**$528,131**	**$1,581,401**	**$3,051**	**$2,112,583**	**$272,828**
Tax Relief															
Tax Relief															
Local Assistance															
Homeowners' Property Tax Relief	434,384	-	-	434,384	-	429,517	-	-	429,517	-	425,255	-	-	425,255	-
Subventions for Open Space	1	-	-	1	-	1	-	-	1	-	1	-	-	1	-
Property Tax Postponement Loan Repayment	-6,900	-	-	-6,900	-	-6,800	-	-	-6,800	-	-6,900	-	-	-6,900	-
Totals, Local Assistance	427,485	-	-	427,485	-	422,718	-	-	422,718	-	418,356	-	-	418,356	-
Totals, Tax Relief	**$427,485**	**-**	**-**	**$427,485**	**-**	**$422,718**	**-**	**-**	**$422,718**	**-**	**$418,356**	**-**	**-**	**$418,356**	**-**
Local Government Subventions															
Local Government Financing															
Local Assistance	90,800	-	-	90,800	-	2,096,824	-	-	2,096,824	-	1,800	-	-	1,800	-
Payment to Counties for Homicide Trials															
Local Assistance	125	-	-	125	-	1	-	-	1	-	1	-	-	1	-
Shared Revenues															
Local Assistance	-	-	64,616	64,616	-	-	-	-	-	-	-	-	-	-	-
Apportionment of Off-Hwy License Fees															
Local Assistance	-	2,179	-	2,179	-	-	2,405	-	2,405	-	-	2,405	-	2,405	-
Apportionment of Fed Rcpts Fld Cntl Lnds															
Local Assistance	-	-	-	-	285	-	-	-	-	380	-	-	-	-	380
Apportionment of Fed Rcpts Forest Rsrvs															
Local Assistance	-	-	-	-	39,326	-	-	-	-	66,141	-	-	-	-	66,141
Apportionment of Fed Rcpts Grazing Land															
Local Assistance	-	-	-	-	73	-	-	-	-	107	-	-	-	-	107
Apportionment of Fed Potash Lease Rntls															
Local Assistance	-	-	-	-	3,334	-	-	-	-	2,173	-	-	-	-	2,173
Apportionment of Tideland Revenues															
Local Assistance	793	-	-	793	-	740	-	-	740	-	740	-	-	740	-
Apportionment of MV Fuel Tx County Rds															
Local Assistance	-	465,236	-	465,236	-	-	296,704	-	296,704	-	-	299,210	-	299,210	-
Apportionment of MV Fuel Tx City Streets															
Local Assistance	-	190,189	-	190,189	-	-	191,728	-	191,728	-	-	193,348	-	193,348	-
Apportionment of MV Fuel Tx Co Rd/Cty St															
Local Assistance	-	885,485	-	885,485	-	-	744,210	-	744,210	-	-	1,075,065	-	1,075,065	-
Apportionment of MV Fuel Co&Cty/St&Hwy															
Local Assistance	-	281,660	-	281,660	-	-	301,806	-	301,806	-	-	304,355	-	304,355	-
Apportionment of Geothermal Rsrcs Dvlp															
Local Assistance	-	1,570	-	1,570	-	-	1,570	-	1,570	-	-	1,570	-	1,570	-
Totals, Shared Revenues	**$793**	**$1,826,319**	**$64,616**	**$1,891,728**	**$43,018**	**$740**	**$1,538,423**	**-**	**$1,539,163**	**$68,801**	**$740**	**$1,875,953**	**-**	**$1,876,693**	**$68,801**
Totals, Local Government Subventions	**$91,718**	**$1,826,319**	**$64,616**	**$1,982,653**	**$43,018**	**$2,097,565**	**$1,538,423**	**-**	**$3,635,988**	**$68,801**	**$2,541**	**$1,875,953**	**-**	**$1,878,494**	**$68,801**
Debt Service															
Enhanced Tobacco Asset-Backed Bonds															
State Operations	-	-	-	-	-	-	-	-	-	-	1	-	-	1	-

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
Economic Recovery Financing Committee															
State Operations	-	13,392	-	13,392	-	-	13,791	-	13,791	-	-	14,961	-	14,961	-
Unclassified	-	1,011,596	-	1,011,596	-	-	1,384,988	-	1,384,988	-	-	1,527,874	-	1,527,874	-
Totals, Economic Recovery Financing Committee	**-**	**$1,024,988**	**-**	**$1,024,988**	**-**	**-**	**$1,398,779**	**-**	**$1,398,779**	**-**	**-**	**$1,542,835**	**-**	**$1,542,835**	**-**
Cash Management and Budgetary Loans															
State Operations	111,642	-	-	111,642	-	134,300	-	-	134,300	-	181,500	-	-	181,500	-
Interest Payments to the Federal Govt															
State Operations	687	58	-	745	-	2,000	1,001	-	3,001	-	10,000	1,001	-	11,001	-
Totals, Debt Service	**$112,329**	**$1,025,046**	**-**	**$1,137,375**	**-**	**$136,300**	**$1,399,780**	**-**	**$1,536,080**	**-**	**$191,501**	**$1,543,836**	**-**	**$1,735,337**	**-**
Statewide Expenditures															
Health & Dental Benefits for Annuitants															
State Operations	1,466,529	-	-	1,466,529	-	1,314,883	-	-	1,314,883	-	1,513,038	-	-	1,513,038	-
Prefunding Hlth & Dental Bens Annuitants															
State Operations	-	-	-	-	-	-	-	-	-	-	-	9,031	-	9,031	87
Statewide Accounts Receivable Management															
State Operations	-	-	-	-	-	499	1,562	-	2,061	-	-	-	-	-	-
Victim Compensation/Government Claims Bd															
State Operations	13,707	1,514	-	15,221	1,320	2,364	59	-	2,423	-	-	-	-	-	-
Contingencies/Emergencies Augmentation															
State Operations	-	-	-	-	-	15,570	15,000	-	30,570	-	20,000	15,000	-	35,000	-
Reserve for Liquidation of Encumbrances															
Unclassified	100,456	-	-	100,456	-	-	-	-	-	-	-	-	-	-	-
Statewide Proposition 98 Reconciliation															
Local Assistance	-308,381	-	-	-308,381	-	-49,516	-	-	-49,516	-	-26,873	-	-	-26,873	-
Section 3.60 Rate Adjustments															
State Operations	-	-	-	-	-	-	-	-	-	-	48,691	30,972	-	79,663	-
PERS General Fund Deferral Payment															
State Operations	418,229	-	-	418,229	-	424,560	-	-	424,560	-	440,153	-	-	440,153	-
Statewide General Admin Exp (Pro Rata)															
State Operations	-486,198	898	-	-485,300	-	-583,854	519	-	-583,335	-	-636,604	1,158	-	-635,446	-
Various Departments															
State Operations	-	-	-	-	-	-	-	-	-	-	-71,940	21,000	-	-50,940	-
Local Assistance	-	77,240	-	77,240	-	-	68,190	-	68,190	-	-	68,190	-	68,190	-
Unclassified	-	-	-	-	-	-200,000	200,000	-	-	-	-300,000	399,423	-	99,423	-
Totals, Various Departments	**-**	**$77,240**	**-**	**$77,240**	**-**	**$-200,000**	**$268,190**	**-**	**$68,190**	**-**	**$-371,940**	**$488,613**	**-**	**$116,673**	**-**
Totals, Statewide Expenditures	**$1,204,342**	**$79,652**	**-**	**$1,283,994**	**$1,320**	**$924,506**	**$285,330**	**-**	**$1,209,836**	**-**	**$986,465**	**$544,774**	**-**	**$1,531,239**	**$87**
Augmentation for Employee Compensation															
Augmentation for Employee Compensation															
State Operations	-	-	-	-	-	-	-	-	-	-	246,993	170,899	-	417,892	-
June to July Payroll Deferral															
State Operations	19,690	-42,773	-	-23,083	-	34,634	20,701	-	55,335	-	-52,704	-31,501	-	-84,205	-
Local Assistance	-	-800	-	-800	-	-	37	-	37	-	-	-56	-	-56	-
Totals, June to July Payroll Deferral	**$19,690**	**$-43,573**	**-**	**$-23,883**	**-**	**$34,634**	**$20,738**	**-**	**$55,372**	**-**	**$-52,704**	**$-31,557**	**-**	**$-84,261**	**-**
Totals, Augmentation for Employee Compensation	**$19,690**	**$-43,573**	**-**	**$-23,883**	**-**	**$34,634**	**$20,738**	**-**	**$55,372**	**-**	**$194,289**	**$139,342**	**-**	**$333,631**	**-**
Statewide Savings															

SCHEDULE 9 -- Continued
COMPARATIVE STATEMENT OF EXPENDITURES
(Dollars In Thousands)

	Actual 2011-12					Estimated 2012-13					Proposed 2013-14				
	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds	General Fund	Special Fund	Selected Bond Funds	Budget Total	Federal Funds
General Fund Credits from Federal Funds															
State Operations	-109,806	-	-	-109,806	-	-152,624	-	-	-152,624	-	-150,078	-	-	-150,078	-
PERS Deferral															
State Operations	-424,560	-	-	-424,560	-	-440,153	-	-	-440,153	-	-450,697	-	-	-450,697	-
Totals, Statewide Savings	**$-534,366**	**-**	**-**	**$-534,366**	**-**	**$-592,777**	**-**	**-**	**$-592,777**	**-**	**$-600,775**	**-**	**-**	**$-600,775**	**-**
TOTALS, GENERAL GOVERNMENT	**$1,721,542**	**$4,169,614**	**$65,033**	**$5,956,189**	**$356,485**	**$3,502,473**	**$4,771,544**	**$1,997**	**$8,276,014**	**$365,245**	**$1,720,508**	**$5,685,306**	**$3,051**	**$7,408,865**	**$341,716**
State Operations	1,359,339	1,202,359	417	2,562,115	212,634	1,173,730	1,517,653	1,564	2,692,947	252,487	1,568,935	1,753,767	1,356	3,324,058	260,114
Local Assistance	260,950	1,955,448	64,616	2,281,014	43,118	2,528,618	1,667,829	-	4,196,447	68,901	451,448	2,004,242	-	2,455,690	68,901
Capital Outlay	797	211	-	1,008	100,733	125	1,074	433	1,632	43,857	125	-	1,695	1,820	12,701
Unclassified	100,456	1,011,596	-	1,112,052	-	-200,000	1,584,988	-	1,384,988	-	-300,000	1,927,297	-	1,627,297	-
GRAND TOTAL	**$86,403,523**	**$33,853,308**	**$6,104,227**	**$126,361,058**	**$73,062,779**	**$92,993,839**	**$39,648,369**	**$12,294,798**	**$144,937,006**	**$85,829,817**	**$97,650,244**	**$40,927,826**	**$7,248,480**	**$145,826,550**	**$78,840,978**
State Operations	$22,962,060	$13,038,479	$435,627	$36,436,166	$8,562,066	$24,322,086	$13,602,690	$1,037,975	$38,962,751	$9,312,650	$26,368,958	$13,093,403	$635,578	$40,097,939	$9,198,916
Local Assistance	$63,231,057	$19,224,454	$4,078,787	$86,534,298	$62,156,743	$68,707,723	$23,583,027	$7,019,400	$99,310,150	$71,974,469	$71,409,677	$25,474,212	$2,664,768	$99,548,657	$66,847,999
Capital Outlay	$26,534	$662,195	$1,589,813	$2,278,542	$2,343,970	$80,614	$961,080	$4,237,423	$5,279,117	$4,537,698	$88,193	$516,330	$3,948,134	$4,552,657	$2,789,063
Unclassified	$183,872	$928,180	-	$1,112,052	-	$-116,584	$1,501,572	-	$1,384,988	$5,000	$-216,584	$1,843,881	-	$1,627,297	$5,000
BUDGET ACT TOTALS	**$60,017,368**	**$13,681,789**	**$1,305,611**	**$75,004,768**	**$63,509,988**	**$60,204,915**	**$13,805,581**	**$2,315,556**	**$76,326,052**	**$75,115,330**	**$58,033,439**	**$14,333,315**	**$1,862,931**	**$74,229,685**	**$67,875,945**
State Operations	19,293,414	10,060,034	273,442	29,626,890	3,394,924	21,071,165	10,546,303	495,268	32,112,736	3,970,849	22,490,588	11,038,968	518,413	34,047,969	3,869,500
Local Assistance	40,714,682	3,178,803	418,378	44,311,863	58,637,817	39,285,877	2,564,632	1,002,398	42,852,907	67,608,276	35,814,783	2,530,538	940,053	39,285,374	62,787,685
Capital Outlay	9,272	442,952	613,791	1,066,015	1,477,247	47,873	494,646	817,890	1,360,409	3,531,205	28,068	364,386	404,465	796,919	1,213,760
Unclassified	-	-	-	-	-	-200,000	200,000	-	-	5,000	-300,000	399,423	-	99,423	5,000
STATUTORY APPROPRIATIONS	**$19,698,974**	**$14,852,311**	**$413,023**	**$34,964,308**	**$2,391,388**	**$17,877,642**	**$15,809,270**	**$548,745**	**$34,235,657**	**$3,448,073**	**$17,781,571**	**$11,608,025**	**$746,526**	**$30,136,122**	**$2,710,466**
State Operations	-658,125	2,039,116	12,819	1,393,810	49,021	-672,563	2,219,282	17,856	1,564,575	370,506	-698,171	945,488	18,000	265,317	387,955
Local Assistance	20,357,099	11,724,485	397,921	32,479,505	2,222,800	18,550,205	12,215,490	526,889	31,292,584	3,000,116	18,479,742	9,173,136	424,498	28,077,376	2,287,511
Capital Outlay	-	118,400	2,283	120,683	119,567	-	-10,428	4,000	-6,428	77,451	-	8,218	304,028	312,246	35,000
Unclassified	-	970,310	-	970,310	-	-	1,384,926	-	1,384,926	-	-	1,481,183	-	1,481,183	-
CONSTITUTIONAL APPROPRIATIONS	**$4,472,969**	**$4,076,643**	**-**	**$8,549,612**	**-**	**$11,614,020**	**$10,760,469**	**-**	**$22,374,489**	**-**	**$10,828,813**	**$10,642,048**	**-**	**$21,470,861**	**-**
State Operations	4,389,553	755,153	-	5,144,706	-	4,003,604	658,734	-	4,662,338	-	4,670,397	974,353	-	5,644,750	-
Local Assistance	-	3,363,620	-	3,363,620	-	7,527,000	10,185,089	-	17,712,089	-	6,075,000	9,704,420	-	15,779,420	-
Unclassified	83,416	-42,130	-	41,286	-	83,416	-83,354	-	62	-	83,416	-36,725	-	46,691	-
OTHER APPROPRIATIONS	**$2,214,212**	**$1,242,565**	**$4,385,593**	**$7,842,370**	**$7,161,403**	**$3,297,262**	**$-726,951**	**$9,430,497**	**$12,000,808**	**$7,266,414**	**$11,006,421**	**$4,344,438**	**$4,639,023**	**$19,989,882**	**$8,254,567**
State Operations	-62,782	184,176	149,366	270,760	5,118,121	-80,120	178,371	524,851	623,102	4,971,295	-93,856	134,594	99,165	139,903	4,941,461
Local Assistance	2,159,276	957,546	3,262,488	6,379,310	1,296,126	3,344,641	-1,382,184	5,490,113	7,452,570	1,366,077	11,040,152	4,066,118	1,300,217	16,406,487	1,772,803
Capital Outlay	17,262	100,843	973,739	1,091,844	747,156	32,741	476,862	3,415,533	3,925,136	929,042	60,125	143,726	3,239,641	3,443,492	1,540,303
Unclassified	100,456	-	-	100,456	-	-	-	-	-	-	-	-	-	-	-

SCHEDULE 10
SUMMARY OF FUND CONDITION STATEMENTS
(Dollars In Thousands)

Fund	Reserves June 30, 2011	Actual Revenues 2011-12	Actual Expenditures 2011-12	Reserves June 30, 2012	Estimated Revenues 2012-13	Estimated Expenditures 2012-13	Reserves June 30, 2013	Estimated Revenues 2013-14	Estimated Expenditures 2013-14	Reserves June 30, 2014
GENERAL FUND	**-2,282,311**	**87,070,787**	**86,403,503**	**-1,615,027**	**95,394,242**	**92,993,836**	**785,379**	**98,500,613**	**97,650,244**	**1,635,748**
SPECIAL FUNDS										
Abandoned Mine Reclamation & Minerals Fd	1,263	1,016	397	1,882	1,071	526	2,427	1,005	1,208	2,224
Abandoned Watercraft Abatement Fund	415	600	598	417	850	850	417	775	775	417
Accountancy Fund	14,651	9,052	9,402	14,301	10,230	11,212	13,319	10,254	11,626	11,947
Acupuncture Fund	5,830	-2,594	1,869	1,367	2,658	2,770	1,255	2,657	2,810	1,102
Acute Orphan Well Account, Oil, Gas, Geo	831	3	5	829	2	10	821	2	804	19
Administration Acct, Child & Families	24,359	4,757	6,027	23,089	4,569	4,600	23,058	4,415	4,436	23,037
Adoption Assistance Program Subacct	-	381,791	381,791	-	-	-	-	-	-	-
Adoptions Subaccount, HHSA	-	70,405	70,405	-	-	-	-	-	-	-
Adult Protective Services Subacct, HHSA	-	55,000	55,000	-	-	-	-	-	-	-
Advanced Services Fund, California	33,802	11,157	1,497	43,462	21,824	40,218	25,068	98,043	58,482	64,629
Aeronautics Account STF	3,039	5,614	6,992	1,661	5,449	5,608	1,502	5,448	5,663	1,287
Agricultural Export Promotion Acct, CA	55	8	6	57	10	10	57	10	10	57
Air Pollution Control Fund	42,574	139,421	157,304	24,691	145,337	153,826	16,202	104,267	117,391	3,078
Air Quality Improvement Fund	16,523	31,226	44,344	3,405	34,000	35,279	2,126	34,000	35,726	400
Air Toxics Inventory and Assessment Acct	708	516	220	1,004	600	980	624	600	975	249
Alcohol Beverages Control Fund	27,474	52,884	47,074	33,284	53,940	54,459	32,765	55,017	56,259	31,523
Alcoholic Beverage Control Appeals Fund	1,193	1,251	909	1,535	1,276	1,017	1,794	1,802	1,033	2,563
Alternative & Renewable & Vehicle Tech	71,581	104,536	99,609	76,508	107,859	173,027	11,340	103,397	107,488	7,249
Analytical Laboratory Account, Food & Ag	1,250	204	351	1,103	223	503	823	223	500	546
Antiterrorism Fund	763	435	542	656	1,400	819	1,237	1,400	1,259	1,378
Appellate Court Trust Fund	3,977	5,167	4,405	4,739	6,355	6,960	4,134	6,355	6,597	3,892
Apprenticeship Training Contribution Fd	18,650	9,942	10,368	18,224	8,000	10,729	15,495	8,000	11,085	12,410
Architects Board Fund, California	2,580	4,156	2,694	4,042	2,770	3,696	3,116	4,086	3,850	3,352
Architectural Paint Stewardship Account	-	-	-	-	577	253	324	205	262	267
Armory Discretionary Improvement Account	362	101	87	376	101	173	304	101	175	230
Asbestos Consultant Certification Acct	1,078	433	344	1,167	429	378	1,218	429	393	1,254
Asbestos Training Approval Account	531	193	121	603	192	135	660	192	139	713
Assembly and Senate, Operating Funds Of	32	-	-	32	-	-	32	-	-	32
Assembly Operating Fund	153	-	-	153	-	-	153	-	-	153
Assistance for Fire Equipment Acct,State	778	73	22	829	87	115	801	87	105	783
Athletic Commission Fund	466	1,387	1,830	23	1,381	1,195	209	1,392	1,193	408
Athltc Comm Neurlgcl Exmntn Acct, St	699	79	66	712	23	119	616	23	124	515
Attorney General Antitrust Account	585	1,906	1,548	943	1,905	2,324	524	1,905	2,421	8
Audit Fund, State	1,945	-	-2,778	4,723	-	-	4,723	-	-	4,723
AIDS Drug Assistance Program Rebate Fund	52,046	242,068	289,078	5,036	307,859	309,591	3,304	285,124	265,079	23,349
AIDS Vaccine Research Develop Grant Fd	27	-27	-	-	-	-	-	-	-	-
Barbering & Cosmetology Contingent Fund	16,081	10,855	16,943	9,993	21,785	19,983	11,795	22,789	20,546	14,038
Beach and Coastal Enhancement Acct,Calif	1,570	1,749	1,318	2,001	1,782	2,460	1,323	1,764	1,884	1,203
Behavioral Health Services Growth Spec	-	-	-	-	24,843	24,843	-	73,778	73,778	-
Behavioral Health Subaccount	-	-	-	-	959,396	959,396	-	984,239	984,239	-
Behavioral Science Examiners Fund	4,626	4,491	7,319	1,798	7,571	8,079	1,290	8,991	8,050	2,231
Beverage Container Recycling Fund, CA	184,983	1,202,974	1,182,672	205,285	1,083,991	1,196,167	93,109	1,233,689	1,201,753	125,045
Bicycle Transportation Account, STF	5,179	7,276	7,093	5,362	7,331	12,051	642	50	55	637

SCHEDULE 10 -- Continued
SUMMARY OF FUND CONDITION STATEMENTS
(Dollars In Thousands)

Fund	Reserves June 30, 2011	Actual Revenues 2011-12	Actual Expenditures 2011-12	Reserves June 30, 2012	Estimated Revenues 2012-13	Estimated Expenditures 2012-13	Reserves June 30, 2013	Estimated Revenues 2013-14	Estimated Expenditures 2013-14	Reserves June 30, 2014
Bimetal Processing Fee Acct, Bev Cont Re	12,830	1,549	395	13,984	1,365	381	14,968	1,369	381	15,956
Bingo Fund, Califomia	631	-	1	630	-	-	630	-	-	630
Birth Defects Monitoring Fund	6,167	3,723	2,945	6,945	3,630	4,153	6,422	3,875	4,192	6,105
Bldng Stnds Admin Special Revolving Fund	1,264	1,471	1,145	1,590	1,472	1,350	1,712	1,572	1,453	1,831
Breast Cancer Control Account	9,316	13,051	17,105	5,262	10,395	11,290	4,367	10,348	11,830	2,885
Breast Cancer Fund	4,188	-3,394	717	77	710	786	1	804	805	-
Breast Cancer Research Account	16,738	13,075	26,882	2,931	10,489	11,064	2,356	10,442	12,228	570
Business Fees Fund, Secty of State's	897	38,666	38,563	1,000	33,590	33,590	1,000	35,359	35,359	1,000
Cal- OSHA Targeted Inspection & Consult	13,155	21,870	8,223	26,802	40	8,849	17,993	-4,960	41	12,992
California Memorial Scholarship Fund	29	-	-	29	-	-	29	-	4	25
CalWORKs Maintenance of Effort Subacct	-	701,586	701,586	-	701,586	701,586	-	752,040	752,040	-
Cannery Inspection Fund	1,633	2,146	1,980	1,799	2,176	2,381	1,594	2,176	2,409	1,361
Car Wash Worker Fund	2,630	541	211	2,960	540	198	3,302	540	199	3,643
Car Wash Worker Restitution Fund	1,780	417	78	2,119	416	80	2,455	416	80	2,791
Carpet Stewardship Account, IWMF	-	-	-	-	290	253	37	290	262	65
Caseload Subacct, Sales Tax Growth Acct	-	227,637	227,637	-	28,756	28,756	-	-	-	-
Cemetery Fund	2,201	2,141	1,987	2,355	2,202	2,322	2,235	2,228	2,540	1,923
Centrl Cst St Vet Cmtry Ft Ord Oper, CA	-	-	-	-	1,074	1,074	-	-	-	-
Certification Acct, Consumer Affairs Fd	970	1,114	1,030	1,054	1,123	1,127	1,050	1,160	1,158	1,052
Certification Fund	4,080	1,483	1,349	4,214	1,427	1,701	3,940	1,427	1,681	3,686
Certified Access Specialist Fund	694	386	262	818	334	288	864	397	281	980
Certified Unified Program Account, State	2,556	1,451	1,186	2,821	1,586	2,227	2,180	1,573	2,256	1,497
Charity Bingo Mitigation Fund	-	13	13	-	10	10	-	10	10	-
Child Abuse Fund, DOJ	1,573	418	301	1,690	419	372	1,737	419	387	1,769
Child Abuse Prevention Subacct, HHSA	-	13,395	13,395	-	-	-	-	-	-	-
Child Care Acct, Child & Families Trust	23,129	14,107	12,737	24,499	13,565	13,565	24,499	13,102	13,102	24,499
Child Health and Safety Fund	4,651	4,908	2,497	7,062	4,628	5,713	5,977	4,628	5,828	4,777
Child Performer Services Permit Fund	-	-	-	-	250	-	250	690	701	239
Child Welfare Services Subacct, HHSA	-	670,486	670,486	-	-	-	-	-	-	-
Childhood Lead Poisoning Prevention Fund	71,905	11,210	20,083	63,032	21,202	23,678	60,556	21,202	23,870	57,888
Children & Families First Trust Fd, Cal	531	15,185	15,712	4	17,162	17,162	4	17,604	17,602	6
Children's Health & Human Services Sp Fd	88,547	251,328	307,898	31,977	364,603	282,732	113,848	484,973	461,199	137,622
Children's Medical Services Rebate Fund	31,585	11,339	8,000	34,924	9,117	9,000	35,041	9,117	9,000	35,158
Chiropractic Examiners Fund	2,591	3,602	4,060	2,133	3,519	3,677	1,975	3,524	3,833	1,666
Cigarette & Tobacco Products Compliance	7,384	1,657	850	8,191	1,573	1,203	8,561	1,499	1,273	8,787
Cigarette & Tobacco Products Surtax Fund	47	8,880	8,935	-8	9,859	9,760	91	10,064	9,987	168
Clandestine Drug Lab Clean-Up Account	8	-	-	8	-	-	8	-	-	8
Clinical Laboratory Improvement Fund	9,483	9,911	6,920	12,474	10,521	10,638	12,357	11,024	10,886	12,495
Clnup Loans Envirnmntl Asst Neighood Act	3,381	-29	-175	3,527	-40	-	3,487	-35	1,000	2,452
Co Medical Svc Subacct,Sales Tax Growth	-	-	-	-	6,521	6,521	-	8,018	8,018	-
Coachella Valley Mountains Conservancy	21	5	24	2	5	5	2	5	5	2
Coastal Access Account, SCCF	2,035	500	538	1,997	500	1,166	1,331	500	500	1,331
Coastal Act Services Fund	2,304	661	224	2,741	700	669	2,772	700	683	2,789
Collegiate License Plate Fund, Calif	1	-	-	1	-	-	1	-	-	1
Collins-Dugan Calif Conserv Corps Reimb	17,334	20,521	31,515	6,340	32,764	36,770	2,334	28,886	29,189	2,031

SCHEDULE 10 -- Continued
SUMMARY OF FUND CONDITION STATEMENTS
(Dollars In Thousands)

Fund	Reserves June 30, 2011	Actual Revenues 2011-12	Actual Expenditures 2011-12	Reserves June 30, 2012	Estimated Revenues 2012-13	Estimated Expenditures 2012-13	Reserves June 30, 2013	Estimated Revenues 2013-14	Estimated Expenditures 2013-14	Reserves June 30, 2014
Commnty Corrctns Perfmnc Incntvs Fd, St.	-	-	-419	419	-	419	-	-	-	-
Community Corrections Growth Special Acc	-	-	-	-	77,354	77,354	-	89,771	89,771	-
Community Corrections Subaccount	-	-	-	-	842,900	842,900	-	998,900	998,900	-
Community Revitalization Fee Fund	1	-	-	1	-1	-	-	-	-	-
Construction Management Education Acct	336	57	134	259	58	180	137	58	174	21
Contingent Fd of the Medical Board of CA	30,996	43,857	50,240	24,613	52,513	56,291	20,835	52,523	57,115	16,243
Continuing Care Provider Fee Fund	2,381	567	1,401	1,547	592	1,343	796	886	1,338	344
Contractors' License Fund	15,250	64,917	53,490	26,677	54,986	58,866	22,797	53,314	61,619	14,492
Corporations Fund, State	58,600	37,292	35,746	60,146	35,321	44,886	50,581	20,324	44,867	26,038
Corrections Training Fund	17,028	19,828	20,869	15,987	19,936	22,159	13,764	13,624	22,115	5,273
Cost of Implementation Account	-	-	-	-	-	-	-	41,893	39,604	2,289
Counties Children & Families Acct	-	373,592	373,592	-	359,221	359,221	-	346,867	346,867	-
County School Service Fd Contingency Ac	100	-	-	100	-	-	100	-	-	100
Court Collection Account	3,446	90,022	86,518	6,950	81,271	79,300	8,921	81,271	79,793	10,399
Court Facilities Trust Fund	-1,077	99,868	95,884	2,907	99,747	101,756	898	102,100	101,756	1,242
Court Interpreters' Fund	213	212	160	265	194	164	295	194	167	322
Court Reporters Fund	1,365	752	773	1,344	632	770	1,206	636	894	948
Credit Union Fund	2,484	6,429	7,193	1,720	7,272	7,380	1,612	8,622	7,538	2,696
Dam Safety Fund	1,341	10,826	10,672	1,495	11,185	11,257	1,423	11,639	11,691	1,371
Davis-Dolwig Account	-	-	-	-	10,000	10,000	-	10,000	10,000	-
Deaf & Disabled Telecomm Prg Admin Comm	16,132	63,675	68,688	11,119	55,434	54,968	11,585	55,434	64,001	3,018
Dealers' Record of Sale Special Account	18,231	5,829	11,621	12,439	19,379	20,809	11,009	24,137	22,404	12,742
Debt & Investment Advisory Comm Fund,Cal	5,385	1,780	2,231	4,934	1,958	2,798	4,094	2,010	2,882	3,222
Debt Limit Allocation Committee Fund,Cal	3,576	977	1,098	3,455	1,013	1,395	3,073	1,113	1,343	2,843
Deficit Recovery Bond Retirement Sinking	928	41,811	41,286	1,453	63	62	1,454	46,711	46,691	1,474
Dental Assistant Fund, State	2,310	1,634	1,499	2,445	1,647	1,742	2,350	1,664	1,859	2,155
Dental Hygiene Fund, State	711	1,119	942	888	1,089	1,412	565	1,106	1,530	141
Dentally Underserved Account	1,979	7	25	1,961	10	133	1,838	10	132	1,716
Dentistry Fund, State	6,159	9,926	9,905	6,180	8,013	11,486	2,707	10,746	11,878	1,575
Department of Agriculture Account, Ag Fd	37,328	118,364	113,419	42,273	127,663	139,331	30,605	143,595	137,378	36,822
Developmental Disabilities Prog Dev Fund	1,504	5,158	6,662	-	10,143	10,142	1	9,556	9,557	-
Developmental Disabilities Services Acct	153	-	-	153	150	150	153	150	150	153
Diesel Emission Reduction Fund	3,087	180	-	3,267	214	-	3,481	214	-	3,695
Disability Access & Education Revolv Fd	-	-	-	-	-	-	-	532	532	-
Disability Access Account	3,462	5,719	6,422	2,759	4,962	5,645	2,076	4,474	6,545	5
Disaster Relief Fund	3	-	-	3	-	-	3	-	-	3
Dispensing Opticians Fund	359	186	200	345	171	342	174	168	333	9
Dist Attorney & Public Defender Subaccnt	-	-	-	-	14,600	14,600	-	17,100	17,100	-
Dist. Attorney & Pub. Defender Growth SA	-	-	-	-	5,157	5,157	-	5,985	5,985	-
District Attorney and Public Defender	-	12,700	12,700	-	-	-	-	-	-	-
Domestic Violence Trng & Education Fund	690	637	1,136	191	712	805	98	792	795	95
Drinking Water Operator Cert Special Act	2,438	1,627	1,372	2,693	1,659	1,696	2,656	1,707	1,818	2,545
Drinking Water Treatment & Research Fund	2,594	10	-	2,604	10	-	2,614	10	-	2,624
Driver Training Penalty Assessment Fund	4,626	1,626	1,561	4,691	1,607	1,654	4,644	1,647	1,655	4,636
Driving Under-the-Influence Prog Lic Trs	2,208	-99	1,605	504	1,415	1,763	156	1,819	1,812	163

SCHEDULE 10 -- Continued
SUMMARY OF FUND CONDITION STATEMENTS
(Dollars In Thousands)

Fund	Reserves June 30, 2011	Actual Revenues 2011-12	Actual Expenditures 2011-12	Reserves June 30, 2012	Estimated Revenues 2012-13	Estimated Expenditures 2012-13	Reserves June 30, 2013	Estimated Revenues 2013-14	Estimated Expenditures 2013-14	Reserves June 30, 2014
Drug and Device Safety Fund	7,534	4,466	5,155	6,845	4,325	5,863	5,307	4,325	6,258	3,374
Drug Court Subaccount, HHSA	-	26,851	26,851	-	-	-	-	-	-	-
Drug Medi-Cal Subaccount, HHSA	-	131,085	131,085	-	-	-	-	-	-	-
DNA Identification Fund	34,625	56,478	54,766	36,337	64,355	76,626	24,066	65,982	77,981	12,067
Earthquake Emergency Invest Acct-NDA Fd	49	-	-	49	-	-	49	-	-	49
Earthquake Risk Reduction Fund of 1996	407	1,000	1,000	407	1,000	1,000	407	1,000	1,000	407
Education Acct, Child & Families TrustFd	25,051	23,483	27,297	21,237	22,582	22,582	21,237	21,810	21,810	21,237
Educational Telecommunication Fund	2,458	-	1,815	643	-	332	311	-	311	-
Electric Program Investment Charge Fund	-	-	-	-	12,128	1,094	11,034	197,100	193,280	14,854
Electrician Certification Fund	4,959	2,304	1,687	5,576	2,500	2,676	5,400	2,400	2,621	5,179
Electronic and Appliance Repair Fund	2,270	2,303	2,660	1,913	2,300	2,432	1,781	2,289	2,702	1,368
Electronic Waste Recovery & Recycling	87,626	112,184	95,597	104,213	84,991	96,406	92,798	55,373	96,714	51,457
Elevator Safety Account	10,208	27,086	19,383	17,911	26,682	20,709	23,884	26,692	21,630	28,946
Emerg Medical Srvcs Trng Prog Approvl Fd	153	224	377	-	371	358	13	371	377	7
Emergency Food Assistance Program Fund	644	592	632	604	626	602	628	148	624	152
Emergency Medical Air Transportation Act	3,232	9,199	-	12,431	7,170	15,272	4,329	7,170	10,010	1,489
Emergency Medical Services Personnel Fnd	713	2,092	1,570	1,235	2,103	1,550	1,788	2,103	1,933	1,958
Emergency Medical Technician Cert Fund	105	1,436	1,134	407	1,903	1,596	714	1,903	1,624	993
Emergency Telephone Number Acct, State	69,827	83,320	98,579	54,568	108,700	122,386	40,882	78,100	118,980	2
Employment Development Contingent Fund	-21,843	69,084	47,241	-	64,062	64,062	-	53,186	53,186	-
Employment Developmnt Dept Benefit Audit	-1	14,988	14,987	-	15,435	15,435	-	15,876	15,876	-
Energy Conservation Assistance Ac, State	12,701	27,042	266	39,477	3,010	42,487	-	2,686	2,686	-
Energy Facility License and Compliance	6,201	4,529	5,938	4,792	3,585	2,495	5,882	3,585	3,515	5,952
Energy Resources Programs Account	-12,674	84,727	60,589	11,464	90,977	71,780	30,661	70,786	75,020	26,427
Energy Resources Surcharge Fund	38,947	-10,552	-	28,395	-20,191	-	8,204	-	-	8,204
Energy Tech Research, Dev, & Demo Acct	2,926	33	-	2,959	1	13	2,947	-	-	2,947
Enhanced Fleet Mod Subacct,HiPollRprRmvl	5,513	51,303	37,901	18,915	31,599	37,511	13,003	31,774	36,564	8,213
Enhancing Law Enforcement Activities Sub	-	-	-	-	489,900	489,900	-	489,900	489,900	-
Enterprise Zone Fund	1,228	1,672	1,045	1,855	1,100	1,288	1,667	1,500	1,472	1,695
Entertainment Work Permit Fund	-	24	-	24	300	65	259	50	309	-
Environmental Enhancement and Mitigation	8,329	10,121	8,487	9,963	10,030	13,646	6,347	26	1	6,372
Environmental Enhancement Fund	2,006	186	26	2,166	106	361	1,911	102	358	1,655
Environmental Laboratory Improvement Fnd	783	2,795	2,369	1,209	2,904	2,883	1,230	2,904	3,161	973
Environmental License Plate Fund, Calif	3,761	40,794	38,333	6,222	43,391	42,065	7,548	43,361	42,236	8,673
Environmental Protection Trust Fund	124	1	-	125	1	-	126	1	-	127
Environmental Quality Assessment Fund	341	78	213	206	-	52	154	-	7	147
Environmental Water Fund	79	-	-	79	-	-	79	-	-	79
Equality in Prv & Svcs Domestic Abuse Fd	221	87	101	207	75	103	179	75	103	151
Expedited Site Remediation Trust Fund	2,970	-	692	2,278	561	-	2,839	-	2,837	2
Export Document Program Fund	1,812	344	215	1,941	325	233	2,033	325	499	1,859
Exposition Park Improvement Fund	4,691	6,410	7,328	3,773	6,412	7,698	2,487	6,412	7,957	942
Fair and Exposition Fund	5,952	3,224	2,626	6,550	1,004	3,581	3,973	1,004	1,356	3,621
False Claims Act Fund	1,797	13,169	8,773	6,193	11,599	11,720	6,072	11,007	12,189	4,890
Family Law Trust Fund	1,754	1,924	1,842	1,836	1,919	2,786	969	1,919	2,812	76
Farm & Ranch Solid Waste Cleanup & Abate	1,887	300	272	1,915	1,000	1,138	1,777	-	1,141	636

SCHEDULE 10 -- Continued
SUMMARY OF FUND CONDITION STATEMENTS
(Dollars In Thousands)

Fund	Reserves June 30, 2011	Actual Revenues 2011-12	Actual Expenditures 2011-12	Reserves June 30, 2012	Estimated Revenues 2012-13	Estimated Expenditures 2012-13	Reserves June 30, 2013	Estimated Revenues 2013-14	Estimated Expenditures 2013-14	Reserves June 30, 2014
Farmworker Remedial Account	530	237	-	767	225	102	890	225	102	1,013
Film Promotion and Marketing Fund	1	8	3	6	10	10	6	10	10	6
Financial Institutions Fund	11,736	24,364	24,553	11,547	24,463	25,914	10,096	24,463	26,173	8,386
Financial Responsibility Penalty Account	1,131	-181	-	950	-	-	950	-	-	950
Fingerprint Fees Account	35,662	40,579	59,108	17,133	69,937	68,758	18,312	69,937	70,577	17,672
Fire and Arson Training Fund, Calif	2,004	2,239	2,825	1,418	2,408	3,268	558	2,708	3,231	35
Fire Marshal Fireworks Enf & Disp Fd, St	586	6	330	262	199	179	282	600	332	550
Fire Marshal Licensing & Cert Fund, St	1,574	2,154	2,020	1,708	2,120	2,870	958	2,120	2,833	245
Firearm Safety Account	1,316	677	307	1,686	846	336	2,196	1,058	345	2,909
Firearms Safety and Enforcement Specl Fd	5,244	850	3,218	2,876	7,203	3,416	6,663	9,004	3,499	12,168
Fiscal Recovery Fund	205,556	1,314,963	983,702	536,817	1,401,700	1,398,717	539,800	1,498,100	1,496,144	541,756
Fish and Game Preservation Fund	96,722	90,446	97,925	89,243	95,053	113,992	70,304	99,278	110,596	58,986
Fish and Wildlife Pollution Account	661	1,595	2,035	221	1,195	1,281	135	1,059	1,133	61
Food Safety Fund	6,685	7,414	6,005	8,094	7,298	7,448	7,944	7,298	7,795	7,447
Foreclosure Consultant Regulation Fund	9	2	-	11	2	-	13	2	-	15
Foster and Small Family Insurance Fund	3,260	-	-278	3,538	-	-	3,538	-	-	3,538
Foster Care Administration Subaccount	-	40,094	40,094	-	-	-	-	-	-	-
Foster Care Assistance Subaccount, HHSA	-	391,067	391,067	-	-	-	-	-	-	-
Funeral Directors and Embalmers Fund, St	1,953	1,261	1,435	1,779	1,293	1,741	1,331	1,353	1,804	880
Gambling Addiction Program Fund	485	197	119	563	205	160	608	205	159	654
Gambling Control Fines & Penalties Acct	1,649	164	41	1,772	458	47	2,183	164	48	2,299
Gambling Control Fund	23,921	-1,993	8,994	12,934	16,557	11,048	18,443	16,557	13,072	21,928
Garment Industry Regulations Fund	3,918	2,874	2,895	3,897	2,874	2,967	3,804	2,874	3,053	3,625
Garment Manufacturers Special Account	2,906	394	-	3,300	395	500	3,195	395	500	3,090
Gas Consumption Surcharge Fund	175,433	477,458	495,044	157,847	566,605	588,954	135,498	566,605	588,086	114,017
General Growth Subacct,Sales Tax Growth	-	-	-	-	126,650	126,650	-	191,085	191,085	-
Genetic Disease Testing Fund	7,042	108,611	111,136	4,517	111,136	114,728	925	115,690	115,859	756
Geology and Geophysics Account PELS Fund	1,061	987	1,007	1,041	997	1,366	672	969	1,384	257
Geothermal Resources Development Account	6	3,338	3,371	-27	2,800	2,778	-5	2,800	2,770	25
Glass Processing Fee Account	758	54,513	57,896	-2,625	64,041	58,395	3,021	63,076	54,275	11,822
Gold Star License Plate Account, SLPF	185	-	185	-	-	-	-	-	-	-
Graphic Design License Plate Account	2,620	2,352	2,803	2,169	2,279	2,828	1,620	2,211	2,868	963
Greenhouse Gas Reduction Fund	-	-	-	-	200,000	200,000	-	400,000	400,000	-
Guide Dogs for the Blind Fund	195	144	175	164	143	197	110	152	198	64
Habitat Conservation Fund	34,082	6,673	28,878	11,877	6,562	6,140	12,299	9,432	9,432	12,299
Hatchery and Inland Fisheries Fund	15,594	20,317	25,784	10,127	20,840	24,920	6,047	21,366	21,590	5,823
Hazardous & Idle-Deserted Well Abate Fnd	599	111	133	577	129	251	455	129	125	459
Hazardous Liquid Pipeline Safety Calif	5,691	3,221	2,115	6,797	3,345	3,339	6,803	3,345	3,369	6,779
Hazardous Spill Prevention Acct, RAPRF	4	-	-	4	-	-	4	-	-	4
Hazardous Waste Control Account	23,623	48,692	45,678	26,637	48,174	48,871	25,940	51,703	51,551	26,092
Health Care Benefits Fund	262	1,843	1,843	262	2,000	2,000	262	2,000	2,000	262
Health Data & Planning Fund, CA	12,935	29,978	25,716	17,197	25,301	28,749	13,749	26,256	28,410	11,595
Health Ed Acct, Cig & Tob Pr Surtax	18,802	65,349	66,558	17,593	61,979	71,643	7,929	60,333	64,849	3,413
Health Information Technology & Exchange	-179	10,672	10,493	-	10,500	10,500	-	9,881	9,881	-
Health Statistics Special Fund	8,139	19,336	23,374	4,101	20,665	21,893	2,873	22,164	23,717	1,320

SCHEDULE 10 -- Continued
SUMMARY OF FUND CONDITION STATEMENTS
(Dollars In Thousands)

Fund	Reserves June 30, 2011	Actual Revenues 2011-12	Actual Expenditures 2011-12	Reserves June 30, 2012	Estimated Revenues 2012-13	Estimated Expenditures 2012-13	Reserves June 30, 2013	Estimated Revenues 2013-14	Estimated Expenditures 2013-14	Reserves June 30, 2014
Health Subaccount, Sales Tax Account	-	325,583	325,583	-	325,583	325,583	-	398,553	398,553	-
Hearing Aid Dispensers Acct of the SLPAF	735	-135	600	-	-	-	-	-	-	-
Heritage Enrichment Resource Fund	14	52	38	28	52	40	40	52	48	44
Heritage Fund, California	62	-	-	62	-	-	62	-	-	62
High Polluter Repair or Removal Account	11,885	36,298	40,644	7,539	36,508	38,925	5,122	36,873	41,523	472
High-Cost Fund-A Admin Committee Fd, Cal	56,061	223	37,338	18,946	53,645	50,047	22,544	55,349	50,001	27,892
High-Cost Fund-B Admin Committee Fd, Cal	-2,915	48,104	22,491	22,698	46,547	36,533	32,712	123,209	29,509	126,412
Highway Account, State, STF	373,520	3,441,541	3,334,068	480,993	3,208,502	3,424,232	265,263	3,734,548	3,616,141	383,670
Highway Users Tax Account, TTF	35,708	1,788,172	1,823,880	-	1,535,943	1,535,943	-	1,873,522	1,873,522	-
Historic Property Maintenance Fund	-308	1,653	1,500	-155	1,937	1,658	124	2,105	1,655	574
Home Furnish & Thermal Insulation Fund	3,741	2,571	4,049	2,263	3,914	4,679	1,498	5,413	4,884	2,027
Horse Racing Fund	1,415	11,723	11,596	1,542	11,599	11,561	1,580	11,647	11,726	1,501
Hospital Building Fund	113,632	-21,189	48,036	44,407	45,142	55,505	34,044	48,142	57,288	24,898
Hospital Quality Assurance Revenue Fund	595,164	49,453	637,351	7,266	5,594,600	4,788,224	813,642	3,145,590	3,790,569	168,663
Hospital Svc Acct, Cig & Tob Pr Surtax	16,317	63,130	70,593	8,854	57,429	58,946	7,337	54,711	58,946	3,102
HICAP Fund, State	779	2,744	2,480	1,043	2,936	2,493	1,486	2,936	2,487	1,935
Illegal Drug Lab Cleanup Account	4,660	16	898	3,778	6	892	2,892	17	883	2,026
Immediate and Critical Needs Acct, SCFCF	405,524	-238,659	105,804	61,061	301,121	288,803	73,379	100,281	159,526	14,134
Indian Gaming Special Distribution Fund	82,787	15,759	37,440	61,106	10,295	41,682	29,719	6,271	30,701	5,289
Industrial Development Fund	23	15	34	4	315	263	56	218	269	5
Industrial Rel Construction Enforce Fd	1,164	127	64	1,227	127	62	1,292	-1,292	-	-
Infant Botulism Treatment & Prevention	7,483	6,011	4,808	8,686	4,233	6,249	6,670	4,233	6,201	4,702
Inland Wetlands Cons Fd, Wildlife Rest	1,127	4	-	1,131	4	500	635	4	-	639
Insurance Fund	57,472	201,217	222,163	36,526	211,925	223,053	25,398	234,523	238,365	21,556
Int Hlth Info Intgrty Qual Imprvmnt Acct	8	16	-	24	25	25	24	25	25	24
Integrated Waste Management Account	23,259	34,587	35,527	22,319	34,641	40,490	16,470	36,154	41,462	11,162
Internatl Student Exch Visitor Plcmt Org	74	5	-	79	5	-	84	5	-	89
Judicial Admin Efficiency & Modernztion	4,382	-19,857	-23,356	7,881	-7,881	-	-	-	-	-
Juvenile Justice Growth Special Account	-	-	-	-	10,314	10,314	-	11,969	11,969	-
Juvenile Reentry Grant Special Account	-	-	-	-	5,453	5,453	-	6,022	6,022	-
Juvenile Reentry Grant Subaccount, JJA	-	3,742	3,742	-	-	-	-	-	-	-
Labor and Workforce Development Fund	4,137	5,276	366	9,047	4,000	5,578	7,469	4,000	5,268	6,201
Labor Enforcement and Compliance Fund	20,688	37,926	37,740	20,874	36,184	38,714	18,344	47,214	43,583	21,975
Lake Tahoe Conservancy Account	1,888	1,172	1,321	1,739	1,182	2,366	555	1,182	1,144	593
Landscape Architects Fd, CA Bd/Arch Exam	2,109	778	602	2,285	760	1,133	1,912	759	1,174	1,497
Law Library Special Account,Calif_State	459	406	562	303	410	605	108	410	503	15
Lead-Related Construction Fund	528	516	437	607	500	488	619	500	538	581
Leaking Undrgrnd Stor Tank Cost Recovery	101	-	-	101	-	-	101	-	-	101
Licensed Midwifery Fund	153	34	-	187	35	-	222	34	-	256
Licensing and Certification Prog Fd, PH	44,386	78,287	70,280	52,393	75,400	86,857	40,936	76,955	89,039	28,852
Lifetime License Trust Acct, Fish & Game	8,074	366	-	8,440	495	-	8,935	509	-	9,444
Loc Pub Prosecutors & Pub Defenders Trng	1,055	854	869	1,040	853	881	1,012	853	882	983
Local Agency Deposit Security Fund	452	244	258	438	241	396	283	241	409	115
Local Airport Loan Account	13,119	1,037	1,020	13,136	1,245	-1,435	15,816	1,242	-1,435	18,493
Local Community Corrections Acct, LRF	-	354,300	354,300	-	-	-	-	-	-	-

SCHEDULE 10 -- Continued
SUMMARY OF FUND CONDITION STATEMENTS
(Dollars In Thousands)

Fund	Reserves June 30, 2011	Actual Revenues 2011-12	Actual Expenditures 2011-12	Reserves June 30, 2012	Estimated Revenues 2012-13	Estimated Expenditures 2012-13	Reserves June 30, 2013	Estimated Revenues 2013-14	Estimated Expenditures 2013-14	Reserves June 30, 2014
Local Govt Geothermal Resource Subacct	1,780	1,801	362	3,219	1,201	809	3,611	1,201	4,010	802
Local Jurisdiction Energy Assistance	1,312	-	-	1,312	1	-	1,313	-	-	1,313
Local Law Enforcement Services Acct, LRF	-	489,900	489,900	-	-	-	-	-	-	-
Local Revenue Fund	-	714	714	-	699	699	-	725	725	-
Local Safety and Protection Account, TTF	773	-	-	773	-	-	773	-	-	773
Local Transportation Loan Acct, SHA, STF	3,975	15	-	3,990	14	-	4,004	14	-	4,018
Long-Term Care Quality Assurance Rev Fd	-	-	-	-	-	-	-	511,079	-	511,079
Low Income Health MCE Out Network ECS	-	-	-	-	86,400	66,400	20,000	129,600	99,600	50,000
Major Risk Medical Insurance Fund	17,059	33,067	25,336	24,790	30,885	43,020	12,655	31,800	42,955	1,500
Managed Care Admin Fines & Penalties Fnd	3,289	-2,264	-	1,025	-90	-	935	-149	-	786
Managed Care Fund	15,427	42,129	40,359	17,197	38,332	50,044	5,485	45,904	48,907	2,482
Marine Invasive Species Control Fund	3,150	4,364	4,246	3,268	4,590	4,754	3,104	4,590	4,745	2,949
Mass Media Comm Acct, Child & Fam Trust	31,405	28,856	40,530	19,731	27,006	27,006	19,731	26,079	26,079	19,731
Mass Transit Revolving Account STF	1,000	-	-	1,000	-	-	1,000	-	-	1,000
Medical Marijuana Program Fund	123	457	276	304	294	290	308	-61	208	39
Medical Waste Management Fund	2,605	2,108	1,820	2,893	2,107	2,139	2,861	2,107	2,231	2,737
Mental Health Practitioner Education Fd	660	336	445	551	345	597	299	345	541	103
Mental Health Services Fund	1,408,282	1,190,743	1,842,369	756,656	1,351,609	1,417,780	690,485	1,195,946	1,402,754	483,677
Mental Health Subaccount, Sales Tax Acct	-	1,083,600	1,083,600	-	1,130,128	1,130,128	-	1,131,665	1,131,665	-
Mental Hlth Facility Licensing Fund	92	364	391	65	363	393	35	360	393	2
Mexican Amer Vet's Memrl Beautif/Enhance	13	153	31	135	20	27	128	100	18	210
Mine Reclamation Account	2,591	3,646	3,923	2,314	3,658	4,343	1,629	3,665	4,688	606
Missing Children Reward Fund	7	-	-	7	-	-	7	-	-	7
Missing Persons DNA Data Base Fund	4,813	-739	3,051	1,023	3,240	3,326	937	4,220	3,460	1,697
Mobilehome Manufactured Home Revolv Fd	6,285	18,962	17,011	8,236	19,095	17,537	9,794	19,095	17,867	11,022
Mobilehome Parks & Spec. Occupancy Rv Fd	3,405	6,713	6,118	4,000	6,771	6,859	3,912	6,771	6,847	3,836
Motor Carriers Safety Improvement Fund	3,462	1,634	2,056	3,040	1,658	2,078	2,620	1,658	2,099	2,179
Motor Vehicle Account, STF	286,342	2,835,112	2,630,852	490,602	2,543,513	2,799,745	234,370	2,917,353	2,914,609	237,114
Motor Vehicle Fuel Account, TTF	-11,858	39,637	27,779	-	30,048	30,048	-	31,699	31,699	-
Motor Vehicle Insurance Account, State	27,458	12,100	30,603	8,955	43,195	49,437	2,713	40,000	34,172	8,541
Motor Vehicle License Fee Account, TTF	7,581	29,939	34,698	2,822	27,720	30,382	160	22,485	22,560	85
Motor Vehicle Parking Facil Moneys Acct	686	3,302	2,948	1,040	3,371	2,327	2,084	3,386	3,321	2,149
Motor Vehicle Trans Tax Account, TTF	1,751	-	-	1,751	-	-	1,751	-1,751	-	-
Narcotic Treatment Program Licensing Trt	863	1,334	1,252	945	1,384	1,365	964	1,384	1,384	964
Native Species Conserv & Enhancement Acc	304	69	-	373	95	-	468	87	-	555
Natural Gas Subaccount, PIRD&D Fund	23,308	24,261	26,334	21,235	24,262	41,363	4,134	24,262	24,110	4,286
Naturopathic Doctor's Fund	277	189	104	362	220	172	410	217	166	461
New Motor Vehicle Board Account	1,270	1,063	1,645	688	1,495	1,623	560	1,630	1,729	461
Nondesignated Public Hospital Supplemntl	1,672	9	1,225	456	8	457	7	2	-	9
Nondrug Medi-Cal Substance Abuse Tretmnt	-	20,533	20,533	-	-	-	-	-	-	-
Nontoxic Dry Cleaning Incentive Trst Fd	1,012	165	449	728	180	403	505	180	403	282
Notes Expense Account, State	250	-	-	250	-	-	250	-	-	250
Nuclear Planning Assessment Special Acct	-18	4,404	5,073	-687	6,351	5,664	-	5,796	5,796	-
Nursing Home Admin St Lic Exam Fund	610	357	288	679	372	328	723	372	344	751
Occupancy Compliance Monitoring Account	37,465	-16,713	2,803	17,949	5,368	3,645	19,672	5,368	3,827	21,213

SCHEDULE 10 -- Continued
SUMMARY OF FUND CONDITION STATEMENTS
(Dollars In Thousands)

Fund	Reserves June 30, 2011	Actual Revenues 2011-12	Actual Expenditures 2011-12	Reserves June 30, 2012	Estimated Revenues 2012-13	Estimated Expenditures 2012-13	Reserves June 30, 2013	Estimated Revenues 2013-14	Estimated Expenditures 2013-14	Reserves June 30, 2014
Occupational Lead Poisoning Prev Account	3,605	3,154	3,883	2,876	3,100	3,995	1,981	3,100	4,078	1,003
Occupational Safety and Health Fund	29,859	34,882	40,731	24,010	35,475	39,955	19,530	57,932	51,355	26,107
Occupational Therapy Fund	896	979	1,267	608	1,688	1,351	945	1,086	1,428	603
Off Highway License Fee Fund	185	1,994	2,179	-	2,405	2,405	-	2,405	2,405	-
Off-Highway Vehicle Trust Fund	166,865	126,799	91,660	202,004	-22,840	120,120	59,044	82,095	96,364	44,775
Office of Patient Advocate Trust Fund	-	-	-	-	2,506	2,477	29	2,526	2,526	29
Oil Spill Prevention & Administration Fd	8,900	37,470	34,798	11,572	38,590	42,388	7,774	39,842	42,261	5,355
Oil Spill Response Trust Fund	10,921	4,230	2,750	12,401	555	2,011	10,945	566	2,009	9,502
Oil, Gas and Geothermal Administrative	5,940	29,055	27,731	7,264	30,858	34,508	3,614	37,027	35,534	5,107
Olympic Training Account,California	49	-43	-	6	-	-	6	-	-	6
Optometry Fund, State	1,520	717	1,276	961	1,751	1,704	1,008	1,788	1,849	947
Osteopathic Medical Bd of Calif Contn Fd	4,450	-32	1,525	2,893	1,546	1,763	2,676	1,622	1,806	2,492
Other - Unallocated Special Funds	-	-	-42,850	42,850	5,737	38,177	10,410	-	207,434	-197,024
Outpatient Setting Fd of Medical Board	260	1	2	259	63	27	295	1	27	269
Parks and Recreation Fund, State	57,682	138,790	138,259	58,213	125,309	149,333	34,189	113,309	130,918	16,580
Payphone Service Providers Committee Fd	217	1	-	218	1	72	147	1	72	76
Peace Officers' Training Fund	30,009	44,941	49,928	25,022	45,284	58,877	11,429	48,717	59,447	699
Pedestrian Safety Account, STF	10	-	-	10	-	-	10	-	-	10
Penalty Acct, Ca Bev Container Recyc Fd	4,110	1,077	-	5,187	214	-	5,401	215	-	5,616
Perinatal Insurance Fund	11,635	55,075	48,289	18,421	47,778	57,535	8,664	48,666	57,328	2
Pesticide Regulation Fund, Dept of	15,445	74,601	74,537	15,509	77,430	78,463	14,476	78,863	81,557	11,782
Pharmacy Board Contingent Fund	13,823	12,703	12,969	13,557	11,953	14,905	10,605	11,945	15,909	6,641
Physical Therapy Fund	2,420	1,746	3,254	912	3,249	3,208	953	3,247	3,175	1,025
Physician Assistant Fund	2,195	-133	1,089	973	1,438	1,420	991	1,508	1,391	1,108
Physician Svc Acct, Cig & Tob Pr Surtax	2,671	-1,246	105	1,320	103	105	1,318	-1,207	105	6
Pierce's Disease Management Account	16,030	1,902	4,867	13,065	2,756	6,526	9,295	2,756	3,227	8,824
Pilot Commissioners' Special Fd, Board	3,421	2,553	1,759	4,215	1,787	2,232	3,770	1,679	2,224	3,225
Podiatric Medicine Fund, Board of	857	921	919	859	891	1,178	572	890	1,404	58
Political Dsclose, Acctablty, Trans, Acs	-	-	-	-	-	-	-	200	81	119
Pressure Vessel Account	46	3,993	3,674	365	4,681	4,997	49	5,406	5,113	342
Private Hospital Supplemental Fund	67,723	-23,972	6,325	37,426	-11,415	999	25,012	-2,574	-	22,438
Private Investigator Fund	1,700	-722	591	387	724	650	461	715	654	522
Private Postsecondary Education Admin Fd	6,473	7,696	5,835	8,334	10,926	8,211	11,049	11,001	8,753	13,297
Private Security Services Fund	9,721	7,033	10,345	6,409	10,035	11,219	5,225	10,266	12,084	3,407
Professional Engineer & Land Surveyor Fd	5,978	5,087	10,368	697	8,884	9,293	288	11,950	9,911	2,327
Professional Fiduciary Fund	58	420	241	237	491	406	322	568	442	448
Professional Forester Registration Fund	549	82	169	462	119	229	352	119	227	244
Property Acquisition Law Money Account	2,284	3,536	4,731	1,089	2,970	3,085	974	3,225	3,097	1,102
Protective Services Growth Special Acct	-	-	-	-	157,122	157,122	-	137,398	137,398	-
Protective Services Subaccount	-	-	-	-	1,640,400	1,640,400	-	1,817,891	1,817,891	-
Psychiatric Technicians Account	1,978	1,730	1,803	1,905	1,722	2,162	1,465	1,721	2,111	1,075
Psychology Fund	4,165	3,612	3,157	4,620	3,592	4,418	3,794	3,661	4,492	2,963
Pub Sch Plng Desgn & Constr Rev Revlv Fd	12,110	44,978	42,637	14,451	38,224	47,245	5,430	48,966	46,465	7,931
Publ Utilities Comm Utilities Reimb Acct	21,718	84,948	84,074	22,592	93,678	89,120	27,150	118,440	89,607	55,983
Public Beach Restoration Fund	253	1,140	1,140	253	350	350	253	-	-	253

SCHEDULE 10 -- Continued
SUMMARY OF FUND CONDITION STATEMENTS
(Dollars In Thousands)

Fund	Reserves June 30, 2011	Actual Revenues 2011-12	Actual Expenditures 2011-12	Reserves June 30, 2012	Estimated Revenues 2012-13	Estimated Expenditures 2012-13	Reserves June 30, 2013	Estimated Revenues 2013-14	Estimated Expenditures 2013-14	Reserves June 30, 2014
Public Hospital Invest Improve Incentive	-3,077	459,547	456,469	1	786,032	786,032	1	817,500	817,500	1
Public Int Res, Dev & Demonstratn Progrm	96,196	26,188	48,139	74,245	-9,650	32,007	32,588	-9,800	7,441	15,347
Public Res Acct, Cig & Tob Pr Surtax	2,141	13,737	13,550	2,328	13,124	13,128	2,324	9,637	11,209	752
Public Rights Law Enforcement Special Fd	5,675	185	1,514	4,346	3,708	5,779	2,275	3,604	5,749	130
Public Transportation Account, STF	247,469	622,513	641,845	228,137	661,810	761,311	128,636	663,544	753,330	38,850
Public Util Comm Transport Reimb Acct	3,955	11,777	10,087	5,645	10,746	11,142	5,249	10,746	11,583	4,412
Public Works Enforcement Fund, State	168	2,449	611	2,006	1,003	2,100	909	6,000	5,720	1,189
PET Processing Fee Acct, Bev Cont Rec Fd	5,257	22,035	22,002	5,290	10,741	7,331	8,700	35,997	33,047	11,650
PUC Ratepayer Advocate Account	4,645	23,268	23,132	4,781	23,909	23,173	5,517	24,413	24,483	5,447
Radiation Control Fund	9,146	20,459	21,642	7,963	22,241	23,099	7,105	22,241	22,656	6,690
Rail Accident Prevention & Response Fund	13	-	-	13	-	-	13	-	-	13
Real Estate Appraisers Regulation Fund	6,046	2,927	4,831	4,142	2,662	5,003	1,801	10,558	5,384	6,975
Real Estate Fund	30,383	43,054	46,611	26,826	43,462	46,495	23,793	44,547	47,581	20,759
Recreational Health Fund	255	242	59	438	-341	1	96	-	-	96
Recycling Market Development Rev Loan	10,745	1,233	1,856	10,122	1,207	7,251	4,078	1,326	4,021	1,383
Reg Environmental Health Specialist Fd	633	301	396	538	319	343	514	319	348	485
Registered Nurse Education Fund	2,814	1,863	2,093	2,584	1,920	2,435	2,069	1,920	2,190	1,799
Registered Nursing Fund, Board of	13,347	20,863	27,214	6,996	29,838	29,277	7,557	30,439	29,641	8,355
Registry of Charitable Trusts Fund	4,053	770	2,773	2,050	3,644	3,008	2,686	3,645	3,128	3,203
Removal & Remedial Action Acct	6,373	1,195	1,355	6,213	3,860	3,368	6,705	3,860	3,353	7,212
Renewable Energy Resources Dev Trust Fnd	5,993	12	4,991	1,014	5,002	-	6,016	-4,988	-	1,028
Renewable Resource Trust Fund	113,930	37,707	64,534	87,103	66,100	94,036	59,167	31,213	60,922	29,458
Research & Devel Acct, Child & Fam Trust	17,831	14,081	19,528	12,384	13,512	13,512	12,384	13,049	13,049	12,384
Research Acct, Cig & Tob Pr Surtax	10,502	16,406	24,998	1,910	15,476	15,763	1,623	15,065	15,853	835
Residential & Outpatient Prog Lic Fund	2,567	3,826	4,184	2,209	3,187	4,515	881	3,780	4,532	129
Resources License Plate Fund	763	-	-	763	-	-	763	-	-	763
Respiratory Care Fund	2,213	2,659	2,471	2,401	2,698	3,144	1,955	2,723	3,217	1,461
Responsibility Area Fire Prevention Fund	-	88,914	50,000	38,914	88,914	56,901	70,927	90,755	72,682	89,000
Restitution Fund	63,744	108,901	103,389	69,256	106,498	120,498	55,256	105,198	120,483	39,971
Retail Food Safety and Defense Fund	-1	11	2	8	-	-	8	-	-	8
Rigid Container Account	243	-	31	212	162	163	211	162	163	210
Rural CUPA Reimbursement Account	1,461	-1,300	-54	215	-	-	215	1,300	-	1,515
Safe Drinking Water and Toxic Enforcment	5,593	2,559	4,029	4,123	1,530	2,249	3,404	1,530	2,170	2,764
Safe Drinking Water Account	7,529	13,476	13,267	7,738	13,892	13,133	8,497	14,456	13,842	9,111
Sale of Tobacco to Minors Control Acct	2,630	209	506	2,333	207	478	2,062	207	772	1,497
Salmon & Steelhead Trout Restoration Acc	154	-	-	154	-	-	154	-	-	154
San Fran Bay Area Conservancy Prog Acct	475	2	434	43	3	-	46	-	-	46
San Joaquin River Conservancy Fund	903	304	104	1,103	300	126	1,277	300	123	1,454
Satellite Wagering Account	156	1	13	144	-	144	-	-	-	-
Schl Dist Acct, Udrgrd Strg Tnk Clnp Fnd	6,571	10,043	10,000	6,614	30	-	6,644	10	-	6,654
School Building Lease-Purchase Fund,St	3,759	-	3,651	108	-	108	-	-	-	-
School Facilities Emergency Repair Accnt	14,353	-	11,415	2,938	-	2,938	-	-	-	-
School Fund, State	4,937	93,347	79,778	18,506	93,347	93,347	18,506	93,347	93,347	18,506
School Land Bank Fund	1,930	7	212	1,725	8,014	971	8,768	10	1,009	7,769
Secondhand Dealer and Pawnbroker Fund	-	-	-	-	1,382	-	1,382	720	-	2,102

SCHEDULE 10 -- Continued
SUMMARY OF FUND CONDITION STATEMENTS
(Dollars In Thousands)

Fund	Reserves June 30, 2011	Actual Revenues 2011-12	Actual Expenditures 2011-12	Reserves June 30, 2012	Estimated Revenues 2012-13	Estimated Expenditures 2012-13	Reserves June 30, 2013	Estimated Revenues 2013-14	Estimated Expenditures 2013-14	Reserves June 30, 2014
Self-Insurance Plans Fund	4,963	2,351	3,376	3,938	2,220	3,796	2,362	2,220	3,916	666
Senate Operating Fund	9	-	-	9	-	-	9	-	-	9
Sexual Habitual Offender, DOJ	2,060	1,833	1,941	1,952	2,067	2,259	1,760	2,067	2,373	1,454
Sexual Predator Public Information Acct	390	149	81	458	135	182	411	135	184	362
Site Operation and Maintenance Account	712	119	223	608	199	416	391	226	412	205
Site Remediation Account	17,387	9,123	10,369	16,141	10,735	26,755	121	10,736	10,797	60
Skilled Nursing Facility Quality & Accnt	1,262	6	-448	1,716	202	1,900	18	202	-2,764	2,984
Social Services Subaccount, Sales Tx Acc	-	1,441,436	1,441,436	-	1,669,073	1,669,073	-	1,707,576	1,707,576	-
Soil Conservation Fund	307	2,387	979	1,715	2,502	1,367	2,850	1,502	1,793	2,559
Solid Waste Disposal Site Cleanup Tr Fd	3,433	5,068	2,664	5,837	5,047	5,610	5,274	5,047	5,624	4,697
Special Account for Capital Outlay	93	-	-	93	-93	-	-	-	-	-
Specialized License Plate Fund	-	-	-	-	120	-	120	382	477	25
Speech-Language Pathology Audio Hearing	1,161	463	766	858	1,475	1,893	440	1,774	1,909	305
State Court Facilities Construction Fund	420,279	-285,708	64,342	70,229	71,735	63,852	78,112	119,556	68,728	128,940
State Parks Revenue Incentive Subaccount	-	-	-	-	15,340	15,340	-	15,340	15,340	-
State Trial Ct Improvement & Modern Fund	38,944	41,008	39,705	40,247	14,055	24,680	29,622	12,803	42,326	99
Strong-Motion Instrumnt & Seismic Mappng	8,951	4,688	5,707	7,932	5,390	6,191	7,131	5,890	9,358	3,663
Structural Pest Cntrl Educ&Enforcemnt Fd	571	392	385	578	322	393	507	322	395	434
Structural Pest Control Fund	806	3,912	3,704	1,014	4,035	4,252	797	4,035	4,522	310
Structural Pest Control Research Fund	50	133	-	183	122	3	302	122	3	421
Substance Abuse Treatment Trust Fund	240	-	-	240	-	-	240	-	-	240
Surface Impoundment Assessment Account	1	-	-	1	-	-	1	-	-	1
Surface Mining and Reclamation Account	1,685	2,000	1,929	1,756	2,001	2,227	1,530	2,001	2,466	1,065
Tax Credit Allocation Fee Account	16,304	-8,251	2,133	5,920	4,884	2,330	8,474	5,028	2,445	11,057
Teacher Credentials Fund	1,820	13,566	14,798	588	15,243	14,540	1,291	14,975	15,134	1,132
Technical Assistance Fund	40	22,134	20,100	2,074	21,589	22,086	1,577	21,589	22,086	1,080
Teleconnect Fd Admin Comm Fd, Cal	-24,765	57,868	75,090	-41,987	120,503	77,737	779	92,343	92,852	270
Telephone Medical Advice Services Fund	689	145	147	687	236	154	769	120	174	715
Test Development and Admin Acct, Tc Fd	6,882	2,251	4,670	4,463	4,699	4,177	4,985	4,465	4,188	5,262
Timber Regulation & Forest Restore Fund	-	-	-	-	13,500	11,767	1,733	27,000	26,706	2,027
Tire Recycling Management Fund, Calif	47,416	28,310	36,824	38,902	27,846	31,550	35,198	28,776	31,929	32,045
Tissue Bank License Fund	1,784	623	418	1,989	613	510	2,092	618	526	2,184
Tobacco Settlement Fund	2,273	-	-	2,273	-	-	2,273	-	-	2,273
Toxic Substances Control Account	37,151	44,418	50,984	30,585	43,573	47,386	26,772	45,460	43,681	28,551
Traffic Congestion Relief Fund	2,723	228,937	226,781	4,879	133,416	108,581	29,714	131,362	145,938	15,138
Transcript Reimbursement Fund	289	251	257	283	301	317	267	301	314	254
Transportation Debt Service Fund	-	755,153	755,153	-	658,734	658,734	-	974,353	974,353	-
Transportation Deferred Investment Fund	8,800	-48,416	-52,690	13,074	-68,416	-59,416	4,074	-56,416	-59,416	7,074
Transportation Investment Fund	107,545	-123	98,181	9,241	55,000	55,300	8,941	35,000	32,300	11,641
Transportation Rate Fund	51	2,035	1,726	360	2,421	2,074	707	2,421	2,791	337
Trauma Care Fund	53	-	-	53	-	-	53	-	-	53
Traumatic Brain Injury Fund	575	960	1,062	473	849	1,138	184	823	1,007	-
Travel Seller Fund	2,083	671	858	1,896	682	1,398	1,180	679	1,430	429
Trial Court Security Account, LRF 2011	-	446,902	446,902	-	-	-	-	-	-	-
Trial Court Security Growth Spec Account	-	-	-	-	10,314	10,314	-	11,969	11,969	-

SCHEDULE 10 -- Continued
SUMMARY OF FUND CONDITION STATEMENTS
(Dollars In Thousands)

Fund	Reserves June 30, 2011	Actual Revenues 2011-12	Actual Expenditures 2011-12	Reserves June 30, 2012	Estimated Revenues 2012-13	Estimated Expenditures 2012-13	Reserves June 30, 2013	Estimated Revenues 2013-14	Estimated Expenditures 2013-14	Reserves June 30, 2014
Trial Court Security Subaccount	-	-	-	-	496,429	496,429	-	506,743	506,743	-
Trial Court Trust Fund	115,010	1,616,112	1,625,587	105,535	1,522,395	1,569,212	58,718	1,461,766	1,512,403	8,081
Umbilical Cord Blood Collection Program	1,875	2,370	4,245	-	2,500	2,500	-	2,500	2,500	-
Unallocated Acct, Cig & Tob Pr Surtax	10,911	45,346	48,945	7,312	48,118	49,388	6,042	44,731	48,234	2,539
Unallocated Acct,Child & Families Trust	5,425	9,361	4,144	10,642	9,015	9,015	10,642	8,706	8,706	10,642
Underground Storage Tank Cleanup Fund	117,357	307,599	319,682	105,274	304,509	335,376	74,407	256,481	286,847	44,041
Underground Storage Tank Fund	115	-	-	115	-	-	115	-	-	115
Underground Storage Tank Tester Account	139	18	40	117	20	62	75	23	64	34
Undistributed Account, LRF 2011	-	1,452,334	1,452,334	-	-	-	-	-	-	-
Undrgrnd Strg Tnk Ptrlm Cnt Orphn St Cln	31,242	122	10,053	21,311	122	-	21,433	75	-	21,508
Unfair Competition Law Fund	1,431	50,757	48,611	3,577	49,948	10,407	43,118	8,927	10,891	41,154
Unified Program Account	11,230	-1,927	6,901	2,402	15,001	12,957	4,446	6,301	7,719	3,028
Universal Lifeline Telpne Svc Trst Admin	119,820	232,126	261,348	90,598	178,152	264,574	4,176	350,059	284,381	69,854
Unlawful Sales Reduction Fund	94	-	-	94	1	-	95	1	-	96
Upper Newport Bay Ecological Maint&Presv	17	-	-	17	-	17	-	-	-	-
Used Oil Recycling Fund, California	9,584	26,197	22,947	12,834	28,222	30,689	10,367	27,044	31,926	5,485
Vectorborne Disease Account	259	111	84	286	121	123	284	121	132	273
Vehicle Inspection and Repair Fund	62,414	118,983	116,123	65,274	119,557	121,610	63,221	120,763	130,040	53,944
Vehicle License Collection Acct, LRF	-	14,000	14,000	-	14,000	14,000	-	14,000	14,000	-
Vehicle License Fee Account	-	1,369,449	1,369,449	-	1,441,595	1,441,595	-	1,441,595	1,441,595	-
Vehicle License Fee Growth Account	-	111,922	111,922	-	-	-	-	22,146	22,146	-
Veterans Cemetery Master Devl Fund, NoCA	351	-	219	132	-	-	132	-	-	132
Veterans Cemetery Perpetual Maint Fd	203	66	80	189	77	80	186	82	80	188
Veterans Service Office Fund	834	759	986	607	833	1,099	341	857	806	392
Veterinary Medical Board Contingent Fund	1,962	2,955	2,597	2,320	2,912	2,812	2,420	2,996	2,959	2,457
Victim - Witness Assistance Fund	18,574	4,140	16,430	6,284	15,257	18,664	2,877	15,815	18,677	15
Victims of Corporate Fraud Compensation	4,574	1,681	2,957	3,298	1,641	1,607	3,332	1,641	1,530	3,443
Vietnam Veterans Memorial Account	2	6	-	8	-	-	8	-	-	8
Vocational Nurse Education Fund	632	198	200	630	200	253	577	200	232	545
Vocational Nursing & Psychiatric Tech Fd	8,611	9,901	9,534	8,978	9,806	10,204	8,580	9,804	10,056	8,328
Waste Discharge Permit Fund	8,861	99,711	102,169	6,403	99,321	101,960	3,764	105,874	107,458	2,180
Wastewater Operator Certification Fund	697	732	625	804	822	664	962	1,510	1,279	1,193
Water Device Certification Special Acct	795	178	125	848	197	379	666	200	406	460
Water Fund, California	39	-	-	39	-	-	39	-	-	39
Water Rights Fund	7,625	14,927	16,398	6,154	15,544	18,673	3,025	15,544	17,342	1,227
Waterfowl Habitat Preservation Acct, Cal	2,448	9	27	2,430	9	246	2,193	8	245	1,956
Welcome Center Fund	51	100	84	67	105	105	67	105	104	68
Wildlife Restoration Fund	8,606	363	1,565	7,404	1,770	2,681	6,493	2,270	2,748	6,015
Wine Safety Fund	164	-	4	160	-	-	160	-	-	160
Winter Recreation Fund	559	117	301	375	230	347	258	230	347	141
Women & Children's Resi Treat Svcs Acct	-	-	-	-	5,104	5,104	-	5,104	5,104	-
Women and Children's Residential Tretmnt	-	5,104	5,104	-	-	-	-	-	-	-
Workers' Comp Administration Revolv Fund	163,829	130,375	156,085	138,119	197,761	165,181	170,699	295,811	310,221	156,289
Workers' Compensation Managed Care Fund	613	7	21	599	7	78	528	7	80	455
Workers' Occupational Sfty & Health Ed	275	856	755	376	800	778	398	800	1,139	59

SCHEDULE 10 -- Continued
SUMMARY OF FUND CONDITION STATEMENTS
(Dollars In Thousands)

Fund	Reserves June 30, 2011	Actual Revenues 2011-12	Actual Expenditures 2011-12	Reserves June 30, 2012	Estimated Revenues 2012-13	Estimated Expenditures 2012-13	Reserves June 30, 2013	Estimated Revenues 2013-14	Estimated Expenditures 2013-14	Reserves June 30, 2014
Wtr Pltn Cntrl Rvl Fnd Smll Cmty Cmt Fd	5,127	6,357	1,000	10,484	6,968	12,000	5,452	6,631	8,000	4,083
Yosemite Foundation Acct, ELPF	5	876	867	14	900	840	74	900	840	134
Youth Offender Block Grant Special Acct	-	-	-	-	93,351	93,351	-	103,096	103,096	-
Youth Pilot Program Fund	40	-	-	40	-	-	40	-	-	40
Youthful Offender Block Grant Fund	643	-	-	643	-643	-	-	-	-	-
Youthful Offender Block Grant, JJA	-	93,448	93,448	-	-	-	-	-	-	-
Totals, Special Funds	$8,633,649	$32,006,023	$33,853,289	$6,786,383	$39,007,531	$39,648,338	$6,145,576	$40,173,951	$40,927,826	$5,391,701
GRAND TOTALS	**$6,351,338**	**$119,076,810**	**$120,256,792**	**$5,171,356**	**$134,401,773**	**$132,642,174**	**$6,930,955**	**$138,674,564**	**$138,578,070**	**$7,027,449**

SCHEDULE 11
STATEMENT OF GENERAL OBLIGATION BOND & COMMERCIAL PAPER DEBT OF THE STATE OF CALIFORNIA
(Dollars in Thousands)

(This statement does not include bonds issued under authority of state instrumentalities that are not general obligations of the State of California)

			General Obligation Bonds						Commercial Paper	
			As of December 31, 2012				Proposed Sales		As of December 31, 2012	
Fund	Bond Act	Final Maturity	Authorized	Unissued	Outstanding	Redeemed	Jan-Jun 2013	Jul-Dec 2013	Finance Cmte. Authorization	Total Outstanding
	LEGISLATIVE, JUDICIAL, EXECUTIVE									
6032	Voting Modernization (2002)	2018	$200,000	$64,495	$62,325	$73,180	$0	$0	$64,495	$0
	Total, Legislative, Judicial, Executive		$200,000	$64,495	$62,325	$73,180	$0	$0	$64,495	$0
	BUSINESS, TRANSPORTATION & HOUSING									
0703	Clean Air & Transp Improv (1990)	2040	$1,990,000	$17,570	$903,645	$1,068,785	$13,821	$2,449	$1,940	$0
0714	Housing & Homeless (1990)	2023	150,000	-	1,940	148,060	-	-	-	-
6037	Housing and Emergency Shelter (2002)	2040	2,100,000	132,535	1,491,550	475,915	-	-	132,535	-
6066	Housing and Emergency Shelter (2006)	2040	2,850,000	1,258,990	1,543,280	47,730	-	-	1,258,990	-
6053	Highway Safe, Traffic Red, Air Qual, Port Sec (2006)	2042	19,925,000	10,281,720	9,481,805	161,475	1,815,274	1,520,815	730,570	6,500
0756	Passenger Rail & Clean Air (1990)	2022	1,000,000	-	92,610	907,390	-	-	-	-
6043	Safe, Reliable High-Speed Passenger Train Bond Act (2008)	2040	9,950,000	9,448,725	499,285	1,990	-	-	38,775	-
0653	Seismic Retrofit (1996)	2039	2,000,000	-	1,321,120	678,880	-	-	-	-
	Total, Business, Transportation & Housing		$39,965,000	$21,139,540	$15,335,235	$3,490,225	$1,829,095	$1,523,264	$2,162,810	$6,500
	NATURAL RESOURCES									
0722	Ca Park & Recreational Facil (1984)	2027	$368,900	$0	$15,125	$353,775	$0	$0	$0	$0
0721	Ca Parklands (1980)	2024	285,000	-	3,270	281,730	-	-	-	-
0707	Ca Safe Drinking Water (1976)	2027	172,500	-	3,560	168,940	-	-	-	-
0707	Ca Safe Drinking Water (1984)	2027	75,000	-	2,255	72,745	-	-	-	-
0707	Ca Safe Drinking Water (1986)	2030	100,000	-	27,695	72,305	-	-	-	-
0793	Ca Safe Drinking Water (1988)	2040	75,000	-	32,450	42,550	-	-	-	-
6001	Ca Safe Drinking Water (2000)	2040	1,970,000	135,844	1,543,115	291,041	-	-	135,844	-
6051	Ca Safe Drinking Water (2006)	2040	5,388,000	2,957,710	2,417,410	12,880	-	120,569	950,000	-
0786	Ca Wildlife, Coast, & Park Land Cons (1988)	2032	768,670	-	140,210	628,460	-	-	-	-
0740	Clean Water (1984)	2024	325,000	-	13,500	311,500	-	-	-	-
6029	Clean Water, Clean Air, and Parks (2002)	2040	2,600,000	259,240	2,243,445	97,315	-	1,200	240,423	-
0716	Community Parklands (1986)	2022	100,000	-	3,475	96,525	-	-	-	-
6052	Disaster Prep and Flood Prevent (2006)	2041	4,090,000	1,818,652	2,252,925	18,423	-	-	655,227	-
0748	Fish & Wildlife Habitat Enhance (1984)	2033	85,000	-	5,830	79,170	-	-	-	-
0720	Lake Tahoe Acquisitions (1982)	2017	85,000	-	450	84,550	-	-	-	-
0402	Safe, Clean, Reliable Water Supply (1996)	2040	995,000	89,070	674,855	231,075	-	-	89,070	-
0005	Safe Neighborhood Parks (2000)	2040	2,100,000	85,815	1,653,450	360,735	-	-	42,060	-
0742	State, Urban & Coastal Park (1976)	2029	280,000	-	4,805	275,195	-	-	-	-
0744	Water Conserv & Water Quality (1986)	2031	150,000	13,730	39,745	96,525	-	-	13,730	-
0790	Water Conserv (1988)	2036	60,000	5,235	26,550	28,215	-	-	5,235	-
	Total, Natural Resources		$20,073,070	$5,365,296	$11,104,120	$3,603,654	$0	$121,769	$2,131,589	$0
	ENVIRONMENTAL PROTECTION									
0737	Clean Water & Water Conserv (1978)	2028	$375,000	$0	$5,400	$369,600	$0	$0	$0	$0
0764	Clean Water & Water Reclam (1988)	2029	65,000	-	25,495	39,505	-	-	-	-
6031	Water Security, Coastal & Beach Protection (2002)	2040	3,440,000	586,909	2,698,095	154,996	30,958	32,340	285,999	10,130
	Total, Environmental Protection		$3,880,000	$586,909	$2,728,990	$564,101	$30,958	$32,340	$285,999	$10,130
	HEALTH AND HUMAN SERVICES									
6046	Children's Hospital Projects (2004)	2040	$750,000	$47,445	$670,325	$32,230	$0	$0	$47,445	$0
6079	Children's Hospital Projects (2008)	2040	980,000	449,240	528,865	1,895	-	51,070	113,890	-
	Total, Health and Human Services		$1,730,000	$496,685	$1,199,190	$34,125	$0	$51,070	$161,335	$0
	YOUTH AND ADULT CORRECTIONAL									
0711	Co Corr Facil Cap Expend (1986)	2022	$495,000	$0	$20,055	$474,945	$0	$0	$0	$0
0796	Co Corr Facil Cap Expend & Youth Facil (1988)	2030	500,000	-	91,940	408,060	-	-	-	-
0746	New Prison Construction (1986)	2034	500,000	-	8,270	491,730	-	-	-	-
0747	New Prison Construction (1988)	2030	817,000	2,165	27,380	787,455	-	-	2,165	-
0751	New Prison Construction (1990)	2029	450,000	605	36,885	412,510	-	-	307	-
	Total, Youth and Adult Correctional		$2,762,000	$2,770	$184,530	$2,574,700	$0	$0	$2,472	$0

SCHEDULE 11
STATEMENT OF GENERAL OBLIGATION BOND & COMMERCIAL PAPER DEBT OF THE STATE OF CALIFORNIA
(Dollars in Thousands)

(This statement does not include bonds issued under authority of state instrumentalities that are not general obligations of the State of California)

			General Obligation Bonds						Commercial Paper	
			As of December 31, 2012				Proposed Sales		As of December 31, 2012	
Fund	Bond Act	Final Maturity	Authorized	Unissued	Outstanding	Redeemed	Jan-Jun 2013	Jul-Dec 2013	Finance Cmte. Authorization	Total Outstanding
	EDUCATION--K-12									
0794	Ca Library Constr & Renov (1988)[1]	2031	$72,405	$0	$15,695	$56,710	$0	$0	$0	$0
6000	Ca Library Constr & Renov (2000)	2040	350,000	5,040	283,295	61,665	-	-	5,040	-
0119	Class Size Reduction K-U Pub. Ed. Facil (1998) K-12	2034	6,700,000	11,860	4,524,555	2,163,585	8,668	777	11,860	-
0657	Public Education Facil (1996) K-12[1]	2035	2,012,035	-	1,072,795	939,240	-		-	-
6036	Public Education Facil (2002) K-12	2042	11,400,000	71,900	9,933,765	1,394,335	71,900	-	71,900	-
6044	Public Education Facil (2004) K-12	2042	10,000,000	524,870	8,892,580	582,550	417,805	37,476	524,870	-
6057	Public Education Facil (2006) K-12	2042	7,329,000	1,541,185	5,776,375	11,440	1,235,259	117,247	1,521,185	-
0739	School Bldg & Earthquake (1974)	2026	40,000	-	18,640	21,360	-	-	-	-
0708	School Facilities (1990)	2033	800,000	-	182,295	617,705	-	-	-	-
0745	School Facilities (1992)	2036	1,900,000	10,280	674,280	1,215,440	-	-	10,280	-
0776	1988 School Facil Bond Act (Nov)[1]	2033	797,745	-	49,615	748,130	-	-	-	-
0774	1990 School Facil Bond Act (Jun)[1]	2033	797,875	-	114,155	683,720	-	-	-	-
0765	1992 School Facil Bond Act (Nov)[1]	2035	898,211	-	320,535	577,676	-	-	-	-
	Total, Education--K-12		$43,097,271	$2,165,135	$31,858,580	$9,073,556	$1,733,632	$155,500	$2,145,135	$0
	HIGHER EDUCATION									
0574	Class Size Reduction K-U Pub. Ed. Facil (1998) Hi-Ed	2039	$2,500,000	$0	$1,913,385	$586,615	$0	$0	$0	$0
0785	Higher Education Facil (1988)	2033	600,000	-	28,875	571,125	-	-	-	-
0791	Higher Education Facil (Jun 1990)	2040	450,000	540	59,365	390,095	-	-	540	-
0705	Higher Education Facil (Jun 1992)	2040	900,000	105	379,610	520,285	-	-	105	-
0658	Public Education Facil (1996) Hi-Ed	2033	975,000	14,720	573,155	387,125	-	-	14,720	-
6028	Public Education Facil (2002) Hi-Ed	2039	1,650,000	-	1,496,575	153,425	-	-	-	-
6041	Public Education Facil (2004) Hi-Ed	2040	2,300,000	64,779	2,112,590	122,631	-	-	64,779	-
6048	Public Education Facil (2006) Hi-Ed	2042	3,087,000	289,505	2,785,505	11,990	4,247	-	289,505	50,000
6047	Stem Cell Research and Cures (2004)	2039	3,000,000	1,873,475	1,120,305	6,220	150,000	144,000	249,175	91,000
	Total, Higher Education		$15,462,000	$2,243,124	$10,469,365	$2,749,511	$154,247	$144,000	$618,824	$141,000
	GENERAL GOVERNMENT									
0768	Earthquake Safety & Public Bldg. Rehab (1990)	2029	$300,000	$9,765	$130,985	$159,250	$0	$0	$9,765	$0
0701	Veterans' Homes (2000)	2039	50,000	975	39,190	9,835	-	-	975	-
	Total, General Government		$350,000	$10,740	$170,175	$169,085	$0	$0	$10,740	$0
	Total, All Agencies		**$127,519,341**	**$32,074,694**	**$73,112,510**	**$22,332,137**	**$3,747,932**	**$2,027,943**	**$7,583,399**	$157,630
	SELF-LIQUIDATING BONDS[2]									
	Ca Water Resources Dev (1959)	2024	$1,750,000	$167,600	$326,990	$1,255,410	$0	$0	$0	$0
	The Economic Recovery Bond Act	2023	15,000,000	-	5,455,690	9,544,310	-	-	-	-
	Veterans Bonds	2042	3,560,000	1,138,610	698,820	1,722,570	-	-	238,610	-
	Total, Self-Liquidating Bonds		$20,310,000	$1,306,210	$6,481,500	$12,522,290	$0	$0	$238,610	$0
	Total		**$147,829,341**	**$33,380,904**	**$79,594,010**	**$34,854,427**	**$3,747,932**	**$2,027,943**	**$7,822,009**	**$157,630**

[1] SB 1018 (06/27/2012) reduced the voter authorized amount

[2] The California Water Resource Development Bond Act, The Economic Recovery Bond Act, and the Veterans Bond Acts are public service enterprises that have their own revenues to finance their respective debt service expenditures.

Source: State Treasurer's Office

SCHEDULE 12A
STATE APPROPRIATIONS LIMIT SUMMARY
(Dollars in Millions)

	2011-12			2012-13			2013-14		
	General Fund	Special Funds	Total	General Fund	Special Funds	Total	General Fund	Special Funds	Total
Schedule 8									
Revenues and Transfers	$87,071	$32,006	$119,077	$95,394	$39,008	$134,402	$98,501	$40,174	$138,675
Less/Add: Transfers	-1,509	1,197	-$312	-1,800	1,347	-$453	23	134	$157
Schedule 12B									
Less: Revenues to Excluded Funds	-	-10,435	-$10,435	-	-16,684	-$16,684	-	-15,463	-15,463
Schedule 12C									
Less: Non-Tax Revenues to Included Funds	-2,387	-475	-$2,862	-2,151	-584	-$2,735	-1,700	-615	-2,315
Schedule 12D									
Add: Transfers from Other Funds to Included Funds	98	-80	$18	319	-165	$154	237	-174	63
TOTAL, SAL REVENUES AND TRANSFERS	**$83,273**	**$22,213**	**$105,486**	**$91,762**	**$22,922**	**$114,684**	**$97,061**	**$24,056**	**$121,117**
Schedule 12E									
Less: Exclusions	-37,274	-6,087	-43,361	-30,994	-13,842	-44,836	-35,141	-12,875	-48,016
TOTAL, SAL APPROPRIATIONS			**$62,125**			**$69,848**			**$73,101**
CALCULATION OF LIMIT ROOM									
Appropriations Limit (Sec. 12.00)			$81,726			$84,221			$89,700
Less: Total SAL Appropriations			62,125			69,848			73,101
Appropriation Limit Room/(Surplus)			**$19,601**			**$14,373**			**$16,599**

SCHEDULE 12B
REVENUES TO EXCLUDED FUNDS
(Dollars In Thousands)

Source Code	Source	Actual 2011-12	Estimated 2012-13	Proposed 2013-14
	MAJOR REVENUES:			
110500	Cigarette Tax	$781,837	$753,000	$730,000
110900	Horse Racing Fees-Licenses	14,688	12,590	12,638
114300	Other Motor Vehicle Fees	126,663	125,768	126,083
114400	Identification Card Fees	455	455	455
115400	Mobilehome In-Lieu Tax	2,398	2,388	2,388
	TOTAL, MAJOR TAXES AND LICENSES	**$926,041**	**$894,201**	**$871,564**
	MINOR REVENUES:			
	REGULATORY TAXES AND LICENSES:			
120200	General Fish and Game Taxes	1,155	1,181	1,214
120300	Energy Resource Surcharge	646,500	673,104	858,076
120600	Quarterly Public Utility Commission Fees	119,859	129,057	129,057
120700	Penalties on Pub Util Comm Qtrly Fees	2	-	-
120900	Off-Highway Vehicle Fees	18,031	17,000	17,000
121000	Liquor License Fees	52,786	53,842	54,919
121100	Genetic Disease Testing Fees	112,298	114,730	119,529
121200	Other Regulatory Taxes	83,284	95,451	101,347
121300	New Motor Vehicle Dealer License Fee	1,056	1,487	1,622
121500	General Fish and Game Lic Tags Permits	97,685	102,529	105,938
121600	Duck Stamps	11	-	11
122400	Elevator and Boiler Inspection Fees	28,047	28,150	28,860
122700	Employment Agency License Fees	4,464	4,458	4,458
122900	Teacher Credential Fees	12,001	15,177	14,711
123000	Teacher Examination Fees	3,732	4,692	4,462
123100	Insurance Co License Fees & Penalties	37,624	39,258	44,169
123200	Insurance Company Examination Fees	20,443	20,011	20,112
123400	Real Estate Examination Fees	2,636	2,540	2,540
123500	Real Estate License Fees	36,615	31,864	33,106
123600	Subdivision Filing Fees	4,374	4,502	4,720
123800	Building Construction Filing Fees	5,718	4,962	4,474
124100	Domestic Corporation Fees	8,281	7,453	7,453
124200	Foreign Corporation Fees	1,052	947	947
124300	Notary Public License Fees	892	892	892
124400	Filing Financing Statements	2,217	2,217	2,217
125100	Beverage Container Redemption Fees	1,152,469	1,151,635	1,150,635
125200	Explosive Permit Fees	1	18	18
125300	Processing Fees	325	262	325
125400	Environmental and Hazardous Waste Fees	33,232	33,108	32,544
125600	Other Regulatory Fees	1,882,553	7,502,978	5,919,175
125700	Other Regulatory Licenses and Permits	460,002	459,974	475,873
125800	Renewal Fees	244,206	241,753	244,176
125900	Delinquent Fees	6,792	6,180	6,147
127100	Insurance Department Fees, Prop 103	23,791	27,233	28,612
127200	Insurance Department Fees, General	19,879	19,642	29,463
127300	Insurance Fraud Assessment, Workers Comp	47,163	49,562	49,629
127400	Insurance Fraud Assessment, Auto	47,249	48,195	49,400
127500	Insurance Fraud Assessment, General	6,132	8,790	13,653
	TOTAL, REGULATORY TAXES AND LICENSES	**$5,224,557**	**$10,904,834**	**$9,561,484**
	REVENUE FROM LOCAL AGENCIES:			
130600	Architecture Public Building Fees	34,074	32,691	32,691
130700	Penalties on Traffic Violations	77,431	74,903	72,595
130800	Penalties on Felony Convictions	53,381	57,001	57,001
130900	Fines-Crimes of Public Offense	12,372	6,000	6,000
131000	Fish and Game Violation Fines	1,429	1,005	838
131100	Penalty Assessments on Fish & Game Fines	626	609	565
131300	Addt'l Assmnts on Fish & Game Fines	66	66	64
131600	Fingerprint ID Card Fees	64,643	69,995	69,995
131700	Misc Revenue From Local Agencies	1,075,798	1,421,708	1,461,290
	TOTAL, REVENUE FROM LOCAL AGENCIES	**$1,319,820**	**$1,663,978**	**$1,701,039**
	SERVICES TO THE PUBLIC:			
140600	State Beach and Park Service Fees	92,413	85,000	85,000
140900	Parking Lot Revenues	8,501	8,386	8,401
141100	Emergency Telephone Users Surcharge	83,320	80,700	78,100
141200	Sales of Documents	1,064	1,031	1,031

SCHEDULE 12B -- Continued
REVENUES TO EXCLUDED FUNDS
(Dollars In Thousands)

Source Code	Source	Actual 2011-12	Estimated 2012-13	Proposed 2013-14
142000	General Fees--Secretary of State	26,128	26,627	26,777
142200	Parental Fees	5,155	10,140	9,553
142500	Miscellaneous Services to the Public	86,207	92,541	97,499
143000	Personalized License Plates	57,227	57,568	57,506
	TOTAL, SERVICES TO THE PUBLIC	**$360,015**	**$361,993**	**$363,867**
	USE OF PROPERTY AND MONEY:			
150200	Income From Pooled Money Investments	345	342	293
150300	Income From Surplus Money Investments	19,516	129,550	81,514
150400	Interest Income From Loans	3,470	4,365	4,098
150500	Interest Income From Interfund Loans	29,308	8,855	19,620
151800	Federal Lands Royalties	95,347	95,347	95,347
152100	Geothermal Resource Well Fees	5,096	3,950	3,950
152200	Rentals of State Property	9,321	8,988	8,944
152300	Misc Revenue Frm Use of Property & Money	20,567	18,440	17,232
152400	School Lands Royalties	43	50	50
	TOTAL, USE OF PROPERTY AND MONEY	**$183,013**	**$269,887**	**$231,048**
	MISCELLANEOUS:			
160100	Attorney General Proceeds of Anti-Trust	1,906	1,905	1,905
160200	Penalties & Interest on UI & DI Contrib	129,793	104,403	91,430
160400	Sale of Fixed Assets	41,903	199	46,827
160500	Sale of Confiscated Property	39	20	20
160600	Sale of State's Public Lands	-	8,004	-
161000	Escheat of Unclaimed Checks & Warrants	3,673	3,281	3,280
161400	Miscellaneous Revenue	354,120	428,921	402,610
161800	Penalties & Intrst on Personal Income Tx	18,841	14,705	14,927
161900	Other Revenue - Cost Recoveries	110,442	104,041	106,854
162000	Tribal Gaming Revenues	42,170	43,000	45,476
162100	Delinquent Receivables-Cost Recoveries	100	-	-
163000	Settlements/Judgments(not Anti-trust)	2,398	4,310	4,210
164100	Traffic Violations	31,646	32,229	31,412
164200	Parking Violations	1,262	1,060	1,060
164300	Penalty Assessments	226,878	266,040	226,539
164400	Civil & Criminal Violation Assessment	186,007	168,002	156,902
164600	Fines and Forfeitures	214,040	208,388	208,789
164700	Court Filing Fees and Surcharges	606,431	662,297	660,759
164800	Penalty Assessments on Criminal Fines	268,550	268,084	268,133
164900	Donations	745	624	720
165000	Auction Proceeds for Carbon Allowances	-	200,000	400,000
180200	Cash Adjustment for Transportation Funds	180,516	70,000	62,000
	TOTAL, MISCELLANEOUS	**$2,421,460**	**$2,589,513**	**$2,733,853**
	TOTAL, MINOR REVENUES	**$9,508,865**	**$15,790,205**	**$14,591,291**
	TOTALS, Revenue to Excluded Funds (MAJOR and MINOR)	**$10,434,906**	**$16,684,406**	**$15,462,855**

SCHEDULE 12C
NON-TAX REVENUES IN FUNDS SUBJECT TO LIMIT
(Dollars In Thousands)

Source Code	Source	Actual 2011-12		Estimated 2012-13		Proposed 2013-14	
		General Fund	Special Fund	General Fund	Special Fund	General Fund	Special Fund
	MAJOR REVENUES:						
110900	Horse Racing Fees-Licenses	$951	-	$1,044	$750	$1,044	$750
111100	Horse Racing Fines and Penalties	156	-	146	-	146	-
111200	Horse Racing Fees-Unclaimed P-M Tickets	41	-	-	-	-	-
111300	Horse Racing Miscellaneous	2	-	10	-	10	-
114200	Driver's License Fees	-	186,947	-	270,000	-	283,500
114300	Other Motor Vehicle Fees	-	43,846	-	41,531	-	43,031
114400	Identification Card Fees	-	30,292	-	30,500	-	31,000
114500	Lien Sale Application Fees	-	1,547	-	1,563	-	1,579
	Total, MAJOR TAXES AND LICENSES	**$1,150**	**$262,632**	**$1,200**	**$344,344**	**$1,200**	**$359,860**
	MINOR REVENUES:						
	REGULATORY TAXES AND LICENSES:						
120800	Hwy Carrier Uniform Business License Tax	-	-	153	-	153	-
120900	Off-Highway Vehicle Fees	-	6,231	-	6,500	-	6,500
121000	Liquor License Fees	-	383	-	386	-	390
122600	Industrial Homework Fees	1	-	-	-	-	-
122700	Employment Agency License Fees	662	-	550	-	580	-
122800	Employment Agency Filing Fees	93	-	79	-	79	-
124500	Candidate Filing Fee	795	-	18	-	1,100	-
125600	Other Regulatory Fees	524,935	6,573	552,504	20,123	53,901	33,689
125700	Other Regulatory Licenses and Permits	5,091	34,958	4,872	35,208	4,972	35,642
	Total, REGULATORY TAXES AND LICENSES	**$531,577**	**$48,145**	**$558,176**	**$62,217**	**$60,785**	**$76,221**
	REVENUE FROM LOCAL AGENCIES:						
130800	Penalties on Felony Convictions	2	-	4	-	4	-
130900	Fines-Crimes of Public Offense	60	-	60	-	64	-
131500	Narcotic Fines	1,885	-	1,000	-	1,000	-
131700	Misc Revenue From Local Agencies	241,788	433	242,234	437	210,498	437
131900	Rev Local Govt Agencies-Cost Recoveries	14,005	8,258	17,018	8,341	19,018	8,424
	Total, REVENUE FROM LOCAL AGENCIES	**$257,740**	**$8,691**	**$260,316**	**$8,778**	**$230,584**	**$8,861**
	SERVICES TO THE PUBLIC:						
140100	Pay Patients Board Charges	17,000	-	11,503	-	10,239	-
140900	Parking Lot Revenues	-	500	-	506	-	511
141200	Sales of Documents	35	3,266	58	3,630	58	3,643
142000	General Fees--Secretary of State	92	-	182	-	262	-
142500	Miscellaneous Services to the Public	2,444	68,163	2,008	69,000	2,008	69,500
142700	Medicare Receipts Frm Federal Government	18,123	-	15,966	-	15,587	-
143000	Personalized License Plates	-	6	-	6	-	6
	Total, SERVICES TO THE PUBLIC	**$37,694**	**$71,935**	**$29,717**	**$73,142**	**$28,154**	**$73,660**
	USE OF PROPERTY AND MONEY:						
152000	Oil & Gas Lease-1% Revenue City/County	793	-	750	-	750	-
152200	Rentals of State Property	20,487	39,587	21,530	42,091	21,921	42,590
152300	Misc Revenue Frm Use of Property & Money	793	692	2,249	5,062	2,249	4,972
152500	State Lands Royalties	478,525	-	324,018	-	296,697	-
	Total, USE OF PROPERTY AND MONEY	**$500,598**	**$40,279**	**$348,547**	**$47,153**	**$321,617**	**$47,562**
	MISCELLANEOUS:						
160400	Sale of Fixed Assets	5	191	-	-	-	1
160500	Sale of Confiscated Property	6,543	-	6,560	-	6,560	-
160600	Sale of State's Public Lands	-	9,092	-	13,682	-	13,436
160700	Proceeds From Estates of Deceased Person	830	-	830	-	830	-
160900	Revenue-Abandoned Property	401,257	-	307,674	-	320,530	-
161000	Escheat of Unclaimed Checks & Warrants	29,888	3,273	32,131	4,396	32,023	4,500
161400	Miscellaneous Revenue	177,639	9,056	171,664	7,710	169,120	8,318
161900	Other Revenue - Cost Recoveries	36,877	8,407	33,261	9,283	36,057	9,486
162000	Tribal Gaming Revenues	268,188	-	236,600	-	236,600	-
162100	Delinquent Receivables-Cost Recoveries	9,641	26	9,641	-	9,641	-
163000	Settlements/Judgments(not Anti-trust)	24,038	-	104,797	-	203,014	-
164000	Uninsured Motorist Fees	1,349	339	1,423	343	1,423	346
164100	Traffic Violations	-	9,901	-	10,000	-	10,100
164200	Parking Violations	15,922	-	15,922	-	15,922	-
164300	Penalty Assessments	82,553	1,894	28,968	2,575	22,118	2,575
164400	Civil & Criminal Violation Assessment	357	529	175	534	150	540
164600	Fines and Forfeitures	3,296	-	3,290	-	3,290	-

SCHEDULE 12C -- Continued
NON-TAX REVENUES IN FUNDS SUBJECT TO LIMIT
(Dollars In Thousands)

Source Code	Source	Actual 2011-12		Estimated 2012-13		Proposed 2013-14	
		General Fund	Special Fund	General Fund	Special Fund	General Fund	Special Fund
164900	Donations	9	-	-	-	-	-
	Total, MISCELLANEOUS	**$1,058,392**	**$42,708**	**$952,936**	**$48,523**	**$1,057,278**	**$49,302**
	TOTAL, MINOR REVENUES	**$2,386,001**	**$211,758**	**$2,149,692**	**$239,813**	**$1,698,418**	**$255,606**
	TOTALS, Non-Tax Revenue (MAJOR and MINOR)	**$2,387,151**	**$474,390**	**$2,150,892**	**$584,157**	**$1,699,618**	**$615,466**

SCHEDULE 12D
STATE APPROPRIATIONS LIMIT
TRANSFER FROM OTHER FUNDS TO INCLUDED FUNDS
(Dollars In Thousands)

	Actual 2011-12		Estimated 2012-13		Proposed 2013-14	
	General Fund	Special Fund	General Fund	Special Fund	General Fund	Special Fund
From Corporations Fund, State (0067) to General Fund (0001) per Item 1701-001-0067, Budget Act of 2013)	-	-	-	-	15,000	-
From Childhood Lead Poisoning Prevention Fund (0080) to General Fund (0001) (per Item 4265-011-0080, Budget Act 2011)	9,062	-	-	-	-	-
From Department of Agriculture Account, Ag Fd (0111) to General Fund (0001) (per Revenue and Taxation Code 8352.5(b))	-	-	38,655	-	38,655	-
From Business Fees Fund, Secty of State's (0228) to General Fund (0001) (per Government Code Section 12176)	5,124	-	9,083	-	7,314	-
From Off-Highway Vehicle Trust Fund (0263) to General Fund (0001) (per Chapters 22 & 32, Statutes of 2012)	-	-	103,767	-	-	-
From Olympic Training Account,California (0442) to General Fund (0001) (Transfer per Govt Code 7592)	128	-	92	-	92	-
From Recreational Health Fund (3157) to General Fund (0001) per Item 4265-001-3157, Budget Act of 2011)	-	-	341	-	-	-
From Environmental License Plate Fund, Calif (0140) to Motor Vehicle Account, STF (0044) (per Public Resources Code Section 21191)	-	3,890	-	1,772	-	1,802
From Site Operation and Maintenance Account (0458) to Toxic Substances Control Account (0557) (per Item 3960-011-0458, Budget Acts)	-	23	-	20	-	20
From Motor Vehicle Account, STF (0044) to General Fund (0001) per Government Code Section 16475	24	-24	300	-300	300	-300
From Motor Vehicle Fuel Account, TTF (0061) to General Fund (0001) per Revenue and Taxation Code Section 8352.6(a)(3)	11,662	-11,662	9,996	-9,996	9,996	-9,996
From Motor Vehicle Account, STF (0044) to General Fund (0001) per Item 2740-011-0044, Budget Acts	71,600	-71,600	65,800	-65,800	65,800	-65,800
From AIDS Vaccine Research Develop Grant Fd (0135) to General Fund (0001) per Chapter 294, Statutes of 1997	27	-27	-	-	-	-
From Motor Vehicle Fuel Account, TTF (0061) to General Fund (0001) per Revenue and Taxation Code Section 8352.4(b)	-	-	30,555	-30,555	30,555	-30,555
From Motor Vehicle Fuel Account, TTF (0061) to General Fund (0001) per Revenue and Taxation Code Section 8352.6(a)(2)	-	-	60,181	-60,181	69,201	-69,201
TOTAL TRANSFERS:	**$97,627**	**$-79,400**	**$318,770**	**$-165,040**	**$236,913**	**$-174,030**

SCHEDULE 12E
STATE APPROPRIATIONS LIMIT
EXCLUDED APPROPRIATIONS
(Dollars in Millions)

	Fund	Actual 2011-12	Estimated 2012-13	Proposed 2013-14
DEBT SERVICE:				
9600 Bond Interest and Redemption				
(9600-510-0001)	General	$4,390	$4,292	$5,071
(9600-511-3107)	Special	755	659	974
(9600-511-8071)	Special	106	92	94
9618 Economic Recovery Bond Debt Service	Special	1,025	1,399	1,543
TOTAL -- DEBT SERVICE		$6,276	$6,442	$7,682
QUALIFIED CAPITAL OUTLAY:				
Various (Ch. 3 Except DOT)	General	$27	$81	$88
Various (Ch. 3 Except DOT)	Special	18	60	30
Various Qualified Capital Outlay	General	142	167	157
Various Qualified Capital Outlay	Special	147	98	88
Lease-Revenue Bonds (Capital Outlay)	General	662	737	830
Lease-Revenue Bonds (Capital Outlay)	Special	26	26	28
TOTAL -- CAPITAL OUTLAY		$1,022	$1,169	$1,221
SUBVENTIONS:				
6110 K-12 Apportionments (6110-601-0001)	General	$18,673	$14,897	$24,346
6110 K-12 Apportionments (6110-601-3207)	Special	0	6,572	5,314
6110 K-12 Supplemental Instruction (6110-104/664/657-0001)	General	336	336	0
6110 K-12 Class Size Reduction (6110-234/629/630-0001)	General	1,263	1,270	570
6110 K-12 ROCP (6110-105/618/659-0001)	General	385	385	40
6110 K-12 Apprenticeships (6110-103/635/613-0001)	General	16	16	6
6110 Charter Sch Block Grant (6110-211/621/616-0001)	General	186	292	6
State Subventions Not Counted in Schools' Limit	General	-16	-1,709	-6,778
6110 County Offices (6110-608-0001)	General	211	9	409
6110 County Offices (6110-608-3207)	Special	0	127	93
6870 Community Colleges (6870-101/103/615/616/680-0001)	General	3,342	2,699	3,474
6870 Community Colleges (6870-101-3207)	Special	0	828	668
SUBVENTIONS -- EDUCATION		$24,396	$25,722	$28,148
5195 1991 State-Local Realignment				
Vehicle License Collection Account	Special	$14	$14	$14
Vehicle License Fees	Special	1,479	1,439	1,461
5196 2011 State-Local Realignment				
Vehicle License Fees	Special	486	482	490
9100 Tax Relief (9100-101-0001)	General	434	430	425
9350 Shared Revenues				
(9430-640-0064)	Special	0	0	0
(9430-601-0001) Trailer VLF GF backfill (Shared Rev.)	General	21	23	23
SUBVENTIONS -- OTHER		$2,434	$2,388	$2,413
COURT AND FEDERAL MANDATES:				
Various Court and Federal Mandates (HHS)	General	$3,300	$3,486	$3,746
Various Court and Federal Mandates	General	3,902	3,583	2,728
Various Court and Federal Mandates	Special	216	212	216
TOTAL -- MANDATES		$7,418	$7,281	$6,690
PROPOSITION 111:				
Motor Vehicle Fuel Tax: Gasoline	Special	$1,256	$1,272	$1,291
Motor Vehicle Fuel Tax: Diesel	Special	247	253	258
Weight Fee Revenue	Special	312	309	313
TOTAL -- PROPOSITION 111		$1,815	$1,834	$1,862
TOTAL EXCLUSIONS:		**$43,361**	**$44,836**	**$48,016**
General Fund		*$37,274*	*$30,994*	*$35,141*
Special Funds		*$6,087*	*$13,842*	*$12,875*

Finance Glossary of Accounting and Budgeting Terms

The following budgetary terms are used frequently throughout the Governor's Budget, the Governor's Budget Summary, and the annual Budget (Appropriations) Bill. Definitions are provided for terminology that is common to all publications. For definitions of terms unique to a specific program area, please refer to the individual budget presentation.

Abatement
A reduction to an expenditure that has already been made. In state accounting, only specific types of receipts are accounted for as abatements, including refund of overpayment of salaries, rebates from vendors or third parties for defective or returned merchandise, jury duty and witness fees, and property damage or loss recoveries. (See *SAM 10220* for more detail.)

Abolishment of Fund
The closure of a fund pursuant to the operation of law. Funds may also be administratively abolished by the Department of Finance with the concurrence of the State Controller's Office. When a special fund is abolished, all of its assets and liabilities are transferred by the State Controller's Office to a successor fund, or if no successor fund is specified, then to the General Fund. *(GC 13306, 16346.)*

Accrual Basis of Accounting
The basis of accounting in which transactions are recognized when they occur, regardless of when cash is received or disbursed. Revenue is recorded when earned, and expenditures are recorded when obligations are created (generally when goods/services are ordered or when contracts are signed).

Administration
Refers to the Governor's Office and those individuals, departments, and offices reporting to it (e.g., the Department of Finance).

Administration Program Costs
The indirect cost of a program, typically a share of the costs of the administrative units serving the entire department (e.g., the Director's Office, Legal, Personnel, Accounting, and Business Services). "Distributed Administration" costs represent the distribution of the indirect costs to the various program activities of a department. In most departments, all administrative costs are distributed. (Also see "Indirect Costs" and "SWCAP.")

Administratively Established Positions
Positions authorized by the Department of Finance during a fiscal year that were not included in the Budget and are necessary for workload or administrative reasons. Such positions terminate at the end of the fiscal year, or, in order to continue, must meet certain criteria under Control Section 31.00. *(SAM 6406, Control Section 31.00)*

Agency
A legal or official reference to a government organization at any level in the state organizational hierarchy. (See the *UCM* for the hierarchy of State Government Organizations.)

Or:

A government organization belonging to the highest level of the state organizational hierarchy as defined in the UCM. An organization whose head (Agency Secretary) is designated by Governor's order as a cabinet member. *(SAM 6610)*

Allocation
A distribution of funds or costs from one account or appropriation to one or more accounts or appropriations (e.g., the allocation of employee compensation funding from the statewide 9800 Budget Act items to departmental Budget Act items).

Allotment
The approved division of an amount (usually of an appropriation) to be expended for a particular purpose during a specified time period. An allotment is generally authorized on a line item expenditure basis by program or organization. *(SAM 8300 et seq)*

Amendment
A proposed or accepted change to a bill in the Legislature, the California Constitution, statutes enacted by the Legislature, or ballot initiative.

A-pages
A common reference to the Governor's Budget Summary. Budget highlights now contained in the Governor's Budget Summary were once contained in front of the Governor's Budget on pages A-1, A-2, etc., and were, therefore, called the A-pages.

Appropriated Revenue
Revenue which, as it is earned, is reserved and appropriated for a specific purpose. An example is student fees received by state colleges that are by law appropriated for the support of the colleges. The revenue does not become available for expenditure until it is earned.

Appropriation
Authorization for a specific agency to make expenditures or create obligations from a specific fund for a specific purpose. It is usually limited in amount and period of time during which the expenditure is to be recognized. For example, appropriations made by the Budget Act are available for encumbrance for one year, unless otherwise specified. Appropriations made by other legislation are available for encumbrance for three years, unless otherwise specified, and appropriations stating "without regard to fiscal year" shall be available from year to year until fully expended. Legislation or the California Constitution can provide continuous appropriations, and voters can also make appropriations by approving ballot measures. An appropriation shall be available for encumbrance during the period specified therein, or if not specified, for a period of three years after the date upon which it first became available for encumbrance. Except for federal funds, liquidation of encumbrances must be within two years of the expiration date of the period of availability for encumbrance, at which time the undisbursed (i.e., unliquidated) balance of the appropriation is reverted back into the fund. Federal funds have four years to liquidate. *(GC 16304, 16304.1)*

Appropriation Without Regard To Fiscal Year (AWRTFY)
An appropriation for a specified amount that is available from year to year until fully expended.

Appropriations Limit, State (SAL)
The constitutional limit on the growth of certain appropriations from tax proceeds, generally set to the level of the prior year's appropriation limit as adjusted for changes in cost of living and population. Other adjustments may be made for such reasons as the transfer of services from one government entity to another. *(Article XIII B, § 8; GC Sec. 7900 et seq; CS 12.00)*

Appropriation Schedule
The detail of an appropriation (e.g., in the Budget Act), showing the distribution of the appropriation to each of the categories, programs, or projects thereof.

Assembly
California's lower house of the Legislature composed of 80 members. As a result of Proposition 140 (passed in 1990) and Proposition 28 (passed in 2012), members elected in or after 2012 may serve 12 years in the Legislature in any combination of four-year state Senate or two-year state Assembly

terms. Prior to Proposition 28, Assembly members could serve two-year terms and a maximum of three terms. *(Article IV, § 2 (a))*

Audit
Typically a review of financial statements or performance activity (such as of an agency or program) to determine conformity or compliance with applicable laws, regulations, and/or standards. The state has three central organizations that perform audits of state agencies: the State Controller's Office, the Department of Finance, and the California State Auditor's Office. Many state departments also have internal audit units to review their internal functions and program activities. *(SAM 20000, etc.)*

Augmentation
An authorized increase to a previously authorized appropriation or allotment. This increase can be authorized by Budget Act provisional language, control sections, or other legislation. Usually a Budget Revision or an Executive Order is processed to implement the increase.

Authorized
Given the force of law (e.g., by statute). For some action or quantity to be authorized, it must be possible to identify the enabling source and date of authorization.

Authorized Positions

As reflected in the Governor's Budget (Expenditures by Category and Changes in Authorized Positions), corresponds with the "Total, Authorized Positions" shown in the Salaries and Wages Supplement (Schedule 7A).

In these documents, for past year, authorized positions represent the number of actual positions filled for that year. For current year, authorized positions include all regular ongoing positions approved in the Budget Act for that year, less positions abolished by the State Controller per Government Code 12439, adjustments to limited term positions, and positions authorized in enacted legislation. For budget year, the number of authorized positions is the same as current year except for adjustments for any positions that have been removed due to expiring limited positions. (GC 19818; SAM 6406.)

Availability Period
The time period during which an appropriation may be encumbered (i.e., committed for expenditure), usually specified by the law creating the appropriation. If no specific time is provided in financial legislation, the period of availability is three years. Unless otherwise provided, Budget Act appropriations are available for one year. However, based on project phase, capital outlay projects may have up to three years to encumber. An appropriation with the term "without regard to fiscal year" has an unlimited period of availability and may be encumbered at any time until the funding is exhausted. (See also "Encumbrances")

Balance Available
In regards to a fund, it is the excess of resources over uses. For budgeting purposes, the balance available in a fund condition is the carry-in balance, net of any prior year adjustments, plus revenues and transfers, less expenditures. For accounting purposes, the balance available in a fund is the net of assets over liabilities and reserves that is available for expenditure .

For appropriations, it is the unobligated, or unencumbered, balance still available.

Baseline Adjustment
Also referred as Workload Budget Adjustment. See Workload Budget Adjustment.

Baseline Budget
Also referred as Workload Budget. See Workload Budget.

Bill
A draft of a proposed law presented to the Legislature for enactment. (A bill has greater legal formality and standing than a resolution.)

OR An invoice, or itemized statement, of an amount owing for goods and services received.

Bond Funds
For legal basis budgeting purposes, funds used to account for the receipt and disbursement of non-self liquidating general obligation bond proceeds. These funds do not account for the debt retirement since the liability created by the sale of bonds is not a liability of bond funds. Depending on the provisions of the bond act, either the General Fund or a sinking fund pays the principal and interest on the general obligation bonds. The proceeds and debt of bonds related to self-liquidating bonds are included in nongovernmental cost funds. *(SAM 14400)*

Budget
A plan of operation expressed in terms of financial or other resource requirements for a specific period of time. (*GC 13320, 13335; SAM 6120)*

Budget Act (BA)
An annual statute authorizing state departments to expend appropriated funds for the purposes stated in the Governor's Budget and amended by the Legislature. *(SAM 6333)*

Budget Bill
Legislation presenting the Governor's proposal for spending authorization for the next fiscal year. The Budget Bill is prepared by the Department of Finance and submitted to each house of the Legislature in January (accompanying the Governor's Budget). The Budget Bill's authors are typically the budget committee chairpersons.

The California Constitution requires the Legislature to pass the Budget Bill and send it by June 15 each year to the Governor for signature. The Budget Bill becomes the Budget Act upon signature by the Governor, after any line-item vetoes. *(Art. IV. § 12(c); GC 13338; SAM 6325, 6333)*

Budget Change Proposal (BCP)
A proposal to change the level of service or funding sources for activities authorized by the Legislature, propose new program activities not currently authorized, or to delete existing programs. The Department of Finance annually issues a Budget Letter with specific instructions for preparing BCPs. *(SAM 6120)*

Budget Cycle
The period of time required to prepare a state financial plan and enact that portion of it applying to the budget year. Significant events in the cycle include:

- preparation of the Governor's proposed budget (usually prepared between July 1st and January 10)
- submission of the Governor's Budget and Budget Bill to the Legislature (by January 10)
- submission to the Legislature of proposed adjustments to the Governor's Budget
    - April 1 - adjustments other than Capital Outlay and May Revision
    - May 1 - Capital Outlay appropriation adjustments
    - May 14 - May Revision adjustments for changes in General Fund revenues, necessary expenditure reductions to reflect updated revenue, and funding for Proposition 98, caseload, and population
- review and revision of the Governor's Budget by the Legislature
- return of the revised budget to the Governor by June 15, as required by the California Constitution, for signature after any line-item vetoes
- signing of the budget by the Governor . *(Art. IV. § 10, GC 13308, SAM 6150)*

Budget—Program or Traditional
A program budget expresses the operating plan in terms of the costs of activities (programs) to be undertaken to achieve specific goals and objectives. A traditional (or object of expenditure) budget expresses the plan in terms of categories of costs of the goods or services to be used to perform specific functions.

The Governor's Budget is primarily a program budget but also includes detailed categorization of proposed expenditures for goods and services (Expenditures by Category) for State Operations for each department. *(GC 13336; SAM 6210, 6220)*

Budget Revision (BR)
A document, usually approved by the Department of Finance, that cites a legal authority to authorize a change in an appropriation. Typically, BRs either increase the appropriation or make adjustments to the categories or programs within the appropriation as scheduled. (*SAM 6533, 6542, 6545)*

Budget Year (BY)
The next state fiscal year, beginning July 1 and ending June 30, for which the Governor's Budget is submitted (i.e., the year following the current fiscal year).

CALSTARS
The acronym for the California State Accounting and Reporting System, the state's primary accounting system. Most departments currently use CALSTARS. *(GC 13300)*

Capital Outlay (CO)
A character of expenditure of funds to acquire land, plan and construct new buildings, expand or modify existing buildings, and/or purchase equipment related to such construction. (*CS 3.00)*

Carryover
The unencumbered balance of an appropriation that continues to be available for expenditure in years subsequent to the year of enactment. For example, if a three-year appropriation is not fully encumbered in the first year, the remaining amount is carried over to the next fiscal year.

Cash Basis of Accounting
The basis of accounting in which revenues and expenditures are recorded when cash is received or disbursed.

Cash Flow Statement
A statement of cash receipts and disbursements for a specified period of time.

Category
A grouping of related types of expenditures, such as Personal Services, Operating Expenses and Equipment, Reimbursements, Special Items of Expense, Unclassified, Local Costs, Capital Costs, and Internal Cost Recovery. *(UCM)*

Category Transfer
An allowed transfer between categories or functions within the same schedule of an appropriation. Such transfers are presently authorized by Control Section 26.00 of the Budget Act (and prior to 1996-97, by Section 6.50 of the Budget Act). The control section specifies the amounts of the allowable transfers and requirements for reporting to the Legislature.

Change Book System
The system the Department of Finance uses to record all the legislative changes (including changes proposed by the Administration and approved by the Legislature) made to the Governor's Budget and the final actions on the budget taken by the Legislature and Governor. A “Final Change Book” is

published after enactment of the Budget Act. It includes detailed fiscal information on the changes made by the Legislature and by the Governor's vetoes. (*SAM 6355)*

Changes in Authorized Positions ("Schedule 2")
A schedule in the Governor's Budget that reflects staffing changes made subsequent to the adoption of the current year budget and enacted legislation. This schedule documents changes in positions due to various reasons. Some examples are: transfers, positions established, and selected reclassifications, as well as proposed new positions included in BCPs for the current or budget year. (SAM 6406)

Chapter
The reference assigned by the Secretary of State to an enacted bill, numbered sequentially in order of enactment each calendar year. The enacted bill is then referred to by this "chapter" number and the year in which it became law. For example, *Chapter 1, Statutes of 1997,* would refer to the first bill enacted in 1997.

Character of Expenditure
A classification identifying the major purpose of an expenditure, such as State Operations, Local Assistance, Capital Outlay, or Unclassified. *(UCM)*

Claim Schedule
A request from a state department to the State Controller's Office to disburse payment from a legal appropriation or account for a lawful state obligation. The claim schedule identifies the appropriation or account to be charged, the payee(s), the amount(s) to be paid, and an affidavit attesting to the validity of the request.

COBCP
Capital outlay budgets are zero-based each year, therefore, the department must submit a written capital outlay budget change proposal for each new project or subsequent phase of an existing project for which the department requests funding. *(SAM 6818)*

Codes, Uniform
See "Uniform Codes Manual."

Conference Committee
A committee of three members (two from the majority party, one from the minority party) from each house, appointed to meet and resolve differences between versions of a bill (e.g., when one house of the Legislature does not concur with bill amendments made by the other house). If resolution cannot be reached, another conference committee can be selected, but no more than three different conference committees can be appointed on any one bill. Budget staff commonly refer to the conference committee on the annual budget bill as the "Conference Committee." *(SAM 6340)*

Continuing Appropriation
An appropriation for a set amount that is available for more than one year. *(SAM 8382)*

Continuous Appropriation
Constitutional or statutory expenditure authorization which is renewed each year without further legislative action. The amount available may be a specific, recurring sum each year; all or a specified portion of the proceeds of specified revenues which have been dedicated permanently to a certain purpose; or it may be whatever amount is designated for the purpose as determined by formula, e.g., school apportionments. Note: Government Code Section 13340 sunsets statutory continuous appropriations on June 30 with exceptions specified in the section and other statutes. Section 30.00 of the annual Budget Act traditionally extends the continuous appropriations for one additional fiscal year. *(GC 13340)*

Continuously Vacant Positions
On July 1, positions which were continuously vacant for six consecutive monthly pay periods during the preceding fiscal year are abolished by the State Controller's Office. The six consecutive monthly pay periods may occur entirely within one fiscal year or between two consecutive fiscal years. The exceptions to this rule are positions exempt from civil service and instructional positions authorized for the California State University. The Department of Finance may authorize the reestablishment of positions in cases where the vacancies were (1) due to a hiring freeze, (2) the department has diligently attempted to fill the position but was unable to complete all steps to fill the position within six months, (3) the position is determined to be hard-to-fill, (4) the position has been designated as a management position for the purposes of collective bargaining and has been held vacant pending the appointment of the director or other chief executive officer of the department as part of the transition from one Governor to the suceeding Governor, or, (5) late enactment of the budget causes the department to delay filling the position, and the Department of Finance approves an agency's written appeal to continue the positions. In addition, departments may self-certify reestablishments by August 15 for positions that meet specified conditions during the vacancy period.

By October 15 of each year, the State Controller's Office is required to notify the Joint Legislative Budget Committee and the Department of Finance of the continously vacant positions identified for the preceding fiscal year. *(GC 12439)*

Control Sections
Sections of the Budget Act (i.e., 1.00 to the end) providing specific controls on the appropriations itemized in Section 2.00 of the Budget Act. See more detail under "Sections."

Cost-of-Living Adjustments (COLA)
Increases provided in state-funded programs that include periodic adjustments predetermined in state law (statutory, such as K-12 education apportionments), or established at optional levels (discretionary) by the Administration and the Legislature each year through the budget process.

Current Year (CY)
A term used in budgeting and accounting to designate the operations of the present fiscal year in contrast to past or future periods. (See also "Fiscal Year.")

Debt Service
The amount of money required to pay interest on outstanding bonds and the principal of maturing bonds.

Department
A governmental organization, usually belonging to the third level of the state organizational hierarchy as defined in the Uniform Codes Manual. *(UCM)*

Department of Finance (Finance)
The Director of Finance functions as the Governor's chief fiscal policy advisor with emphasis on the financial integrity of the state. Finance is delegated the responsibility for preparation of the Governor's Budget. Primary functions of the department include:

- Prepare, explain, and administer the state's annual financial plan (budget), which the Governor is required under the State Constitution to present by January 10 of each year.
- Analyze legislation.
- Establish appropriate fiscal policies to carry out the state's programs.
- Develop and maintain the California State Accounting and Reporting System (CALSTARS), which is used by most state departments to record their accounting transactions.

- Monitor and audit expenditures by state departments to ensure compliance with the law, approved standards and policies.

- Develop economic forecasts and revenue estimates.

- Develop population and enrollment estimates and projections.

- Review expenditures for information technology activities of state departments.

- Support the Director or designee in their role as member of approximately 95 state boards and commissions.

(GC 13000 et seq.)

Detailed Budget Adjustments
Department Detailed Budget Adjustments are included in department budget displays to provide the reader a snapshot of proposed expenditure and position adjustments in the department, why those changes are being proposed, and their dollar and position impact.

The Detailed Budget Adjustments include two adjustment categories: workload and policy. Within the workload section, issues are further differentiated between budget change proposals and other workload budget adjustments. Below are the standard categories or headings including definitions: Additional categories or headings may be used as needed in any particular year.

- **Workload Budget Adjustments** - See "Workload Budget Adjustments."
- **Policy Adjustments** - See "Policy Adjustments."
- **Employee Compensation Adjustments** - See "Employee Compensation/Retirement."
- **Retirement Rate Adjustment** – See "Employee Compensation/Retirement."
- **Limited Term Positions/ Expiring Programs** - Reduction of the budget-year funding and positions for expiring programs or positions.
- **Abolished Vacant Positions** – Positions abolished that are vacant for six consecutive monthly pay periods, irrespective of fiscal years, per Government Code 12439.
- **One-Time Cost Reductions** - Reductions of the budget-year funding and positions to account for one-time costs budgeted in the current year.
- **Full-Year Cost of New/Expanded Programs** - Increases to the budget year funding and positions to reflect the full-year costs of programs authorized to begin after July 1 of the current fiscal year (does not include the full year effect of employee compensation adjustments that are displayed separately).
- **Carryover/Reappropriation** – See "Carryover" and "Reappropriation."
- **Legislation With an Appropriation** – New legislation with funding to carry out its purpose.
- **Expenditure Transfers** – Transfers of expenditures between two departments but within the same fund.
- **Lease Revenue Debt Service Adjustment** – Expenditures related to changes in lease revenue costs.
- **Miscellaneous Adjustments** – This category includes all workload budget adjustments not included in one of the aforementioned categories. This category may include Pro Rata and Statewide Costs Allocation Plan (SWCAP) adjustments. See Pro Rata and Statewide Cost Allocation.

Detail of Appropriations and Adjustments
A budget display, for each organization, that reflects appropriations and adjustments by fund source for each character of expenditure, (i.e., State Operations, Local Assistance, and Capital Outlay). (*SAM 6478)*

Element
A subdivision of a budgetary program and the second level of the program structure in the Uniform Codes Manual.

Employee Compensation/Retirement
Salary, benefit, employer retirement rate contribution adjustments, and any other related statewide compensation adjustments for state employees. Various 9800 Items of the Budget Act appropriate funds for compensation increases for most state employees (excluding Higher Education and some others), that is, they appropriate the incremental adjustment proposed for the salary and benefit adjustments for the budget year. The base salary and benefit levels are included in individual agency/departmental budgets.

Encumbrance
The commitment of all or part of an appropriation for future expenditures. Encumbrances represent commitments related to unfilled purchase orders or unfulfilled contracts. Outstanding encumbrances are recognized as budgetary expenditures in the department's budget documents and annual financial reports. For budgeting purposes, the Department of Finance makes a statewide adjustment to remove encumbrances from overall General Fund expenditures and show the amount as a reserve in the fund balance, in accordance with Government Code section 13307. For other funds, such encumbrance adjustments are not made, and encumbrances are treated as budgetary expenditures which decrease the fund balance.

Enrolled Bill Report (EBR)
An analysis prepared on Legislative measures passed by both houses and referred to the Governor, to provide the Governor's Office with information concerning the measure with a recommendation for action by the Governor. While approved bill analyses become public information, EBRs do not. Note that EBRs are not prepared for Constitutional Amendments, or for Concurrent, Joint, or single house resolutions, since these are not acted upon by the Governor. *(SAM 6965)*

Enrollment, Caseload, & Population Adjustments
These adjustments are generally formula or population driven.

Executive Branch
One of the three branches of state government, responsible for implementing and administering the state's laws and programs. The Governor's Office and those individuals, departments, and offices reporting to it (the Administration) are part of the Executive Branch.

Executive Order (EO)
A budget document, issued by the Department of Finance, requesting the State Controller's Office to make an adjustment in their accounts. The adjustments are typically authorized by Budget Act provision language, Budget Act control sections, and other statutes. An EO is used when the adjustment makes increases or decreases on a state-wide basis, involves two or more appropriations, or makes certain transfers or loans between funds.

Exempts
State employees exempt from civil service pursuant to subdivision (e), (f), or (g) of Section 4 of Article VII of the California Constitution. Examples include department directors and other gubernatorial appointees. *(SAM 0400)*

Expenditure
Expenditures reported on a department's annual financial reports and "past year" budget documents consist of amounts paid and accruals (including encumbrances and payables) for obligations created for the fiscal year. "Current Year" and "Budget Year" expenditures in budget documents are estimates. See "Encumbrances".

Expenditure Authority
The authorization to make an expenditure (usually by a budget act appropriation, provisional language or other legislation).

Expenditures by Category
A budget display, for each department, that reflects actual past year, estimated current year, and proposed budget year expenditures presented by character of expenditure (e.g., State Operations and/or Local Assistance) and category of expenditure (e.g., Personal Services, Operating Expenses and Equipment).

3-year Expenditures and Positions
A display at the start of each departmental budget that presents the various departmental programs by title, dollar totals, positions, and source of funds for the past, current, and budget years.

Feasibility Study Report (FSR)
A document proposing an information technology project that contains analyses of options, cost estimates, and other information. *(SAM 4920-4930)*

Federal Fiscal Year (FFY)
The 12-month accounting period of the federal government, beginning on October 1 and ending the following September 30. For example, a reference to FFY 2013 means the period beginning October 1, 2012 and ending September 30, 2013. (See also "Fiscal Year.")

Federal Funds
For legal basis budgeting purposes, classification of funds into which money received in trust from an agency of the federal government will be deposited and expended by a state department in accordance with state and/or federal rules and regulations. State departments must deposit federal grant funds in the Federal Trust Fund, or other appropriate federal fund in the State Treasury. *(GC 13326 (Finance approval), 13338 approp. of FF, CS 8.50)*

Feeder Funds
For legal basis accounting purposes, funds into which certain taxes or fees are deposited upon collection. In some cases administrative costs, collection expenses, and refunds are paid. The balance of these funds is transferable at any time by the State Controller's Office to the receiving fund, in most cases, the General Fund.

Final Budget
Generally refers to the Governor's Budget as amended by actions taken on the Budget Bill (e.g. legislative changes, Governor's vetoes). Note: Subsequent legislation (law enacted after the Budget Bill is chaptered) may add, delete, or change appropriations or require other actions that affect a budget appropriation.

Final Budget Summary
A document produced by the Department of Finance after enactment of the Budget Act which reflects the Budget Act, any vetoes to language and/or appropriations, technical corrections to the Budget Act, and summary budget information. (See also "Budget Act," "Change Book.") (*SAM 6130, 6350)*

Finance Conversion Code (FCC) Listing
A listing distributed by the State Controller's Office to departments each spring, which based upon departmental coding updates, will dictate how the salaries and wages detail will be displayed in the Salaries and Wages publication. *(SAM 6430)*

Finance Letter (FL)
Proposals made, by the Director of Finance to the chairpersons of the budget committees in each house, to amend the Budget Bill and the Governor's Budget from that submitted on January 10 to reflect a revised plan of expenditure for the budget year and/or current year. Specifically, the

Department of Finance is required to provide the Legislature with updated expenditure and revenue information for all policy adjustments by April 1, capital outlay technical changes by May 1, and changes for caseload, population, enrollment, updated revenues, and Proposition 98 by May 14. *(GC 13308)*

Fiscal Committees
Committees of members in each house of the Legislature that review the fiscal impact of proposed legislation, including the Budget Bill. Currently, the fiscal committees include the Senate Budget and Fiscal Review Committee, Senate Appropriations Committee, Assembly Appropriations Committee, and the Assembly Budget Committee. The Senate Budget and Fiscal Review Committee and the Assembly Budget Committee are broken into subcommittees responsible for specific state departments or subject areas. Both houses also have Revenue and Taxation Committees that are often considered fiscal committees.

Fiscal Impact Analysis
Typically refers to a section of an analysis (e.g., bill analysis) that identifies the costs and revenue impact of a proposal and, to the extent possible, a specific numeric estimate for applicable fiscal years.

Fiscal Year (FY)
A 12-month period during which income is earned and received, obligations are incurred, encumbrances are made, appropriations are expended, and for which other fiscal transactions are recorded. In California state government, the fiscal year begins July 1 and ends the following June 30. If reference is made to the state's FY 2013 , this is the time period beginning July 1, 2013 and ending June 30, 2014. (See also "Federal Fiscal Year.") *(GC 13290)*

Floor
The Assembly or Senate chambers or the term used to describe the location of a bill or the type of session. Matters may be referred to as "on the floor".

Form 9
A request by a department for space planning services (e.g., new or additional space lease extensions, or renewals in noninstututional) and also reviewed by the Department of Finance. *(SAM 6453)*

Form 22
A department's request to transfer money to the Architectural Revolving Fund (e.g., for building improvements), reviewed by the Department of Finance. *(GC 14957; SAM 1321.1)*

Fund
A legal budgeting and accounting entity that provides for the segregation of moneys or other resources in the State Treasury for obligations in accordance with specific restrictions or limitations. A separate set of accounts must be maintained for each fund to show its assets, liabilities, reserves, and balance, as well as its income and expenditures.

Fund Balance
For accounting purposes, the excess of a fund's assets over its liabilities. For budgeting purposes, the excess of a fund's resources over its expenditures.

Fund Condition Statement
A budget display, included in the Governor's Budget, summarizing the operations of a fund for the past, current, and budget years. The display includes the beginning balance, prior year adjustments, revenue, transfers, loans, expenditures, the ending balance, and any reserves. Fund Condition Statements are required for all special funds. The Fund Condition Statement for the General Fund is Summary Schedule 1. Other funds are displayed at the discretion of the Department of Finance.

General Fund (GF)
For legal basis accounting and budgeting purposes, the predominant fund for financing state government programs, used to account for revenues which are not specifically designated to be accounted for by any other fund. The primary sources of revenue for the General Fund are the personal income tax, sales tax, and corporation taxes. The major uses of the General Fund are education (K-12 and higher education), health and human service programs, and correctional programs.

Generally Accepted Accounting Principles (GAAP)
The accounting principles, rules, conventions, and procedures that are used for accounting and financial reporting. GAAP for governments are set by the Governmental Accounting Standards Board (GASB), the accounting and financial reporting standards setting body for state and local governments.

Governmental Cost Funds
For legal basis accounting and budgeting purposes, funds that derive revenue from taxes, licenses, and fees.

Governor's Budget
The publication the Governor presents to the Legislature, by January 10 each year. It contains recommendations and estimates for the state's financial operations for the budget year. It also displays the actual revenues and expenditures of the state for the prior fiscal year and updates estimates for the current year revenues and expenditures. This publication is also produced in a web format known as the Proposed Budget Detail on the Department of Finance website. *(Article IV, § 12; SAM 6120, et seq)*

Governor's Budget Summary (or A-Pages)
A companion publication to the Governor's Budget that outlines the Governor's policies, goals, and objectives for the budget year. It provides a perspective on significant fiscal and/or structural proposals. This publication is also produced in a web format known as the Proposed Budget Summary on the Department of Finance web site.

Grants
Typically used to describe amounts of money received by an organization for a specific purpose but with no obligation to repay (in contrast to a loan, although the award may stipulate repayment of funds under certain circumstances). For example, the state receives some federal grants for the implementation of health and community development programs, and the state also awards various grants to local governments, private organizations and individuals according to criteria applicable to the program.

Indirect Costs
Costs which by their nature cannot be readily associated with a specific organization unit or program. Like general administrative expenses, indirect costs are distributed to the organizational unit(s) or program(s) which benefit from their incurrence.

Initiative
The power of the electors to propose statutes or Constitutional amendments and to adopt or reject them. An initiative must be limited to a single subject and be filed with the Secretary of State with the appropriate number of voter signatures in order to be placed on the ballot. *(Article II, § 8)*

Item
Another word for appropriation.

Judgments
Usually refers to decisions made by courts against the state. Payment of judgments is subject to a variety of controls and procedures.

Language Sheets
Copies of the current Budget Act appropriation items provided to Finance and departmental staff each fall to update for the proposed Governor's Budget. These updated language sheets become the proposed Budget Bill. In the spring, language sheets for the Budget Bill are updated to reflect revisions to the proposed appropriation amounts, Item schedule(s), and provisions, and become the Budget Act.

Legislative Analyst's Office (LAO)
A non-partisan organization that provides advice to the Legislature on fiscal and policy matters. For example, the LAO annually publishes a detailed analysis of the Governor's Budget and this document becomes the initial basis for legislative hearings on the Budget Bill. *(SAM 7360)*

Legislative Counsel Bureau
A staff of attorneys who draft legislation (bills) and proposed amendments, and review, analyze and render opinions on legal matters for the legislative members.

Legislative Counsel Digest
A summary of what a legislative measure does contrasting existing law and the proposed change. This summary appears on the first page of a bill.

Legislative Information System (LIS)
An on-line system developed and used by the Department of Finance to maintain current information about all bills introduced in the Assembly and Senate for the current two-year session, and for other recently completed sessions. Finance analysts use this system to prepare bill analyses.

Legislature, California
A two-house body of elected representatives vested with the responsibility and power to make laws affecting the state (except as limited by the veto power of the Governor). See also "Assembly" and "Senate."

Limited-Term Position (LT)
Any position that has been authorized only for a specific length of time with a set termination date. Limited-term positions may be authorized during the budget process or in transactions approved by the Department of Finance. *(SAM 6515)*

Line Item
See "Objects of Expenditure."

Local Assistance (LA)
The character of expenditures made for the support of local government or other locally administered activities.

Mandates
See "State-Mandated Local Program." *(UCM)*

May Revision
An annual update to the Governor's Budget containing a revised estimate of General Fund revenues for the current and ensuing fiscal years, any proposals to adjust expenditures to reflect updated revenue estimates, and all proposed adjustments to Proposition 98, presented by the Department of Finance to the Legislature by May 14 of each year. (See also "Finance Letter.") (*SAM 6130 and GC 13308)*

Merit Salary Adjustment (MSA)
A cost factor resulting from the periodic increase in salaries paid to personnel occupying authorized positions. Personnel generally receive a salary increase of five percent per year up to the upper salary limit of the classification, contingent upon the employing agency certifying that the employee's job performance meets the level of quality and quantity expected by the agency, considering the employee's experience in the position.

Merit salary adjustments for employees of the University of California and the California State University are determined in accordance with rules established by the regents and the trustees, respectively.

Funding typically is not provided for MSAs in the budget; any additional costs incurred by a department usually must be absorbed from within existing resources. (GC 19832)

Minor Capital Outlay
Construction projects or equipment acquired to complete a construction project, estimated to cost less than $600,000 plus any escalation per Public Contract Code 10108.

Modified Accrual Basis
The basis of accounting in which revenues are recognized if the underlying transaction has occurred as of the last day of the fiscal year and the amount is measurable and available to finance expenditures of the current period (i.e., the actual collection will occur either during the current period or after the end of the current period to be used to pay current year-end liabilities). Expenditures are accrued when the obligations are created, except for amounts payable from future fiscal year appropriations. This basis is generally used for the General Fund and special funds.

Non-add
Refers to a numerical value that is displayed in parentheses for informational purposes but is not included in computing totals, usually because the amounts are already accounted for in the budget system or display.

Nongovernmental Cost Funds
For legal basis purposes, used to budget and account for revenues other than general and special taxes, licenses, and fees or certain other state revenues.

Object of Expenditure (Objects)
A classification of expenditures based on the type of goods or services received. For example, the budget category of Personal Services includes the objects of Salaries and Wages and Staff Benefits. The Governor's Budget includes an "Expenditures by Category" for each department at this level. These objects may be further subdivided into line items such as State Employees' Retirement and Workers' Compensation. *(UCM)*

Obligations
Amounts that a governmental unit may legally be required to pay out of its resources. Budgetary authority must be available before obligations can be created. For budgetary purposes, obligations include payables for goods or services received but not yet paid for and encumbrances (i.e., commitments for goods and services not yet received nor paid for). .

One-Time Cost
A proposed or actual expenditure that is non-recurring (usually only in one annual budget) and not permanently included in baseline expenditures. Departments make baseline adjustments to remove prior year one-time costs and appropriately reduce their expenditure authority in subsequent years' budgets.

Operating Expenses and Equipment (OE&E)
A category of a support appropriation which includes objects of expenditure such as general expenses, printing, communication, travel, data processing, equipment, and accessories for the equipment. (*SAM 6451)*

Organization Code
The four-digit code assigned to each state governmental entity (and sometimes to unique budgetary programs) for fiscal system purposes. The organization code is the first segment of the budget item/appropriation number. *(UCM)*

Out-of-State Travel (OST) blanket
A request by a state agency for Governor's Office approval of the proposed out-of-state trips to be taken by that agency's personnel during the fiscal year. *(SAM 0760-0765)*

Overhead
Those elements of cost necessary in the production of an article or the performance of a service that are of such a nature that the amount applicable to the product or service cannot be determined directly. Usually they relate to those costs that do not become an integral part of the finished product or service, such as rent, heat, light, supplies, management, or supervision. See also "Indirect Costs."

Overhead Unit
An organizational unit that benefits the production of an article or a service but that cannot be directly associated with an article or service to distribute all of its expenditures to elements and/or work authorizations. The cost of overhead units are distributed to operating units or programs within the department. (See "Administration Program Costs.")

Past Year
The most recently completed fiscal year. (See also "Fiscal Year.")

Performance Budget
A budget wherein proposed expenditures are organized and tracked primarily by measurable performance objectives for activities or work programs. A performance budget may also incorporate other bases of expenditure classification, such as character and object, but these are given a subordinate status to activity performance.

Personal Services
A category of expenditure which includes such objects of expenditures as the payment of salaries and wages of state employees and employee benefits, including the state's contribution to the Public Employees' Retirement Fund, insurance premiums for workers' compensation, and the state's share of employees' health insurance. See also "Objects of Expenditure." *(SAM 6403, 6506)*

Plan of Financial Adjustment (PFA)
A plan proposed by a department, approved by the Department of Finance, and accepted by the State Controller's Office (SCO), to permit the SCO to allocate costs paid from one item to one or more items within a department's appropriations. A PFA might be used, for example, to allow the department to pay all administrative costs out of its main item and then to transfer the appropriate costs to the correct items for their share of the costs paid. The SCO transfers the funds upon receipt of a letter (transaction request) from the department stating the amount to be transferred based on the criteria for cost distribution in the approved PFA. *(SAM 8715)*

Planning Estimate (PE)
A document used to record and monitor those current and budget year expenditure adjustments including budget change proposals approved for inclusion in the Governor's Budget. PEs are broken down by department, fund type, character, Budget Bill/Act appropriation number, and "lines"(i.e., expenditure groupings such as employee compensation, price increases, one-time costs). PEs are primarily used to record the incremental decisions made about changes to each base budget, are

updated at frequent intervals, and can be used for quick planning or "what if" analyses. PEs identify all proposed expenditure changes (baseline and policy) to the previous year's Budget Act, and once budget preparation is complete, PEs will tie to all other fiscal characterizations of the proposed Governor's Budget. (The term is sometimes used synonymously with Planning Estimate Line, which is one specific expenditure grouping.)

Planning Estimate Line
A separate planning estimate adjustment or entry for a particular expenditure or type. (See "Planning Estimate.")

Policy Adjustments
Changes to existing law or Administration policies. These adjustments require action by the Governor and/or Legislature and modify the workload budget.

Pooled Money Investment Account (PMIA)
A State Treasurer's Office accountability account maintained by the State Controller's Office to account for short-term investments purchased by the State Treasurer's Office as designated by the Pooled Money Investment Board on behalf of various funds.

Pooled Money Investment Board (PMIB)
A board comprised of the Director of Finance, State Treasurer, and the State Controller, the purpose of which is to design an effective cash management and investment program, using all monies flowing through the Treasurer's bank accounts and keeping all available monies invested consistent with the goals of safety, liquidity, and yield. *(SAM 7350)*

Positions
See "Authorized Positions."

Price Increase
A budget adjustment to reflect the inflation factors for specified operating expenses consistent with the budget instructions from the Department of Finance.

Prior Year Adjustment
An adjustment for the difference between prior year accruals and actual expenditures or revenues. The prior year adjustment amount is generally included in the Fund Condition Statements as an adjustment to realign the beginning fund balance to ensure accurate fund balances.

Pro Rata
The amount of state administrative costs, paid from the General Fund and the Central Service Cost Recovery Fund (e.g., amounts expended by central service departments such as the State Treasurer's Office, State Personnel Board, State Controller's Office, and Department Finance for the general administration of state government), that are chargeable to and recovered from special funds (other than the General Fund, Central Service Cost Recovery Fund, and federal funds) as determined by the Department of Finance. *(GC 11270-11277, 13332.03; 22828.5; SAM 8753, 8754)*

Program Budget
See "Budget, Program or Traditional."

Program Cost Accounting (PCA)
A level of accounting that identifies costs by activities performed in achievement of a purpose in contrast to the traditional line-item format. The purpose of accounting at this level is to produce cost data sufficiently accurate for allocating and managing its program resources. *(SAM 9200)*

Programs
Activities of an organization grouped on the basis of common objectives. Programs are comprised of elements, which can be further divided into components and tasks.

Proposed New Positions
A request for an authorization to expend funds to employ additional people to perform work. Proposed new positions may be for limited time periods (limited term) and for full or less than full time. Proposed new positions may be for an authorization sufficient to employ one person, or for a sum of funds (blanket) from which several people may be employed. (See also "Changes in Authorized Positions.")

Proposition 98
An initiative passed in November 1988, and amended in the June 1990 election, that provides a minimum funding guarantee for school districts, community college districts, and other state agencies that provide direct elementary and secondary instructional programs for kindergarten through grade 14 (K-14) beginning with fiscal year 1988-89. The term is also used to refer to any expenditures which fulfill the guarantee. *(Article XVI, § 8)*

Provision
Language in a bill or act that imposes requirements or constraints upon actions or expenditures of the state. Provisions are often used to constrain the expenditure of appropriations but may also be used to provide additional or exceptional authority. (Exceptional authority usually begins with the phrase "Notwithstanding...".)

Public Service Enterprise Funds
For legal basis accounting purposes, the fund classification that identifies funds used to account for the transactions of self-supporting enterprises that render goods or services for a direct charge to the user (primarily the general public). Self-supporting enterprises, that render goods or services for a direct charge to other state departments or governmental entities, account for their transactions in a Working Capital and Revolving Fund. *(UCM, Fund Codes—Structure)*

Reappropriation
The extension of an appropriation's availability for encumbrance and/or expenditure beyond its set termination date and/or for a new purpose. Reappropriations are typically authorized by statute for one year at a time but may be for some greater or lesser period.

Recall
The power of the electors to remove an elected officer. *(Article II, § 13)*

Redemption
The act of redeeming a bond or other security by the issuing agency.

Reference Code
A three-digit code identifying whether the item is from the Budget Act or some other source (e.g., legislation), and its character (e.g., state operations). This is the middle segment of the budget item/appropriation number.

Referendum
The power of the electors to approve or reject statutes or parts of statutes, with specified exceptions and meeting specified deadlines and number of voters' signatures. *(Article II, § 9)*

Refund to Reverted Appropriations
A receipt account to record the return of monies (e.g., abatements and reimbursements) to appropriations that have reverted.

Regulations
A rule, order, or standard of general application issued by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedures. With state government, the process of adopting or changing most regulations is subject to the Administrative Procedures Act and oversight of the Office of Administrative Law (OAL). The Department of Finance must also review and approve any non-zero estimate of state or local fiscal impact included in a regulation package before it can be approved by OAL. *(GC 13075, and Chapter 3.5 [commencing with section 11340], Part 1, Division 3, Title 2; SAM 6601-6616)*

Reimbursement Warrant (or Revenue Anticipation Warrant)
A warrant that has been sold by the State Controller's Office, as a result of a cash shortage in the General Fund, the proceeds of which will be used to reimburse the General Cash Revolving Fund. The Reimbursement Warrant may or may not be registered by the State Treasurer's Office. The registering does not affect the terms of repayment or other aspects of the Reimbursement Warrant.

Reimbursements
An amount received as a payment for the cost of services performed, or of other expenditures made for, or on behalf of, another entity (e.g., one department reimbursing another for administrative work performed on its behalf). Reimbursements represent the recovery of an expenditure. Reimbursements are available for expenditure up to the budgeted amount (scheduled in an appropriation), and a budget revision must be prepared and approved by the Department of Finance before any reimbursements in excess of the budgeted amount can be expended. *(SAM 6463)*

Reserve
An amount of a fund balance set aside to provide for expenditures from the unencumbered balance for continuing appropriations, economic uncertainties, future apportionments, pending salary or price increase appropriations, and appropriations for capital outlay projects.

Revenue
Any addition to cash or other current assets that does not increase any liability or reserve and does not represent the reduction or recovery of an expenditure (e.g., reimbursements/abatements). Revenues are a type of receipt generally derived from taxes, licenses, fees, or investment earnings. Revenues are deposited into a fund for future appropriation, and are not available for expenditure until appropriated. *(UCM)*

Revenue Anticipation Notes (RANs)
A cash management tool generally used to eliminate cash flow imbalances in the General Fund within a given fiscal year. RANs are not a budget deficit-financing tool.

Revenue Anticipation Warrant (RAW)
See Reimbursement Warrant.

Reversion
The return of the unused portion of an appropriation to the fund from which the appropriation was made, normally two years (four years for federal funds) after the last day of an appropriation's availability period. The Budget Act often provides for the reversion of unused portions of appropriations when such reversion is to be made prior to the statutory limit.

Reverted Appropriation
An appropriation that is reverted to its fund source after the date its liquidation period has expired.

Revolving Fund
Generally refers to a cash account known as an office revolving fund (ORF). It is not a fund but an advance from an appropriation. Agencies may use the cash advance to disburse ORF checks for immediate needs, as specified in SAM. The cash account is subsequently replenished by a State

Controlloer's Office warrant. The size of departmental revolving funds is subject to Department of Finance approval within statutory limits. *(SAM 8100, et seq)*

SAL
See "Appropriations Limit, State".

Salaries and Wages Supplement
An annual publication issued shortly after the Governor's Budget, containing a summary of all positions by department, unit, and classification for the past, current, and budget years, as of July 1 of the current year. This publication is also displayed on the Department of Finance website.

Schedule
The detail of an appropriation in the Budget Bill or Act, showing its distribution to each of the categories, programs, or projects thereof. *OR*

A supplemental schedule submitted by departments to detail certain expenditures. *OR*

A summary listing in the Governor's Budget.

Schedule 2
See "Changes in Authorized Positions."

Schedule 7A
A summary version of the State Controller's Office detailed Schedule 8 position listing for each department. The information reflected in this schedule is the basis for the "Salaries and Wages Supplement" displayed on the Department of Finance website. *(SAM 6415-6419)*

Schedule 8
A detailed listing generated from the State Controller's Office payroll records for a department of its past, current, and budget year positions as of June 30 and updated for July 1. This listing must be reconciled with each department's personnel records and becomes the basis for centralized payroll and position control. The reconciled data should coincide with the level of authorized positions for the department per the final Budget. *(SAM 6424-6429, 6448)*

Schedule 10 (Supplementary Schedule of Appropriations)
A Department of Finance control document listing all appropriations and allocations of funds available for expenditure during the past, current, and budget years. These documents are sorted by state operations, local assistance, and capital outlay. The Schedule 10s reconcile expenditures by appropriation (fund source) and the adjustments made to appropriations, including allocation of new funds. These documents also show savings and carryovers by item. The information provided in this document is summarized in the Detail of Appropriations and Adjustments in the Governor's Budget. (*SAM 6484)*

Schedule 10R (Supplementary Schedule of Revenues and Transfers)
A Department of Finance control document reflecting information for revenues, transfers, and inter-fund loans for the past, current, and budget years. Schedule 10Rs are required for the General Fund and all special funds. Schedule 10R information for special funds is displayed in the Fund Condition Statement for that fund in the Governor's Budget.

Schedule 11
Outdated term for "Supplementary Schedule of Operating Expenses and Equipment."

Schedule of Federal Funds and Reimbursements, Supplementary
A supplemental schedule submitted by departments during budget preparation which displays the federal receipts and reimbursements by source. *(SAM 6460)*

Schedule of Operating Expenses and Equipment, Supplementary
A supplemental schedule submitted by departments during budget preparation which details by object the expenses included in the Operating Expenses and Equipment category. *(SAM 6454, 6457)*

Section 1.50
Section of the Budget Act that 1) specifies a certain format and style for the codes used in the Budget Act, 2) authorizes the Department of Finance to revise codes used in the Budget Act in order to provide compatibility with the Governor's Budget and records of the State Controller's Office, and 3) authorizes the Department of Finance to revise the schedule of an appropriation in the Budget Act for technical changes that are consistent with legislative intent. Examples of such technical changes to the schedule of an appropriation include the elimination of amounts payable, the distribution of administration costs, the distribution of unscheduled amounts to programs or categories, and the augmentation of reimbursement amounts when the Legislature has approved the budget for the department providing the reimbursement.

Section 1.80
Section of the Budget Act that includes periods of availability for Budget Act appropriations.

Section 8.50
The Control Section of the Budget Act that provides the authority to increase federal funds spending authority.

Section 26.00
A Control Section of the Budget Act that provides the authority for the transfer of funds from one category, program or function within a schedule to another category, program or function within the same schedule, subject to specified limitations and reporting requirements to the Legislature. (Prior to 1996-97, this authority was contained in Section 6.50 of the Budget Act.) *(SAM 6548)*

Section 28.00
A Control Section of the Budget Act that authorizes the Director of Finance to approve the augmention or reduction of items of expenditure for the receipt of unanticipated federal funds or other non-state funds, and that specifies the related reporting requirements to the Legislature. Appropriation authority for unanticipated federal funds is contained in Section 8.50. *(SAM 6551-6557)*

Section 28.50
A Control Section of the Budget Act that authorizes the Department of Finance to augment or reduce the reimbursement line of an appropriation schedule for reimbursements received from other state agencies. It also contains specific reporting requirements to the Legislature. *(SAM 6551-6557)*

Section 30.00
A Control Section of the Budget Act that amends Government Code Section 13340 to sunset continuous appropriations.

Section 31.00
A Control Section of the Budget Act that specifies certain administrative procedures. For example, the section subjects the Budget Act appropriations to various sections of the Government Code, limits the new positions a department may establish to those authorized in the Budget, requires Finance approval and legislative notification of certain position transactions, requires all administratively established positions to terminate on June 30 and allows for such positions to continue if they were established after the Governor's Budget was submitted to the Legislature, and prohibits increases in salary ranges and other employee compensation which require funding not authorized by the budget unless the Legislature is informed.

Senate
The upper house of California's Legislature consisting of 40 members. As a result of Proposition 140 (1990, term limits) and Proposition 28 (2012, limits on Legislators' terms in office), members elected in or after 2012 may serve 12 years in the Legislature in any combination of four-year state Senate or two-year state Assembly terms. Prior to Proposition 28, Senate members could serve a maximum of two four-year terms. Twenty members are elected every two years. (*Article IV, § 2 (a))*

Service Revolving Fund
A fund used to account for and finance many of the client services rendered by the Department of General Services. Amounts expended by the fund are reimbursed by sales and services priced at rates sufficient to keep the fund solvent. *(SAM 8471.1)*

Settlements
Refers to any proposed or final settlement of a legal claim (usually a suit) against the state. Approval of settlements and payments for settlements are subject to numerous controls. See also "Judgments." *(GC 965)*

Shared Revenue
A state-imposed tax, such as the gasoline tax, which is shared with local governments in proportion, or substantially in proportion, to the amount of tax collected or produced in each local unit. The tax may be collected either by the state and shared with the localities, or collected locally and shared with the state.

Sinking Fund
A fund or account in which money is deposited at regular intervals to provide for the retirement of bonded debt.

Special Fund for Economic Uncertainties
A fund in the General Fund (a similar reserve is included in each special fund) authorized by statute and Budget Act Control Section 12.30 to provide for emergency situations. *(GC 16418 , 16418.5)*

Special Funds
For legal basis budgeting purposes, funds created by statute, or administratively per Government Code Section 13306, used to budget and account for taxes, licenses, and fees that are restricted by law for particular activities of the government.

Special Items of Expense
An expenditure category that covers nonrecurring large expenditures or special purpose expenditures that generally require a separate appropriation (or otherwise require separation for clarity). *(SAM 6469; UCM)*

Sponsor
An individual, group, or organization that initiates or brings to a Legislator's attention a proposed law change.

Spot Bill
An introduced bill that makes non-substantive changes in a law, usually with the intent to amend the bill at a later date to include substantive law changes. This procedure provides a means for circumventing the deadline for the introduction of bills.

Staff Benefits
An object of expenditure representing the state costs of contributions for employees' retirement, OASDI, health benefits, and nonindustrial disability leave benefits. *(SAM 6412; UCM)*

State Fiscal Year
The period beginning July 1 and continuing through the following June 30.

State-Mandated Local Program
State reimbursements to local governments for the cost of activities required by legislative and executive acts. This reimbursement requirement was established by Chapter 1406, Statutes of 1972 (SB 90) and further ratified by the adoption of Proposition 4 (a constitutional amendment) at the 1979 general election. *(Article XIII B, § 6; SAM 6601)*

State Operations (SO)
A character of expenditure representing expenditures for the support of state government, exclusive of capital investments and expenditures for local assistance activities.

Statewide Cost Allocation Plan (SWCAP)
The amount of state administrative, General Fund costs (e.g., amounts expended by central service departments such as the State Treasurer's Office, State Personnel Board, State Controller's Office, and the Department of Finance for the general administration of state government) chargeable to and recovered from federal funds, as determined by the Department of Finance. These statewide administrative costs are for administering federal programs, which the federal government allows reimbursement. *(GC 13332.01-13332.02; SAM 8753, 8755-8756 et seq.)*

Statute
A written law enacted by the Legislature and signed by the Governor (or a vetoed bill overridden by a two-thirds vote of both houses), usually referred to by its chapter number and the year in which it is enacted. Statutes that modify a state code are "codified" into the respective Code (e.g., Government Code, Health and Safety Code). See also "Bill" and "Chapter". *(Article IV, § 9)*

Subcommittee
The smaller groupings into which Senate or Assembly committees are often divided. For example, the fiscal committees that hear the Budget Bill are divided into subcommittees generally by departments/subject area (e.g., Education, Resources, General Government).

Subventions
Typically used to describe amounts of money expended as local assistance based on a formula, in contrast to grants that are provided selectively and often on a competitive basis. For the purposes of Article XIII B, state subventions include only money received by a local agency from the state, the use of which is unrestricted by the statutes providing the subvention. (GC Section 7903)

Summary Schedules
Various schedules in the Governor's Budget Summary which summarize state revenues, expenditures and other fiscal and personnel data for the past, current, and budget years.

Sunset Clause
Language contained in a law that states the expiration date for that statute.

Surplus
An outdated term for a fund's excess of assets (or resources) over liabilities. See "Fund Balance."

Tax Expenditures
Subsidies provided through the taxation systems by creating deductions, credits and exclusions of certain types of income or expenditures that would otherwise be taxable.

Technical
In the budget systems, refers to an amendment that clarifies, corrects, or otherwise does not materially affect the intent of a bill.

Tort
A civil wrong, other than a breach of contract, for which the court awards damages. Traditional torts include negligence, malpractice, assault and battery. Recently, torts have been broadly expanded such that interference with a contract and civil rights claims can be torts. Torts result in either settlements or judgments. *(GC 948, 965-965.9; SAM 6472, 8712; BA Item 9670)*

Traditional Budget
See "Budget, Program or Traditional."

Transfers
As used in Schedule 10Rs and fund condition statements, transfers reflect the movement of resources from one fund to another based on statutory authorization or specific legislative transfer appropriation authority. See also "Category Transfer."

Trigger
An event that causes an action or actions. Triggers can be active (such as pressing the update key to validate input to a database) or passive (such as a tickler file to remind of an activity). For example, budget "trigger" mechanisms have been enacted in statute under which various budgeted programs are automatically reduced if revenues fall below expenditures by a specific amount.

Unanticipated Cost/Funding Shortage
A lack or shortage of (1) cash in a fund, (2) expenditure authority due to an insufficient appropriation, or (3) expenditure authority due to a cash problem (e.g., reimbursements not received on a timely basis). See Budget Act Items 9840 and 9850.

Unappropriated Surplus
An outdated term for that portion of the fund balance not reserved for specific purposes. See "Fund Balance" and "Reserve."

Unencumbered Balance
The balance of an appropriation not yet committed for specific purposes. See "Encumbrance."

Uniform Codes Manual (UCM)
A document maintained by the Department of Finance which sets standards for codes and various other information used in state fiscal reporting systems. These codes identify, for example, organizations, programs, funds, receipts, line items, and objects of expenditure.

Unscheduled Reimbursements
Reimbursements collected by an agency that were not budgeted and are accounted for by a separate reimbursement category of an appropriation. To expend unscheduled reimbursements, a budget revision must be approved by the Department of Finance, subject to any applicable legislative reporting requirements (e.g., Section 28.50).

Urgency Statute/Legislation
A measure that contains an "urgency clause" requiring it to take effect immediately upon the signing of the measure by the Governor and the filing of the signed bill with the Secretary of State. Urgency statutes are generally those considered necessary for immediate preservation of the public peace, health or safety, and such measures require approval by a two-thirds vote of the Legislature, rather than a majority. *(Article IV, § 8 (d))*. However, the Budget Bill and other bills providing for appropriations related to the Budget Bill may be passed by a majority vote to take effect immediately upon being signed by the Governor or upon a date specified in the legislation. (Article IV § 12 (e) (1)).

Veto
The Governor's Constitutional authority to reduce or eliminate one or more items of appropriation while approving other portions of a bill. *(Article IV, §10 (e); SAM 6345)*

Victim Compensation and Government Claims Board, California
An administrative body in state government exercising quasi-judicial powers (power to make rules and regulations) to establish an orderly procedure by which the Legislature will be advised of claims against the state when no provision has been made for payment. This board was known as the Board of Control prior to January 2001. The rules and regulations adopted by the former Board of Control are in the California Code of Regulations, Title 2, Division 2, Chapter 1.

Warrant
An order drawn by the State Controller directing the State Treasurer to pay a specified amount, from a specified fund, to the person or entity named. A warrant generally corresponds to a bank check but is not necessarily payable on demand and may not be negotiable. *(SAM 8400 et seq)*

Without Regard To Fiscal Year (WRTFY)
Where an appropriation has no period of limitation on its availability.

Working Capital and Revolving Fund
For legal basis accounting purposes, fund classification for funds used to account for the transactions of self-supporting enterprises that render goods or services for a direct charge to the user, which is usually another state department/entity. Self-supporting enterprises that render goods or services for a direct charge to the public account for their transactions in a Public Service Enterprise Fund.

Workload
The measurement of increases and decreases of inputs or demands for work, and a common basis for projecting related budget needs for both established and new programs. This approach to BCPs is often viewed as an alternative to outcome or performance based budgeting where resources are allocated based on pledges of measurable performance.

Workload Budget
Workload Budget means the budget year cost of currently authorized services, adjusted for changes in enrollment, caseload, population, statutory cost-of-living adjustments, chaptered legislation, one-time expenditures, full-year costs of partial-year programs, costs incurred pursuant to Constitutional requirements, federal mandates, court-ordered mandates, state employee merit salary adjustments, and state agency operating expense and equipment cost adjustments to reflect inflation. The compacts with Higher Education and the Courts are commitments by this Administration and therefore are included in the workload budget and considered workload adjustments. A workload budget is also referred to as a baseline budget. *(GC 13308.05)*

Workload Budget Adjustment
Any adjustment to the currently authorized budget necessary to maintain the level of service required to fund a Workload Budget, as defined in Government Code Section 13308.05. A workload budget adjustment is also referred to as a baseline adjustment.

Year of Appropriation (YOA)
Refers to the initial year of an appropriation.

Year of Budget (YOB)
The fiscal year revenues and expenditures are recognized. For revenues, this is generally the fiscal year when revenues are earned. For expenditures, this is generally the fiscal year when obligations, including encumbrances, have been created during the availability period of the appropriation. When the availability period of encumbrance of an appropriation is one year (e.g., most Budget Act items), YOB is the same as year of appropriation (YOA) and year of completion (YOC). However, when the availability period is more than one year, YOB may be any fiscal year during the availability period, including YOA or YOC, as appropriate. For example, an appropriation created in 2010-11 and is available for three years, the YOA is 2010 and the YOC is 2012. If an obligation is created in 2011-12, the YOB for this obligation is 2011. In CALSTARS, YOB is referred to as funding fiscal year (FFY).

The rules of recognition are not the same for all funds depending on the appropriate basis of accounting for the fund types or other factors.

Year of Completion (YOC)
The last fiscal year for which the appropriation is available for expenditure or encumbrance.

* *Abbreviations used in the references cited:*

Article	*Article of California Constitution*
BA	*Budget Act*
CS	*Control Section of Budget Act*
GC	*Government Code*
SAM	*State Administrative Manual*
UCM	*Uniform Codes Manual*