

Item 13

PROPOSED STATEWIDE COST ESTIMATE

\$95,464

(Approximate Prospective Cost of \$31,109 Annually)

Education Code Sections 48354(b)(1), 48356(d), 48357, 53202(a), 53202(b), 53300, and 53301

Statutes 2009-2010, 5th Extraordinary Session, Chapter 2 (SBX5 1);

Statutes 2009-2010, 5th Extraordinary Session, Chapter 3 (SBX5 4)

California Code of Regulations, Title 5, Section 4702(a) (Register 2010, No. 32)

Race to the Top

10-TC-06

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Section 60601, as added and amended by Statutes 1995, Chapter 975, Section 1 (AB 265); Statutes 1996, Chapter 69, Section 1 (SB 430); Statutes 2001, Chapter 722, Section 2 (SB 233); Statutes 2004, Chapter 233, Section 1 (SB 1448); Statutes 2007, Chapter 174, Section 11 (SB 80); Statutes 2009-2010, 5th Extraordinary Session, Chapter 2, Section 9 (SBX5 1);

Education Code Sections 48353, 48354, 48355, 48356, 48357, 48358, 48359, 48359.5, 48360 and 48361, as added by Statutes 2009-2010, 5th Extraordinary Session, Chapter 3, Section 1 (SBX5 4);

Education Code Sections 53100, 53101, 53200, 53201, 53201.5, 53202 and 53203, as added by Statutes 2009-2010, 5th Extraordinary Session, Chapter 2, Section 8 (SBX5 1);

Education Code Sections 53300, 53301 and 53303, as added by Statutes 2009-2010, 5th Extraordinary Session, Chapter 3, Section 2 (SBX5 4);

California Code of Regulations, Title 5, Section 4702 (Register 2010, Nos. 32).

Filed on November 23, 2010

By Twin Rivers Unified School District,
Claimant.

Case No.: 10-TC-06

Race to the Top

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

(Adopted March 28, 2014)

(Served April 4, 2014)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on March 28, 2014. Arthur Palkowitz appeared for the claimant, Twin Rivers School District, and Jillian Kisse and Kathleen Lynch appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the proposed statement of decision to partially approve the test claim at the hearing by a vote of 6-0 with one member absent.

Summary of the Findings

This test claim addresses the state statutes enacted in 2009 and 2010 to make California competitive in the federal Race to the Top (RTTT) education grant program.

The Commission concludes that the test claim statutes and regulation identified below impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning April 12, 2010.

1. Race to the Top

School districts that receive notice that a school or schools within the district have been identified by the SPI as persistently lowest-achieving pursuant to Education Code section 53200(b) are required to perform the following activities:

- a) Hold at least two public hearings for each school identified as a persistently lowest-achieving school to notify staff, parents, and the community of the designation and to seek input from staff, parents, and the community regarding the option or options most suitable for the applicable school or schools in its jurisdiction. At least one of the public hearings shall be held at a regularly scheduled meeting, if applicable, and at least one of the public hearings shall be held on the site of a school deemed persistently lowest-achieving. (Ed. Code, § 53202(b), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)
- b) Conduct a meeting of the governing board to select one of the four interventions for turning around the identified persistently lowest-achieving school or schools as described in Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009:
 - (1) The turnaround model.
 - (2) The restart model.
 - (3) School closure.
 - (4) The transformational model. (Ed. Code, § 53202(a), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)
- c) Implement one of the four intervention models for turning around the identified persistently lowest-achieving school or schools. (Ed. Code, § 53202(a), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)

However, participating in a school-to-school partnership program by working with a mentor school that has successfully transitioned from a low-achieving to a higher-

achieving school pursuant to Education Code section 53202(c) is not mandated by the state.

The following schools are exempt from the requirements of Education Code section 53202(a) and (b) and are, therefore, ***not*** mandated by the state to comply with the above activities:

- Schools identified by the SPI and SBE as already having implemented a reform that conforms to the intervention requirements of the RTTT program, and are showing significant progress in its reform pursuant to Education Code section 53202(a); and
- Schools listed in Education Code section 53201(e) (i.e., county community schools, juvenile court schools, schools that provide educational services exclusively to individuals with exceptional needs, and schools that have experienced academic growth of at least 50 points over the previous five years as measured by the API).

2. Parent Empowerment Act

School districts that receive a petition, signed by the number of parents specified in Education Code section 53300 and for the purpose of improving academic achievement or pupil safety, requesting the implementation of one or more of the four intervention models described in Education Code section 53202 for a school that is not identified as a persistently lowest-achieving school, but is subject to corrective action pursuant to NCLB, continues to fail to make adequate yearly progress, and has an API score of less than 800, are required to perform the following activities:

- a) Implement the intervention model requested by parents unless, in a regularly scheduled public hearing, the school district makes a finding in writing stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options it will implement in the subsequent school year consistent with the requirements specified in federal regulations and guidelines. (Ed. Code, § 53300, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 2.)
- b) Notify the SPI and SBE of the receipt of a petition and the final disposition of the petition. If the school district indicates in writing that it will implement in the upcoming school year a different alternative governance arrangement than requested by the parents, the school district shall notify the SPI and SBE that the alternative governance option selected has substantial promise of enabling the school to make adequate yearly progress as defined in NCLB, 20 U.S.C. section 6301 et seq. (Ed. Code, § 53301, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 2.)

3. Open Enrollment Act

- a) The school district of residence that receives notice that one or more of its schools are low-achieving and on the list created by the SPI, shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer to another public school served by the district of residence or another school district. This notice shall be provided on the first day of

instruction. If the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's Web site at <http://www.cde.ca.gov/>. (Ed. Code, § 48354(b)(1); Cal. Code Regs., tit. 2, § 4702(a).)

- b) Upon receipt of a transfer application, the school district of enrollment shall ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled, and are selected through a random, nonbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. If the number of pupils requesting a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order in section 48356(d)(1) and (2) to select pupils at random. (Ed. Code, § 48356(d), Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1.)
- c) Within 60 days of receiving an application from a parent or guardian for transfer, the school district of enrollment shall notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. (Ed. Code, § 48357, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1.)

Court, community, community day schools, and charter schools are exempt and *not* mandated by the state to comply with the Open Enrollment Act.¹

All other statutes and activities pled are denied.

In addition, any federal funding or grant funding appropriated for these mandated activities, including SIG funds (State Budget Act, Line Item 6110-134-0890) appropriated to implement an intervention model pursuant to Education Code section 53202, shall be identified as offsetting revenue and deducted from the costs claimed by the district.

COMMISSION FINDINGS

I. Chronology

- 11/23/2010 Claimant, Twin Rivers Unified School District, filed the *Race to the Top* test claim, 10-TC-06 with the Commission.²
- 12/22/2010 Commission staff issued a notice of complete test claim filing and schedule for comments.

¹ Education Code section 48352(a)(2)(B) and (C).

² Exhibit A. Based on the filing date of this test claim and pursuant to Government Code section 17557(e), the potential period of reimbursement for this claim begins July 1, 2009. However, because the effective date of the statutes over which the Commission has jurisdiction is April 12, 2010, any reimbursement requirement under this test claim would not begin until that date.

- 08/05/2013 Commission staff issued a request to the claimant and state agencies for additional briefing regarding grant funding applicable to the Race to the Top program. No responses were filed on this request.
- 01/26/2014 Commission staff issued the draft staff analysis and proposed statement of decision, setting the matter for the March 28, 2014 hearing.³
- 02/27/2014 Claimant submitted written comments on the draft staff analysis and proposed statement of decision.⁴
- 03/04/2014 The Department of Finance submitted late comments on the draft staff analysis and proposed statement of decision.⁵

II. Background

This test claim addresses statutes enacted in 2009 and 2010 to make California competitive in the federal Race to the Top (RTTT) education grant program. To assist the reader, a glossary of terms can be found at the end of this document.

In February 2009, Congress enacted the American Recovery and Reinvestment Act (ARRA), which provided substantial one-time funds to help struggling states and created competitive grant programs designed to spur education and economic reform. One of the programs created as part of ARRA was the RTTT competitive grant program. Under RTTT, states competed for approximately \$4.35 billion in funds to encourage and reward states that are creating conditions for education innovation and reform; achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers; and implementing ambitious plans in the following four core education reform areas:

- Adopting standards and assessments that prepare students to succeed in college and the workplace and to compete in the global economy;
- Building data systems that measure student growth and success, and inform teachers and principals about how they can improve instruction;
- Recruiting, developing and rewarding, and retaining effective teachers and principals, especially where they are needed most; and
- Turning around our lowest-achieving schools.⁶

The federal RTTT program initially consisted of two award phases. States could apply in either phase, and if they failed to receive an award in the first phase, they could apply again. In order to be eligible to receive funds under RTTT, a state must meet two requirements: the state application for grant funding must be approved by the U.S. Education Department; and no legal, statutory, or

³ Exhibit C.

⁴ Exhibit D.

⁵ Exhibit E.

⁶ Exhibit F, Race to the Top Executive Summary, published by the U.S. Department of Education (November 2009).

regulatory barriers can exist at the state level to linking data on student achievement or student growth to teachers and principals for the purpose of teacher and principal evaluation.

California submitted a Phase 1 application to receive \$1 billion. California's application, however, finished 27th out of 41 states that applied and, thus, the Phase 1 application was not successful.⁷ In May 2010, California applied for an award in the second phase. Although California was selected as a finalist, it did not secure any grant funding. In 2011, the federal Department of Education announced that it would allow the finalists to apply for a share of \$200 million added to the program in 2011. California's application, however, was rejected in November 2011. California ultimately received a RTTT Early Learning Challenge grant of \$52.6 million in December 2011 and an additional grant of \$22.4 million in August 2013.

A. The test claim statutes and regulation; California's response to the federal RTTT program

The state Legislature added article 10 to chapter 2 and added a new chapter 18 to the Education Code specifically to make California's application for RTTT grant funds competitive. Chapter 18 includes Race to the Top (Ed. Code §§ 53100-53203) and the Parent Empowerment Act (Ed. Code sections §§53300-53303) and article 10 to chapter 2 added the Open Enrollment Act (Ed. Code sections 48350-48361). The California Department of Education (CDE) also adopted a regulation (Cal. Code Regs., tit. 5, § 4702) to implement the Open Enrollment Act. These provisions are summarized below.

1) Race to the Top (Ed. Code, §§ 53100-53203)

Education Code sections 53100-53203 establish a process by which, through a memorandum of understanding (MOU), the state and local educational agencies who choose to participate in the application for RTTT grant funds target the RTTT criteria, focusing particularly on persistently low-achieving schools.⁸ These code sections require the state and participating schools who have signed a memorandum of understanding to develop a plan to address how federal funds from both RTTT and other federal funding sources will provide resources for those identified schools.⁹ The plan may address professional development, technical assistance, and partnership with other schools that have successfully transitioned from low performing to higher performing schools.¹⁰

They also require identification of schools that meet the definition of persistently lowest-achieving schools. "Persistently Lowest-Achieving Schools" are defined to include:

- The lowest five percent of schools that are Title 1, No Child Left Behind (NCLB), schools in improvement, corrective action, or restructuring when measured by the academic achievement of pupils in reading/language arts and mathematics;

⁷ Exhibit F, "Race to the Top: An Update and Key Issues for Phase 2, Legislative Analyst's Office, May 12, 2010.

⁸ Education Code sections 53100-53203.

⁹ Education Code section 53101.

¹⁰ Education Code section 53101.

- Secondary schools that do not receive Title 1 NCLB funds, but whose academic achievement of pupils in reading/language arts and mathematics is in the lowest five percent; and
- Any high school that has a graduation rate that is less than 60 percent in each of the previous three years; and any school determined to be included in the list by the Superintendent of Public Instruction (SPI) and the state Board of Education (SBE) that is a county community school, a juvenile court school, or a school that provides educational services exclusively for special education students.¹¹

If the SPI and the SBE determine that a Title I persistently lowest-achieving school has implemented a reform within the last two years that conforms to the interventions identified in the federal Race to the Top program and is showing significant progress, then that school is exempt from the RTTT intervention requirements.¹² Once a school is identified by the SPI and SBE as a persistently low-achieving school, and has not been so exempted, the governing school district is required to hold at least two public hearings to notify staff, parents, and the community of the designation and to seek input regarding the options for implementing one of the four intervention models described in Appendix C of the federal RTTT legislation for turning around the school.¹³ These models include the following:

- Turn around model. This includes replacing the principal, screening all staff and rehiring no more than 50 percent of the existing staff and adopting a new governance structure.
- Restart model. This model includes converting to a charter school or hiring an education management company to run the school.
- School closure. This model envisions closing the school down and sending the students to a higher-achieving school.
- Transformation model. This model involves specific interventions including the following: developing and increasing teacher and school leader effectiveness by replacing the principal and using rigorous and equitable evaluation systems for teachers and principals; identifying and rewarding school leaders, teachers, and staff, who have increased student achievement and graduation rates, and identifying and removing those who have not improved their professional practice; providing staff with professional development; and implementing strategies for financial incentives, increased opportunities for promotion and career growth, and retaining staff with the skills necessary to meet the needs of the students.¹⁴

A persistently lowest-achieving school implementing the turnaround or transformational model may participate in a school-to-school partnership program by working with a mentor school that

¹¹ Education Code section 53201.

¹² Education Code section 53202(a).

¹³ Education Code section 53202(b).

¹⁴ Education Code section 53202, RTTT Appendix C Notice of Final Priorities, Requirements, Definitions, Selection Criteria (Federal Register, Volume 74, Number 221, November 18, 2009).

has successfully transitioned from a low-achieving to a higher-achieving school.¹⁵ If a school-to-school mentor program is used, the principal of the mentor school is required to provide guidance to develop a reform plan for the persistently lowest-achieving school.¹⁶ The mentor school may receive funding to the extent federal funds are made available, for serving as the mentor school.¹⁷

School districts with one or more persistently lowest-achieving schools are authorized to assist in the implementation of intervention methods adopted by the district from funds obtained in the federal RTTT competitive grant program.¹⁸

2) Parent Empowerment Act (Ed. Code, §§53300-53303)

The Parent Empowerment Act allows parents to petition a school to implement one of the intervention models described above in order to improve academic achievement or pupil safety. Parents may file a petition for those schools that are not identified as persistently low-achieving, but are subject to corrective action under NCLB, fail to make adequate yearly progress, and have an Academic Performance Index (API) score of less than 800.¹⁹

Schools are required, following a receipt of a petition filed by parents, to implement the intervention option requested by the parents unless, in a regularly scheduled public hearing of the school district, the school district makes a finding in writing stating the reason it cannot implement the specific recommended option and, instead, designates in writing which of the other intervention options it will implement in the subsequent school year that has substantial promise of enabling the school to make adequate yearly progress.²⁰ The school district is also required to notify the SPI and SBE upon receipt of a petition and the district's final disposition of the matter.²¹

3) Open Enrollment Act (Ed. Code, §§ 48350-48361, Cal. Code of Regs., tit. 5, § 4702)

The Open Enrollment Act is intended to improve the academic achievement of pupils and to enhance parental choice in education by providing pupils enrolled in low-achieving schools with additional options to enroll in higher-achieving public schools throughout the state regardless of the pupil's residence.²² Education Code section 48354 and section 4702 of the CDE regulations require a school district of residence that has been identified on a list known as the Open Enrollment List to notify parents of the option for a student to transfer to a higher-achieving school by the first day of the school year. The school district of residence may prohibit a transfer if the governing board of the school district determines the transfer would negatively impact a

¹⁵ Education Code section 53202(c).

¹⁶ Education Code section 53202(c).

¹⁷ Education Code section 53202(c).

¹⁸ Education Code section 53202(c).

¹⁹ Education Code section 53300.

²⁰ Education Code section 53300.

²¹ Education Code section 53301.

²² Education Code section 48351.

court-ordered or voluntary desegregation plan of the district or the racial and ethnic balance of the district, provided that the school district's policy is consistent with state and federal law.²³

The school district of enrollment is required to prioritize transfers, first providing a period of time for resident pupil enrollment before accepting transfers from pupils residing outside the district of enrollment.²⁴ The school district of enrollment may develop specific written standards for acceptance or rejection of transfers.²⁵ The school district of enrollment must ensure a student who transfers from an identified school are enrolled in a school with a higher API and that placement of that student is made through a random, unbiased process.²⁶ The school district of enrollment has 60 days to notify the applicant parent and school district of residence in writing whether the application is accepted or rejected.²⁷ The school district of enrollment must accept credits toward graduation awarded by another school district and must graduate the student if the pupil meets the graduation requirements of the school district of enrollment.²⁸

The school district of residence and the school district of enrollment are encouraged to keep records of all requests for transfer.²⁹

4) Education Code section 60601, relating to the STAR test (as added and amended from 1995 to 2010)

Education Code section 60601, as amended in 2010, sets the inoperative and repeal date for the Leroy Greene California Assessment of Academic Achievement Act, which created a school STAR testing program. As amended in 2010, the statute provided that the STAR testing program shall become inoperative on July 1, 2014, and as of January 1, 2015, is repealed unless a later enacted statute, enacted before January 1, 2015, deletes or extends the dates upon which it becomes inoperative and is repealed. A later enacted statute, Statutes 2013, chapter 489, deleted the provisions establishing the STAR program and replaced them with provisions establishing the Measurement of Academic Performance and Progress (MAPP) program, commencing in the 2013/2014 school year. Statutes 2013, chapter 489 amended section 60601 to provide an inactive date of July 1, 2020 and a repeal date of July 1, 2021.

B. The Federal No Child Left Behind Act

In 2001, Congress enacted the No Child Left Behind Act of 2001 (NCLB), which amended the long standing Elementary and Secondary School Act, first adopted in 1965. Significant grant funding is made available to states through Title I of NCLB (20 U.S.C. sections 6300, *et seq.*) to fund educational programs for disadvantaged students. School districts receiving Title 1 funds are required by NCLB to comply with its requirements.

²³ Education Code section 48355.

²⁴ Education Code section 48354.

²⁵ Education Code section 48356(a).

²⁶ Education Code section 48356(d).

²⁷ Education Code section 48357.

²⁸ Education Code section 48358.

²⁹ Education Code section 48359.

NCLB created an ambitious long-term goal of proficiency in reading and mathematics to be achieved by school year 2013-2014. To achieve that goal, NCLB requires states that accept Title 1 funding to develop an approved system for implementing the accountability provisions of NCLB, including the creation of a single definition of adequate yearly progress for all schools in the state. Adequate yearly progress is measured by annual targets for academic achievement, participation in assessments, graduation rates for high schools, and other academic indicators for elementary and middle schools.³⁰

Before a state receives Title I funding, the state submits a plan, formulated with local education agencies (LEAs), teachers, parents and other personnel that demonstrates the state has developed challenging academic standards and has implemented an accountability system.³¹ In addition, any LEA accepting funding under Title I is required to file a local plan with the state that includes assurances the LEA will use high quality student academic assessments in addition to those provided by the state.³²

NCLB requires states and LEAs that receive funds to annually assess academic progress to ensure each school is making adequate yearly progress as measured by the state academic assessment model and to disseminate the results of the review to parents, teachers, principals, schools and the community. A school is identified for improvement if a school fails, for two consecutive years, to make adequate yearly academic progress as defined in NCLB.³³ An identified school must give notice to all students, no later than the first day of the school year, of the opportunity to transfer to another school or public charter school within the district that is not an identified school, with priority going to the lowest achieving children from low income families.³⁴ Prior to making a final determination on identifying a school for school improvement, the school has the opportunity to review the evidence in support of the determination, and present evidence to correct any statistical or substantive reason why the school should not be identified as needing improvement. The LEA must publicize the final determination within 30 days of the review period.³⁵

When a Title 1 school continues to fail to meet adequate yearly progress goals for four or more consecutive years, the district is required to implement *corrective action*, which includes replacing school staff, implementing new curriculum, decreasing the authority of the school-level administration, appointing outside experts to advise the school, extending the school year or school day, and restructuring the internal organization of the school.³⁶ When a Title 1 school fails to meet adequate yearly progress goals for five consecutive years, the district is required by NCLB to *prepare a plan to restructure* the school. The restructuring plan must include one of the

³⁰ 20 U.S.C. section 6311.

³¹ 20 U.S.C. section 6311.

³² 20 U.S.C. section 6312.

³³ 20 U.S.C. section 6316.

³⁴ 20 U.S.C. section 6316(b)(1).

³⁵ 20 U.S.C. section 6316(b)(2).

³⁶ 20 U.S.C. section 6316(b)(7)(C).

following alternative governance arrangements: reopen the school as a public charter school; replace all or most of the school staff; enter into a contract to have an outside entity operate the school; arrange for the state to take over operation of the school; or any other major restructuring of the school's governance arrangement.³⁷ If a Title 1 school fails to meet adequate yearly progress goals for six consecutive years, the district is required *to implement the restructuring plan* developed in the previous year.³⁸

The LEA in need of restructuring must give prompt notice to teachers and parents of the restructuring and must provide both teachers and parents the opportunity to comment and participate in the development of a restructuring plan.³⁹

California receives Title 1 NCLB federal funding and has enacted several other statutes to implement the requirements of that federal law, including the STAR program (Ed. Code §§ 60601, 60640, *et seq.*) and the Public Schools Accountability Act of 1999 (Ed. Code, §§ 52050, *et seq.*). The STAR test results are a major component used for calculating each school's API, which measures the growth in academic performance. These results are also used for determining whether elementary and middle schools are making adequate yearly progress in helping pupils become proficient on the California content standards, as required by NCLB.⁴⁰ The Public Schools Accountability Act of 1999 establishes the API and intervention programs for underperforming schools for purposes of complying with NCLB.⁴¹

III. Position of the Parties

A. Claimant's position

The claimant alleges that the test claim statutes and regulation impose a reimbursable state-mandated program for school districts under article XIII B, section 6 and Government Code section 17514. Claimant alleges that implementing intervention programs in fourteen schools in the Twin Rivers School District identified as persistently lowest-achieving, holding at least two public hearings prior to implementing an intervention model, and providing notice of the option to transfer from an identified lowest-achieving school will cost the District approximately \$450,000. Claimant alleges that the actual or increased statewide costs to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed to be \$5,000,000.

In written comments dated February 27, 2014, the claimant alleges that Education Code section 53100 imposes a reimbursable state-mandated program upon school districts to enter into a memorandum of understanding with the state that meets the requirements of the federal RTTT guidelines and is signed by as many as possible of each district's superintendent of schools, president of the governing board, or the leader of any local collective bargaining unit for teachers.

³⁷ 20 U.S.C. section 6316(b)(8)(A).

³⁸ 20 U.S.C. section 6316(b)(8)(B).

³⁹ 20 U.S.C. section 6316(b)(7).

⁴⁰ 20 U.S.C. section 6311(b)(2).

⁴¹ Education Code sections 52050, *et seq.* (added by Stats. 1999, 1st Extraordinary Session (SBX1 1), ch.6.1, § 1).

B. State Agency Position

The Department of Finance (Finance) filed late comments on the draft proposed statement of decision, arguing that many of the requirements of the Parent Empowerment Act, Open Enrollment Act, and RTTT overlap with federal requirements in Title 1 of NCLB, and that the state-mandated requirements should be reduced to reflect the true higher level of service required by the state. In particular, Finance asserts that the parental petition process in Education Code section 53300 of the Parent Empowerment Act is not a new program or higher level of service as the petition would impose an intervention that is duplicative of either the turnaround model or the restart model. Finance also asserts that the transfer option in the open enrollment provisions of Education Code section 48350 *et seq.* duplicate Title I transfer options. Finally, Finance identifies Title I School Improvement Grant (SIG) funds that are awarded to a school identified as persistently lowest-achieving and are used by that school to implement an intervention model as offsetting revenue.

IV. Discussion

Article XIII B, section 6 of the California Constitution 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 programs or increased level of service.

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that article XIII A and XIII B impose.”⁴² Thus the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government]...”⁴³

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

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform and activity.⁴⁴
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁴⁵

⁴² *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

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

⁴⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

⁴⁵ *San Diego Unified School Dist., supra* 33 Cal.4th at 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.⁴⁶
4. The mandated activity results in the local agency or school district incurring increased cost. However, increased costs are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁴⁷

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁴⁸ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁴⁹ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁵⁰

A. The Commission does not have jurisdiction over Education Code section 60601, as added and amended from 1995 through 2007.

The claimant has pled Education Code section 60601, as originally enacted in 1995 and amended in 1996, 2001, 2004, 2007, and in 2009-2010. The Commission does not have jurisdiction over Education Code section 60601, as enacted in 1995 and amended from 1996 through 2007 because these statutes were the subject of a prior test claim, *Standardized Testing and Reporting (STAR) II and III* (05-TC-02, 05-TC-03, and 08-TC-06), and denied because the code section does not impose any mandated duties on school districts.⁵¹ A Commission decision that becomes final and has not been set aside by a court cannot be reconsidered by the Commission.⁵²

⁴⁶ *San Diego Unified School Dist.*, *supra* 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal 3d 830, 835.

⁴⁷ *County of Fresno v. state of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

⁴⁸ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

⁴⁹ *County of San Diego*, *supra*, 15 Cal.4th 68,109.

⁵⁰ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1995) 45 Cal.App.4th 1802, 1817.

⁵¹ 05-TC-02, 05-TC03, and 08-TC-06 addressing Education Code sections 60601 et seq., as added or amended by Statutes 1995, Chapter 975, Statutes 1997, Chapter 735, Statutes 2000, Chapter 576, Statutes 2001, Chapter 722, Statutes 2002, Chapter 1168, Statutes 2003, Chapter 773, Statutes 2004, Chapter 183, Statutes 2004, Chapter 233, Statutes 2005, Chapter 676, Statutes 2007, Chapter 174, Statutes 2007, Chapter 730, Statutes 2008, Chapter 473, and Statutes 2008, Chapter 757.

⁵² *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

In addition, the statute of limitations for filing a test claim on Education Code section 60601, as added and amended from 1995 to 2007, has expired. Government Code section 17551(c) requires a test claim 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.” As this test claim was filed on November 23, 2010, it is outside the statute of limitations for the initial enactment of section 60601 and for all amendments from 1995 to 2007.

Accordingly, the Commission finds that it does not have jurisdiction over Education Code section 60601, as added and amended in 1995, 1996, 2001, 2004, and 2007.

B. Some of the remaining statutes and test claim regulation impose a state-mandated new program or higher level of service on school districts.

1. Education Code section 60601 (amended by Statutes 2009-2010, chapter 2) does not impose a state-mandated new program or higher level of service on school districts.

Education Code section 60601 as amended by Statutes 2009-2010, chapter 2, effective April 12, 2010, set the date by which the chapter governing the STAR program would become inoperative and then repealed. By its plain language, Education Code section 60601 does not impose any state-mandated activities on school districts.

2. Education Code section 53202(a) and (b) imposes a state-mandated new program or higher level of service on school districts; however, the remaining code sections governing the state’s Race to the Top application and implementation activities do not impose a new program or higher level of service.

a) Education Code sections 53100 and 53101 do not impose any state-mandated activities on school districts.

Education Code sections 53100 and 53101 contain the framework of the RTTT application process. The federal RTTT statute required states filing an application for grant funds to enter into a memorandum of understanding with LEAs in order to be eligible to apply for the federal grant funds.⁵³ Section 53100 provides that “The Superintendent and the President of the state board *may* enter into a memorandum of understanding with a local educational agency” in order to apply for grant funds under the federal RTTT competitive grant fund program. This section further provides that “participating local educational agencies” shall enter into the memorandum of understanding and obtain signatures from as many as possible of each participating agency’s superintendent of schools, president of the local government boards, and leaders of any local collective bargaining unit for teachers. Section 53100 states the following:

For the purposes of implementing the federal Race to the Top program established by the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5):

(a) The Superintendent and the President of the state board may enter into a memorandum of understanding with a local educational agency.

⁵³ 34 CFR Subtitle B, Chapter II Race to the Top Fund (Federal Register, Volume 74, Number 221, November 18, 2009).

(b) Participating local educational agencies shall enter into a memorandum of understanding with the Superintendent and the President of the state board, that meets the requirements expressed in the Race to the Top guidelines and that is signed by as many as possible of each participating local educational agency's:

- (1) Superintendent of schools, or their equivalents.
- (2) President of the local governing boards, or their equivalents.
- (3) Leader of any local collective bargaining unit for teachers, if applicable.

The federal RTTT program requires states applying for grant funds to have in place a plan to implement the priorities articulated in the grant fund.⁵⁴ To meet that requirement, California Education Code section 53101 requires the state to develop a plan to submit as part of the RTTT application process.⁵⁵ The plan must demonstrate how funds from the federal RTTT program, as well as any other available federal funds, will be used to provide resources to the low-achieving and persistently lowest-achieving schools that can be used for professional development, technical assistance, and partnering with schools that have successfully transitioned from low to higher-performing status.⁵⁶ Section 53101(a) states that “the Governor, the Superintendent, and the state board shall jointly develop a single high-quality plan or multiple plans, *in collaboration with participating local educational agencies*, as necessary, to submit as part of an application for federal Race to the Top funds, authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).” Thus, school districts that have voluntarily agreed to participate in the MOU and federal RTTT application process are requested to collaborate in the preparation of the plan.

The claimant argues that school districts are mandated by comply with these requirements.⁵⁷ The Commission finds, however, that Education Code sections 53100 and 53101 do not impose any state-mandated activities on school districts. The plain language of the RTTT provisions pled creates a voluntary program; school districts shall enter into an MOU with the state to apply for and participate in the federal RTTT grant program only if they decide to “participate” in the program. If a school district decides to participate, the district is then required to gather the signatures and is encouraged to participate in the development of the state’s plan. These activities are triggered by the district’s voluntary decision to participate in the program to compete for federal funds. Pursuant to the court’s decision in *Department of Finance v. Commission on State*

⁵⁴ 34 CFR Subtitle B, Chapter II, Federal Register Volume 74, No. 221.

⁵⁵ *Id.*

⁵⁶ Education Code section 53101(b).

⁵⁷ Exhibit D, Claimant’s comments on draft staff analysis and proposed decision.

Mandates (Kern High School Dist.), downstream requirements triggered by local discretionary decisions are not eligible for reimbursement.⁵⁸

Accordingly, the Commission finds that Education Code sections 53100 and 53101 do not impose any state-mandated activities on school districts.

- b) Education Code section 53102, which addresses the independent evaluation of the state's plan for RTTT funds, imposes duties on state agencies, but does not impose any state-mandated activities on local school districts.

Section 53102(a) requires that, by January 1, 2011, the Superintendent of Public Instruction (SPI) "shall contract for an independent evaluation of the implementation and impact of the state plan submitted in an application for a federal Race to the Top competitive grant award." As part of the independent evaluation, section 53102(b) requires the SPI to convene a working group consisting of staff representing the policy and fiscal committees of both houses of the Legislature, the Legislative Analyst's Office, the Department of Finance, the Governor, the State Board of Education (SBE), and the Department of Education (CDE) to jointly develop the parameters of the evaluation, and make recommendations regarding development of any requests for proposals or request for applications used to solicit contract proposals, and the selection of the independent evaluator.

Section 53102(c) requires the SPI to provide to the Legislature, the Governor, and SBE an interim evaluation report on or before June 1, 2012, and a final evaluation report on or before June 1, 2014.

Section 53102(d) states "[t]he department shall use federal funds made available from the Race to the Top Fund and detailed in the expenditure plan required pursuant to subdivision (c) of Section 53101 for the purpose of contracting for this evaluation."

Accordingly, the Commission finds that Education Code section 53102 requires activities of the state, but imposes no state-mandated activities on school districts.

- c) Education Code sections 53200, 53201, 53201.5, which require the identification of persistently lowest-achieving schools, do not impose any state-mandated activities on school districts.

Education Code section 53200-53203 are informally titled "Intervening in the Persistently Lowest-Achieving Schools" and describe the interventions required for persistently lowest-achieving schools that are identified by the state. Section 53200 provides the following definitions for the article:

- "Lowest-achieving school" means "a school described in subdivision (a) of section 53201." Section 53201(a) identifies schools that are Title 1 schools in improvement, corrective action, or restructuring under NCLB.
- "Persistently lowest-achieving school" means "a school identified pursuant to subdivisions (a) to (f) inclusive, of Section 53201." These schools include the lowest five percent of

⁵⁸ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777; *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355.

the Title 1 schools in improvement, corrective action, or restructuring when measured by the academic achievement of pupils in reading/language arts and mathematics; secondary schools that do not receive Title 1 funds, but whose academic achievement of pupils in reading/language arts and mathematics is in the lowest five percent; any high school that has a graduation rate that is less than 60 percent in each of the previous three years; and any school determined to be included in the list by the SPI and SBE that is a county community school, a juvenile court school, or a school that provides educational services exclusively for special education students.

Education Code section 53201 requires the SPI and SBE to establish a list of the lowest-achieving and persistently lowest-achieving schools as follows:

- (a) Identify any Title I school in improvement, corrective action, or restructuring.
- (b) Identify the lowest 5 percent of schools in subdivision (a) as measured by academic achievement of all pupils in a school in terms of proficiency on the state's assessment under section 1111(b)(3) of the federal Elementary and secondary Education Act (20 U.S.C. Sect. 6301 et seq.) in reading/language arts and mathematics, combined pursuant to subdivision (h).
- (c) Identify any secondary school that is eligible for, but that does not receive, Title I funds and is in the lowest 5 percent of secondary schools as measured by the academic achievement of all pupils in a school in terms of proficiency on the state's assessment under Section 1111(b)(3) of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.) in reading/language arts and mathematics, combined pursuant to subdivision (h).
- (d) Add to the schools identified pursuant to subdivisions (a) to (c), inclusive, any high school that has a graduation rate, as defined in Section 200.19(b) of Title 34 of the Code of Federal Regulations, that is less than 60 percent in each of the previous three years.
- (e) To the extent allowable under federal law, exclude from the schools identified pursuant to subdivisions (a) to (d), inclusive, a school that meets any of the following, except as provided in subdivision (f):
 - 1. The school is a county community school operated pursuant to Chapter 6.5 (commencing with Section 1980) of Part 2 of Division 1 of Title 1.
 - 2. The school is a juvenile court school operated pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of part 27.
 - 3. The school provides educational services exclusively to individuals with exceptional needs as defined in Section 56-26.
 - 4. The school has experience academic growth of at least 50 points over the previous five years as measured by the Academic Performance Index, using the most recent data available.
- (f) Notwithstanding subdivision (e), a school that meets any of the criteria in subdivision (e) shall not be excluded from the schools identified pursuant to subdivisions (a) to (d), inclusive if both the Superintendent and the state board find cause not to exclude the school.

- (g) To the extent allowable under federal law, a community day school, operated pursuant to Article 3)commencing with Section 48660) of Chapter 4 or Part 27, may be excluded from the schools identified pursuant to subdivisions (a) to (d), inclusive, if both the Superintendent and the state board find cause to exclude the school.
- (h) For the purposes of identifying the lowest 5 percent of schools pursuant to subdivisions (b) and (c), the Superintendent and the state board may use a methodology consistent with the methodology used to calculate the Academic Performance Index in order to create composite results across content areas and grade levels in reading/language arts and mathematics pursuant to subdivisions (b) and (c), unless the Superintendent and the state board develop a more appropriate methodology to meet the requirements of subdivisions (b) and (c).
- (i) Prior to the implementation of subdivision (h), the Superintendent and the state board shall notify the appropriate policy and fiscal committees of the Legislature.

Education Code section 53201.5 then requires that the “[t]he Superintendent shall notify the governing board of a school district, county superintendent of schools, or the governing body of a charter school or its equivalent, that one or more of the schools in its jurisdiction have been identified as a persistently lowest-achieving school.”

The Commission finds that Education Code sections 53200, 53201, and 53201.5 impose duties on the state, but do not impose any state-mandated activities on school districts.

- d) Education Code section 53202 imposes a state-mandated new program or higher level of service on identified school districts with persistently lowest-achieving schools to hold hearings and implement an intervention model.

Education Code section 53202 requires those school districts notified by the SPI that one or more of the schools in its jurisdiction has been identified as a persistently lowest-achieving school, to select and implement one of the four interventions identified in the federal RTTT program for turning around persistently lowest-achieving schools. If, however, the SPI and SBE determine that an identified school has already implemented a reform under federal law within the last two years that conforms to the requirements of the interventions required by the RTTT program, and the reform measures show significant progress in turning the school around, then that school is not required to comply with section 53202. Education Code section 53202(a) states the following:

For purposes of implementing the federal Race to the Top program established by Sections 14005 and 14006 of Title XIV of the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), the governing board of a school district, county superintendent of schools, or the governing body of a charter school or its equivalent, *shall implement*, for any school identified by the Superintendent as persistently lowest-achieving pursuant to subdivision (b) of Section 53200, *unless the Superintendent and the state board determines, to the extent allowable under federal law, that the school has implemented a reform within the last two years that conforms to the requirements of the interventions required by the Race to the Top program and is showing significant progress*, one of the following four interventions for turning around persistently lowest-achieving schools as described in Appendix C of the

Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009:

- (1) The turnaround model.
- (2) The restart model.
- (3) School closure.
- (4) The transformational model. (Emphasis added.)

Before the school district selects one of the four intervention models, the district is required by section 53202(b) to hold at least two public hearings to seek input from staff, parents, and the community. Section 53202(b) states the following:

Prior to the governing board meeting to select one of the four interventions described in subdivision (a), the governing board of a school district, county superintendent of schools, or the governing body of a charter school or its equivalent, with one or more persistently lowest-achieving schools *shall hold at least two public hearings* to notify staff, parents and the community of the designation and to seek input from staff, parents, and the community regarding the option or options most suitable for the applicable school or schools in its jurisdiction. At least one of those public hearings shall be held at a regularly scheduled meeting, if applicable, and at least one of the public hearings shall be held on the site of a school deemed persistently lowest-achieving. (Emphasis added.)

The Commission finds that section 53202(a) and (b) impose a state-mandated program on school districts that have schools identified by the SPI and SBE as a persistently lowest-achieving school to select and implement one of the four intervention models identified in the federal RTTT program and, prior to the governing board meeting to select one of the four intervention models, to hold at least two public hearings as specified in section 53202(b). In *Hayes v. Commission on State Mandates*, the court addressed the issue of the state imposing new or increased requirements on local agencies in order to implement a federal program. The court concluded that when a state “freely chose to impose the costs upon a local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless of whether the costs were imposed upon the state by the federal government.” Here, the state has enacted a school intervention program that incorporates selection criteria from the federal RTTT; a federal competitive grant program. School district participation in the federal grant program is voluntary and not mandated by federal law.

The Commission further finds that the activities required by section 53202(a) and (b) are new for all schools that are identified and receive notice by the SPI and SBE that they are persistently lowest-achieving schools pursuant to Education Code sections 53200(b) and 53201, and are required to comply with section 53202. In this respect, the parties do not dispute that schools which have *not* implemented a reform model under federal law (NCLB) within the two years before the enactment of section 53202, were under no obligation to hold public hearings and implement school improvement under prior state or federal law.

Under prior state law, schools identified as having failed to meet their API and scoring under the 50th percentile on the API were invited to participate in the Immediate Intervention/Underperforming Schools Program. Once enrolled in the program, school districts were required to implement measures to meet academic improvement targets.⁵⁹ The requirements of the Immediate Intervention/Underperforming Schools Program, however, are not mandated by the state. As the court ruled in *Department of Finance v. Commission on State Mandates (Kern High School Dist.)*, “if a school district elects to participate in ...any underlying *voluntary* program, the district’s obligation to comply with [the program] does not constitute a reimbursable state mandate.”⁶⁰ Thus, schools participating in the state school improvement program in place prior to the enactment of Education Code section 53202 did so voluntarily.

Finance suggests, however, that the mandated activities are not new and do not provide a higher level of service for those Title 1 schools already in corrective or restructuring action under NCLB that have implemented one of the intervention models identified in the RTTT program. Title 1 of NCLB does require some of the same interventions as described in the RTTT program for those schools in corrective or restructuring action. Under NCLB, states are required to identify any elementary or secondary school served by Title 1 that fails to make adequate yearly progress for two consecutive years. When a Title 1 school continues to fail to meet adequate yearly progress goals for four or more consecutive years, the district is required to implement *corrective action*, which includes replacing school staff, implementing new curriculum, decreasing the authority of the school-level administration, appointing outside experts to advise the school, extending the school year or school day, and restructuring the internal organization of the school.⁶¹ Some of these activities are similar to those in the turn-around or transformational models of the RTTT program, which also involve replacing the principal, screening and rehiring staff and adopting a new governance structure. When a Title 1 school fails to meet adequate yearly progress goals for five consecutive years, the district is required by NCLB *to prepare a plan to restructure* the school. The restructuring plan must include one of the following alternative governance arrangements: reopen the school as a public charter school; replace all or most of the school staff; enter into a contract to have an outside entity operate the school; arrange for the state to take over operation of the school; or any other major restructuring of the school’s governance arrangement.⁶² If a Title 1 school fails to meet adequate yearly progress goals for six consecutive years, the district is required *to implement the restructuring plan* developed in the previous year.⁶³ These interventions are also similar to those in the restart model of RTTT, which involves converting the school to a charter school or hiring an education management company to run the school.

However, the plain language of section 53202(a) provides that schools, determined by the SPI and SBE to have “implemented a reform within the last two years that conforms to the requirements

⁵⁹ Education Code section 52055.

⁶⁰ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742.

⁶¹ 20 U.S.C. section 6316(b)(7)(C).

⁶² 20 U.S.C. section 6316(b)(8)(A).

⁶³ 20 U.S.C. section 6316(b)(8)(B).

of the interventions required by the [RTTT] program and is showing significant progress,” are not required to comply with requirements of section 53202. Thus, the plain language of the statute recognizes the overlap and expressly exempts those school districts which have implemented a reform in the last two years that conforms to the requirements of RTTT from complying with the mandated activities. Those Title 1 schools that have implemented a reform that has *not* shown significant progress as determined by the SPI and SBE are not exempt from the requirements of section 53202, and are required to take *additional* steps to comply with public hearing and intervention requirements of the test claim statutes.⁶⁴

Thus, the public hearing and intervention requirements of Education Code section 53202(a) and (b) are new to all persistently lowest achieving schools selected by the SPI and SBE. These activities are intended to turn around persistently lowest achieving schools in the state and, thus, provide a new program or higher level service to the public.

Section 53202(c), however, does not impose any state-mandated activities on school districts. Section 53202(c) provides authority for a persistently lowest-achieving school implementing the turnaround or transformational model to participate in a school-to-school partnership program by working with a mentor school that has successfully transitioned from a low-achieving to a higher-achieving school. Section 53202(c) states the following:

In addition to meeting the requirements in Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009, a persistently lowest-achieving school implementing the turnaround or transformational model *may* participate in the school-to-school partnership program by working with a mentor school that has successfully transitioned from a low-achieving school to a higher-achieving school.

- (1) For purposes of this article, a mentor school is a school that meets either of the following:
 - (A) The school has exited Program Improvement pursuant to the No Child Left Behind Act.
 - (B) The school has increased, in the statewide rankings based upon the Academic Performance Index, by two or more deciles over the last five years, using the most recent data available.
- (2) The principal and, at the discretion of the principal, the staff of a mentor school shall provide guidance to a lowest-achieving school to develop a reform plan for the school using the required elements of the turnaround or transformation model, and provide guidance and advice on how the mentor school was able to transform the culture of the

⁶⁴ The legislative history of the test claim statute shows that the RTTT interventions are additional to the requirements of NCLB. The analysis of SBX5 1 by the Senate Appropriations Committee, November 3, 2009, states that “The SBE and SPI would be required to consider not identifying a school for *additional* intervention if that school is showing significant progress under an existing intervention.” (Exhibit F.)

school from low-achieving to higher-achieving and how that transformation could be replicated at the school implementing a turnaround or transformational model.

- (3) To the extent federal funds are made available for this purpose pursuant to subdivision (c) of Section 53101, the mentor school shall receive funds for serving as the mentor school. As a condition of receipt of funds, the principal and, at the principal's discretion, the staff, of a mentor school shall meet regularly with the assigned persistently lowest-achieving school for a period of at least three years. (Emphasis added.)

While section 53202 requires a school district that has a persistently lowest-achieving school in the district to select and implement an intervention model, the statute does not require the school district or school site to participate in the school-to-school partnership, or require the higher-achieving school to provide guidance. The plain language of section 53202(c) authorizes, but does not require, these activities.

Accordingly, the Commission finds that Education Code section 53202(a) and (b) (Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8) imposes a state-mandated new program or higher level of service, beginning April 12, 2010, on those school districts that receive notice that a school or schools within the district have been identified by the SPI and SBE as persistently lowest-achieving pursuant to section 53200(b), for the following activities:

- Hold at least two public hearings for each school identified as a persistently lowest-achieving school to notify staff, parents, and the community of the designation and to seek input from staff, parents, and the community regarding the option or options most suitable for the applicable school or schools in its jurisdiction. At least one of the public hearings shall be held at a regularly scheduled meeting, if applicable, and at least one of the public hearings shall be held on the site of a school deemed persistently lowest-achieving.
- Conduct a meeting of the governing board to select one of the four interventions for turning around the identified persistently lowest-achieving school or schools as described in Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009:
 - (1) The turnaround model.
 - (2) The restart model.
 - (3) School closure.
 - (4) The transformational model.
- Implement one of the four intervention models for turning around the identified persistently lowest-achieving school or schools.

The following schools are exempt from the requirements of Education Code section 53202(a) and (b) and are, therefore, **not** mandated by the state to comply with the above activities:

- Schools identified by the SPI and SBE as already having implemented a reform that conforms to the intervention requirements of the RTTT program, and are showing significant progress in its reform pursuant to Education Code section 53202(a); and

- Schools listed in Education Code section 53201(e) (i.e., county community schools, juvenile court schools, schools that provide educational services exclusively to individuals with exceptional needs, and schools that have experienced academic growth of at least 50 points over the previous five years as measured by the API).
- e) Education Code section 53203, requiring regional consortia to aid in school improvement, does not impose a state-mandated activity on school districts.

Education Code section 53203 requires the regional consortia authorized under Education Code section 53203, in collaboration with CDE, to provide technical assistance and support, as specified in the statute, to school districts with one or more persistently lowest-achieving schools to assist in the implementation of intervention methods adopted by the district from funds obtained in the federal RTTT competitive grant program. Education Code section 53203 states the following:

- (a) The regional consortia authorized under Section 52059, in collaboration with the department, from funds provided for this purpose pursuant to subdivision (c) of Section 53101, shall provide, at a minimum, technical assistance and support to local educational agencies with one or more persistently lowest-achieving schools to assist with the implementation of the duties specified for any of the four interventions for persistently lowest-achieving schools pursuant to Section 53202.
- (b) Funds for the regional consortia shall be distributed based on the number of persistently lowest-achieving schools identified pursuant to this section and the pupil enrollment of these schools.
- (c) It is the intent of the Legislature that the regional consortia coordinate the duties described in subdivision (a) with the duties performed pursuant to Section 52059 as it relates to schools and districts identified in program improvement pursuant to the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).
- (d) The areas of technical assistance and support pursuant to this section may include, but are not limited to, any of the following:
 - (1) Identifying strategies that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the pupils at the school, including financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions.
 - (2) Identifying strategies that provide increased instructional time.
 - (3) Implementing any of the professional development activities authorized in the state's plan or application submitted for the federal Race to the Top program.
 - (4) Developing a new governance structure that may include the establishment of a new turnaround office, located within the local educational agency or the department, that a school implementing the turnaround model will report to.
 - (5) Developing social-emotional and community-oriented services, including strategies for parental involvement and services that can be located at the schoolsite.

- (6) Identifying, reviewing, and recommending quality charter school operators, charter management organizations, or education management organizations that can operate a persistently lowest-achieving school.
- (7) Identifying higher-achieving schools in the school district, including charter schools, to relocate pupils attending a school that is scheduled for closure.
- (8) Developing, in consultation with teachers and principals, a rigorous, transparent, and equitable evaluation system for teachers and principals that includes the use of pupil growth data and other factors such as multiple observation-based assessments that all schools implementing the turnaround or transformation model may use.
- (9) Identifying strategies to identify and reward school leaders, teachers, and other staff who, in implementing the transformation model, have increased pupil achievement and high school graduation rates and have identified and removed those, who, after ample opportunities, have been provided for them to improve their professional practice, have not done so.
- (10) Identifying and approving mentor schools pursuant to subdivision (c) of Section 53202. The regional consortia shall first seek eligible mentor schools located within the district of each of the schools implementing the turnaround or transformation model.
- (11) Consistent with the collective bargaining agreement, assisting a local educational agency in doing any of the following:
 - (A) Meeting federal guidelines under Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the federal Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009, which encourages the state to ensure that persistently lowest-achieving schools are not required to accept a teacher without mutual consent of the teacher and principal, regardless of the teacher's seniority.
 - (B) Implementing schoolsite-based teacher hiring decisions.
 - (C) Giving persistently lowest-achieving schools first priority in selecting from the qualified district applicant pool, among those teachers who have specifically applied to work at the school.

The Commission finds that Education Code section 53203 does not impose a state-mandated program on school districts. The code section adds requirements to the regional consortia established under Education Code section 52059, which created regional consortia as part of the grant fund requirements of NCLB. Section 52059 requires CDE to establish a statewide system of intensive and sustained support and technical assistance for schools identified as being in need of improvement pursuant to NCLB (20 U.S.C. section 6316). The system developed in accordance with section 53209 “shall consist of regional consortia as well as district assistance and intervention teams and other technical assistance providers.”⁶⁵ While the CDE is required to

⁶⁵ Education Code section 52059(a).

establish the statewide system of school support, nothing in the plain language of the section requires local school districts to participate in the regional consortia or intervention team. Section 53203 takes the existing regional consortia, whose participation at the local district level is voluntary, and adds requirements for technical aid and assistance in the RTTT program for persistently lowest-achieving schools. Because participation in the regional consortia by school districts is voluntary, section 53203 does not impose any state-mandated activities upon school districts.⁶⁶

3. Education Code sections 53300 and 53301, governing the Parent Empowerment Act, impose a state-mandated new program or higher level of service on school districts; however, section 53303 does not impose any new activities on school districts and does not constitute a state-mandated new program or higher level of service.

The Parent Empowerment Act creates a petition process by which parents of students in a school not identified as persistently lowest-achieving, but subject to corrective action under Title I of NCLB, may petition the governing school district to implement one of the four intervention models described in Education Code section 53202. Education Code section 53300 provides as follows:

For any school not identified as a persistently lowest-achieving school under Section 53201 which, after one full school year, is subject to corrective action pursuant to paragraph (7) of Section 1116(b) of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.) and continues to fail to make adequate yearly progress, and has an Academic Performance Index score of less than 800, and where at least one-half of the parents or legal guardians of pupils attending the school, or a combination of at least one-half of the parents or legal guardians of pupils attending the school and the elementary or middle schools that normally matriculate into a middle or high school, as applicable, sign a petition requesting the local educational agency to implement one or more of the four interventions identified pursuant to paragraphs (1) to (4), inclusive of subdivision (a) of Section 53202 or the federally mandated alternative governance arrangement pursuant to Section 6316(b)(8)(B)(v) of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.), the local educational agency shall implement the option requested by the parents unless, in a regularly scheduled public hearing, the local educational agency makes a finding in writing stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options described in this section it will implement in the subsequent school year consistent with requirements specified in federal regulations and guidelines for schools subject to restructuring under Section 1116(b)(8) of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.) and regulations and guidelines for the four interventions.

The plain language of Education Code section 53300 requires a school, following a receipt of a petition filed by parents, to implement the intervention option requested by the parents unless, in a

⁶⁶ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 742.

regularly scheduled public hearing, the school makes a finding in writing stating the reason it cannot implement the specific recommended option and, instead, designates in writing which of the other options described in this section it will implement in the subsequent school year. The option selected must be consistent with requirements specified in federal regulations and guidelines for schools subject to restructuring under section 1116(b)(8) of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.) and regulations and guidelines for the four interventions. These activities are not required, however, if the petition request is filed for reasons other than improving academic achievement or pupil safety. Education Code section 53303 states: “A local educational agency shall not be required to implement the option requested by the parent petition if the request is for reasons other than improving academic achievement or pupil safety.”

Education Code section 53301 also requires a school district to notify the SPI and SBE upon receipt of a petition and the district’s final disposition of the matter as follows:

- (a) The local educational agency shall notify the Superintendent and the state board upon receipt of a petition under Section 53300 and upon its final disposition of that petition.
- (b) If the local educational agency indicates in writing that it will implement in the upcoming school year a different alternative governance arrangement than requested by the parents, the local educational agency shall notify the Superintendent and the state board that the alternative governance option selected has substantial promise of enabling the school to make adequate yearly progress as defined in the federally mandated state plan under Section 1111(b)(2) of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.).

These requirements are new and provide a service to the public with the goal of improving academic success. Under existing law, neither the federal RTTT nor the provisions of NCLB have a parent petition process. Under the federal RTTT selection criteria, states are judged on their “comprehensive approach to educational reform,” but no specific parental component is identified. Under NCLB, if a school is identified for school improvement and continues to fail to meet adequate yearly progress by the end of the second full school year after identification, the school is required to take corrective action. But NCLB gives discretion to the school district to determine which intervention model to impose as part of the corrective action and does not allow the parents to petition for any new intervention.⁶⁷

Accordingly, the Commission finds that Education Code sections 53300 and 53301 (Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 2) mandate a new program or higher level of service on school districts, beginning April 12, 2010, to perform the following activities upon receipt of a petition, signed by the number of parents specified in section 53300 and for the purpose of improving academic achievement or pupil safety, requesting the implementation of one or more of the four intervention models described in Education Code section 53202 for a school that is not identified as a persistently lowest-achieving school, but is subject to corrective action pursuant to NCLB, continues to fail to make adequate yearly progress, and has an API score of less than 800:

⁶⁷ 20 U.S.C. section 6316(b)(7).

- Implement the intervention model requested by parents unless, in a regularly scheduled public hearing, the school district makes a finding in writing stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options it will implement in the subsequent school year consistent with the requirements specified in federal regulations and guidelines.
- Notify the SPI and SBE of the receipt of a petition and the final disposition of the petition. If the school district indicates in writing that it will implement in the upcoming school year a different alternative governance arrangement than requested by the parents, the school district shall notify the SPI and SBE that the alternative governance option selected has substantial promise of enabling the school to make adequate yearly progress as defined in NCLB, 20 U.S.C. section 6301 et seq.

Section 53302, which was not pled in this test claim, limits the number of schools subject to the petition process, based upon the number of notices provided to the SPI and SBE, to 75 schools. Additionally, as stated above, section 53303 limits the requirement to implement the requested option to where the petition is filed for the purpose of improving academic achievement or pupil safety. Since section 53303 imposes no requirements on school districts, the Commission finds that it does not impose a new program or higher level of service.

4. Education Code sections 48354, 48356, and 48357 and California Code of Regulations, title 5, section 4702, which govern the Open Enrollment Act, impose a state-mandated new program or higher level of service on school districts.

As part of the additions to the Education Code enacted to compete successfully for federal RTTT grant funds, the Legislature enacted the Open Enrollment Act; Education Code sections 48350-48361.⁶⁸ Under the Act, a school district that has been identified on a list known as the Open Enrollment List is required to notify parents of the option for a student to transfer to a higher-achieving school either inside or outside the school district of residence. The stated purpose of the Open Enrollment Act is to improve pupil achievement in accordance with the regulations and guidelines for the federal RTTT fund and to enhance parental choice in education by providing options to pupils to enroll in public schools throughout the state without regard to the residence of their parents.⁶⁹

The process starts with Education Code section 48352, which requires the SPI to identify schools as low-achieving by creating a list of 1000 schools ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1 in the 2008-2009 school year. The SPI is required to ensure that no more than 10 percent of a district's schools are on the list. Court, community, community day schools, and charter schools shall not be on the list.⁷⁰ According to CDE, the list of low-achieving schools in California consisted of 687 elementary schools, 165 middle schools, and 148 high schools and was created using with the lowest API scores as follows:

⁶⁸ Added by Statutes 2009-2010, 5th Extraordinary Session, chapter 3 (S.B.4) § 1, effective April 12, 2010.

⁶⁹ Education Code section 48351.

⁷⁰ Education Code section 48352(a)(2)(B) and (C).

Creating the list starts with identification of the 687 elementary schools, 165 middle schools, and 148 high schools that have the lowest API scores within the criteria described above. This list is ranked from lowest API score to highest API score. When an LEA on the list has reached its “10 percent” cap, subject to the roundup provision, . . . the LEA’s schools with the highest API scores are dropped from the list until the LEA has no more than its “10 percent” number of schools on the list. Schools with the next lowest API scores remaining in the pool are then added to create the next list of 1,000 schools that maintains the required ratio of schools. This process continues until a final list of 1,000 schools is achieved that both maintains the ratio of 68.7 percent elementary schools, 16.5 percent middle schools, and 14.8 percent high schools and does not exceed any LEA’s “10 percent” number of schools.^{71, 72}

Education Code section 48354(b)(1) and section 4702(a) of the title 5 regulations then require the school district that receives notice that one or more of its schools are on the list created by the SPI, to provide notice to parents and guardians of the option to transfer to another public school served by the school district of residence or another school district. Education Code section 48354(b)(1), which became effective on April 12, 2010, states that “the district of residence shall provide the parents and guardians of all pupils enrolled in a school determined [to be low-achieving] with notice of the option to transfer to another public school served by the district of residence or another school district.” Section 4702(a) of the regulations was adopted as an emergency regulation effective in August 2010 to implement the notice requirement and states the following:

The district of residence shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer. This notice shall be provided on the first day of instruction; if the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's Web site at <http://www.cde.ca.gov/>.

Pursuant to Education Code section 48354(a) and (b), the parent of a pupil enrolled in a low-achieving school on the list may submit an application for the pupil to transfer to a school, other than the school in which the parent of the pupil resides, prior to January 1 of the school year preceding the school year for which the pupil is requesting to transfer.

Pursuant to Education Code section 48355, the school district of residence and the school district of enrollment may prohibit the transfer of pupils under the Act if the governing board of the district determines that the transfer would negatively impact a court-ordered or voluntary desegregation plan of the district, or the racial and ethnic balance of the district, provided that any policy adopted pursuant to this statute is consistent with federal and state law. Section 48356(a)

⁷¹ Exhibit F, California Department of Education, Frequently Asked Questions, Open Enrollment Act, Senate Bill 4 of the Fifth Extraordinary Session (SBX5 4).

⁷² Exhibit F, The list of schools on the Open Enrollment List for 2012-2013, 2013-2014, and 2014-2015 found on CDE’s website at: <http://www.cde.ca.gov/sp/eo/op/> (accessed March 10, 2014).

also authorizes a school district of enrollment to adopt standards for acceptance and rejection of applications pursuant to the Open Enrollment Act, which may include consideration of the capacity of a program, class, grade level, school building, or adverse financial impact. The standards shall not consider a pupil's previous academic achievement, physical condition, proficiency in the English language, family income, or other individual characteristics. In addition, a school district of residence is prohibited by section 48355 from adopting any policies that prevent or discourage pupils from applying for a transfer to a school district of enrollment. All communications to parents by districts shall be factually accurate and not target individual parents or guardians or residential neighborhoods on the basis of a child's actual or perceived academic or athletic performance.

Section 48356(d) requires the school district of enrollment to ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled. Section 48356(d) also requires the school district of enrollment to ensure that pupils are selected through a random, unbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. Pupils applying for a transfer shall be assigned priority for approval as follows: first priority for the siblings of children who already attend the desired school; second priority for pupils transferring from a program improvement school ranked in decile 1 on the API; and if the number of pupils requesting a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order to select pupils at random. Pursuant to section 48356(e), the initial application of a pupil for transfer to a school within the school district of enrollment shall not be approved if the transfer would require the displacement from the desired school of any other pupil who resides within the attendance area of that school or is currently enrolled in that school. In this respect, section 48354(b)(6) requires the school district of enrollment to establish a period of time for resident pupil enrollment before accepting transfer applications under this Act.

Within 60 days of receiving an application from a parent or guardian for transfer, section 48357 requires the school district of enrollment to notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. If a pupil's transfer is accepted, the school district of enrollment is required by section 48358 to accept credits toward graduation that were awarded to the pupil by another school district and shall graduate the pupil if that pupil meets the graduation requirements of the school district of enrollment.

Each school district is encouraged by section 48359 to keep an accounting of all requests made for alternative attendance under this Act and records of the disposition of those requests.

Education Code section 48359.5 describes the apportionment of state funds for average daily attendance for basic aid schools and how those funds shall be credited to a school district of enrollment that accepts a transfer pupil. Section 48360 requires the SPI to contract for an independent evaluation of the open enrollment program from federal funds appropriated. And, section 48361 states the following: "No exercise of discretion of enrollment in its administration of this article shall be overturned absent a finding as designated by a court of competent jurisdiction that the district governing board acted in an arbitrary and capricious manner."

Based on the plain language of these statutes and regulation, the Commission finds that the test claim statutes and regulation require school districts to perform the following activities:

- The school district of residence that receives notice that one or more of its schools are low-achieving and on the list created by the SPI, shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer to another public school served by the district of residence or another school district. This notice shall be provided on the first day of instruction. If the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's Web site at <http://www.cde.ca.gov/>. (Ed. Code, § 48354(b)(1); Cal. Code Regs., tit. 2, § 4702(a).)⁷³
- Upon receipt of a transfer application, the school district of enrollment shall ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled, and are selected through a random, nonbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. If the number of pupils requesting a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order in section 48356(d)(1) and (2) to select pupils at random. (Ed. Code, § 48356(d).)
- Within 60 days of receiving an application from a parent or guardian for transfer, the school district of enrollment shall notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. (Ed. Code, § 48357.)
- If a pupil's transfer is accepted, the school district of enrollment shall accept credits toward graduation that were awarded to the pupil by another school district and shall graduate the pupil if that pupil meets the graduation requirements of the school district of enrollment. (Ed. Code, § 48358.)

The Commission finds that the activities identified in the bullets above are mandated by the state. In *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1593, the court framed the issue of state imposition of a federal program upon local agencies as whether the state “freely chose to impose costs upon a local agency as a means of implementing a federal program.”⁷⁴ The court concluded that, if a state chose to impose costs upon a local government, those costs are

⁷³ According to CDE, a template notification letter for school districts has not been provided by the state. Instead, school districts “can best determine the most appropriate method and language for accomplishing parent notification.” (Exhibit F, California Department of Education, Frequently Asked Questions, Open Enrollment Act, Senate Bill 4 of the Fifth Extraordinary Session (SBX5 4).)

⁷⁴ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593.

mandated by the state.⁷⁵ Here, the state enacted the requirements bulleted above in order to compete successfully in a voluntary competitive federal RTTT grant program.

The remaining code sections and activities in the Open Enrollment Act that are not identified in the bullets above, are either required of the state or are performed at the discretion of the school district (including the authority to adopt standards for acceptance and rejection of applications under the Open Enrollment Act, and the encouragement to keep an accounting of all requests made for alternative attendance and records of the disposition of those requests). These remaining activities do not impose any state-mandated activities on school districts. Finance argues, however, that when determining if the mandated activities impose a new program or higher level of service, the school-of-choice requirements in Title 1 of NCLB need to be taken into account to determine the “true higher level of service” now imposed on school districts. Finance states the following:

Consistent with Section 1116(b)(1)(E) of the ESEA, the state Open Enrollment Act requires that on or before the first day of the school year, any district of residence identified by the State Department of Education as being a low-achieving school, shall provide the parents and guardians of all pupils with notification of the option to transfer to another public school. The extent to which schools are identified using federal criteria of low-achievement (which could overlap with state criteria), would reflect a requirement of federal law. Any other schools that are only identified by state criteria would reflect a requirement of the state. Thus, the increment that state law goes beyond federal law and imposes additional requirements reflects the true higher level of service required by the state.

In addition, federal regulations require that notifications sent to parents include information on how other schools compare in terms of academic achievement. [Footnote omitted.] This federal requirement could reduce the workload required to fulfill the state requirement that the school district from which a student transfers, ensures that the student is transferring to a school with a higher Academic Performance Index score. Therefore, the increment that state law goes beyond federal law and imposes additional requirements reflects the true higher level of service required by the state.⁷⁶

Finance is correct that existing federal law, under Title 1 of NCLB, requires that all students enrolled in a Title 1 school that has been identified for school improvement, corrective action, or restructuring, shall be offered the opportunity to transfer to a higher achieving school *in* the district,⁷⁷ and that the test claim statute, section 48354, also requires the district of residence to provide notice of the option to transfer to another public school if identified on the list of 1,000 schools prepared by the SPI. However, the school of choice provisions under NCLB and the

⁷⁵ *Id.*

⁷⁶ Exhibit E.

⁷⁷ 20 U.S.C. section 6316(b)(1)(E), (b)(5)(A), (b)(7)(C)(i), and (b)(8)(A)(i); 34 C.F.R. §200.44(a)(1).

school of choice provisions under the state's Open Enrollment Act are distinct and impose two separate programs. Under NCLB, schools in program improvement are identified based on criteria provided by the federal government. Open Enrollment schools are identified based on the provisions in Education Code section 48352. School districts that receive notice of program improvement under NCLB and notice that one of the schools in the district is also on the Open Enrollment List are required to provide notice to parents and guardians of *both* programs. A parent or guardian, therefore, may exercise either option.⁷⁸ In addition, under NCLB, a student can attend a higher performing school in his or her district of residence. Under the Open Enrollment program, a parent may enroll a student in a school within his or her district of residence *or* a school in another district, as long as the school has a higher API score.⁷⁹ Thus, a school district's compliance with one program does not excuse the compliance with the other program and there is no overlap in the two programs, as suggested by Finance.

Rather, the first three bulleted activities are newly required by the state and constitute a new program or higher level of service. These activities provide a service to the public to carry out the states' purpose of the Act to improve pupil achievement in accordance with the regulations and guidelines for the federal RTTT fund and to enhance parental choice in education by providing options to pupils to enroll in public schools throughout the state without regard to the residence of their parents.⁸⁰

The activities in the last bullet from Education Code section 48358 -- requiring the school district of enrollment to accept credits toward graduation that were awarded to the pupil by another school district and to graduate the pupil if that pupil meets the graduation requirements of the school district of enrollment -- are not new, however, and do not provide a higher level of service to the public. Under existing law, minimum graduation standards for English, mathematics, science, social studies, physical education, and visual or performing arts or foreign language, are established by the state for high school graduation. In addition to those courses mandated by the state, school districts have the authority under existing law to adopt other coursework requirements for graduation.⁸¹ Thus, requiring the district of enrollment to graduate a pupil if he or she meets the graduation requirements of the district, is not new. In addition, requiring the school district of enrollment to accept credits toward graduation that were awarded to the pupil by another school district establishes a lower level of service for the district of enrollment. By accepting credits for courses already taken by the pupil at the district of residence, the number of credits needed to graduate and the number of courses needed to be provided by the district of enrollment is reduced. Thus, Education Code section 48358 does not impose a new program or higher level of service on school districts.

Accordingly, the Commission finds that the following activities required by Education Code sections 48354, 48356, and 48357 (Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1) and

⁷⁸ Exhibit F, California Department of Education, Frequently Asked Questions, Open Enrollment Act, Senate Bill 4 of the Fifth Extraordinary Session (SBX5 4).

⁷⁹ *Ibid.*

⁸⁰ Education Code section 48351.

⁸¹ Education Code section 51225.3.

California Code of Regulations, title 5, section 4702 (Register 2010, No. 32), constitute state-mandated new programs or higher levels of service on school districts beginning April 12, 2010:

- The school district of residence that receives notice that one or more of its schools are low-achieving and on the list created by the SPI, shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer to another public school served by the district of residence or another school district. This notice shall be provided on the first day of instruction. If the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's Web site at <http://www.cde.ca.gov/>. (Ed. Code, § 48354(b)(1); Cal. Code Regs., tit. 2, § 4702(a).)
- Upon receipt of a transfer application, the school district of enrollment shall ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled, and are selected through a random, nonbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. If the number of pupils requesting a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order in section 48356(d)(1) and (2) to select pupils at random. (Ed. Code, § 48356(d).)
- Within 60 days of receiving an application from a parent or guardian for transfer, the school district of enrollment shall notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. (Ed. Code, § 48357.)

Court, community, community day schools, and charter schools shall not be on the list and are *not* mandated by the state to comply with the Open Enrollment Act.⁸²

C. Do the new mandated activities impose costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514?

Government Code section 17514 provides that “[c]osts mandated by the state’ means 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 executive order implementing any statute enacted on or after January 1, 1975, 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.” Government Code section 17564 provides that “[n]o 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.”

⁸² Education Code section 48352(a)(2)(B) and (C).

Claimant alleges increased costs mandated by the state in the amount of \$450,000 for fourteen schools in the district impacted by the test claim statutes, which exceeds the \$1000 minimum claim amount articulated in Government Code section 17564(a).

Government Code section 17556(e) states that there are no costs mandated by the state if additional revenue specifically intended to fund the costs of the mandated activities, in an amount sufficient to fund the cost of the state-mandated activities, has been appropriated in a Budget Act or other bill. There is no evidence that additional revenue has been appropriated “in an amount sufficient” to fund the cost of all the state-mandated activities in this claim. Thus, Government Code section 17556(e) does not apply to deny this claim.

Finance has noted, however, that federal school improvement grants (SIG) have been awarded to persistently lowest-achieving schools to implement one of the four intervention models for turning a school around pursuant to Education Code section 53202. These funds can be awarded to school districts with persistently lowest-achieving Title 1 schools and to school districts with persistently lowest-achieving secondary schools that are eligible for, but do not receive, Title 1 funding. Funding for SIG is provided by an annual appropriation in the Budget Act in Item 6110-134-0890. The claimant requested funding in September 2010 and funding was awarded to the claimant in the amount of \$5,584,828.⁸³ These funds are specifically intended to fund the implementation of the intervention models required by Education Code section 53202 by a persistently lowest-achieving school and, thus, are required to be identified and deducted as offsetting revenue and deducted from the costs claimed by a district.

There is no evidence the other funds have been appropriated specifically for the remaining activities. To the extent a district receives any additional federal funding or grant funding, however, and applies those funds to the mandated activities, those funds are required to be identified as offsetting revenue and deducted from the costs claimed by the district.

Article XIII B, section 6, does not require reimbursement when the costs are for expenses that are recoverable from sources other than tax revenue.⁸⁴

Accordingly, based on the evidence in the record, the Commission finds there are costs mandated by the state pursuant to Government Code section 17514.

V. CONCLUSION

⁸³ Exhibit F, CDE “Funding Results for School Improvement Grant” (SIG) awards. District totals represent the amount awarded for a three year period.

(<http://www.cde.ca.gov/fg/fo/r16/sigreg09result.asp>)

⁸⁴ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487. For example, the 2010-2011 Budget Act (Stats. 2010, ch. 712), line item 6110-180-0890, provision 5, also allocates federal ARRA competitive grant funding to CDE to award those eligible districts that commit to using education data and technology to improve college and career readiness or the high school graduation rate. Approved applicants may use competitive grant funds to purchase digital equipment and materials to help participants meet the program’s objective. To the extent a district receives this grant funding and applies the grant funds to the costs of implementing one of the four intervention models for turning around an identified persistently lowest-achieving school, then those grant funds are required to be identified as offsetting revenue.

The Commission concludes that the test claim statutes and regulation identified below impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning April 12, 2010.

1. Race to the Top

School districts that receive notice that a school or schools within the district have been identified by the SPI as persistently lowest-achieving pursuant to Education Code section 53200(b) are required to perform the following activities:

- a) Hold at least two public hearings for each school identified as a persistently lowest-achieving school to notify staff, parents, and the community of the designation and to seek input from staff, parents, and the community regarding the option or options most suitable for the applicable school or schools in its jurisdiction. At least one of the public hearings shall be held at a regularly scheduled meeting, if applicable, and at least one of the public hearings shall be held on the site of a school deemed persistently lowest-achieving. (Ed. Code, § 53202(b), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)
- b) Conduct a meeting of the governing board to select one of the four interventions for turning around the identified persistently lowest-achieving school or schools as described in Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009:
 - (1) The turnaround model.
 - (2) The restart model.
 - (3) School closure.
 - (4) The transformational model. (Ed. Code, § 53202(a), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)
- c) Implement one of the four intervention models for turning around the identified persistently lowest-achieving school or schools. (Ed. Code, § 53202(a), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)

The following schools are exempt from the requirements of Education Code section 53202(a) and (b) and are, therefore, **not** mandated by the state to comply with the above activities:

- Schools identified by the SPI and SBE as already having implemented a reform that conforms to the intervention requirements of the RTTT program, and are showing significant progress in its reform pursuant to Education Code section 53202(a); and
- Schools listed in Education Code section 53201(e) (i.e., county community schools, juvenile court schools, schools that provide educational services exclusively to individuals with exceptional needs, and schools that have experienced academic growth of at least 50 points over the previous five years as measured by the API).

2. Parent Empowerment Act

School districts that receive a petition, signed by the number of parents specified in Education Code section 53300 and for the purpose of improving academic achievement or pupil safety, requesting the implementation of one or more of the four intervention models described in Education Code section 53202 for a school that is not identified as a persistently lowest-achieving school, but is subject to corrective action pursuant to NCLB, continues to fail to make adequate yearly progress, and has an API score of less than 800, are required to perform the following activities:

- a) Implement the intervention model requested by parents unless, in a regularly scheduled public hearing, the school district makes a finding in writing stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options it will implement in the subsequent school year consistent with the requirements specified in federal regulations and guidelines. (Ed. Code, § 53300, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 2.)
- b) Notify the SPI and SBE of the receipt of a petition and the final disposition of the petition. If the school district indicates in writing that it will implement in the upcoming school year a different alternative governance arrangement than requested by the parents, the school district shall notify the SPI and SBE that the alternative governance option selected has substantial promise of enabling the school to make adequate yearly progress as defined in NCLB, 20 U.S.C. section 6301 et seq. (Ed. Code, § 53301, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 2.)

3. Open Enrollment Act

- a) The school district of residence that receives notice that one or more of its schools are low-achieving and on the list created by the SPI, shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer to another public school served by the district of residence or another school district. This notice shall be provided on the first day of instruction. If the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's Web site at <http://www.cde.ca.gov/>. (Ed. Code, § 48354(b)(1); Cal. Code Regs., tit. 2, § 4702(a).)
- b) Upon receipt of a transfer application, the school district of enrollment shall ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled, and are selected through a random, nonbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. If the number of pupils requesting a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order in section 48356(d)(1) and (2) to select pupils at random. (Ed. Code, § 48356(d), Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1.)

- c) Within 60 days of receiving an application from a parent or guardian for transfer, the school district of enrollment shall notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. (Ed. Code, § 48357, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1.)

Court, community, community day schools, and charter schools are exempt and *not* mandated by the state to comply with the Open Enrollment Act.⁸⁵

All other statutes and activities pled are denied.

In addition, any federal funding or grant funding appropriated for these mandated activities, including SIG funds (State Budget Act, Line Item 6110-134-0890) appropriated to implement an intervention model pursuant to Education Code section 53202, shall be identified as offsetting revenue and deducted from the costs claimed by the district.

⁸⁵ Education Code section 48352(a)(2)(B) and (C).

Glossary of Frequently Used Terms and Acronyms

Academic Performance Index (API)	The API is a single number, ranging from a low of 200 to a high of 1000, which reflects a school's, an LEA's, or a student group's performance level, based on the results of statewide assessments.
American Recovery and Reinvestment Act (ARRA)	Federal law providing one time funding to help struggling states. ARRA included the competitive grant funding in the federal Race to the Top.
California Department of Education (CDE)	California Department of Education
Local Educational Agency (LEA)	A School District or County Office of Education.
Memorandum of Understanding (MOU)	A bilateral or multilateral agreement between two or more parties. It expresses a convergence of will between the parties, indicating an intended common line of action. It is often used in cases where parties do not imply a legal commitment, cannot create a legally enforceable agreement, or as a preliminary step in the contracting process. Whether or not an MOU constitutes a binding contract depends only on the presence or absence of the well-defined legal elements for a contract: offer, consideration, intention, and acceptance. The specifics can differ slightly depending on whether the contract is for goods (falls under the Uniform Commercial Code) or services (falls under the common law of the state).
Race to the Top (RTTT)(federal)	Federal competitive grant program to encourage academic improvement.
Race to the Top (RTTT)(state)	State statutes enacted to make California competitive in the federal RTTT competitive grant process.
Standardized Testing and Reporting (STAR)	State testing process to measure academic achievement.

State Board of Education (SBE)	The SBE sets K-12 education policy in the areas of standards, curriculum, instructional materials, assessment, and accountability. The SBE adopts instructional materials for use in grades kindergarten through eight. T The SPI, who heads the CDE, also serves as SBE's executive officer and secretary
State Educational Agency	Any state level educational agency.
Superintendent of Public Instruction (SPI)	A California Constitutional Officer, elected every four years to head the California Department of Education. The SPI directs all functions of the Department of Education, executes policies set by the California State Board of Education, serves as the state's chief spokesperson for public schools, provides education policy and direction to local school districts, and also serves as an ex officio member of governing boards of the state's higher education system.

COMMISSION ON STATE MANDATES

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**RE: Adopted Statement of Decision**

Race to the Top, 10-TC-06

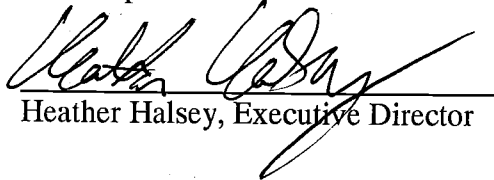
Education Code Sections 48353 et al.

Statutes 2009-2010, 5th Extraordinary Session, Chapters 2 and 3,
SBX5 1 and SBX5 4 et al.

California Code of Regulations, Title 5, Section 4702 (Register 2010, No. 32)

Twin Rivers Unified School District, Claimant

On March 28, 2014, the foregoing statement of decision of the Commission on State Mandates was adopted in the above-entitled matter.


Heather Halsey, Executive Director

Dated: April 4, 2014

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
FOR:

Education Code Sections 48354(b)(1),
48356(d), 48357, 53202(a), 53202(b), 53300,
and 53301

Statutes 2009-2010, 5th Extraordinary Session,
Chapter 2 (SBX5 1); Statutes 2009-2010, 5th
Extraordinary Session, Chapter 3 (SBX5 4)

California Code of Regulations, Title 5,
Section 4702(a) (Register 2010, No. 32)

Period of reimbursement begins
April 12, 2010.

Case No.: 10-TC-06

Race to the Top

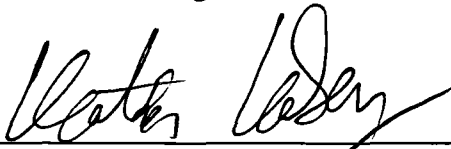
STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION
17500 ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted May 30, 2014)

(Served June 4, 2014)

PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached parameters and guidelines on
May 30, 2014.


Heather Halsey, Executive Director

PARAMETERS AND GUIDELINES

Education Code Sections 48354(b)(1), 48356(d), 48357, 53202(a), 53202(b), 53300, and 53301

Statutes 2009-2010, 5th Extraordinary Session, Chapter 2 (SBX5 1);

Statutes 2009-2010, 5th Extraordinary Session, Chapter 3 (SBX5 4)

California Code of Regulations, Title 5, Section 4702(a) (Register 2010, No. 32)

Race to the Top

10-TC-06

Twin Rivers Unified School District, Claimant

Period of reimbursement begins April 12, 2010

I. SUMMARY OF THE MANDATE

These parameters and guidelines address activities mandated by the state to compete in the federal *Race to the Top* (RTTT) competitive grant program established by the federal American Recovery and Reinvestment Act of 2009. Under the federal grant program, the states competed for approximately \$4.35 billion in funds awarded to states that are creating conditions for education innovation and reform; achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers; and implementing ambitious plans in four core education reform areas. To make California's application for RTTT grant funds competitive, the Legislature added and amended the Education Code by enacting the Race to the Top program (Ed. Code §§ 53100-53203), the Parent Empowerment Act (Ed. Code sections §§53300-53303) and the Open Enrollment Act (Ed. Code sections 48350-48361). The California Department of Education (CDE) also adopted a regulation (Cal. Code Regs., tit. 5, § 4702) to implement the Open Enrollment Act.

On March 28, 2014, the Commission on State Mandates (Commission) adopted a statement of decision on the *RTTT* program, 10-TC-06, finding that the test claim statutes and regulation impose a partially reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the test claim for the reimbursable activities identified in Section IV. of these parameters and guidelines.

II. ELIGIBLE CLAIMANTS

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

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on November 23, 2010, establishing eligibility for reimbursement for the 2009-2010 fiscal year. However, the test claim statutes did not become operative and effective until April 12, 2010.

Race to the Top, 10-TC-06
Parameters and Guidelines

As a result, any costs incurred for the activities in these parameters and guidelines are reimbursable beginning on or after April 12, 2010.

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

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

IV. REIMBURSABLE ACTIVITIES

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

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

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

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

1. Race to the Top

School districts that receive notice that a school or schools within the district have been identified by the Superintendent of Public Instruction (SPI) as persistently lowest-achieving pursuant to Education Code section 53200(b) are required to perform the following activities:

- a) Hold at least two public hearings for each school identified as a persistently lowest-achieving school to notify staff, parents, and the community of the designation and to seek input from staff, parents, and the community regarding the option or options most suitable for the applicable school or schools in its jurisdiction. At least one of the public hearings shall be held at a regularly scheduled meeting, if applicable, and at least one of the public hearings shall be held on the site of a school deemed persistently lowest-achieving. (Ed. Code, §53202(b); Stats. 2009-2010, 5th Ex. Sess., ch. 2, §8 (SBX5 1).)
- b) Conduct a meeting of the governing board to select one of the four interventions for turning around the identified persistently lowest-achieving school or schools as described in Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the *RTTT* program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009:
 - The turnaround model.
 - The restart model.
 - School closure.
 - The transformational model. (Ed. Code, §53202(a); Stats. 2009-2010, 5th Ex. Sess., ch. 2, §8 (SBX5 1).)
- c) Implement one of the four intervention models for turning around the identified persistently lowest-achieving school or schools. (Ed. Code, §53202(a); Stats. 2009-2010, 5th Ex. Sess., ch. 2, §8 (SBX5 1).)

The following schools are *exempt* from the requirements of Education Code section 53202(a) and (b) and are, therefore, *not* mandated by the state to comply with the above activities:

- Schools identified by the SPI and State Board of Education (SBE) as already having implemented a reform that conforms to the intervention requirements of the *RTTT* program, and are showing significant progress in its reform pursuant to Education Code section 53202(a); and
- Schools listed in Education Code section 53201(e) (i.e., county community schools, juvenile court schools, schools that provide educational services exclusively to individuals with exceptional needs, and schools that have experienced academic growth of at least 50 points over the previous five years as measured by the Academic Performance Index (API)).

2. Parent Empowerment Act

School districts that receive a petition, signed by the number of parents specified in Education Code section 53300 and for the purpose of improving academic achievement or pupil safety, requesting the implementation of one or more of the four intervention models

described in Education Code section 53202 for a school that is not identified as a persistently lowest-achieving school, but is subject to corrective action pursuant to No Child Left Behind (NCLB), continues to fail to make adequate yearly progress, and has an API score of less than 800, are required to perform the following activities:

- a) Implement the intervention model requested by parents unless, in a regularly scheduled public hearing, the school district makes a finding in writing stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options it will implement in the subsequent school year consistent with the requirements specified in federal regulations and guidelines. (Ed. Code, §53300; Stats. 2009-2010, 5th Ex. Sess., ch. 3, §2 (SBX5 4).)
- b) Notify the SPI and SBE of the receipt of a petition and the final disposition of the petition. If the school district indicates in writing that it will implement in the upcoming school year a different alternative governance arrangement than requested by the parents, the school district shall notify the SPI and SBE that the alternative governance option selected has substantial promise of enabling the school to make adequate yearly progress as defined in NCLB, Title 20 United States Code section 6301 et seq.. (Ed. Code, §53301; Stats. 2009-2010, 5th Ex. Sess., ch. 3, §2 (SBX5 4).)

3. Open Enrollment Act

- a) The school district of residence that receives notice that one or more of its schools are low-achieving and on the list created by the SPI, shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer to another public school served by the district of residence or another school district. This notice shall be provided on the first day of instruction. If the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the California Department of Education's (CDE) Web site at <http://www.cde.ca.gov/>. (Ed. Code, §48354(b)(1); Cal. Code Regs., tit. 2, §4702(a).)
- b) Upon receipt of a transfer application, the school district of enrollment shall ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled, and are selected through a random, nonbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. If the number of pupils requesting a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order in section 48356(d)(1) and (2) to select pupils at random. (Ed. Code, §48356(d); Stats. 2009-2010, 5th Ex. Sess., ch. 3, §1 (SBX5 4).)
- c) Within 60 days of receiving an application from a parent or guardian for transfer, the school district of enrollment shall notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. (Ed. Code, §48357; Stats. 2009-2010, 5th Ex. Sess., ch. 3, §1 (SBX5 4).)

Court, community, community day schools, and charter schools are *exempt and not mandated* by the state to comply with the Open Enrollment Act.¹

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets

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

¹Education Code section 48352(a)(2)(B) and (C).

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

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

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

VI. **RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. **OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim. Specifically, the School Improvement Grant funds under the state Budget Act Item 6110-134-0890 must be identified as offsetting revenue and deducted from the costs claimed by the district for implementing an intervention model pursuant to Education Code section 53202.

² This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

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

IX. REMEDIES BEFORE THE COMMISSION

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

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

Hearing: March 27, 2015

J:\MANDATES\2010\TC\10-TC-06 Race to the Top\SCE\ Draft PSCE.doc

Item ____

DRAFT PROPOSED STATEWIDE COST ESTIMATE

\$95,464

(Approximate Prospective Cost of \$31,109 Annually)

Education Code Sections 48354(b)(1), 48356(d), 48357, 53202(a), 53202(b), 53300, and 53301

Statutes 2009-2010, 5th Extraordinary Session, Chapter 2 (SBX5 1);

Statutes 2009-2010, 5th Extraordinary Session, Chapter 3 (SBX5 4)

California Code of Regulations, Title 5, Section 4702(a) (Register 2010, No. 32)

Race to the Top

10-TC-06

STAFF ANALYSIS

Background and Summary of the Mandate

This test claim addresses statutes enacted in 2009 and 2010 and regulations adopted in 2010 to make California competitive in the federal *Race to the Top* (RTTT) education grant program.

On March 28, 2014, the Commission on State Mandates (Commission) adopted a statement of decision¹ on the *Race to the Top* (RTTT) test claim (10-TC-06) finding that the test claim statutes imposes a partially reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514.

Parameters and guidelines² were adopted on May 30, 2014 approving the reimbursable activities described below under the *Reimbursable Activities* section.

Eligible claimants were required to file initial reimbursement claims, for costs incurred for the period April 12, 2010 through June 30, 2013 by December 31, 2014 with the State Controller's Office (SCO), and fiscal year 2013-2014 by February 17, 2014. Late initial reimbursement claims may be filed until December 31, 2015.

Eligible Claimants and Period of Reimbursement

Any school district, with the exception of community colleges, that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. Twin Rivers Unified School District filed the test claim November 23, 2010, establishing eligibility for reimbursement for the 2009-2010 fiscal year. However, the effective date of the reimbursable state-mandated activities

¹ Exhibit A. Test Claim Statement of Decision.

² Exhibit B. Parameters and Guidelines.

began April 12, 2010, the effective date of the test claim statute. As a result, any costs incurred for the activities in these parameters and guidelines are reimbursable on or after April 12, 2010.

Reimbursable Activities

The parameters and guidelines authorize reimbursement of each eligible claimant for the following activities:

1. Race to the Top

School districts that receive notice that a school or schools within the district have been identified by the Superintendent of Public Instruction (SPI) as persistently lowest-achieving pursuant to Education Code section 53200(b) are required to perform the following activities:

- a) Hold at least two public hearings for each school identified as a persistently lowest-achieving school to notify staff, parents, and the community of the designation and to seek input from staff, parents, and the community regarding the option or options most suitable for the applicable school or schools in its jurisdiction. At least one of the public hearings shall be held at a regularly scheduled meeting, if applicable, and at least one of the public hearings shall be held on the site of a school deemed persistently lowest-achieving. (Ed. Code, §53202(b); Stats. 2009-2010, 5th Ex. Sess., ch. 2, §8 (SBX5 1).)
- b) Conduct a meeting of the governing board to select one of the four interventions for turning around the identified persistently lowest-achieving school or schools as described in Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the *RTTT* program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009:
 - The turnaround model.
 - The restart model.
 - School closure.
 - The transformational model. (Ed. Code, §53202(a); Stats. 2009-2010, 5th Ex. Sess., ch. 2, §8 (SBX5 1).)
- c) Implement one of the four intervention models for turning around the identified persistently lowest-achieving school or schools. (Ed. Code, §53202(a); Stats. 2009-2010, 5th Ex. Sess., ch. 2, §8 (SBX5 1).)

The following schools are *exempt* from the requirements of Education Code section 53202(a) and (b) and are, therefore, *not* mandated by the state to comply with the above activities:

- Schools identified by the SPI and State Board of Education (SBE) as already having implemented a reform that conforms to the intervention requirements of the *RTTT* program, and are showing significant progress in its reform pursuant to Education Code section 53202(a); and
- Schools listed in Education Code section 53201(e) (i.e., county community schools, juvenile court schools, schools that provide educational services exclusively to individuals with exceptional needs, and schools that have

experienced academic growth of at least 50 points over the previous five years as measured by the Academic Performance Index (API).

2. Parent Empowerment Act

School districts that receive a petition, signed by the number of parents specified in Education Code section 53300 and for the purpose of improving academic achievement or pupil safety, requesting the implementation of one or more of the four intervention models described in Education Code section 53202 for a school that is not identified as a persistently lowest-achieving school, but is subject to corrective action pursuant to No Child Left Behind (NCLB), continues to fail to make adequate yearly progress, and has an API score of less than 800, are required to perform the following activities:

- a) Implement the intervention model requested by parents unless, in a regularly scheduled public hearing, the school district makes a finding in writing stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options it will implement in the subsequent school year consistent with the requirements specified in federal regulations and guidelines. (Ed. Code, §53300; Stats. 2009-2010, 5th Ex. Sess., ch. 3, §2 (SBX5 4).)
- b) Notify the SPI and SBE of the receipt of a petition and the final disposition of the petition. If the school district indicates in writing that it will implement in the upcoming school year a different alternative governance arrangement than requested by the parents, the school district shall notify the SPI and SBE that the alternative governance option selected has substantial promise of enabling the school to make adequate yearly progress as defined in NCLB, Title 20 United States Code section 6301 et seq.. (Ed. Code, §53301; Stats. 2009-2010, 5th Ex. Sess., ch. 3, §2 (SBX5 4).)

3. Open Enrollment Act

- a) The school district of residence that receives notice that one or more of its schools are low-achieving and on the list created by the SPI, shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer to another public school served by the district of residence or another school district. This notice shall be provided on the first day of instruction. If the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the California Department of Education's (CDE) Web site at <http://www.cde.ca.gov/>. (Ed. Code, §48354(b)(1); Cal. Code Regs., tit. 2, §4702(a).)
- b) Upon receipt of a transfer application, the school district of enrollment shall ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled, and are selected through a random, nonbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. If the number of pupils requesting a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order in section

48356(d)(1) and (2) to select pupils at random. (Ed. Code, §48356(d); Stats. 2009-2010, 5th Ex. Sess., ch. 3, §1 (SBX5 4).)

- c) Within 60 days of receiving an application from a parent or guardian for transfer, the school district of enrollment shall notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. (Ed. Code, §48357; Stats. 2009-2010, 5th Ex. Sess., ch. 3, §1 (SBX5 4).)

Court, community, community day schools, and charter schools are ***exempt and not mandated*** by the state to comply with the Open Enrollment Act.³

Offsetting Revenues and Reimbursements

The parameters and guidelines⁴ provide:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim. Specifically, the School Improvement Grant funds under the state Budget Act Item 6110-134-0890 must be identified as offsetting revenue and deducted from the costs claimed by the district for implementing an intervention model pursuant to Education Code section 53202.

To the extent that the claimant has used fees or any funds provided by the state or federal government, as opposed to proceeds of local taxes, to pay for the cost of the program, those costs are not reimbursable.

Statewide Cost Estimate

Assumptions

Staff reviewed the reimbursement claims data submitted by the two school districts that submitted initial claims, which was compiled by the SCO.⁵ The data showed that only one school district filed initial claims for fiscal years 2009-2010 through 2011-2012 and two school districts filed an initial claim for fiscal year 2012-2013 for a total of \$95,464. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
 - *Additional districts are likely to file late initial reimbursement claims and late claims for 2013-2014*

There are currently over 1000 school districts in California. Of those, only two school districts filed initial reimbursement claims totaling \$95,464. The reimbursable

³Education Code section 48352(a)(2)(B) and (C).

⁴ Exhibit B. Parameters and Guidelines.

⁵ Claims data reported as of February 3, 2015.

activities of this program are based on the number of schools who have been identified by the Superintendent of Public Instruction (SPI) as persistently low-achieving. In 2014, California's Department of Education identified 188 schools within 76 different school districts as persistently low-achieving based on graduation rates and academic performance. These institutions must comply with the requirements listed in the parameters and guidelines. Thus, late initial claims are likely to be filed on this program by some of the 74 districts that have not yet filed claims. If eligible claimants file late initial claims, the cost of reimbursing those claims may exceed the statewide cost estimate. Late initial reimbursement claims for this program for the period April 12, 2010 through June 30, 2014 may be filed until December 31, 2015. Annual reimbursement claims for fiscal year 2013-2014 were required to be filed by February 17, 2015 and late claims for that year may be filed until February 15, 2016.

- *There are reasons why a district that has incurred costs might not file a claim.*

There also may be several reasons that non-claiming school districts did not file reimbursement claims, including but not limited to, (1) they did not incur more than \$1,000 in increased costs for this program and (2) they did not have supporting documentation to file a reimbursement claim.

- *The number of reimbursement claims and amount of costs claimed will vary from year to year.*

As discussed above, costs under this program are driven by an SPI designation of a school as persistently low-achieving in a given year. Moreover, the number of petitions signed by parents requesting an intervention model for the purpose of improving academic achievement or pupil safety, and the number of parents who apply for a school transfer after receiving notification from the SPI the current school is low-achieving, can fluctuate year-to-year. Therefore, the reimbursable activities of this program are driven by circumstances rather than a fixed cycle.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable.

Methodology

April 12, 2010 through June 30, 2013.

The statewide cost estimate for the period April 12, 2010 through June 30, 2013 was developed by totaling the 5 reimbursement claims filed with the SCO for this period. Staff finds that the average for the most recent three-year period is likely indicative of potential future costs. For that three-year period, costs averaged \$31,109 annually

Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
2009-2010	1	\$2,136
2010-2011	1	\$33,745
2011-2012	1	\$30,197
2012-2013	2	\$29,386
TOTAL	5	\$95,464

Staff Recommendation

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$95,464 (Approximate Prospective Cost of \$31,109 Annually)** for costs incurred in complying with the *Race To The Top* program.