

**ITEM 4**  
**PROPOSED DECISION**  
**AND**

**PARAMETERS AND GUIDELINES**

Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and  
Education Code Sections 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908)

*Cal Grant: Opt-Out Notice and Grade Point Average Submission*<sup>1</sup>

16-TC-02

Fairfield-Suisun Unified School District, Claimant

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<sup>1</sup> Note that the underlying Test Claim was entitled “*Cal Grant: Grade Point Average and Graduation Certification, 16-TC-02*” but that the Parameters and Guidelines have been renamed consistent with the activities approved for reimbursement.

# Exhibit A

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 69432.9, 69432.92

Statutes 2014, Chapter 679 (AB 2160),  
Statutes 2015, Chapter 637 (AB 1091),  
Statutes 2016, Chapter 82 (AB 2908)

Filed on June 26, 2017

By Fairfield-Suisun Unified School District,  
Claimant

Case No.: 16-TC-02

*Cal Grant: Grade Point Average and  
Graduation Certification*

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

*(Adopted January 26, 2018)*

*(Served February 2, 2018)*

## DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on January 26, 2018. Jolene Tollenaar and Kathryn Young appeared on behalf of the claimant, Fairfield-Suisun Unified School District. Donna Ferebee and Bijan Mehryar appeared on behalf of the Department of Finance.

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

The Commission adopted the Proposed Decision to partially approve the Test Claim by a vote of 6-0, as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Richard Chivaro, Representative of the State Controller	Absent
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	Yes
Scott Morgan, Representative of the Director of the Office of Planning and Research	Yes
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	Yes
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	Yes

## Summary of the Findings

This Test Claim pleads Education Code sections 69432.9 and 69432.92, as added or amended by Statutes 2014, chapter 679, Statutes 2015, chapter 637, and Statutes 2016, chapter 82, with respect to the Cal Grant A and Cal Grant B Entitlement programs, through which the state provides financial assistance to college students who meet the eligibility criteria. The test claim statutes address the activities performed by K-12 school districts for pupils in grades 11 and 12 who may be eligible for a Cal Grant Entitlement award. Generally, sections 69432.9 and 69432.92:

- Deem every grade 12 pupil a Cal Grant applicant;
- Require school districts to provide written notification to pupils of the opportunity to opt out of being deemed a Cal Grant applicant;
- Require school districts to certify and electronically submit to the California Student Aid Commission (CSAC) the grade point averages (GPAs) of all grade 12 pupils, except those who opt out of being a Cal Grant applicant;
- Authorize CSAC to require an electronic submission of verification of high school graduation or its equivalent for all grade 12 pupils who graduated in the prior academic year, except those who opt of being a Cal Grant applicant;
- Authorize school districts to obtain permission from the pupil or parent or guardian of the pupil, to submit the pupil's social security number (SSN) to CSAC if CSAC determines that an SSN is required to complete the application for financial aid.

As a preliminary matter, the Commission finds that the Test Claim was timely filed pursuant to Government Code section 17551(c) and section 1183.1(c) of the Commission's regulations.

On the merits, the Commission finds that the activity to *certify* GPAs for all grade 12 pupils, as required by Education Code section 69432.9(c), does not constitute a new program or higher level of service. School districts have long been required to certify GPAs under penalty of perjury for Cal Grant applicants.<sup>1</sup> Although school districts may now have to certify more GPAs than under prior law, and may incur increased costs to do so, increased costs alone do not establish a reimbursable state-mandated program.<sup>2</sup>

The Commission further finds that the activity to electronically verify, upon request from CSAC, the high school graduation of all former grade 12 pupils who have not opted out of the Cal Grant program pursuant to Education Code section 69432.92, does not impose a state-mandated program on school districts. The plain language of the statute authorizes, but does not require, CSAC to request school districts to submit electronic verification of the high school graduation

<sup>1</sup> Former Education Code section 69432.9(c) (as last amended by Stats. 2011, ch. 7); see also, California Code of Regulations, title 5, section 30008.

<sup>2</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 55-56; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.

for grade 12 pupils.<sup>3</sup> In addition, the Education Code has long required a pupil to confirm his or her high school graduation before Cal Grant payments can be released, and either the pupil or the school district can verify graduation.<sup>4</sup> Ultimately, the applicant is responsible for verifying his or her high school graduation.<sup>5</sup> This process has not changed with the test claim statutes.

In addition, the Commission finds that providing SSNs, if requested by CSAC, is not mandated by the plain language of Education Code section 69432.9(c)(2). The statute clearly states that SSNs shall not be included in the information, and that “if” CSAC requests the SSN, the school district “may” obtain permission from the pupil or the parent to submit the information. Moreover, a school district submitting SSNs upon CSAC’s request is not a new activity.

However, the Commission finds that the requirement to provide a written Cal Grant opt-out notice pursuant to Education Code section 69432.9(d), (Stats 2014, ch. 679, Stats. 2016, ch. 82) mandates a new program or higher level of service on K-12 school districts to:

- Beginning January 1, 2015, provide written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
- Beginning January 1, 2017, provide written notice by January 1 to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.

This activity is newly mandated by the state and provides a service to the public by increasing access to college financial aid for California students and thus, imposes a new program or higher level of service.

The Commission also finds that the requirement to electronically submit the GPAs of all grade 12 pupils each academic year to CSAC pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679), except for pupils who opt out, mandates a new program or higher level of service. Under prior law, the GPA could be submitted by either the pupil or the school,<sup>6</sup> on

<sup>3</sup> Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

<sup>4</sup> Education Code section 69433.9 (as last amended by Stats. 2006, ch. 652.).

<sup>5</sup> Education Code section 69432.9(a) (as last amended by Stats. 2011, ch. 7), and still in place today, states: “A Cal Grant applicant shall submit a complete official financial aid application pursuant to Section 69433 and application regulations adopted by the commission.” See also, Exhibit F, California Student Aid Commission, “High School Graduation Confirmation for High Schools, WebGrants User Guide” May 23, 2008, page 5.

<sup>6</sup> Exhibit F, Senate Appropriations Committee, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, pages 1-2.

paper or electronically,<sup>7</sup> and responsibility for GPA submission was expressly on the Cal Grant applicant.<sup>8</sup> The 2014 test claim statute added Education Code section 69432.9(c)(2) to require electronic submission of GPAs for all grade 12 pupils except those who opt out by specified deadlines. Although the test claim statute did not specify who is required to submit the GPA to CSAC, both CSAC and the California Department of Education have interpreted section 69432.9(c)(2) to require the school district to electronically submit the GPAs for all grade 12 pupils each academic year.<sup>9</sup> Thus, the Commission finds that the activity is newly mandated on school districts and provides a higher service to the public.

Moreover, the Commission finds that these activities result in increased costs mandated by the state, and that funding appropriated to school districts under the Local Control Funding Formula and the College Readiness Block Grant do not trigger the application of Government Code section 17556(e) to deny this Test Claim.

Accordingly, the Commission partially approves this Test Claim.

## COMMISSION FINDINGS

### I. Chronology

- 06/26/2017 The Fairfield Suisun Unified School District (claimant) filed the Test Claim with the Commission.<sup>10</sup>
- 10/11/2017 The Department of Finance (Finance) filed comments on the Test Claim.<sup>11</sup>
- 11/09/2017 The claimant filed rebuttal comments.<sup>12</sup>
- 11/22/2017 Commission staff issued the Draft Proposed Decision.<sup>13</sup>

<sup>7</sup> Exhibit F, California Student Aid Commission, “Non-SSN GPA Q & A For the 2013-14 Cal Grant Application Year,” dated October 11, 2012. ([http://www.csac.ca.gov/pubs/forms/grnt\\_frm/non\\_ssn\\_gpa\\_qa.pdf](http://www.csac.ca.gov/pubs/forms/grnt_frm/non_ssn_gpa_qa.pdf)); See also, Cal Grant Manual, chapter 4.1, “The Cal Grant Application Process,” December 2005.

<sup>8</sup> California Code of Regulations, title 5, sections 30008(c) and 30023(a).

<sup>9</sup> Exhibit F, California Department of Education, Official Letter to County and District Superintendents, Charter School Administrators, High School Principals, and High School Counselors, January 25, 2016. See also California Department of Education, Letter to County and District Superintendents, Charter School Administrators, High School Principals, and High School Counselors, September 19, 2017; Exhibit F, California Student Aid Commission, Operations Memo to High School Principals, High School Counselors, and County and District Superintendents, October 10, 2016.

<sup>10</sup> Exhibit A, Test Claim, page 11.

<sup>11</sup> Exhibit B, Department of Finance’s Comments on the Test Claim.

<sup>12</sup> Exhibit C, Claimant’s Rebuttal Comments.

<sup>13</sup> Exhibit D, Draft Proposed Decision.

12/13/2017 The claimant filed comments on the Draft Proposed Decision.<sup>14</sup>

## **II. Background**

### **A. History and Overview of the Cal Grant Program**

In 1955, the Legislature enacted the Hegland-Shell-Donahoe and Donald D. Doyle Act, which provided for a series of competitive undergraduate scholarships for college tuition and fees. The awards were granted on the basis of a competitive examination, demonstrated financial need, and additional requirements pertaining to residency and citizenship. The State Scholarship later became the Cal Grant A program, and were administered by a newly-created State Scholarship Commission, with members appointed by the Governor. This commission was later expanded and renamed the California Student Aid Commission.<sup>15</sup>

In 1968, the College Opportunity Grant was created as a competitive grant program and later changed to the Cal Grant B program.<sup>16</sup> In 1973, the Occupational Education and Training Grant was created and later changed to the Cal Grant C program, which is for community college students.<sup>17</sup>

Statutes 2000, chapter 403<sup>18</sup> enacted the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program, which replaced the former Cal Grant program, and applies to Cal Grant recipients beginning in the 2001-2002 academic year. The intent of the program is to guarantee a Cal Grant to every California high school pupil graduating in 2001 and after, who meets the minimum GPA and eligibility requirements, has financial need, and applies for the Cal Grant by March 2 of the academic year of high school graduation, or by March 2 of the year following graduation.<sup>19</sup> The guarantee also extends to California community college students transferring to a four-year college, who graduated from a California high school after June 2000, were California residents when they graduated, and who meet the Cal Grant requirements when they transfer to a four-year college. These grants consist of the following:

- Cal Grant A Entitlement awards pay tuition and fees at “qualifying” four-year colleges. Every high school senior graduating in 2001 or after who has at least a 3.0 high school

<sup>14</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision.

<sup>15</sup> Exhibit F, California Student Aid Commission, “Cal Grant Handbook,” February 11, 2016, page 3. See [http://www.csac.ca.gov/CGM/calgrant\\_handbook.pdf](http://www.csac.ca.gov/CGM/calgrant_handbook.pdf), accessed on October 26, 2017.

<sup>16</sup> Exhibit F, California Student Aid Commission, “Cal Grant Handbook,” February 11, 2016, page 3. See [http://www.csac.ca.gov/CGM/calgrant\\_handbook.pdf](http://www.csac.ca.gov/CGM/calgrant_handbook.pdf), accessed on October 26, 2017.

<sup>17</sup> Exhibit F, California Student Aid Commission, “Cal Grant Handbook,” February 11, 2016, page 3. See [http://www.csac.ca.gov/CGM/calgrant\\_handbook.pdf](http://www.csac.ca.gov/CGM/calgrant_handbook.pdf), accessed on October 26, 2017.

<sup>18</sup> Urgency legislation, operative September 12, 2000. This added chapter 1.7 to Part 42 of the Education Code, beginning with Education Code section 69430, replacing the former program at former section 69530 et seq.

<sup>19</sup> Statutes 2000, chapter 403 (SB 1644), section 2.

GPA, meets all the Cal Grant requirements, is a California resident at the time of graduation, and applies by March 2 of either the year of graduation or the following year is guaranteed a Cal Grant award.<sup>20</sup> A Cal Grant A recipient attending a California community college will not receive any payment, however, because community colleges do not charge tuition. Cal Grant eligible students attending a community college qualify for a Board of Governors fee waiver instead. The Cal Grant A award is held in reserve by CSAC for two years (or three years upon request) for use when the student transfers to a tuition charging four-year qualifying institution.<sup>21</sup>

- Cal Grant B Entitlement awards are for students from disadvantaged or low-income families and generally cover “access costs” such as living expenses, books, supplies, and transportation expenses in the first academic year. In subsequent years, the award includes an additional amount to pay for tuition and fees. Every graduating high school senior who has at least a 2.0 high school GPA, meets all the Cal Grant requirements, is a California resident at the time of graduation, and applies by March 2 of either the year of graduation or the following year is guaranteed a Cal Grant B entitlement award. A limited number of first-year students who have exceptional financial need and a high grade point average may receive both the living allowance and the tuition and fee award.<sup>22</sup>
- Cal Grant Transfer Entitlement awards are for community college students transferring to a four-year college and did not receive a Cal Grant within one year of graduating from high school. To qualify, students must have graduated from a California high school after June 30, 2000, and be a California resident when they graduated. Students must also have a 2.4 community college GPA (of at least 24 semester units or the equivalent), meet the Cal Grant eligibility requirements, be under 24 years old, and apply by the March 2 deadline before the fall term when they plan to transfer.<sup>23</sup>

Other students who are eligible for a Cal Grant, but are not high school seniors or recent graduates may compete for Cal Grant A or B Competitive awards. These awards are the same as the Cal Grant Entitlement awards except that they are not guaranteed. A limited number of Competitive awards are available each academic year. Half of the Competitive awards are set aside for pupils who apply by the March 2 deadline and meet the requirements, and half are for California community college students who meet the requirements and apply by September 2. The eligibility requirements for the competitive awards are focused on nontraditional students and take into account GPA, time out of high school, family income, parent’s educational levels, high school performance standards, whether the student comes from a single-parent household or was a foster youth. A student selected for a Cal Grant A Competitive award who enrolls in a

<sup>20</sup> Education Code section 69434 (as last amended by Stats. 2009, ch. 644).

<sup>21</sup> Education Code section 69434.5 (as last amended by Stats. 2001, ch. 159).

<sup>22</sup> Education Code sections 69435 (as last amended by Stats. 2009, ch. 644), 69435.3 (as last amended by Stats. 2001, ch. 8); California Code of Regulations, title 5, section 30024.

<sup>23</sup> Education Code sections 69436 (as last amended by Stats. 2012, ch. 38), 69436.5 (as added by Stats. 2000, ch. 403).

California community college has the award for tuition held in reserve until the student transfers to a four-year institution.<sup>24</sup>

Except for certain five-year educational programs, Cal Grant A and B awards may be renewed for a total of the equivalent of four years of full-time attendance in an undergraduate program provided that financial need continues to exist. The total number of years of eligibility is based on the student's educational level, which is designated by the institution of attendance when the student initially receives payment for a grant.<sup>25</sup>

The Cal Grant C for vocational training and Cal Grant T awards for teacher credential training (after the student earned a baccalaureate or higher degree) were also included in the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program.<sup>26</sup>

#### 1. The Cal Grant application process under prior law

The Cal Grant applicant is required to submit a complete official financial aid application to CSAC to apply for a Cal Grant.<sup>27</sup> Under both prior and current law, the application process required pupils to complete and submit a Free Application for Federal Student Aid (FAFSA) form.<sup>28</sup> The FAFSA is mailed or electronically submitted to the U.S. Department of Education's central processor, which sends FAFSA information for California pupils to CSAC. For Cal Grant eligibility, the pupil must show on the FAFSA that he or she:

- Is a California resident
- Is a U.S. citizen or eligible noncitizen
- Meets Selective Service requirements
- Will attend an eligible California School
- Does not owe state or federal grant repayment
- Is not in default on a student loan
- Has not earned a BA/BS degree
- Maintains satisfactory academic progress
- Is not incarcerated
- Is enrolled at least half-time

<sup>24</sup> Education Code sections 69437 - 69437.7 (as added by Stats. 2000, ch. 403); California Code of Regulations, title 5, section 30025.

<sup>25</sup> Education Code section 69433.6 (as last amended by Stats. 2011, ch. 7).

<sup>26</sup> Education Code sections 69439 (as last amended by Stats. 2011, ch. 7), 69440 (as last amended by Stats. 2003, chs. 91 and 253).

<sup>27</sup> Education Code section 69432.9(a) (as last amended by Stats. 2011, ch. 7); Education Code section 69433(c) (as added by Stats. 2000, ch. 403).

<sup>28</sup> Education Code section 69432.9 (as last amended by Stats. 2011, ch. 7); Education Code section 69433(c) (as added by Stats. 2000, ch. 403); Education Code section 69433.9 (as last amended by Stats. 2006, ch. 43).



- Has a Social Security number.<sup>29</sup>

Pupils who are not citizens but who meet other eligibility criteria may file the California Dream Act application in lieu of the FAFSA.<sup>30</sup>

Except for applicants competing for Competitive Cal Grant A or B awards and permitted to provide test scores in lieu of a GPA, a certified GPA is required to be submitted by the statutory deadline for all Cal Grant A and B applicants, which for high school pupils, is March 2.<sup>31</sup> Each reported GPA is required to include a certification, executed under penalty of perjury, by a school official, that the GPA is accurately reported.<sup>32</sup> Under both prior and current law, a high school pupil's GPA is calculated by a school official as follows:

“High school grade point average” means a grade point average calculated on a 4.0 scale, using all academic coursework, for the sophomore year, the summer following the sophomore year, the junior year, and the summer following the junior year, excluding physical education, reserve officer training corps (ROTC), and remedial courses, and computed pursuant to regulations of the commission. However, for high school graduates who apply after their senior year, “high school grade point average” includes senior year coursework.<sup>33</sup>

The GPA must be submitted by either the pupil or the school.<sup>34</sup> CSAC regulations, however, expressly place the responsibility for GPA submission on the Cal Grant applicant: “All Cal

<sup>29</sup> Education Code section 69433.9 (as last amended by Stats. 2006, ch. 43); Exhibit F, California Student Aid Commission, Cal Grant 101, Presentation at 2013 CASFAA Conference, pages 4-7.

<sup>30</sup> The California Dream Act application is for pupils who are noncitizens, but who attended a California high school for at least three years or graduated early from a California high school with the equivalent of at least three years of credits and attended three years of elementary and secondary school, graduated from a California high school or the equivalent, and are or will be attending an accredited California college or university. Education Code section 68130.5(a) (as last amended by Stats. 2016, ch. 69).

<sup>31</sup> Education Code sections 69432.9 (as last amended by Stats. 2011, ch. 7), 69433 (as added by Stats. 2000, ch. 403); Education Code section 69434(b)(1) (as last amended by Stats. 2009, ch. 644.); Education Code section 69435.3(a)(1) (as last amended by Stats. 2001, ch. 8); California Code of Regulations, title 5, sections 30007, 30008, 30023(a)(b).

<sup>32</sup> Education Code section 69432.9(c) (as last amended by Stats. 2011, ch. 7).

<sup>33</sup> Education Code section 69432.7(h) (as last amended by Stats. 2012, chs. 38 and 575); California Code of Regulations, title 5, section 30008(a).

<sup>34</sup> Exhibit F, California Student Aid Commission, “Cal Grant Manual,” chapter 4.1, ‘The Cal Grant Application Process’, December 2005; See also, California Student Aid Commission, “Cal Grant Handbook,” February 11, 2016, pages 21-22, [http://www.csac.ca.gov/CGM/calgrant\\_handbook.pdf](http://www.csac.ca.gov/CGM/calgrant_handbook.pdf), accessed on October 26, 2017.

Grant A and B applicants shall submit a grade point average”<sup>35</sup> and, “It is the responsibility of the applicant to have his or her high school grade point average reported.”<sup>36</sup>

CSAC may accept a GPA from an applicant or reporting school after the statutory deadline if, in the opinion of the Executive Director, circumstances beyond the control of the applicant delayed or prevented the timely submission of the GPA. The circumstances must be shown by a certification from the reporting school and the applicant. Applicants or officials who submit a timely but incomplete or incorrect GPA shall have a grace period of ten days after CSAC’s mailing of notice to file a corrected or completed GPA.<sup>37</sup>

In addition, CSAC may use an applicant’s SSN as a key identifier in CSAC’s Grant Delivery System to match the FAFSA information with the pupil’s GPA.<sup>38</sup>

In addition, Education Code section 69433.9(e), as last amended in 2006, requires that a student meet the requirements for a high school diploma to be eligible for a Cal Grant Entitlement award.<sup>39</sup>

In response to state audit findings in 2006, CSAC voted to require confirmation of the graduation status for new Cal Grant A and B Entitlement awardees as follows.

For 2007-08, Cal Grant Entitlement participants were to submit proof of high school graduation to the college they were attending or complete a self-certification of their high school graduation on the California High School Graduation Certification Form (G-8) confirmed prior to receiving payment in the fall. The system placed the responsibility to restrict payment on the colleges.

For the 2008-09 school year, the Commissioners directed staff to put into place an electronic certification system with the Commission as the central repository of high school graduation confirmations. The WebGrants system will store the required confirmation data and restrict Cal Grant payment to those student’s [sic] whose status has not yet been confirmed. Confirmation to this system must be post-high school graduation. No certifications of graduation status will be allowed until after the student has actually graduated. For this reason, the great majority of new Cal Grant Entitlement high school graduation confirmations cannot be made until May or June each year.<sup>40</sup>

<sup>35</sup> California Code of Regulations, title 5, section 30023(a).

<sup>36</sup> California Code of Regulations, title 5, sections 30008(c) and 30023(a)(2). See also section 30002, which defines an “eligible applicant.”

<sup>37</sup> California Code of Regulations, title 5, section 30023.

<sup>38</sup> Exhibit F, California Student Aid Commission, “California Student Aid Commission, Cal Grant GPA Questions and Answers for High Schools,” October 2009, page 1.

<sup>39</sup> Education Code section 69433.9(e), as last amended by Statutes 2006, chapter 652.

<sup>40</sup> Exhibit F, California Student Aid Commission, “High School Graduation Confirmation for High Schools, WebGrants User Guide” May 23, 2008, page 5.

Before the test claim statutes, school districts could certify an applicant's high school graduation on the High School Graduation Verification screen, accessible in WebGrants. Pupils could also confirm their graduation status on WebGrants for Students, and had the option of submitting a paper confirmation using the 2008-09 California High School Graduation Confirmation Certification Form (G-8).<sup>41</sup>

2. Prior Test Claim filed by community college districts (*Cal Grants*, 02-TC-28), on the Cal Grant program added by Statutes 2000, chapter 403, and the implementing regulations

On March 27, 2009, the Commission adopted a Statement of Decision on the Test Claim *Cal Grants*, 02-TC-28, filed by Long Beach Community College District, finding that Education Code section 69432.9 (as added by Stats. 2000, ch. 403), and sections 30007, 30023(a) and (d), and 30026 of CSAC regulations constitute a reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for:

- Calculating a college or community college grade point average pursuant to the instructions in California Code of Regulations, title 5, section 30007. (Ed. Code, § 69432.9(b)(3)(C), as added by Stats. 2000, ch. 403; Cal. Code Regs, tit. 5, §§ 30007, 30023(a), and 30026.)
- Certifying under penalty of perjury to the best of his or her knowledge from the school official filing the report that the grade point average is accurately reported and that it is subject to review by the Student Aid Commission or its designee. (Ed. Code, § 69432.9(b)(3)(C), as added by Stats. 2000, ch. 403; Cal. Code Regs, tit. 5, §§ 30007 and 30026.)
- Completing or correcting a grade point average upon notice that the original submitted grade point average was not complete or correct. (Cal. Code Regs., tit. 5, § 30023(d).)

The Commission determined that these activities apply to community colleges only when: (1) a community college student applies for a Cal Grant Transfer Entitlement award for use at a four year college; (2) a community college student competes for a Competitive Cal Grant A to be held in reserve until the student attends a four year college; or (3) a community college student competes for a Competitive Cal Grant B award, which can be used at the community college.<sup>42</sup>

No prior test claim has been filed by K-12 school districts on the Cal Grant program.

### **B. The Test Claim Statutes**

This Test Claim pleads Education Code section 69432.9, as amended by Statutes 2014, chapter 679, Statutes 2015, chapter 637, and, Statutes 2016, chapter 82, and section 69432.92, as added and amended by Statutes 2015, chapter 637, and, Statutes 2016, chapter 82. The test claim statutes affect the activities performed by K-12 school districts in relation to the Cal Grant A and

<sup>41</sup> Exhibit F, California Student Aid Commission, "High School Graduation Confirmation for High Schools, WebGrants User Guide" May 23, 2008, page 5.

<sup>42</sup> Commission on State Mandates, Statement of Decision, *Cal Grants*, 02-TC-08, pages 30-31.

Cal Grant B Entitlement programs for pupils in grades 11 and 12 who may attend college and be eligible for a Cal Grant.<sup>43</sup>

1. Education Code section 69432.9 (Statutes 2014, chapter 679; Statutes 2015, chapter 634; and Statutes 2016, chapter 82)

Effective January 1, 2015, Statutes 2014, chapter 679, amended Education Code section 69432.9(a) to provide that each “pupil enrolled in grade 12 in a California public school, including a charter school, other than pupils who opt out as provided in subdivision (d), shall be deemed to be a Cal Grant applicant.”

The 2014 statute also added subdivision (c)(2) to provide that CSAC “shall require that a grade point average be submitted to it electronically for all grade 12 pupils at public schools, including charter schools, each academic year, except for pupils who have opted out as provided in subdivision (d).” The statute also provides that pupil SSNs shall not be included in the information submitted to CSAC unless CSAC determines that a SSN is required to complete the application for financial aid. In such cases, school districts may obtain permission from the parent or guardian of the pupil, or from the pupil if he or she is 18 years of age, to submit the pupil’s SSN to CSAC.

The 2014 statute also added subdivision (d) to section 69432.9 to require the school district to provide written notification by October 15 to each grade 12 pupil who is 18 years of age, or to the parent or guardian of each grade 12 pupil under the age of 18, that the pupil will automatically be deemed a Cal Grant applicant unless the pupil opts out, and requires the school district or charter school to provide an opportunity for the pupil to opt out.

CSAC provided an opt-out form that school districts may use to comply with the notification requirement.<sup>44</sup>

<sup>43</sup> Government Code section 17519 states that “‘School district’ means any school district, community college district, or county superintendent of schools.” The county superintendent of schools is the executive officer of the county office of education. (Ed. Code, § 1010.) The county office of education administers county community schools, which are public schools that educate pupils in kindergarten through grade 12 who are expelled from school or who are referred because of attendance or behavior problems. County community schools also serve pupils who are homeless, on probation or parole, or who are not attending any school. Parents or guardians may request that their child attend a county community school. (Ed. Code, § 1980, et seq.). County community schools are also affected by the test claim statutes and counties are eligible local agency claimants, as defined. In addition, the test claim statutes expressly refer to charter schools. However, only school districts, as defined in Government Code section 17519, are eligible claimants. Thus, only mandated costs for charter schools which are costs of a school district may be claimed by an eligible school district. Individual schools (including charter schools) that are not school districts and subject to the tax and spend limitations of the California Constitution, are not eligible claimants and may not file mandate reimbursement claims.

<sup>44</sup> Exhibit F, California Student Aid Commission, Operations Memo to High School Counselors, October 9, 2015.

Statutes 2014, chapter 679, was sponsored by the Education Trust-West (ETW) with the goal of increasing Cal Grant applications and awards. According to the Senate Committee on Education analysis:

In 2013 the Education Trust-West issued its report *The Cost of Opportunity* which found that only 54% of California's 12th graders completed a FAFSA in 2012, and only 50% completed both the FAFSA and submitted a GPA verification, both steps necessary to apply for a Cal Grant by the March 2nd deadline. In 2014, a follow up Equity Alert entitled *Doorways to College Aid: Boosting Access to Financial Aid in California* found that in 2013 the rates of completion of the FAFSA and Cal Grant applications increased statewide by 7% and 8% respectively for a total of 25,000 additional FAFSA completions and more than 30,000 additional Cal Grant applications. However, 42% (170,000) of 12th graders from the class of 2013 still did not complete a Cal Grant application.

The report notes the higher completion rates were the results of efforts at the local level which include an early focus on FAFSA completion and the electronic submission of GPAs for all students. An analysis of districts using electronic GPA found a 10 percent boost in Cal Grant Completion for those districts. The average Cal Grant completion rate for these districts was 71 percent, compared to 56 percent for other districts. The report also noted that some districts are hesitant to adopt this practice due to privacy concerns.

Among other things, the report recommended that all high schools and districts should electronically submit GPA and graduation verification for all high school seniors. This bill implements this recommendation.<sup>45</sup>

The need for the bill was stated as follows:

According to the author, while some districts already provide GPAs to CSAC for all or some students, many do not. The author notes that Los Angeles and San Francisco unified school districts are already providing GPAs for all high school seniors to CSAC and, according to the author, report that costs for computer programming are minor and absorbable and districts experienced an overall cost savings associated with high school counselors no longer being required to complete paper forms for students. The author also notes that CSAC reported processing over 70,000 paper GPA forms in 2013, taking significant staff time. The author believes that overall cost savings associated with this bill could result in more time for high school counselors and CSAC to outreach to students encouraging Free Application for Federal Student Aid (FAFSA) completion. Without legislation, the author argues "it would take several years for all school districts to implement the best practice in this bill."<sup>46</sup>

<sup>45</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, page 4.

<sup>46</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, page 3. Emphasis in original.

Statutes 2015, chapter 634, amended Education Code section 69432.9 to: (1) clarify that pupil GPAs are to be electronically submitted to CSAC on a *standardized form*, and (2) state the intent of the Legislature for CSAC to “make available to each high school and school district a report identifying all grade 12 pupils within the high school or school district, respectively, who have and have not completed the Free Application for Federal Student Aid or the California Dream Act Application.”

Effective January 1, 2017, Statutes 2016, chapter 82, amended Education Code section 69432.9(c)(2) to specify that GPAs for grade 12 pupils who do not opt out are to be submitted to CSAC *no later than October 1 of each academic year*.

Statutes 2016, chapter 82, also amended the opt-out notification process in section 69432(d), to require school districts to notify pupils that they can opt out of the Cal Grant application process *by January 1 of their grade 11 academic year*. The 2016 statute requires that the opt-out notification indicate when the school will first send GPAs to CSAC and the October 1st deadline for GPAs to be submitted to CSAC. The purpose of Statutes 2016, chapter 82, is to conform the GPA submission deadline to federal financial aid deadlines. According to the Senate Floor Analysis:

Conforming to new Free Application for Federal Student Aid (FAFSA) timeline. On September 14, 2015, President Obama announced significant changes to the FAFSA. Starting this year, the FAFSA will be available to students on October 1, 2016, rather than on January 1, 2017. The earlier submission date will be a permanent change, enabling students to complete and submit a FAFSA on October 1 every year. This bill authorizes CSAC to adjust the GPA submission date thereby conforming to the new FAFSA release date.<sup>47</sup>

2. Education Code section 69432.92 (Statutes 2015, chapter 634)<sup>48</sup>

Statutes 2015, chapter 637, added Education Code section 69432.92 to: (1) authorize CSAC to require verification of high school graduation or its equivalent to be electronically submitted for all former grade 12 pupils who graduated from public schools in the prior academic year, except pupils who have opted out of the Cal Grant application process; and (2) state legislative intent

<sup>47</sup> Exhibit F, Senate Floor Analysis of AB 2908 (2015-2016 Reg. Sess.) as amended April 11, 2016, page 3.

<sup>48</sup> Statutes 2016, chapter 351 replaced the statement of legislative intent in section 69432.92(b) with the following:

If the commission requires verification of high school graduation or its equivalent pursuant to subdivision (a), the commission shall provide guidance to high schools or high school districts to ensure that high schools and high school districts verify the graduation of their pupils as soon as possible upon a pupil’s graduation and no later than August 31 of the academic year following the pupil’s graduation. This subdivision also applies to pupils who graduate during the summer following the grade 12 academic year.

Statutes 2016, chapter 351 was not pled in this Test Claim so the Commission makes no finding on it.

that “high schools or high school districts verify the graduation of their pupils in time to meet the deadlines imposed by subdivision (e) of section 69433.9.”

The legislative history states that the purpose of this bill was to streamline the financial aid process and increase Cal Grant and FAFSA completion rates:

According to author, many students often times become overwhelmed with the Cal Grant application process and fail to submit verification of high school graduation to CSAC. The author further asserts that missing this step could make the difference between a student attending college or not. This bill aims to streamline the financial aid process and increase Cal Grant and FAFSA completion rates by requiring the electronic submission of high school graduation information.

Existing process for verification. According to the CSAC the method for providing verification varies depending on the school district. For the most part, it is the responsibility of the school district to submit the information to CSAC; however, if the district fails to provide the information, the responsibility falls on the student. Generally, most submissions are electronic, but thousands of paper forms are submitted that have to be keyed in manually. This bill seeks to give the CSAC the authority to create a standardized process for collecting information directly from school districts when determining Cal Grant eligibility.<sup>49</sup>

### **III. Positions of the Parties**

#### **A. Fairfield-Suisun Unified School District**

The claimant maintains that the test claim statutes impose a reimbursable state-mandated program on school districts under article XIII B, section 6 of the California Constitution and Government Code section 17514. As stated in the Test Claim, the claimant requests reimbursement for the following activities to comply with the test claim statutes:

1. Time and costs incurred by school districts, county offices of education, and charter schools to prepare for, provide and attend training in order to instruct the employees on the requirements imposed by Statutes 2014, Chapter 679, A.B. 2160, Education Code Sections 69432.9(c)(2), 69432.9(c)(3), 69432.9(c)(5), 69432.9(d)(1), 69432.9 (d)(2). Statutes 2015, Chapter 637, A.B. 1091 Education Code Sections 69432.92(a) and 69432.92(b). Statutes 2016, Chapter 82, AB2908, Education Code Sections 69432.9(c)(2) & (d)(1).
2. Time and costs incurred by school districts, county offices of education, and charter schools to review records, correct, update and submit grade point averages to the CSAC for all grade 12 pupils prior to October 15 of each year. AB 2160 - Statutes 2014, Education Code Section 69432.9(c)(2).
3. Time and costs incurred by school districts, county offices of education, and charter schools to submit each student’s grade point averages electronically, on a standardized form, for all grade 12 pupils at public schools, including

<sup>49</sup> Exhibit F, Senate Floor Analysis, AB 1091 (2015-2016 Reg. Sess.) as amended June 1, 2015, page 3.

charter schools. AB 2160 - Statutes 2014, Education Code Sections 69432.9(c)(2).

4. Time and costs incurred by school districts, county offices of education, and charter schools to comply with CSAC requests for social security numbers including time and costs to obtain permission from the parent or guardian, or pupil, if he or she is 18, and to submit the pupil's social security number to the CSAC. AB 2160 - Statutes 2014, Education Code Sections 69432.9(c)(2).
5. Time and costs incurred by school districts, county offices of education, and charter schools for including a certification to the CSAC, executed under penalty of perjury by a school official, that the grade point average is accurately reported. The certification shall include a statement that it is subject to review by the CSAC or its designee. AB 2160 - Statutes 2014, Education Code Sections 69432.9(c)(3).
6. Time and costs incurred by school districts, county offices of education, and charter schools to ensure the grade point average certification is submitted to CSAC in time to meet the application deadline imposed by this chapter. AB 2160 - Statutes 2014, Education Code Sections 69432.9(c)(5).
7. Time and costs incurred by school districts, county offices of education, and charter schools, no later than October 15 of a pupil's grade 12 academic year, to notify, in writing, each grade 12 pupil and, for a pupil under 18 years of age, his or her parent or guardian that, pursuant to subdivision (a), the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days. The required notice shall indicate when the school will first send grade point averages to the commission. The school district, county office of education or charter school shall provide an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant. Until a pupil turns 18 years of age, only a parent or guardian may opt the pupil out. Once a pupil turns 18 years of age, only the pupil may opt himself or herself out and, if prior to the conclusion of the notice period, the pupil may opt in over the prior decision of a parent or guardian to opt out. Statutes 2014, Chapter 679, A.B. 2160, Education Code Section 69432.9(6)(d) (1) [sic] and Education Code Section 69432.9(d)(1) & (d)(2).
8. Time and costs incurred by school districts, county offices of education, and charter schools to submit the required grade point averages for grade 12 pupils to be submitted by October 1 of each academic year. Statutes 2016, Chapter 82, AB 2908, Education Code Sections 69432.9(c)(2) & (d)(1).
9. Time and costs incurred by school districts, county offices of education, and charter schools to notify pupils by January 1 of their grade 11 academic year so the pupil can opt out of the program. Additionally, school districts, county offices of education, and charter schools are now required to send an "Opt Out" notice to each pupil in grade 12. Statutes 2016, Chapter 82, AB2908,



Education Code Sections 69432.9(d)(1) & (2). (Amended by Stats. 2016, Ch. 82, Sec. 3. Effective January 1, 2017.)

10. Time and costs incurred by school districts, county offices of education, and charter schools to provide verification of high school graduation or its equivalent. Education Code Section 69432.92(a).
11. Time and costs to electronically submit the graduation data for all former grade 12 pupils, in the prior academic year, including charter schools, in the prior academic year, except for pupils who have opted out as provided in subdivision (d) of Section 69433.9, when required by the CSAC. Education Code Section 69432.92(a).
12. Time and costs incurred by school districts, county offices of education, and charter schools to verify the graduation of their pupils, when requested by CSAC in time to meet the deadlines imposed by subdivision (e) of Section 69433.9. This subdivision also applies to pupils who graduate during the summer following the grade 12 academic year. Education Code Sections 69432.92(b).<sup>50</sup>

The claimant alleges costs to implement the test claim statutes, stating: “actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the mandate: Actual: \$13,099 FY 2015-16 and \$14,888 for FY 2016-17.” The claimant further alleges: “The actual or estimated annual costs that will be incurred by the claimant to implement the mandate during the fiscal year immediately following the fiscal year for which the claim was filed: Estimated: \$15,186 FY 2017-18.”

Specifically, the claimant alleges the following costs to comply with the test claim statutes for 2015-2016.<sup>51</sup>

DISTRICT				FAIRFIELD SUISUN UNIFIED SCHOOL							
Fiscal Year	Actual Costs first Incurred		Position	Average Salary & Benefits - Registrar 2015-16	Activity	Time per registrar/ HRS	Number of individuals	Total time spent/H RS	total direct costs 15-16	Indirect costs 15-16 6.05%	cost per student
2015-16	Sept. 1, 2015	AB 2160	Registrar	\$32.86	Training on Cal Grant Reporting Requirements	4	5	20	\$657	\$40	\$0.44
2015-16	Sept. 1, 2015	AB 2160	Registrar	\$32.86	Calculate and key grades into Cal Grant form - 14min each student		1594	571.93	\$17,223	\$740	\$7.67

<sup>50</sup> Exhibit A, Test Claim, pages 13-15.

<sup>51</sup> Exhibit A, Test Claim, page 16.

DISTRICT				FAIRFIELD SUISUN UNIFIED SCHOOL							
2015-16	Sept. 1, 2015	AB 2160	Registrar	\$32.86	Mailing opt out forms to all seniors	1	5	5	\$164	\$10	\$0.10
2015-16	Sept. 1, 2015	AB 2160	Registrar	\$32.86	Comply with CSAC requests for social security numbers	0.25	5	1.25	\$41	\$2	\$0.03
2015-16	Sept 1, 2015	AB 2160	Registrar	\$32.86	Execute certification	0.08	5	0.4	\$13	\$1	\$0.01
2015-16	Districtwide Total								\$13,099.25		\$8.24

The claimant alleges the following costs to comply with the test claim statutes for 2016-2017:<sup>52</sup>

DISTRICT ACTUAL COSTS 2016-17				FAIRFIELD SUISUN UNIFIED SCHOOL DISTRICT							
Fiscal Year	Costs first Incurred		Position	Average Salary & Benefits Registrar 2016-17	Activity	Time per registrar /HRS	Number of individuals	Total time spent/HRS	Total direct costs 16-17	Indirect costs 16-17 5.97%	cost per student
2016-17	Sept. 1, 2015	AB 2160	Registrar	\$33.56	Training on reporting requirements GPA & graduation verification	4	5	20.00	\$671.29	\$40.08	\$0.45
2016-17	Sept. 1, 2015	AB 2160	Registrar	\$33.56	Calculate and key grades into Cal Grant form - 14 min each student		1594	571.93	\$12,483.77	\$745.28	\$8.30
2016-17	Sept. 1, 2015	AB 2160	Registrar	\$33.56	Mailing opt out forms to all seniors	1	5	5.00	\$167.82	\$10.02	\$0.11
2016-17	Sept. 1, 2015	AB 2160	Registrar	\$33.56	Comply with CSAC requests for social security numbers	0.25	5	1.25	\$41.96	\$2.50	\$0.03
2016-17	Sept. 1, 2015	AB 2160	Registrar	\$33.56	Execute certification	0.08	5	0.40	\$13.43	\$0.80	\$0.01
2016-17	Sept. 1, 2016	AB 1091	Registrar	\$33.56	Electronically submit graduation verification	9	5	45.00	\$1,510.40	\$90.17	\$1.00
2016-17	District wide Total								\$14,888.66		\$9.90

<sup>52</sup> Exhibit A, Test Claim, pages 8, 16.

The claimant also alleges the following estimated costs for 2017-2018:<sup>53</sup>

District Estimated Costs 2017-18				FAIRFIELD SUISUN UNIFIED SCHOOL DISTRICT							
Fiscal Year	Costs first Incurred		Position	Average Salary & Benefits Registrar 2017-18	Activity	Time per registrar/HRS	Number of individuals	Total time spent/HRS	Total direct costs 17-18	In-direct costs 17-18 6.57%	cost per student
2017-18	Sept. 1, 2015	AB2160	Registrar	\$34.24	Training on reporting requirements GPA & graduation verification	4	5	20	\$684.72	\$44.99	\$0.46
2017-18	Sept. 1, 2015	AB2160	Registrar	\$34.24	Calculate and key grades into Cal Grant form - 14 min each student	0	1594	371.93	\$12,733.44	\$836.59	\$8.51
2017-18	Sept. 1, 2017	AB2908	Registrar	\$34.24	Mailing opt out forms to all juniors	1	5	5	\$171.18	\$11.25	\$0.11
2017-18	Sept. 1, 2015	AB2160	Registrar	\$34.24	Comply with CSAC requests for social security numbers	.25	5	1.25	\$42.79	\$2.81	\$0.03
2017-18	Sept. 1, 2015	AB2160	Registrar	\$34.24	Execute certification	0.08	5	0.4	\$13.69	\$0.90	\$0.01
2017-18	Sept. 1, 2016	AB1091	Registrar	\$34.24	Electronically submit graduation verification	9	5	45	\$1,540.61	\$101.22	\$1.03
		District wide Total							\$15,186.44		\$10.15

The claimant alleges the statewide cost estimate is \$4,792,337 for 2016-2017 and \$4,915,860 for 2017-2018 and is based on an estimated unit cost for each of the alleged state-mandated activities multiplied by 484,169 pupils.<sup>54</sup>

In its rebuttal comments, the claimant argues that before the passage of AB 2160 in 2014, school districts were not required to submit GPAs for all grade 12 pupils to CSAC, but only for pupils who submitted Cal Grant applications. The claimant also explains that the time and costs to certify GPAs are included in item 5 of the narrative, and the claimant did not include additional costs for “ensuring” that certification is submitted on time because this activity is inseparable

<sup>53</sup> Exhibit A, Test Claim, pages 8, 16.

<sup>54</sup> Exhibit A, Test Claim, pages 15-17.

from the certification activity in item 5. Further, the claimant asserts that time and costs to meet the October 1st deadline for GPA submission is included in the costs to calculate and key grades into the Cal Grant system. Finally, the claimant asserts that CSAC started requiring verification of high school graduation “immediately following the passage of Education Code section 69432.92.” The claimant also submitted two CSAC memos regarding school district verification of high school graduation.<sup>55</sup>

In comments on the Draft Proposed Decision, the claimant agrees with the Draft Proposed Decision, except for the recommendation to deny reimbursement for the activity to certify GPAs to CSAC by a statutory deadline. The claimant argues that the authorities cited for the rule that “increased costs alone do not establish a reimbursable state-mandated program” are not applicable to this case. Specifically, the claimant states that the authorities cited all refer to *County of Los Angeles v. State of California* (1987) 43 Cal.3d 55-56, which does not define “higher level of service.” Rather the case discusses a definition of “programs” as providing a service to the public and not providing worker’s compensation benefits. The claimant also cites an entry from the 1973 Assembly Journal that gives a definition of “increased level of service” to include “performing more acts ... which result in additional costs” to local governments or school districts. Thus, the claimant argues that certifying GPAs for all seniors, not only those who “apply for student loans,” is a higher level of service that should be reimbursable.<sup>56</sup>

#### **B. The Department of Finance**

In its comments on the Test Claim, Finance argues that the requirement to submit GPA information is not new, but was previously required under Education Code section 69432.9(c). According to Finance, “the test claim statutes merely implement some changes that may increase the cost of providing services that were already required to be performed . . . .”<sup>57</sup>

Finance observes that the Test Claim does not indicate what time and costs are incurred by school districts to ensure the GPA is submitted to CSAC in time to meet the application deadline. Finance also states that the claimant provides no evidence that submitting GPAs by October 1st increases the cost of the alleged mandate.<sup>58</sup>

Finance argues that the statute imposes no requirements related to the verification of high school graduation or its equivalent. The language of Education Code section 69432.92(a) only provides specific authorization to CSAC, but does not impose a mandate on school district. Finance also states that charter schools are not eligible claimants.<sup>59</sup>

<sup>55</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 1-9.

<sup>56</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, pages 1-2.

<sup>57</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, pages 1-2.

<sup>58</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, page 2.

<sup>59</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, page 2.

Finally, Finance points to funds made available to school districts that could fully pay for the program, such as the Local Control Funding Formula<sup>60</sup> and the College Readiness Block Grant.<sup>61</sup> According to Finance, these available funds should offset any claims, and would “exceed the actual or estimated costs alleged by the claimant and the statewide cost estimate alleged in the claim.”<sup>62</sup>

Finance did not file comments on the Draft Proposed Decision.

### **C. The California Student Aid Commission**

CSAC has not filed comments on the Test Claim or the Draft Proposed Decision.

### **D. California Department of Education**

The California Department of Education has not filed comments on the Test Claim or the Draft Proposed Decision.

## **IV. Discussion**

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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 articles XIII A and XIII B impose.”<sup>63</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>64</sup>

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 an activity.<sup>65</sup>
2. The mandated activity constitutes a “program” that either:
  - a. Carries out the governmental function of providing a service to the public; or

<sup>60</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, page 2.

<sup>61</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, page 3.

<sup>62</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, page 3.

<sup>63</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>64</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>65</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th. 859, 874.

- b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.<sup>66</sup>
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.<sup>67</sup>
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.<sup>68</sup>

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 of the California Constitution.<sup>69</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>70</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>71</sup>

**A. The Test Claim Was Timely Filed Pursuant to Government Code Section 17551(c) and Section 1183.1(c) of the Commission’s Regulations.**

Government Code section 17551(c) states: “Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations states:

Except as provided in Government Code sections 17573 and 17574, any test claim or amendment filed with the Commission must be filed not later than 12 months following the effective date of the statute or executive order, or within 12 months of first incurring costs as a result of a statute or executive order, whichever is later. For purposes of claiming based on the date of first incurring

<sup>66</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th. 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56).

<sup>67</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th. 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>68</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

<sup>69</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>70</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

<sup>71</sup> *County of Sonoma v. Commission on State Mandates* 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

costs, “within 12 months” means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.

The Test Claim was filed on June 26, 2017, and pleads Statutes 2016, chapter 82, which became effective on January 1, 2017. Because the statute became effective within 12 months of when the Test Claim was filed, the Test Claim is timely with respect to the 2016 statute.

The Test Claim also pleads Statutes 2014, chapter 679, which became effective on January 1, 2015, and Statutes 2015, chapter 637, which became effective on January 1, 2016. Both of these statutes became effective more than 12 months before the Test Claim was filed. However, the claimant states that it first incurred costs under Statutes 2014, chapter 679, (AB 2160) on September 1, 2015,<sup>72</sup> which is within the 2015-2016 fiscal year. The Test Claim was filed on June 26, 2017, which is “by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.”<sup>73</sup>

The claimant stated that it first incurred costs under Statutes 2015, chapter 637, (AB 1091) on either September 1, 2016 or November 1, 2016.<sup>74</sup> Because the Test Claim was filed on June 26, 2017, it complies with the deadline imposed by Government Code section 17551(c) and section 1183.1(c) of the regulations because it was filed “within 12 months of incurring increased costs as a result of a statute or executive order.”

In sum, the Commission finds that the Test Claim was filed within the deadlines imposed by Government Code section 17551(c) and section 1183.1(c) of the Commission’s regulations. Therefore, the Commission has jurisdiction over the Test Claim.

**B. Do the Test Claim Statutes Impose a State-Mandated New Program or Higher Level of Service on School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution?**

1. The requirement to provide written notification to pupils of the opportunity to opt out of being deemed a Cal Grant applicant constitutes a state-mandated new program or higher level of service (Ed. Code, §69432.9(d), Stats 2014, ch. 679, Stats. 2016, ch. 82).

Effective January 1, 2015, Statutes 2014, chapter 679 added subdivision (d) to Education Code section 69432.9, to require school districts, for the first time, to provide written notification, by October 15, to each grade 12 pupil (or pupil’s parent or guardian for pupils under age 18) that the pupil will be automatically deemed a Cal Grant applicant unless the pupil opts out. The opt-out provision states:

(d) (1) The school district or charter school shall, no later than October 15 of a pupil's grade 12 academic year, notify, in writing, each grade 12 pupil and, for a

<sup>72</sup> Exhibit A, Test Claim, page 19.

<sup>73</sup> California Code of Regulations, title 2, section 1183.1(c).

<sup>74</sup> Exhibit A, Test Claim, page 19. On page 3, the claimant alleges that costs were first incurred on November 1, 2016, but page 19 of the Test Claim, a declaration under penalty of perjury in accordance with section 1187.5(b) of the Commission’s regulations, states the date was September 1, 2016.

pupil under 18 years of age, his or her parent or guardian that, pursuant to subdivision (a), the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days. The required notice shall indicate when the school will first send grade point averages to the commission. The school district or charter school shall provide an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.

(2) Until a pupil turns 18 years of age, only a parent or guardian may opt the pupil out. Once a pupil turns 18 years of age, only the pupil may opt himself or herself out and, if prior to the conclusion of the notice period, the pupil may opt in over the prior decision of a parent or guardian to opt out.

Under Education Code section 69432.9(d), the first written opt-out notice to grade 12 pupils was required to be sent by October 15, 2015, for pupils in the 2016 graduating class.<sup>75</sup> The notice was required to state that “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days,” and to indicate when the school will first send GPAs to CSAC.

In addition, the school district is required to “provide an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant. CSAC developed a sample Cal Grant Opt-Out Form in English and Spanish, which is available on its website, for school districts to comply with the opt-out requirement.<sup>76</sup> Thus, school districts are not required by the state to develop their own opt-out notice. The sample form explains that

With the implementation of Assembly Bill 2160, California public high schools are required to submit a high school Grade Point Average (GPA) for all graduating seniors, unless the student or parent has opted out of the submission process. California Education Code section 69432.9 requires the school district, high school or charter school, no later than October 15 of a pupil’s grade 12 academic year, to notify, in writing, each grade 12 pupil and his or her parent or guardian that the pupil will be deemed a Cal Grant applicant unless the pupil is opted out prior to the high school’s submission of GPAs to the California Student Aid Commission (Commission). Students who do not opt out will have their high school GPA submitted to the California Student Aid Commission to be considered for a Cal Grant award. If you do not want your school to report your GPA, please complete this form and return it to your high school counselor.

<sup>75</sup> Exhibit F, California Student Aid Commission, Letter to High School Administrators “The Ting Bill Requirements Letter.” The letter states “The law became effective in the 2015-2016 academic year; thus, GPAs for 2015-2016 seniors must be submitted before March 2, 2016. GPAs must be subsequently submitted each year thereafter by the March 2 deadline.” See [http://www.csac.ca.gov/ting\\_bill.asp](http://www.csac.ca.gov/ting_bill.asp), accessed on October 26, 2017.

<sup>76</sup> Exhibit F, California Student Aid Commission, Cal Grant GPA Opt Out Form. [http://www.csac.ca.gov/pubs/forms/grnt\\_frm/gpa\\_opt\\_out.pdf](http://www.csac.ca.gov/pubs/forms/grnt_frm/gpa_opt_out.pdf), accessed October 16, 2017.



By signing and submitting the CSAC sample form, the pupil is electing not to have his or her school report the high school Cal Grant GPA information and SSN (if applicable) to CSAC for use in the Cal Grant application process.

The claimant alleges the following activities are required to comply with section 69432.9(d), and are eligible for reimbursement under article XIII B, section 6 of the California Constitution:

- Time and costs incurred by school districts, county offices of education, and charter schools, no later than October 15 of a pupil's grade 12 academic year, to notify, in writing, each grade 12 pupil and, for a pupil under 18 years of age, his or her parent or guardian that, pursuant to subdivision (a), the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days. The required notice shall indicate when the school will first send grade point averages to the commission. The school district, county office of education or charter school shall provide an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
- Time and costs incurred by school districts, county offices of education, and charter schools to notify pupils by January 1 of their grade 11 academic year so the pupil can opt out of the program. Additionally, school districts, county offices of education, and charter schools are now required to send an "Opt Out" notice to each pupil in grade 12.<sup>77</sup>

Based on the mandatory language of the test claim statute,<sup>78</sup> the Commission finds that providing written notice by October 15 to all grade 12 pupils, which (1) states "the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;" (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant, is a state-mandated activity. Preexisting law did not require a notice or opportunity to opt-out of the Cal Grant application process because, prior to the test claim statutes, it was the responsibility of a pupil seeking a Cal Grant to file an application.<sup>79</sup> Thus, the activity is newly mandated beginning January 1, 2015.

Effective January 1, 2017, Statutes 2016, chapter 82, amended section 69432.9(d) to require sending the opt-out notification to pupils by January 1 of the pupil's grade 11 academic year, instead of by October 15 of the pupil's grade 12 academic year. On March 27, 2017, CSAC issued a "Special Alert" to high school district superintendents, principals, and counselors, explaining the changes made by the 2016 statute, and stating that "the opt-out notification should be sent to the class of 2018 before the end of their junior year."<sup>80</sup>

<sup>77</sup> Exhibit A, Test Claim, pages 14-15.

<sup>78</sup> Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

<sup>79</sup> California Code of Regulations, title 5, sections 30008(c) and 30023(a)(2). See also section 30002, which defines an "eligible applicant."

<sup>80</sup> Exhibit F, California Student Aid Commission, Special Alert to High School Principals, High School Counselors, and County and District Superintendents, March 27, 2017.

Thus, under these test claim statutes, school districts were required to provide grade 12 pupils in the classes of 2016 and 2017 the opt-out notice by October 15, 2015 and 2016, under Statutes 2014, chapter 679. School districts were also required to provide the opt-out notice to the class of 2018 when those pupils were in grade 11 pursuant to Education Code section 69432.9(d), as amended by the 2016 statute, by January 1, 2017. CSAC's "Special Alert" recommended that the notices be sent to the class of 2018 before the end of their junior year; i.e., before summer break in 2017, to comply with the statute.<sup>81</sup> Future classes are required to receive the opt-out notice by January 1 of their junior year.

Therefore, the Commission finds that Education Code section 69432.9(d), as amended by the 2014 and 2016 test claim statutes, imposes a new state-mandated activity to provide a written Cal Grant opt-out notice as follows:

- Beginning January 1, 2015, providing written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states "the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;" (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant; and
- Beginning January 1, 2017, providing written notice by January 1st to all grade 11 pupils, beginning with the class of 2018, which (1) states "the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;" (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant, is a new state-mandated activity.

In addition, these newly mandated activities provide a service to the public by increasing access to college financial aid to California students and thus, impose a new program or higher level of service.<sup>82</sup>

Accordingly, the Commission finds that Education Code section 69432.9(d), as amended by the 2014 and 2016 test claim statutes, mandates a new program or higher level of service for the activities bulleted above.

2. The requirement to electronically submit GPAs for grade 12 pupils to CSAC constitutes a state-mandated new program or higher level of service. Certifying GPAs to CSAC is not a state-mandated new program or higher level of service, and

<http://www.csac.ca.gov/secured/specialalerts/2017/GSA%202017-13.pdf>, as of October 27, 2017.

<sup>81</sup> Exhibit F, California Student Aid Commission, Special Alert to High School Principals, High School Counselors, and County and District Superintendents, March 27, 2017. <http://www.csac.ca.gov/secured/specialalerts/2017/GSA%202017-13.pdf>, as of October 27, 2017.

<sup>82</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, pages 3-4.

submitting SSNs to CSAC is not a state mandate. (Ed. Code, §69432.9(c)(2), Stats 2014, ch. 679, Stats. 2016, ch. 82.)

Under prior law, a Cal Grant applicant was responsible for submitting a complete official financial aid application to CSAC by the statutory deadlines pursuant to Education Code section 69432.9(a), which included the applicant's GPA, certified under penalty of perjury by a school official, submitted upon the applicant's request pursuant to Education Code section 69432.9(c). The Legislature stated its intent in former section 69432.9(c) that high schools certify their pupil's GPAs in time to meet the Cal Grant application deadlines imposed by this chapter, which for high school pupils was March 2.<sup>83</sup> Education Code section 69432.9(c), as last amended by Statutes 2011, chapter 7, stated:

The commission shall require that a grade point average be submitted for all Cal Grant A and B applicants, except for those permitted to provide test scores in lieu of a grade point average. The commission shall require that each report of a grade point average include a certification, executed under penalty of perjury, by a school official, that the grade point average reported is accurately reported. The certification shall include a statement that it is subject to review by the commission or its designee. The commission shall adopt regulations that establish a grace period for receipt of the grade point average and any appropriate corrections, and that set forth the circumstances under which a student may submit a specified test score designated by the commission, by regulation, in lieu of submitting a qualifying grade point average. It is the intent of the Legislature that high schools and institutions of higher education certify the grade point averages of their students in time to meet the application deadlines imposed by this chapter.<sup>84</sup>

Statutes 2014, chapter 679 amended Education Code section 69432.9(a) to automatically deem each pupil enrolled in grade 12 a Cal Grant applicant, unless the pupil opts out following written notice from the school district. It also added subdivision (c)(2) to require a GPA be submitted electronically for *all* grade 12 pupils, and not just for pupils who apply for a Cal Grant:

The commission shall require that a grade point average be submitted to it electronically for all grade 12 pupils at public schools, including charter schools, each academic year, except for pupils who have opted out as provided in subdivision (d). Social security numbers shall not be included in the information submitted to the commission. However, if the commission determines that a social security number is required to complete the application for financial aid, the school, school district, or charter school may obtain permission from the

<sup>83</sup> Education Code sections 69434(b)(1) and 69435.3(a)(1).

<sup>84</sup> See also California Code of Regulations, title 5, section 30008(c) that states: "Every high school grade point average reported to the Commission shall include a certification under penalty of perjury from the school official filing the report that the grade point average is accurately reported to the best of his or her knowledge. The certification shall include a statement that it is subject to review by the Commission or its designee. It is the responsibility of the applicant to have his or her high school grade point average reported." This regulation was enacted in 2001.

parent or guardian of the pupil, or the pupil, if he or she is 18 years of age, to submit the pupil's social security number to the commission.

The 2014 test claim statute then renumbered, without changes to the language, the existing provisions in former section 69432.9(c), to section 69432.9(c)(1), (3), (4), (5) as follows:

(1) The commission shall require that a grade point average be submitted for all Cal Grant A and B applicants, except for those permitted to provide test scores in lieu of a grade point average.

[¶]...[¶]

(3) The commission shall require that each report of a grade point average include a certification, executed under penalty of perjury, by a school official, that the grade point average reported is accurately reported. The certification shall include a statement that it is subject to review by the commission or its designee.

(4) The commission shall adopt regulations that establish a grace period for receipt of the grade point average and any appropriate corrections, and that set forth the circumstances under which a student may submit a specified test score designated by the commission, by regulation, in lieu of submitting a qualifying grade point average.

(5) It is the intent of the Legislature that high schools and institutions of higher education certify the grade point averages of their students in time to meet the application deadlines imposed by this chapter.

Clarifying changes to subdivision (c)(2) were later made by the 2015 and 2016 test claim statutes. Statutes 2015, chapter 637 amended subdivision (c)(2) to clarify that GPAs be electronically submitted on a "standardized form." Statutes 2016, chapter 82 amended subdivision (c)(2), to specify a date that GPAs for grade 12 pupils are to be submitted to CSAC; "no later than October 1 of each academic year." Under prior law, GPAs for Cal Grant applicants had to be submitted before the March 2 deadline.

The claimant alleges that the following activities are required to comply with these statutes, and are eligible for reimbursement under article XIII B, section 6 of the California Constitution:

- Time and costs incurred by school districts, county offices of education, and charter schools to review records, correct, update and submit grade point averages to the CSAC for all grade 12 pupils prior to October 15 of each year.<sup>85</sup>
- Time and costs incurred by school districts, county offices of education, and charter schools to submit each student's grade point averages electronically, on a standardized form, for all grade 12 pupils at public schools, including charter schools.<sup>86</sup>

<sup>85</sup> Exhibit A, Test Claim, page 13.

<sup>86</sup> Exhibit A, Test Claim, page 13.

- Time and costs incurred by school districts, county offices of education, and charter schools for including a certification to CSAC, executed under penalty of perjury by a school official, that the grade point average is accurately reported. The certification shall include a statement that it is subject to review by CSAC or its designee.<sup>87</sup>
- Time and costs incurred by school districts, county offices of education, and charter schools to ensure the grade point average certification is submitted to CSAC in time to meet the application deadline imposed by this chapter.<sup>88</sup>
- Time and costs incurred by school districts, county offices of education, and charter schools to comply with CSAC requests for social security numbers including time and costs to obtain permission from the parent or guardian, or pupil, if he or she is 18, and to submit the pupil's social security number to CSAC.<sup>89</sup>

Finance contends that “reporting” GPAs is not newly required. “Specifically, if asked by any student, the existing law would have required a school district or county office of education” to certify GPAs to CSAC.<sup>90</sup>

*a) Education Code section 69432.9(c) does not impose a new program or higher level of service to certify GPAs for grade 12 pupils.*

Education Code section 69432.9(c)(2), as amended by the 2014 test claim statute, states that “the commission shall require that a grade point average be submitted to it electronically for all grade 12 pupils at public schools, including charter schools, each academic year, except for pupils who have opted out as provided in subdivision (d).” Section 69432.9(c)(3), a provision that was simply renumbered from former section 69432.9(c) without substantive change, requires that “each report of grade point average include a certification, executed under penalty of perjury, by a school official, that the grade point average reported is accurately reported. The certification shall include a statement that it is subject to review by the commission or its designee.”<sup>91</sup> Thus subdivision (c), as amended, requires school districts to now certify GPAs for all grade 12 pupils, and not just for those grade 12 pupils who apply for a Cal Grant.

The Commission finds that the activity to certify GPAs for all grade 12 pupils, as required by Education Code section 69432.9(c), does not constitute a new program or higher level of service. School districts have long been required to certify GPAs under penalty of perjury for Cal Grant applicants.<sup>92</sup> Although school districts may now have to certify more GPAs than under prior

<sup>87</sup> Exhibit A, Test Claim, page 14.

<sup>88</sup> Exhibit A, Test Claim, page 14.

<sup>89</sup> Exhibit A, Test Claim, pages 13-14.

<sup>90</sup> Exhibit B, Department of Finance's Comments on Test Claim, pages 1 and 2.

<sup>91</sup> Former Education Code section 69432.9(c) (as last amended by Stats. 2011, ch. 7).

<sup>92</sup> Former Education Code section 69432.9(c) (as last amended by Stats. 2011, ch. 7); see also, California Code of Regulations, title 5, section 30008.

law, and may or may not incur increased costs to do so,<sup>93</sup> increased costs alone do not establish a reimbursable state-mandated program.<sup>94</sup> As explained by the California Supreme Court, “a reimbursable ‘higher level of service’ concerning an existing ‘program’ [exists] when a state law or executive order mandates not merely some change that increases the cost of providing services, but an increase in the actual level or quality of governmental services provided.”<sup>95</sup>

In comments on the Draft Proposed Decision, the claimant argues that the authorities cited for the rule that “increased costs alone do not establish a reimbursable state-mandated program” are not applicable to this case. Specifically, the claimant states that those authorities all cite to *County of Los Angeles v. State of California* (1987) 43 Cal.3d 55-56, which does not define “higher level of service,” but discusses the definition of “programs” as providing a service to the public and not providing worker’s compensation benefits. The claimant also cites an entry from the 1973 Assembly Journal that defines “increased level of service” as “performing more acts ... which result in additional costs” to local governments or school districts. Thus, the claimant argues that certifying GPAs for all pupils, not only those who “apply for student loans,” is a higher level of service that should be reimbursable.<sup>96</sup>

The Commission disagrees with the claimant’s interpretation of the law. First, the 1973 Assembly Journal is not relevant. The 1973 Assembly Journal summarized former Revenue and Taxation Code sections 2201, et seq. (Property Tax Relief Act of 1972, otherwise known as the SB 90 program), which defined “increased level of service” anytime that costs were increased under former Revenue and Taxation Code section 2207. That section defined “costs mandated by the state” broadly to include situations where the same program or service was previously required, but costs were later increased by a change made by statute or executive order. For example, reimbursement under former Revenue and Taxation Code section 2207 was required for statutes or executive orders that “prohibit[ed] a specific activity which results in the local agencies using a more costly alternative to provide a mandated program or service;” for statutes or executive orders that required “an existing program or service be provided in a shorter period and thereby increases the costs of the program or service;” and for statutes or executive orders

<sup>93</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, page 3 (stating that both San Francisco Unified and Los Angeles Unified experienced costs savings since counselors no longer had to complete individual paper forms).

<sup>94</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 55-56; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.

<sup>95</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877.

<sup>96</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, pages 1-2.

that “add[ed] new requirements to an existing optional program or service and thereby increases the cost of such program or service.”<sup>97</sup>

California mandates jurisprudence is no longer governed by the Revenue and Taxation Code.<sup>98</sup> Rather, the current law governing mandate reimbursement is article XIII B, section 6 of the California Constitution (as added by Proposition 4 in 1979), Government Code section 17500 et seq. (as added by Stats. 1984, ch. 1459), and the case law interpreting those provisions. In 1987, the California Supreme Court in the *County of Los Angeles* case explained that under the repealed Revenue and Taxation Code sections of SB 90, “‘additional costs’ may have been deemed tantamount to an ‘increased level of service,’ but not under the post-1975 statutory scheme.”<sup>99</sup> The court made it clear that construing the meaning of article XIII B, section 6 of the California Constitution “is *not* focused on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979.”<sup>100</sup> Moreover, as recently as 2004, the California Supreme Court interpreted article XIII B, section 6 and Government Code section 17500 et seq. to find that “simply because a state law or order may *increase the costs* borne by local government *in providing services*, this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting ‘service to the public.’”<sup>101</sup> A “higher level of service” exists when the requirements are new in comparison with the preexisting scheme *and* enhance the service to the public.<sup>102</sup> In this case, the requirement for school districts to certify GPAs for Cal Grant eligibility is not new.

Accordingly, although school districts may now have to certify more GPAs than under prior law, and may incur increased costs to do so, the activity of certifying GPAs for grade 12 pupils does not impose a new program or higher level of service.

b) *The requirement to electronically submit GPAs for grade 12 pupils to CSAC mandates a new program or higher level of service* (Ed. Code, §69432.9(c)(2), Stats 2014, ch. 679, Stats. 2016, ch. 82.)

Former Education Code section 69432.9(c) required that a GPA be submitted and certified for all Cal Grant A and B Entitlement applicants by the March 2 statutory deadline.<sup>103</sup> Prior to the 2014 test claim statute, a pupil’s GPA could be submitted by either the pupil or the school, on paper or

<sup>97</sup> See *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 69-70, quoting former Revenue and Taxation Code section 2207.

<sup>98</sup> In fact, former Revenue and Taxation Code sections 2207 and 2231, were repealed by Statutes 1989, chapter 589. For an historical perspective and summary of the former statutory scheme, see *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 66-71.

<sup>99</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 55.

<sup>100</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (emphasis added).

<sup>101</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877. Emphasis in original.

<sup>102</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

<sup>103</sup> Education Code section 69432.9(c), as last amended by Statutes 2011, chapter 7

electronically.<sup>104</sup> As stated in the Senate Appropriations Committee analysis of AB 2160 (Stats. 2014, ch. 679):

Currently, there is no standard practice for submitting GPA verification to the CSAC. Some schools submit hard copy verification forms, others submit GPAs electronically, and still others rely on their students to submit the verification forms themselves (once signed by a school official).<sup>105</sup>

CSAC regulations, however, expressly placed the responsibility for GPA submission on the Cal Grant applicant: “All Cal Grant A and B applicants shall submit a grade point average”<sup>106</sup> and, “It is the responsibility of the applicant to have his or her high school grade point average reported.”<sup>107</sup>

The 2014 test claim statute amended Education Code section 69432.9(c)(2) to require electronic submission of GPAs for all grade 12 pupils as follows: “The commission shall require that a grade point average be submitted to it electronically for all grade 12 pupils at public schools, including charter schools, each academic year, except for pupils who have opted out as provided in subdivision (d).” As stated in preexisting law, the grade point average had to be submitted by the statutory deadline.<sup>108</sup> As amended by the 2016 test claim statute, the GPAs are now required to be submitted “no later than October 1 of each academic year.”

Finance argues that the requirement for school districts to submit GPAs to CSAC is not new. Rather, it merely increases the costs of services that were already required.<sup>109</sup> The claimant responds that prior to AB 2160, school districts were not required to submit GPAs for all pupils in grade 12. They were only required for pupils who submitted a Cal Grant application.<sup>110</sup>

<sup>104</sup> Exhibit F, California Student Aid Commission, “Non-SSN GPA Q & A For the 2013-14 Cal Grant Application Year,” dated October 11, 2012.

([http://www.csac.ca.gov/pubs/forms/grnt\\_frm/non\\_ssn\\_gpa\\_qa.pdf](http://www.csac.ca.gov/pubs/forms/grnt_frm/non_ssn_gpa_qa.pdf)); See also, Cal Grant Manual, chapter 4.1, “The Cal Grant Application Process,” December 2005.

<sup>105</sup> Exhibit F, Senate Appropriations Committee, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, pages 1-2.

<sup>106</sup> California Code of Regulations, title 5, section 30023(a).

<sup>107</sup> California Code of Regulations, title 5, sections 30008(c) and 30023(a)(2). See also section 30002, which defines an “eligible applicant.”

<sup>108</sup> Education Code sections 69432.9 (as amended by Stats. 2011, ch. 7), 69433 (as added by Stats. 2000, ch. 403); Education Code section 69434(b)(1) (as last amended by Stats. 2009, ch. 644.); Education Code section 69435.3(a)(1) (as last amended by Stats. 2001, ch. 8); Former Education Code section 69432.9(c) (renumbered to (c)(5) by the 2014 test claim statute) [which states that “It is the intent of the Legislature that high schools . . . certify the grade point averages of their students in time to meet the application deadlines imposed by this chapter]; California Code of Regulations, title 5, sections 30007, 30008, 30023(a)(b).

<sup>109</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, page 1.

<sup>110</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 2-3.



The plain language of section 69432.9(c)(2) does not specify who is required to submit the GPA to CSAC, and existing CSAC regulations continue to place the ultimate responsibility on the applicant to make sure his or her high school GPA has been reported.<sup>111</sup> However, both CSAC and the California Department of Education have interpreted section 69432.9(c)(2) as requiring the school district to electronically submit the GPAs for all grade 12 pupils each academic year. On January 25, 2016, the Department of Education issued an official letter to “County and District Superintendents, Charter School Administrators, and High School Principals” that states in relevant part:

I am writing to remind you of a new law that affects your high school campus. Assembly Bill 2160 (Chapter 679, Statutes of 2014), commonly referred to as the “Ting Bill,” was signed into law in September 2014, amending Section 69432.9 of the California Education Code. This law mandates that all public schools electronically submit grade point averages (GPAs) for grade twelve students to the California Student Aid Commission (CSAC). ...

Electronic submission is required each academic year for all grade twelve pupils except for individual students who opt out. GPAs for seniors in the 2015-16 school year must be submitted **before March 2, 2016**.

[¶]...[¶]

Schools and districts that have not previously uploaded GPAs to the CSAC electronically should plan to do so immediately upon receiving WebGrants access; staff involved with GPA uploads must have list-serv subscription to receive notification when the system opens. To subscribe, to the CSAC List-serv Subscription submission and other topics available on the CSAC Webinar Trainings Web page ....<sup>112</sup>

CSAC’s October 10, 2016 memo to High School Counselors, High School Principals, and County and District Superintendents, states in pertinent part:

This Operations Memo from the California Student Aid Commission (Commission) reminds public high schools and charter high schools of Education Code section 69432.9, *which requires schools to electronically submit GPA data for their grade 12 pupils for the 2017-18 grant programs*.<sup>113</sup>

As the agencies required to provide oversight to K-12 school districts and to implement the Cal Grant program for grade 12 pupils, these interpretations are entitled to great respect by the

<sup>111</sup> California Code of Regulations, title 5, sections 30008(c) and 30023(a)(2).

<sup>112</sup> Exhibit F, California Department of Education, Official Letter to County and District Superintendents, Charter School Administrators, High School Principals, and High School Counselors, January 25, 2016. (Emphasis in original.) See also California Department of Education, Letter to County and District Superintendents, Charter School Administrators, High School Principals, and High School Counselors, September 19, 2017.

<sup>113</sup> Exhibit F, California Student Aid Commission, Memo to High School Principals, High School Counselors, and County and District Superintendents, October 10, 2016. Emphasis added.

courts.<sup>114</sup> In addition, these interpretations are consistent with the legislative history of the test claim statute. As discussed above in the background, the legislative intent of Statutes 2014, chapter 679 was to implement a report by Education Trust-West that recommended school districts electronically submit GPAs for all pupils because “it has proven effective in getting more students into the pipeline for college aid. A number of districts that have shifted to this practice have seen dramatic gains in the number of Cal Grant awards offered to their students.”<sup>115</sup>

In addition, although some school districts in the state (e.g., San Francisco Unified and Los Angeles Unified) were electronically submitting GPAs for all grade 12 pupils before the 2014 test claim statute on a voluntary basis, and the legislative history indicates that they experienced cost savings as a result,<sup>116</sup> electronically submitting GPAs to CSAC is still a new state-mandated activity because there was no legal requirement for school districts to do so under prior law. Government Code section 17565 states that “If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs after the operative date of the mandate.” Therefore, any *increased* costs that any eligible school district incurs, and that are mandated by the State as a result of this newly mandated activity, are reimbursable.

Therefore, the Commission finds that Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679) imposes a new state-mandated activity to:

- Electronically submit to CSAC the GPAs for all grade 12 pupils each academic year, except for pupils who opt out in accordance with section 69432.9(d).

This mandated activity provides a service to the public by boosting access to college financial aid to California students and thus, imposes a new program or higher level of service.<sup>117</sup>

*c) Education Code section 69432.9(c)(2) does not mandate a new program or higher level of service to submit pupil SSNs to CSAC.*

Education Code section 69432.9(c)(2), as amended by the 2014 test claim statute, states that a pupil’s SSN shall not be included in the information submitted to CSAC. If CSAC determines that a SSN is necessary to complete the Cal Grant application, the school district “may obtain permission” to submit the SSN to CSAC. The relevant language in section 69432.9(c)(2) states:

Social security numbers shall not be included in the information submitted to the commission. However, if the commission determines that a social security

<sup>114</sup> *Yamaha Corp. of America v. State Board of Equalization* (1988) 19 Cal.4th 1, 4, 7.

<sup>115</sup> Assembly Floor, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended August 18, 2014, page 3.

<sup>116</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, page 3 (stating that both San Francisco Unified and Los Angeles Unified experienced costs savings since counselors no longer had to complete individual paper forms).

<sup>117</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, pages 3-4.

number is required to complete the application for financial aid, the school, school district, or charter school may obtain permission from the parent or guardian of the pupil, or the pupil, if he or she is 18 years of age, to submit the pupil's social security number to the commission.

The claimant argues that submitting SSNs is a new required activity:

Per the CSAC website <http://www.csac.ca.gov/doc.asp?id=983>, Non-SSN GPA's are only allowed for high schools without WebGrants website access, which means almost all, if not all the high schools in California must provide the CSAC with the students SSN when submitting a student's GPA. Thus requiring the school district, county office of education or charter school to obtain permission and submit the SSN electronically as well as the GPA for each student in 12th grade.<sup>118</sup>

The Commission finds that providing SSNs, if requested by CSAC, is not mandated by the plain language of Education Code section 69432.9(c)(2). The statute clearly states that SSNs shall not be included in the information, and that "if" CSAC requests the SSN, the school district "may" obtain permission from the pupil or the parent to submit the information. The claimant has not pled any letter or executive order from CSAC mandating the submission of pupil SSNs.<sup>119</sup>

Moreover, submitting SSNs upon CSAC's request is not new. On October 11, 2012, before the enactment of the test claim statutes, CSAC issued a "Non-SSN GPA Q & A For the 2013-14 Cal Grant Application Year."<sup>120</sup> That document indicates that SSNs are used to match the pupil applicant's FAFSA or Dream Act application with the GPA received in order to process the financial aid application. The document further states that "The CSAC non-SSN GPA submission process allows high schools, high school districts or private school central offices to submit Entitlement Cal Grant GPAs for students *without* including a Social Security Number (SSN)" as long as the high school has WebGrants access (CSAC's on-line school user interface to the Cal Grant program). With the WebGrants system, CSAC can use other demographic information submitted with the GPA to match the pupil's FAFSA or Dream Act application.<sup>121</sup> If, however, a high school submits paper GPAs, the pupil's SSN "must be included."<sup>122</sup>

<sup>118</sup> Exhibit A, Test Claim, pages 12-13.

<sup>119</sup> Government Code section 17553(b)(1) requires that a Test Claim include: "A written narrative that identifies the specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate ..." And section 17553(b)(3)(A) states: "The written narrative shall be supported with copies of . . . The test claim statute that includes the bill number or executive order, alleged to impose or impact a mandate."

<sup>120</sup> Exhibit F, California Student Aid Commission, "Non-SSN GPA Q & A For the 2013-14 Cal Grant Application Year," dated October 11, 2012.

<sup>121</sup> Exhibit F, California Student Aid Commission, "Non-SSN GPA Q & A For the 2013-14 Cal Grant Application Year," dated October 11, 2012, page 1.

<sup>122</sup> Exhibit F, California Student Aid Commission, "Non-SSN GPA Q & A For the 2013-14 Cal Grant Application Year," dated October 11, 2012, page 3.

Because pupil SSN submission was required prior to the test claim statute, the Commission finds that Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679) does not mandate a new program or higher level of service to submit pupil SSNs to CSAC.

3. Education Code section 69432.92 does not impose a state-mandated program on school districts to electronically submit verification of high school graduation to CSAC (Stats 2015, ch. 637).

As indicated in the Background, the Education Code has long required that a pupil confirm his or her high school graduation before Cal Grant payments can be released, and either the pupil or the school district can verify graduation.<sup>123</sup> Under CSAC regulations, the applicant is ultimately responsible for verifying his or her high school graduation.<sup>124</sup>

Statutes 2015, chapter 637, effective January 1, 2016, added section 69432.92 to the Education Code to *authorize* CSAC to require verification of high school graduation or its equivalent except for pupils who opt out, as follows:

- (a) The commission may require verification of high school graduation or its equivalent to be electronically submitted for all former grade 12 pupils who graduated from public schools, including charter schools, in the prior academic year, except for pupils who have opted out as provided in subdivision (d) of Section 69432.9.
- (b) It is the intent of the Legislature that high schools or high school districts verify the graduation of their pupils in time to meet the deadlines imposed by subdivision (e) of Section 69433.9.

The legislative history explains the purpose of the bill and the existing verification process as follows:

According to author, many students often times become overwhelmed with the Cal Grant application process and fail to submit verification of high school graduation to CSAC. The author further asserts that missing this step could make the difference between a student attending college or not. This bill aims to streamline the financial aid process and increase Cal Grant and FAFSA completion rates by requiring the electronic submission of high school graduation information.

Existing process for verification. According to the CSAC the method for providing verification varies depending on the school district. For the most part, it is the responsibility of the school district to submit the information to CSAC;

<sup>123</sup> Education Code section 69433.9 (as last amended by Stats. 2006, ch. 652.); Exhibit F, California Student Aid Commission, “High School Graduation Confirmation for High Schools, WebGrants User Guide” May 23, 2008, page 5.

<sup>124</sup> Education Code section 69432.9(a) (as last amended by Stats. 2011, ch. 7), and still in place today, states the following: “A Cal Grant applicant shall submit a complete official financial aid application pursuant to Section 69433 and application regulations adopted by the commission.” Exhibit F, California Student Aid Commission, “High School Graduation Confirmation for High Schools, WebGrants User Guide” May 23, 2008, page 5.

however, if the district fails to provide the information, the responsibility falls on the student. Generally, most submissions are electronic, but thousands of paper forms are submitted that have to be keyed in manually. This bill seeks to give the CSAC the authority to create a standardized process for collecting information directly from school districts when determining Cal Grant eligibility.<sup>125</sup>

The claimant alleges that the following activities are required to comply with this statute, and are eligible for reimbursement:

Time and costs incurred by school districts, county offices of education, and charter schools to provide verification of high school graduation or its equivalent. Education Code Section 69432.92(a).

Time and costs to electronically submit the graduation data for all former grade 12 pupils, in the prior academic year, including charter schools, in the prior academic year, except for pupils who have opted out as provided in subdivision (d) of Section 69433.9, when required by the CSAC. Education Code Section 69432.92(a).

Time and costs incurred by school districts, county offices of education, and charter schools to verify the graduation of their pupils, when requested by CSAC in time to meet the deadlines imposed by subdivision (e) of Section 69433.9. This subdivision also applies to pupils who graduate during the summer following the grade 12 academic year. Education Code Sections 69432.92(b).<sup>126</sup>

In rebuttal comments on the Test Claim, the claimant states that CSAC first started requiring electronic verification of high school graduation immediately following the passage of section 69432.92.<sup>127</sup> The claimant includes with the comments two CSAC memos issued in 2017. The first is a “Special Alert” dated March 27, 2017, to High School District Superintendents, Principals, and Counselors, and the second is an “Operations Memo” dated May 24, 2017, to the same categories of school district employees. Both memos refer to Education Code section 69432.92(b), and both state “that high schools and high school districts are to verify the graduation of their pupils as soon as possible upon their graduation and no later than August 31.”<sup>128</sup>

The Commission finds that Education Code section 69432.92, as added by the 2015 test claim statute, does not impose a state-mandated program on school districts to electronically verify the high school graduation of all grade 12 pupils who have not opted out of the Cal Grant program. The plain language of the statute (“the Commission *may* require verification of high school graduation or its equivalent to be electronically submitted. . .”) authorizes, but does not require, CSAC to request school districts to submit electronic verification of the high school graduation

<sup>125</sup> Exhibit F, Senate Floor Analyses of AB 1091 (2015-2016 Reg. Sess.) as amended June 1, 2015, page 3.

<sup>126</sup> Exhibit A, Test Claim, pages 13-15.

<sup>127</sup> Exhibit C, Claimant’s Rebuttal Comments, page 4.

<sup>128</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 6-7 (emphasis in original).

for grade 12 applicants.<sup>129</sup> Although subdivision (b) contains a statement that the Legislature intends that high schools or high school districts verify the graduation of their pupils in time to meet the Cal Grant deadlines, the courts have consistently held that a statement of legislative intent alone may not give rise to a mandatory duty.<sup>130</sup> Thus, the plain language of section 69432.92 does not impose any state-mandated duties.

Moreover, as indicated above, the Cal Grant process has always required that an applicant's high school graduation be verified before funds can be released. The legislative history of the test claim statute makes that clear by stating that under the existing process, "it is the responsibility of the school district to submit the information to CSAC; however, if the district fails to provide the information, the responsibility falls on the student."<sup>131</sup> The legislative history further states:

It is important to note that CSAC does authorize students to self-certify high school graduation. This bill is not intended to change the student self-certification process.<sup>132</sup>

The pupil self-certification process verifying high school graduation still remains today. CSAC created a "High School Graduation Certification Form for the Entitlement Cal Grant Program," which allows pupils to self-certify their high school graduation.<sup>133</sup> And, the May 24, 2017, CSAC "Operations Memo" provided by the claimant states that that "Students can self-certify their high school graduation at WebGrants for Students."<sup>134</sup>

Most importantly however, the CSAC "Special Alert" and "Operations Memo" provided by the claimant clearly pertains to section 69432.92 as amended by Statutes 2016, chapter 351, which replaced the statement of legislative intent quoted above with the following:

If the commission requires verification of high school graduation or its equivalent pursuant to subdivision (a), the commission shall provide guidance to high schools or high school districts to ensure that high schools and high school districts verify the graduation of their pupils as soon as possible upon a pupil's graduation and no later than August 31 of the academic year following the pupil's graduation. This subdivision also applies to pupils who graduate during the summer following the grade 12 academic year.

<sup>129</sup> Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

<sup>130</sup> *Shamsian v. Department of Conservation* (2006) 136 Cal.App.4th 621, 633; *City of Arcadia v. State Water Resources Control Board* (2010) 191 Cal.App.4th 156, 176.

<sup>131</sup> Exhibit F, Senate Floor Analysis of AB 1091 (2015-2016 Reg. Sess.) as amended June 1, 2015, page 3.

<sup>132</sup> Exhibit F, Assembly Third Reading, Analysis of AB 1091 (2015-2016 Reg. Sess.) as amended June 1, 2015, page 5.

<sup>133</sup> Exhibit F, California Student Aid Commission, "2017 High School Graduation Certification Form for the Entitlement Cal Grant Program," (G-8, dated 08/16) [http://csac.ca.gov/pubs/forms/grnt\\_frm/2016\\_2017\\_g-8\\_hs\\_graduation\\_verification.pdf](http://csac.ca.gov/pubs/forms/grnt_frm/2016_2017_g-8_hs_graduation_verification.pdf), accessed October 16, 2017.

<sup>134</sup> Exhibit C, Claimant's Rebuttal Comments, page 7.

However, Statutes 2016, chapter 351 has not been pled in this Test Claim. The only 2016 statute pled is Statutes 2016, chapter 82, and thus the Commission does not have jurisdiction to make findings on Statutes 2016, chapter 351 or any unpled executive orders to implement that statute.

Accordingly, the Commission finds that Education Code section 69432.92, as added by Statutes 2015, chapter 637, does not impose a state-mandated program on school districts to electronically verify high school graduation.

**C. Education Code Section 69432.9(c)(2) and (d) (Stats 2014, ch. 679, Stats. 2016, ch. 82) Imposes Costs Mandated by the State for K-12 School Districts to Notify Pupils of the Opportunity to Opt Out of the Cal Grant Application Process and to Electronically Submit GPAs to CSAC Each Academic Year For All Pupils in Grade 12.**

As discussed above, the Commission finds that the following activities mandate a new program or higher level of service:

1. Provide a written Cal Grant opt-out notice pursuant to Education Code section 69432.9(d), (Stats 2014, ch. 679, Stats. 2016, ch. 82) as follows:
  - Beginning January 1, 2015, providing written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
  - Beginning January 1, 2017, providing written notice by January 1st to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
2. Electronically submit to CSAC the GPAs of all grade 12 pupils by October 1 of each academic year, except for pupils who opt out in accordance with section 69432.9(d), pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679).

For these activities to constitute reimbursable state-mandated activities under article XIII B, section 6 of the California Constitution, they must result in school districts incurring increased costs mandated by the state. Government Code section 17514 defines “costs mandated by the state” as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) requires that no claim shall be made unless the claim exceeds \$1,000.

The claimant alleges total increased costs as a result of the test claim statutes as follows: “actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the mandate: Actual: \$13,099 FY 2015-16 and \$14,888 for FY 2016-17.” The claimant further alleges: “The actual or estimated annual costs that will be incurred by the

claimant to implement the mandate during the fiscal year immediately following the fiscal year for which the claim was filed: Estimated: \$15,186 FY 2017-18.”<sup>135</sup>

Finance argues there are no increased costs mandated by the state because funds from the Local Control Funding Formula (LCFF) and the College Readiness Block Grant are available to pay for the cost of the new state-mandated activities. According to Finance, “The total of all of these funds exceeds the actual or estimated costs alleged by the claimant and the statewide cost estimate alleged in the claim.”<sup>136</sup>

The claimant responded to Finance, citing the State Controller’s “All School District Mandated Cost’s Claiming Instructions” that have specific line items for identifying offsetting savings or other funding sources available for the mandate being claimed, and that require offsetting savings to be deducted from claims. According to the claimant:

It is the responsibility of each District to determine (as the DOF [Finance] puts it) “The total of all these funds exceeds the actual or estimated costs alleged by the claimant”, and not an amount outside sources or other government agencies can determine. To determine if these new laws create a new program or higher level of service is COSM’s [the Commission’s] responsibility. It is up to each claimant and the SCO [State Controller] to determine if the costs are 100% funded through other avenues.<sup>137</sup>

For the reasons below, the Commission finds that school districts incur increased costs mandated by the state within the meaning of Government Code section 17514 for the activities listed above, and that funding appropriated to school districts under the LCFF and the College Readiness Block Grant do not trigger the application of Government Code section 17556(e) to deny this Test Claim.

Government Code section 17556(e) states that the Commission shall not find costs mandated by the state if:

The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was *specifically intended* to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for additional revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued. [Emphasis added.]

<sup>135</sup> Exhibit A, Test Claim, page 16.

<sup>136</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, pages 2 and 3.

<sup>137</sup> Exhibit C, Claimant’s Rebuttal Comments, page 8.



The LCFF<sup>138</sup> was enacted in fiscal year 2013-2014 to replace the previous K-12 general purpose revenue funding through Proposition 98, which had been in existence for roughly 40 years. Previously, the state distributed school funding through a combination of general purpose grants (revenue limit entitlements) and more than 40 state categorical programs. Districts could use general purpose grants for any educational purpose, but they had to spend categorical funding on state-prescribed activities. In fiscal year 2013-2014, the state eliminated most categorical programs, replacing all the program-specific funding formulas with one new formula. The new formula increased the size of general purpose grants and directed more funding to districts with disadvantaged pupils.<sup>139</sup> The LCFF combines each district’s 2012-2013 revenue limit entitlement and some categorical funding to create a new base, and then provides additional funding for districts with large numbers of “unduplicated pupils,” defined as low income pupils, pupils in foster care, and English learners. Like the prior revenue limit apportionments, the LCFF is funded through a combination of local property taxes and state aid.<sup>140</sup>

Whether a school district’s general purpose revenue, appropriated through revenue limit apportionments or the LCFF, when used by a school district to pay for a state-mandated program is required to be identified as offsetting revenue to reduce or eliminate the reimbursement requirement for K-12 school districts, is an issue with a long history. In 2008, the Commission amended the Parameters and Guidelines for the *Graduation Requirements* program at the request of the State Controller’s Office and several school districts to adopt a formula for the reimbursement of costs incurred for the higher level of service required to staff the new state-mandated high school science course.<sup>141</sup> The request was opposed by Finance on several grounds, including that the formula did not include increases in unrestricted revenue limits, or general purpose funding appropriated to school districts under Proposition 98, as offsetting revenue. The Commission rejected Finance’s argument, finding that the proceeds of taxes for school districts are different than those of other local government entities, such as counties and cities, because the general purpose revenue of school districts has always been partially provided by the state’s general fund. Thus, the amount spent by school districts from their proceeds of taxes on teacher salaries to staff the mandated science course could not be considered offsetting revenue without violating the purpose of article XIII B, section 6, which was specifically designed to protect local tax revenues, and “provide[s] local entities with the assurance that state

<sup>138</sup> The Local Control Funding Formula is in Article 2 (commencing with section 42238) of Chapter 7 of Part 24 of Division 3 of Title 2 of the Education Code. Also, the County Local Control Funding Formula is in chapter 12.5 (commencing with section 2574) of Part 2 of Division 1 of Title 1 of the Education Code.

<sup>139</sup> Exhibit F, Legislative Analyst’s Office, “The 2017-18 Budget: Proposition 98 Education Analysis,” February 9, 2017, page 29, <http://www.lao.ca.gov/reports/2017/3549/prop98-analysis-020917.pdf>, accessed October 16, 2017.

<sup>140</sup> Exhibit F, California Department of Education, “LCFF Frequently Asked Questions,” <https://www.cde.ca.gov/fg/aa/lc/lcfaq.asp#FC>, accessed October 16, 2017; Education Code sections 42238.02, 42238.03.

<sup>141</sup> Commission on State Mandates, Revised Final Staff Analysis Adopted by the Commission, *Graduation Requirements* Parameters and Guidelines Amendment, Item 3, November 6, 2008 Hearing, <https://csm.ca.gov/agendas/110608/item3.pdf>.

mandates would not place additional burdens on their increasingly limited revenue resources.”<sup>142</sup> The Commission also held that there was no evidence that the state appropriated funds *specifically intended* to fund the costs of providing the second science course mandated by *Graduation Requirements* program, as required by Government Code section 17556(e). Thus, the Commission did not identify the school district’s general purpose revenue as offsetting revenues.<sup>143</sup> Finance filed a petition for writ of mandate in the Sacramento County Superior Court to challenge the Commission’s Decision on the Parameters and Guidelines Amendment, but abandoned the offsetting revenue challenge. On March 20, 2013, the Sacramento County Superior Court denied the petition for writ of mandate and upheld the Commission’s Decision and Parameters and Guidelines.<sup>144</sup>

In 2010, the Legislature added section 42238.24 to the Education Code, which states that “costs related to the salaries and benefits of teachers incurred by a school district or county office of education to provide the courses specified in paragraph (1) of subdivision (a) of Section 51225.3 [the *Graduation Requirements* statute] shall be offset by the amount of state funding apportioned to the district” through the revenue limit apportionments. On January 6, 2011, the California School Boards’ Association (CSBA) filed a lawsuit against the State and the Commission, in part to prevent the Commission or the State from applying Education Code section 42238.24 as an offset to reduce or eliminate state reimbursement for the *Graduation Requirements* program.<sup>145</sup> CSBA argues that revenue limit apportionments (which were later replaced with the LCFF) constitute the proceeds of taxes of school districts, which cannot be used as offsetting revenue under article XIII B, section 6 of the California Constitution.<sup>146</sup> The State takes the position that

<sup>142</sup> Commission on State Mandates, Revised Final Staff Analysis Adopted by the Commission, *Graduation Requirements* Parameters and Guidelines Amendment, Item 3, November 6, 2008 Hearing, <https://csm.ca.gov/agendas/110608/item3.pdf>, pages 52-53 (citing *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; and *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284.)

<sup>143</sup> Commission on State Mandates, Revised Final Staff Analysis Adopted by the Commission, *Graduation Requirements* Parameters and Guidelines Amendment, Item 3, November 6, 2008 Hearing, <https://csm.ca.gov/agendas/110608/item3.pdf>, pages 51-54.

<sup>144</sup> *Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court, Case No. 34-2010-80000529.

<sup>145</sup> *California School Boards Assoc., et al. v. State of California, Commission on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance*, Alameda County Superior Court, Case No. RG11554698, First District Court of Appeal, Case No. A148606.

<sup>146</sup> CSBA cites article XIII B, section 8(c), which defines “appropriations subject to limitation” to include state subventions other than mandate subventions, and Government Code section 7906, which defines “proceeds of taxes” for school districts to include basic aid subventions and state apportionments up to the district’s “foundation program level” minus “local revenues as defined in Section 42238 of the Education Code.” Thus, CSBA asserts that existing law defines all unrestricted state funding, up to the district’s XIII B spending limit, as proceeds of taxes. CSBA Opening Brief, *California School Boards Assoc., et al. v. State of California, Commission*

the revenue limit apportionments and the LCFF are funded with a mix of local property tax revenue and state funds; that school districts “are not being required [by section 42238.24] to use their own property taxes to pay for the cost of the mandate;” and that “only the moneys provided by the state are potentially offsetting.”<sup>147</sup> The *CSBA* matter is currently pending in the First District Court of Appeal. On July 25, 2011, Finance filed a request to amend the Parameters and Guidelines for the *Graduation Requirements* program to identify Education Code section 42238.24 (Stats. 2010, ch. 724, §16) as a required offset. (CSM 11-PGA-03.) That matter is stayed pending the outcome of the *CSBA* litigation.

Thus, the issue whether a school district’s general revenue calculated under the LCFF and used to pay for a state-mandated program is required to be identified as offsetting revenue is unsettled. The Commission has approved many school district test claims, and has never identified a school district’s general purpose revenue as offsetting revenue. Moreover, the Legislature has not enacted a statute that “includes additional revenue that was *specifically intended* to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate,” pursuant to Government Code section 17556(e), with respect to the Cal Grant activities mandated by the state. All LCFF funds are technically “unrestricted,” which means school districts have discretion over how the funds are used. The Legislature has not directed the use of LCFF funds to pay for the costs of this program.<sup>148</sup> Therefore, the funding appropriated under the LCFF does not trigger the application of Government Code section 17556(e) to deny this Test Claim.

Additionally, although it provides potentially offsetting revenue, the College Readiness Block Grant also does not trigger Government Code section 17556(e). Enacted in 2016, the College Readiness Block Grant authorizes the appropriation of \$200 million to provide California’s high school pupils, particularly unduplicated pupils, additional support to increase enrollment at institutions of higher education and complete an undergraduate degree within four years.<sup>149</sup> Appropriations to school districts under this block grant are deemed “General Fund revenues” for school districts, appropriated pursuant to Proposition 98.<sup>150</sup> In addition, the “block grant funds apportioned to eligible school districts shall be used for activities that directly support pupil access and successful matriculation to institutions of higher education.”<sup>151</sup> In this respect, the Legislature has determined that the following “eligible activities,” focused primarily on

*on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance*, filed October 7, 2016, First District Court of Appeal, Case No. A148606.

<sup>147</sup> State’s Opposition to Petition for Writ of Mandate (Second Cause of Action), *California School Boards Assoc., et al. v. State of California, Commission on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance*, filed April 3, 2015, Alameda County Superior Court, Case No. RG11554698, page 17.

<sup>148</sup> Exhibit F, California Department of Education, “LCFF Frequently Asked Questions,” <https://www.cde.ca.gov/fg/aa/lc/lcfaq.asp#FC> accessed October 16, 2017.

<sup>149</sup> Education Code section 41580(b), as added by Statutes 2016, chapter 29.

<sup>150</sup> Education Code section 41580(h).

<sup>151</sup> Education Code section 41580(d).

unduplicated pupils, fits within the purpose of the grant: (1) professional development for teachers, administrators, and counselors to improve pupil college readiness and attendance; (2) beginning or increasing pupil and family counseling regarding college admission requirements and financial aid programs; (3) developing or purchasing materials that support college readiness; (4) developing comprehensive advising plans to support pupil completion of A-G course requirements for college admission; (5) implementing partnerships between high schools and postsecondary educational institutions that support pupil transition to postsecondary education; (6) providing subsidies to unduplicated pupils to pay fees for taking advanced placement exams; and (7) expanding access to coursework or other opportunities to satisfy A-G course requirements to all pupils.<sup>152</sup> School districts are required to develop a plan as a condition of receiving funds, to be discussed at a regularly scheduled meeting of the governing board to ensure community involvement. The plan shall describe how the funds will increase or improve services for unduplicated pupils to ensure college readiness.<sup>153</sup> As a condition of receiving funds, school districts are required to report to the Superintendent how they will measure the impact of the funds received.<sup>154</sup>

However, there is no requirement that school districts use the block grant funding to pay for this state-mandated program. Accordingly, the block grant funds are not “specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate” in accordance with Government Code section 17556(e). Nevertheless, as indicated in the Background, the purpose of the new state-mandated activities to provide the Cal Grant opt-out notice to pupils and electronically submit GPAs to CSAC is to boost access to college financial aid for high school graduating pupils. Although these activities are not specifically focused on unduplicated pupils, they do “support pupil access and successful matriculation to institutions of higher education.” Thus, the grant funds received by school districts under the College Readiness Block Grant program are potential offsetting revenues that must be identified by a school district on a reimbursement claim *if* the district uses the funds for this program.

Therefore, the Commission finds, as a matter of law, that Education Code section 69432.9(c)(2) and (d) (Stats 2014, ch. 679, Stats. 2016, ch. 82) impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the activities listed below.

## **V. Conclusion**

Based on the foregoing, the Commission finds that the test claim statutes impose a partially reimbursable state-mandated program on K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities only:

1. Provide a written Cal Grant opt-out notice pursuant to Education Code section 69432.9(d), (Stats 2014, ch. 679, Stats. 2016, ch. 82) as follows:

<sup>152</sup> Education Code section 41580(d)(1) – (d)(7).

<sup>153</sup> Education Code section 41580(e).

<sup>154</sup> Education Code section 41580(f).

- Beginning January 1, 2015, providing written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
  - Beginning January 1, 2017, providing written notice by January 1 to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
2. Electronically submit the GPAs of all grade 12 pupils each academic year to CSAC, except for pupils who opt out in accordance with section 69432.9(d), pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679). This activity does not include the certification of GPAs or providing SSNs to CSAC.

All other statutes and provisions pled in the Test Claim are denied.



RE: **Decision**

*Cal Grant: Grade Point Average and Graduation Certification, 16-TC-02*  
Education Code Sections 69432.9, 69432.92; Statutes 2014, Chapter 679 (AB 2160),  
Statutes 2015, Chapter 637 (AB 1091), Statutes 2016, Chapter 82 (AB 2908)  
Fairfield-Suisun Unified School District, Claimant

On January 26, 2018, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.

Heather Halsey, Executive Director

Dated: February 2, 2018



**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On February 2, 2018, I served the:

- **Decision adopted January 26, 2018**

*Cal Grant: Grade Point Average and Graduation Certification, 16-TC-02*  
Education Code Sections 69432.9, 69432.92; Statutes 2014, Chapter 679 (AB 2160),  
Statutes 2015, Chapter 637 (AB 1091), Statutes 2016, Chapter 82 (AB 2908)  
Fairfield-Suisun Unified School District, Claimant

AND

- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued February 2, 2018**

*Cal Grant: Opt-Out Notice and Grade Point Average Submission, 16-TC-02*  
Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and  
Education Code Sections 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908)  
Fairfield-Suisun Unified School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 2, 2018 at Sacramento, California.



---

Jill L. Magee  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/2/18

**Claim Number:** 16-TC-02

**Matter:** Cal Grant: Grade Point Average and Graduation Certification

**Claimant:** Fairfield-Suisun Unified School District

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

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

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Hearing Date: May 25, 2018

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**DRAFT EXPEDITED PARAMETERS AND GUIDELINES**

Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and Education Code Sections 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908)

*Cal Grant: Opt-Out Notice and Grade Point Average Submission*

16-TC-02

The period of reimbursement begins July 1, 2015, or on a later date as specified.

**I. SUMMARY OF THE MANDATE**

These parameters and guidelines address the mandated activities performed by K-12 school districts for pupils in grades 11 and 12 to assist the California Student Aid Commission (CSAC) in making determinations regarding those pupils' eligibility for Cal Grant A or B awards, through which the state provides financial assistance to college students.

On January 26, 2018, the Commission on State Mandates (Commission) adopted the Decision finding that the test claim statutes impose a 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. The Commission partially approved the Test Claim, finding only the following activities to be reimbursable:

1. Provide a written Cal Grant opt-out notice pursuant to Education Code section 69432.9(d) (Stats. 2014, ch. 679; Stats. 2016, ch. 82) as follows:
  - Beginning January 1, 2015, provide written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to the California Student Aid Commission (CSAC); and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
  - Beginning January 1, 2017, provide written notice by January 1 to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
2. Electronically submit the grade point averages (GPAs) for all grade 12 pupils each academic year to CSAC, except for pupils who opt out in accordance with section 69432.9(d), pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679). *This activity does not include the calculation or certification of GPAs or providing social security numbers (SSNs) to CSAC.*

## **II. ELIGIBLE CLAIMANTS**

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

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on June 26, 2017, establishing eligibility for reimbursement for the 2015-2016 fiscal year, beginning July 1, 2015. However, Statutes 2016, chapter 82 became effective on January 1, 2017, establishing the period of reimbursement for the activity to provide written notice by January 1 to all grade 11 pupils, beginning with the class of 2018, beginning January 1 2017.

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

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

## **IV. REIMBURSABLE ACTIVITIES**

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, 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:

- A. Provide a written Cal Grant opt-out notice pursuant to Education Code section 69432.9(d) (Stats. 2014, ch. 679; Stats. 2016, ch. 82) as follows:
  1. Beginning July 1, 2015, provide written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to the California Student Aid Commission (CSAC); and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
  2. Beginning January 1, 2017, provide written notice by January 1 to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.

***Reimbursement is not required to develop an opt-out notice; CSAC has developed an opt-out notice form, which is available on its website.***

- B. Beginning July 1, 2015, electronically submit to CSAC the GPAs for all grade 12 pupils each academic year to CSAC, except for pupils who opt out in accordance with section 69432.9(d), pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679). Beginning January 1, 2017 the GPAs must be electronically submitted **by October 1 of each academic year**, except for pupils who opt out in accordance with section 69432.9(d). (Ed. Code, § 69432.9(c)(2), Stats. 2016, ch. 82).

***Reimbursement is not required to calculate or certify GPAs or provide SSNs to CSAC.***

## **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. 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.

## 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 California Department of Education approved indirect cost rate for the year that funds are expended.



## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

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

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 applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.

Grant funds received by school districts under the College Readiness Block Grant (Ed. Code, § 41580) must be identified by a school district as offsetting revenues on a reimbursement claim *if* the district uses the grant funds for this program.

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

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

<sup>1</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

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

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

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

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On February 2, 2018, I served the:

- **Decision adopted January 26, 2018**

*Cal Grant: Grade Point Average and Graduation Certification, 16-TC-02*  
Education Code Sections 69432.9, 69432.92; Statutes 2014, Chapter 679 (AB 2160),  
Statutes 2015, Chapter 637 (AB 1091), Statutes 2016, Chapter 82 (AB 2908)  
Fairfield-Suisun Unified School District, Claimant

AND

- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued February 2, 2018**

*Cal Grant: Opt-Out Notice and Grade Point Average Submission, 16-TC-02*  
Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and  
Education Code Sections 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908)  
Fairfield-Suisun Unified School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 2, 2018 at Sacramento, California.



---

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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/2/18

**Claim Number:** 16-TC-02

**Matter:** Cal Grant: Grade Point Average and Graduation Certification

**Claimant:** Fairfield-Suisun Unified School District

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

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

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**BETTY T. YEE**  
California State Controller

February 23, 2018

Ms. Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**SUBJECT: Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Hearing**

*Cal Grant: Opt-Out Notice and Grade Point Average Submission, 16-TC 02 Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and Education Code Sections 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908), Fairfield-Suisun Unified School District, Claimant*

Dear Ms. Halsey:

The State Controller's Office reviewed the Draft Expedited Parameters and Guidelines for the Cal Grant: Opt-Out Notice and Grade Point Average Submission program and recommends no changes.

If you have any questions, please contact Steve Purser of the Local Reimbursements Section in the Local Government Programs and Services Division, at [SPurser@sco.ca.gov](mailto:SPurser@sco.ca.gov) or (916) 324-5729.

Sincerely,

A handwritten signature in blue ink that reads "Anita Dagan".

ANITA DAGAN, Manager  
Local Reimbursements Section

cc: Jim Spano, Assistant Chief, Division of Audits, State Controller's Office

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

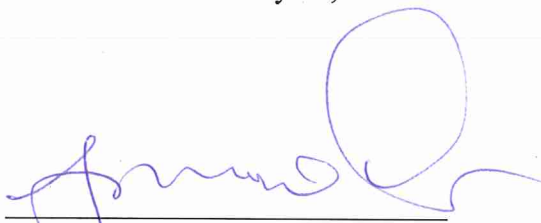
On February 23, 2018, I served the:

- **State Controller's Office (Controller's) Comments on the Draft Expedited Parameters and Guidelines filed February 23, 2018**

*Cal Grant: Opt-Out Notice and Grade Point Average Submission*, 16-TC-02  
Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and  
Education Code Sections 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908)  
Fairfield-Suisun Unified School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 23, 2018 at Sacramento, California.



---

Lorenzo Duran  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/2/18

**Claim Number:** 16-TC-02

**Matter:** Cal Grant: Grade Point Average and Graduation Certification

**Claimant:** Fairfield-Suisun Unified School District

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

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

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March 19, 2018

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Mr. Ed Hanson  
Department of Finance  
Education Systems Unit  
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Sacramento, CA 95814

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

**Re: Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing**

*Cal Grant: Opt-Out Notice and Grade Point Average Submission, 16-TC-02*  
Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and  
Education Code Sections 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908)  
Fairfield-Suisun Unified School District, Claimant

Dear Ms. Tollenaar and Mr. Hanson:

The Draft Proposed Decision and Parameters and Guidelines for the above-captioned matter is enclosed for your review and comment.

**Written Comments**

Written comments may be filed on the Draft Proposed Decision and Parameters and Guidelines by **April 9, 2018**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>1</sup>

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to [http://www.csm.ca.gov/dropbox\\_procedures.php](http://www.csm.ca.gov/dropbox_procedures.php) on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

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<sup>1</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

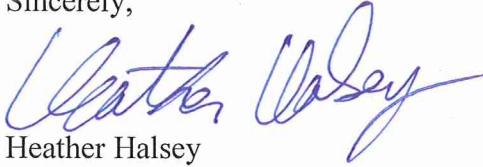


Ms. Tollenaar and Mr. Hanson  
March 19, 2018  
Page 2

**Hearing**

This matter is set for hearing on **Friday, May 25, 2018** at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about May 11, 2018. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey  
Executive Director

**ITEM \_**  
**DRAFT PROPOSED DECISION**  
**AND**  
**PARAMETERS AND GUIDELINES**

Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and  
Education Code Section 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908)

*Cal Grant: Opt-Out Notice and Grade Point Average Submission*<sup>1</sup>

16-TC-02

Fairfield-Suisun Unified School District, Claimant

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**EXECUTIVE SUMMARY**

**I. Summary of the Mandate**

These Parameters and Guidelines address the mandated activities performed by K-12 school districts for pupils in grades 11 and 12 to assist the California Student Aid Commission (CSAC) in determining their eligibility for Cal Grant A or B awards, through which the State provides financial assistance to college students.

On January 26, 2018, the Commission on State Mandates (Commission) adopted a Test Claim Decision finding that the test claim statutes impose a 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, to provide a written Cal Grant opt-out notice pursuant to Education Code section 69432.9(d) (Stats. 2014, ch. 679; Stats. 2016, ch. 82) and to electronically submit the grade point averages (GPAs) for all grade 12 pupils each academic year to CSAC, except for pupils who opt out in accordance with section 69432.9(d), pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679).

**II. Procedural History**

On January 26, 2018, the Commission adopted the Decision partially approving the Test Claim.<sup>2</sup> On February 2, 2017, Commission staff issued the Decision and Draft Expedited Parameters and

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<sup>1</sup> Note that the underlying Test Claim was entitled “*Cal Grant: Grade Point Average and Graduation Certification, 16-TC-02*” but that the Parameters and Guidelines have been renamed consistent with the activities approved for reimbursement.

<sup>2</sup> Exhibit A, Test Claim Decision.

Guidelines.<sup>3</sup> On February 23, 2018, the State Controller's Office filed comments concurring with the Draft Expedited Parameters and Guidelines.<sup>4</sup>

Neither the claimant nor the Department of Finance filed comments on the Draft Expedited Parameters and Guidelines.

### **III. Discussion**

The Draft Expedited Parameters and Guidelines were issued based on the activities that were approved and denied in the Test Claim Decision. No substantive comments were received on the Draft Expedited Parameters and Guidelines, and no "reasonably necessary activities" have been proposed by the claimant.

The period of reimbursement begins July 1, 2015. However, Statutes 2016, chapter 82 became effective on January 1, 2017, establishing the period of reimbursement for the activity to provide written notice by January 1 to all grade 11 pupils, beginning with the class of 2018.

The two reimbursable activities are described below.

#### **1. Opt-out Notice**

Provide a written opt-out notice to all grade 12 pupils, beginning January 1, 2015, and to all grade 11 pupils, beginning January 1, 2017, which provides an opportunity for the pupil to opt out of consideration for a Cal Grant award. Because CSAC has developed a sample Cal Grant Opt-Out Form in English and Spanish, which is available on its website for school districts to comply with the opt-out requirement,<sup>5</sup> the proposed Parameters and Guidelines state that reimbursement is not required to develop an opt-out notice.

#### **2. Submission of Pupil GPAs to CSAC**

Electronically submit the GPAs of all grade 12 pupils each academic year to CSAC, except for pupils who opt out in accordance with section 69432.9(d), pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679).

Additionally, the Test Claim Decision stated: "Statutes 2015, chapter 637 amended subdivision (c)(2) to clarify that GPAs be electronically submitted to CSAC on a "standardized form."<sup>6</sup> Thus, the following language is added to Section IV. of the Parameters and Guidelines for clarification: "Beginning January 1, 2016, the GPAs shall be electronically submitted to CSAC on a "standardized form." (Stats. 2015, ch. 637.)

And the Test Claim Decision stated that reimbursement is not required for GPA certification<sup>7</sup> or providing social security numbers (SSNs) to CSAC.<sup>8</sup> Finally, and in accordance with the Test

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<sup>3</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>4</sup> Exhibit C, State Controller's Comments on the Draft Expedited Parameters and Guidelines.

<sup>5</sup> See Exhibit A, Test Claim Decision, pages 23-24.

<sup>6</sup> Exhibit A, Test Claim Decision, page 27.

<sup>7</sup> Exhibit A, Test Claim Decision, pages 28-30.

<sup>8</sup> Exhibit A, Test Claim Decision, pages 33-35.

Claim Decision, the Draft Expedited Parameters and Guidelines clarified that reimbursement is also not required to calculate the GPA because school districts were required to calculate pupil GPAs submitted to CSAC long before the test claim statutes were enacted.<sup>9</sup>

#### **IV. Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision and Parameters and Guidelines in accordance to article XIII B, section 6(a) of California Constitution and Government Code section 17514 to provide for reimbursement beginning July 1, 2015, or later for certain specified activities.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the Proposed Decision following the hearing.

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<sup>9</sup> Exhibit A, Test Claim Decision, pages 8 and 26. Under both prior and current law, a high school pupil's GPA is calculated by a school official as follows:

“High school grade point average” means a grade point average calculated on a 4.0 scale, using all academic coursework, for the sophomore year, the summer following the sophomore year, the junior year, and the summer following the junior year, excluding physical education, reserve officer training corps (ROTC), and remedial courses, and computed pursuant to regulations of the commission. However, for high school graduates who apply after their senior year, “high school grade point average” includes senior year coursework. (Ed. Code, § 69432.7(h), Stats. 2012, chs. 38 and 575; California Code of Regulations, title 5, § 30008(a).)

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
FOR:

Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and Education Code Section 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908)

The period of reimbursement begins July 1, 2015, or on the later effective date for the specified provision (January 1, 2017).

Case No.: 16-TC-02

*Cal Grant: Opt-Out Notice and Grade Point Average Submission*<sup>10</sup>

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

(Adopted May 25, 2018)

**DECISION**

The Commission on State Mandates (Commission) heard and decided the Parameters and Guidelines during a regularly scheduled hearing on May 25, 2018. [Witness list will be included in the adopted Decision.]

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/modified/rejected] the Proposed Decision to approve the Parameters and Guidelines by a vote of [vote count will be in the adopted Decision], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	

<sup>10</sup> Note that the underlying Test Claim was entitled “*Cal Grant: Grade Point Average and Graduation Certification, 16-TC-02*” but that the Parameters and Guidelines have been renamed consistent with the activities approved for reimbursement.

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

These Parameters and Guidelines address the mandated activities performed by K-12 school districts for pupils in grades 11 and 12 to assist the California Student Aid Commission (CSAC) in determining their eligibility for Cal Grant A or B awards, through which the State provides financial assistance to college students.

On January 26, 2018, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that the test claim statutes impose a 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 for the following activities:

1. Provide a written Cal Grant opt-out notice pursuant to Education Code section 69432.9(d) (Stats. 2014, ch. 679; Stats. 2016, ch. 82) as follows:
  - Beginning January 1, 2015, provide written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to the California Student Aid Commission (CSAC); and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
  - Beginning January 1, 2017, provide written notice by January 1 to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
2. Electronically submit the grade point averages (GPAs) for all grade 12 pupils each academic year to CSAC, except for pupils who opt out in accordance with section 69432.9(d), pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679). This activity does not include the certification of GPAs or providing social security numbers (SSNs) to CSAC.

On February 2, 2018 Commission staff issued the Draft Expedited Parameters and Guidelines, which added the words “calculation or” to the exclusions from the scope of the activity to “electronically submit” the GPAs, in order to clarify that the calculation of a GPA is not new and was not approved in the Test Claim Decision, and is therefore not eligible for reimbursement. Therefore, the language in the Parameters and Guidelines now states: *“This activity does not include the calculation or certification of GPAs or providing social security numbers (SSNs) to CSAC.”*<sup>11</sup>

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<sup>11</sup> Exhibit A, Test Claim Decision, pages 8, 26.

## **II. Procedural History**

On January 26, 2018, the Commission adopted the Decision partially approving the Test Claim.<sup>12</sup> On February 2, 2018, Commission staff issued the Test Claim Decision and Draft Expedited Parameters and Guidelines.<sup>13</sup> On February 23, 2018, the State Controller's Office filed comments concurring with the Draft Expedited Parameters and Guidelines.<sup>14</sup>

Neither the claimant nor the Department of Finance filed comments on the Draft Expedited Parameters and Guidelines.

## **III. Discussion**

The Draft Expedited Parameters and Guidelines were issued in accordance with section 1183.9 of the Commission's regulations, based on the findings in the Test Claim Decision. No substantive comments were received on the Draft Expedited Parameters and Guidelines, and no "reasonably necessary activities" have been proposed by the claimant.

The Parameters and Guidelines for this program include the findings adopted by the Commission in its Test Claim Decision with respect to the period of reimbursement<sup>15</sup>, eligible claimants, and reimbursable activities. None of the parties filed comments recommending changes. The Commission therefore finds that the Parameters and Guidelines are supported by the findings in the Test Claim Decision and this Decision on the Parameters and Guidelines.

The Parameters and Guidelines contain the following information.

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

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on June 26, 2017, establishing reimbursement eligibility for the 2015-2016 fiscal year, beginning July 1, 2015. However, Statutes 2016, chapter 82 became effective on January 1, 2017, establishing the period of reimbursement for the activity to provide written notice by January 1 to all grade 11 pupils, beginning with the class of 2018.

### **B. Reimbursable Activities (Section IV. of the Parameters and Guidelines)**

The reimbursable activities are identified below.

#### **1. Opt-out Notice**

Provide a written notice to all grade 12 pupils, beginning January 1, 2015, and to all grade 11 pupils, beginning January 1, 2017 of the opportunity for the pupil to opt out of consideration for

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<sup>12</sup> Exhibit A, Test Claim Decision.

<sup>13</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>14</sup> Exhibit C, State Controller's Comments on the Draft Expedited Parameters and Guidelines.

<sup>15</sup> Based upon the filing date of the Test Claim on June 1, 2015, the potential period of reimbursement begins July 1, 2015, pursuant to Government Code section 17557(e). However, since test claim statute Statutes 2016, Chapter 82 became effective on January 1, 2017, the period of reimbursement for activities imposed by that statute begins on January 1, 2017.

a Cal Grant award. As stated in the Test Claim Decision,<sup>16</sup> CSAC developed a sample Cal Grant Opt-Out Form in English and Spanish, which is available on its website for school districts to comply with the opt-out requirement.<sup>17</sup> Because the State has provided an opt-out notice, the Parameters and Guidelines state that reimbursement is not required for school districts to develop their own opt-out notice.

## 2. Submission of Pupil GPAs to CSAC

Electronically submit the GPAs of all grade 12 pupils each academic year to CSAC, except for pupils who opt out in accordance with section 69432.9(d), pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679).

The Test Claim Decision stated: “Statutes 2015, chapter 637 amended subdivision (c)(2) to clarify that GPAs be electronically submitted to CSAC on a standardized form.”<sup>18</sup> Thus, the following language is added to Section IV. of the Parameters and Guidelines for clarification:

Beginning January 1, 2016, the GPAs shall be electronically submitted to CSAC on a “standardized form.” (Stats. 2015, ch. 637.)

The Test Claim Decision concluded that certifying GPAs<sup>19</sup> and providing SSNs to CSAC,<sup>20</sup> are not reimbursable state-mandated activities. Thus, the Parameters and Guidelines state that these activities are not eligible for reimbursement.

Finally, and consistent with the Test Claim Decision, Sections I. and IV. of the Parameters and Guidelines state that calculation of GPAs is not a reimbursable activity because it is not a new requirement and it was not approved by the Commission in the Test Claim Decision.<sup>21</sup> School districts were required to calculate pupil GPAs submitted to CSAC long before the test claim statutes were enacted. Education Code section 69432.9(c), as last amended by Statutes 2011, chapter 7, stated:

The commission shall require that a grade point average be submitted for all Cal Grant A and B applicants, except for those permitted to provide test scores in lieu of a grade point average. The commission shall require that each report of a grade point average include a certification, executed under penalty of perjury, by a school official, that the grade point average reported is accurately reported. The

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<sup>16</sup> Exhibit A, Test Claim Decision, pages 23-24.

<sup>17</sup> California Student Aid Commission, Cal Grant GPA Opt-Out Form. [http://www.csac.ca.gov/pubs/forms/grnt\\_frm/gpa\\_opt\\_out.pdf](http://www.csac.ca.gov/pubs/forms/grnt_frm/gpa_opt_out.pdf), accessed March 1, 2018.

<sup>18</sup> Exhibit A, Test Claim Decision, page 27.

<sup>19</sup> Exhibit A, Test Claim Decision, pages 28-30.

<sup>20</sup> Exhibit A, Test Claim Decision, pages 33-35.

<sup>21</sup> Exhibit A, Test Claim Decision, pages 8, 26 where the Commission notes that calculating GPAs was required by prior law in Education Code section 69432.9 and California Code of Regulations, title 5, section 30008(c).



certification shall include a statement that it is subject to review by the commission or its designee.<sup>22</sup>

Additionally, section 30008(c) of CSAC’s regulations, adopted in 2001, states:

Every high school grade point average reported to the Commission shall include a certification under penalty of perjury from the school official filing the report that the grade point average is accurately reported to the best of his or her knowledge. The certification shall include a statement that it is subject to review by the Commission or its designee. It is the responsibility of the applicant to have his or her high school grade point average reported.<sup>23</sup>

Section 30008(a) of CSAC’s regulations includes instructions on how to calculate the high school GPA (e.g., grades for physical education and ROTC are excluded). Thus, the Parameters and Guidelines state that calculating GPAs for Cal Grant eligibility is not eligible for reimbursement.

### **C. The Remaining Sections of the Parameters and Guidelines**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the following direct costs that are eligible for reimbursement: salaries and benefits, materials and supplies, contracted services, and fixed assets. However, training and travel costs are not included in the Parameters and Guidelines because those activities were not approved in the Test Claim Decision, the claimant has not requested these costs as reasonably necessary to perform the mandated activities, and has not submitted any evidence to support such a request.<sup>24</sup>

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

### **IV. Conclusion**

Based on the foregoing, the Commission hereby adopts the Proposed Decision and Parameters and Guidelines.

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<sup>22</sup> This statutory language is still in section 69432.9, but now in subdivisions (c)(1) and (c)(3).

<sup>23</sup> California Code of Regulations, title 5, section 30008(a).

<sup>24</sup> California Code of Regulations, title 2, section 1183.6 states: “The parameters and guidelines shall describe the claimable reimbursable costs and contain the following information: [¶] ... [¶] (d) Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and reasonably necessary activities required to comply with the mandate. ‘Reasonably necessary activities’ are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations.”

## **PROPOSED PARAMETERS AND GUIDELINES**

Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and Education Code Section 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908)

### *Cal Grant: Opt-Out Notice and Grade Point Average Submission*

16-TC-02

The period of reimbursement begins on July 1, 2015,  
or on the later effective date of January 1, 2017 for specified activities.

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

These Parameters and Guidelines address the mandated activities performed by K-12 school districts for pupils in grades 11 and 12 to assist the California Student Aid Commission (CSAC) in determining their eligibility for Cal Grant A or B awards, through which the State provides financial assistance to college students.

On January 26, 2018, the Commission on State Mandates (Commission) adopted the Decision finding that the test claim statutes impose a 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 to provide a written Cal Grant opt-out notice pursuant to Education Code section 69432.9(d) (Stats. 2014, ch. 679; Stats. 2016, ch. 82) and to electronically submit the grade point averages (GPAs) for all grade 12 pupils each academic year to CSAC, except for pupils who opt out in accordance with section 69432.9(d), pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679).

#### **II. ELIGIBLE CLAIMANTS**

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

#### **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on June 26, 2017, establishing eligibility for reimbursement for the 2015-2016 fiscal year, beginning July 1, 2015. However, Statutes 2016, chapter 82 became effective on January 1, 2017, establishing the period of reimbursement for the activity to provide a written opt-out notice by January 1 to all grade 11 pupils, beginning with the class of 2018, beginning January 1 2017.

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

1. Actual costs for one fiscal year shall be included in each claim.

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

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

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, 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:

- A. Provide a written Cal Grant opt-out notice pursuant to Education Code section 69432.9(d) (Stats. 2014, ch. 679; Stats. 2016, ch. 82) as follows:
  1. Beginning July 1, 2015, provide written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states "the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;" (2) identifies when the school will first send grade point averages to the California Student Aid Commission

(CSAC); and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.

2. Beginning January 1, 2017, provide written notice by January 1 to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.

***Reimbursement is not required to develop an opt-out notice because CSAC has developed an opt-out notice form, which is available on its website.***

- B. Beginning July 1, 2015, electronically submit to CSAC the GPAs for all grade 12 pupils each academic year to CSAC, except for pupils who opt out in accordance with section 69432.9(d), pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679).

Beginning January 1, 2016, the GPAs shall be electronically submitted to CSAC on a “standardized form.” (Stats. 2015, ch. 637.)

Beginning January 1, 2017 the GPAs must be electronically submitted **by October 1 of each academic year**, except for pupils who opt out in accordance with section 69432.9(d). (Ed. Code, § 69432.9(c)(2), Stats. 2016, ch. 82).

***Reimbursement is not required to calculate or certify GPAs or provide SSNs to CSAC.***

## **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. 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.

### 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 California Department of Education approved indirect cost rate for the year that funds are expended.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>25</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by

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<sup>25</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

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 applicable State funds, shall be identified and deducted from any claim submitted for reimbursement.

Grant funds received by school districts under the College Readiness Block Grant (Ed. Code, § 41580) must be identified by a school district as offsetting revenues on a reimbursement claim *if* the district uses the grant funds for this program.

## **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 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 1183.17.

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

The decisions 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.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

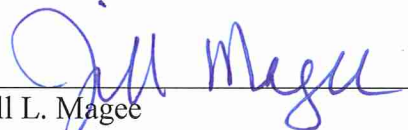
On March 19, 2018, I served the:

- **Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued March 19, 2018**

*Cal Grant: Opt-Out Notice and Grade Point Average Submission, 16-TC-02*  
Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and  
Education Code Sections 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908)  
Fairfield-Suisun Unified School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 19, 2018 at Sacramento, California.



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

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/16/18

**Claim Number:** 16-TC-02

**Matter:** Cal Grant: Opt-Out Notice and Grade Point Average Submission (Test Claim title  
Cal Grant: Grade Point Average and Graduation Certification)

**Claimant:** Fairfield-Suisun Unified School District

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

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

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