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RECEIVED
March 13, 2015
**Commission on
State Mandates**

March 13, 2015

Heather Halsey
Executive Director
COMMISSION ON STATE MANDATES
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**Re: Claimants' Comments
California Assessment of Student Performance and Progress (CAASPP)
Test Claim 14-TC-01**

Dear Ms. Halsey:

Claimants submit the following comments in support of approval of their test claim.

SUMMARY

As will be explained in more detail, the test claim statute and regulations create a reimbursable mandate based on the following:

- a. CAASPP meets the criteria for a new program or higher level of service;
- b. No Child Left Behind does not Mandate CAASPP;
- c. The offsetting revenues for CAASPP are minimal, are one-time, and are woefully insufficient to meet the need.

I. Background

Prior to the enactment of the statutes and regulations at issue in this Test Claim, California required every district to administer standardized assessments under the Standardized Testing and Reporting (STAR) assessment regime. While the assessments that comprised STAR varied over the years, the last formulation included four paper-and-pencil assessments: the California Standards Tests (CST) in English Language Arts (ELA), Mathematics, Science, and History-Social Science; the California Modified Assessment (CMA) in the same subjects for students with disabilities who have an Individualized Education Program (IEP); the California Alternate Performance Assessment (CAPA) in the same subjects for students with an IEP who have significant cognitive disabilities and who are unable to take the CSTs or the CMA with the appropriate accommodations; and the Standards-based Tests in Spanish (STS) for certain Spanish-speaking English learners (ELs).

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With the enactment of the statutes and regulations at issue in this Test Claim, California chose to force every district in California to jettison STAR and instead adopt the California Assessment for Student Performance and Progress (CAASPP) assessment regime. As with STAR, CAASPP is composed of individual assessments, although their content, approach, testing mechanism, and use under CAASPP are fundamentally different than under STAR. For 2013–14, CAASPP was composed of the following mandatory assessments:

- The Smarter Balanced Field Test for English Language Arts (ELA) and Mathematics in grades 3–8 and grade 11.
- The CST, CAPA, and CMA science assessments in grades 5, 8, and 10.
- California Alternate Performance Assessment (CAPA) for ELA and Mathematics in grades 3–8 and grade 11 for students with disabilities.

For 2014-15, CAASPP includes the same mandatory assessments as in 2013-14, except that the Smarter Balanced Field Test is now replaced by Smarter Balanced Summative Assessments for English-Language Arts and Mathematics in grades 3-8 and 11. While “the primary mode of administration of [each CAASPP assessment] shall be via a computing device, the use of an assessment technology platform, and the adaptive engine,” (5 CCR § 853 (b), the Smarter Balanced Summative Assessments are the only such “computer-adaptive” assessments currently able and required to be administered. According to CDE, a paper-pencil version of the Smarter Balanced Summative Assessments is only available for school districts that meet “specific criteria.”¹

Prior to formal adoption of CAASPP, California had voluntarily agreed to join the Smarter Balanced Assessment Consortium (SBAC) to develop computer-adaptive assessments for the CAASPP such as the Smarter Balanced Field Test and the Smarter Balanced Summative Assessments. According to the SBAC website, “California worked with 21 other states as part of the Smarter Balanced Assessment Consortium to develop these new assessments, as well as the professional and instructional resources provided to help students, teachers and schools throughout the year.”²

Joining SBAC and upgrading to computer-adaptive testing offers huge improvements for education in California. As CDE website’s states, “California’s new assessment system [i.e. the SBAC assessments] represents the next step in a comprehensive plan to promote high-quality

¹ See <http://www.cde.ca.gov/ta/tg/ai/cefcaaspp.asp>. Very few students in California are exempt from using technology adoptive tests where internet infrastructure is currently unavailable.

² See <http://www.cde.ca.gov/ta/tg/sa/sbcommonqa.asp>.

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teaching and learning and improve student outcomes. This plan recognizes that assessments can play an important role in promoting and modeling high-quality instruction.”³ The same webpage also explains how the SBAC assessments are “an improvement” over STAR, including the fact that the SBAC “tests are taken online, and results are available to teachers, schools and school districts much more quickly than results from previous tests.”⁴

To join SBAC, California agreed to abide by a memorandum of understanding (MOU) signed by the State Superintendent of Public Instruction and the Governor. The MOU defines the Consortium’s governance and decision-making processes, describes how states may join or exit the Consortium, and specifies other membership requirements.⁵

II. CAASPP is a Reimbursable State Mandate

A statute, regulation, or executive order creates a reimbursable state mandated program if it directs or obligates local governmental entities to undertake a “new program” or “higher level of service” over the former required level of service. (Cal. Const., art. XIII B, § 6.)

To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Additionally, any new program or higher level of service must also be (i) a task or activity that carries out the governmental function of providing services to the public, or (ii) a state law or regulation that imposes unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.)

Once a new program or higher level of service is mandated, the State is required to “provide a subvention of funds to reimburse the local government for the costs of the program.” (Cal. Const., art. XIII B, § 6.) More specifically, the subvention of funds (i.e., the

³ See <http://www.cde.ca.gov/ta/tg/sa/sbcommonqa.asp>.

⁴ The SBAC website similarly states: “Smarter Balanced assessments replace existing tests in English and Math. Administered online, they offer significant improvements over tests of the past, including: writing at every grade; expanded accessibility features to meet the needs of all students; and performance tasks that ask students to demonstrate an array of research, writing, and problem solving skills.” See <http://www.smarterbalanced.org/k-12-education/teachers>.

⁵ See <http://www.smarterbalanced.org/k-12-education/policymakers>.

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reimbursement) must either come from “offsetting savings . . . that result in no net costs to . . . school districts” – which is not applicable here – or from “additional revenue that is *specifically* intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate” (Gov. Code, § 17556(e), emphasis added.)

A. *The CAASPP assessment regime meets the criteria for a new program or higher level of service*

Unlike previous changes to the STAR assessment regime – which made minor changes to the assessment components of STARR – the CAASPP assessment regime is fundamentally new. First, the assessment *content* is new. The State had adopted new content standards and the CAASPP is intended to assess student knowledge of those new standards. Second, the assessment *approach* is entirely different. Under STAR, each student took basically the same test.⁶ Under CAASPP, the adaptive nature of the tests will mean that students are given fundamentally different questions. That is, students who answer the first few questions correctly will get progressively harder questions, while students who answer the first few questions incorrectly will get progressively easier questions.

Third, the assessment *mechanism* is entirely different. The CAASPP tests require hardware (i.e., a device, a keyboard, a headset, etc.), an internet connection, and software (i.e., a program through which the test is actually administered). In contrast, a student taking STAR tests simply needed a #2 pencil. Finally, the use of the assessment is different as well. Whereas STAR was used exclusively for accountability purposes by measuring academic progress, the CAASPP assessments will actually be used to drive instruction and will be “designed to measure student growth over time, which was not possible [under STAR].”⁷ In other words, the CAASPP is a “new program” for purposes of state mandate reimbursement.

CAASPP is not only a new program; it is certainly a higher level of service for similar reasons. Primarily, the assessment mechanism is clearly a higher level of service. As noted above, a student taking a STAR test simply needed a #2 pencil, where the CAASPP tests require much more – hardware (i.e., a device, a keyboard, a headset, etc.), an internet connection, and software (i.e., a program through which the test is actually administered), as well as the staff training to administer and support a computer-adaptive assessment.

⁶ There was some minor variation in the text questions to avoid cheating.

⁷ See <http://www.cde.ca.gov/ta/tg/sa/sbcommonqa.asp>.

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B. No Child Left Behind does not Mandate CAASPP

In 2001, Congress enacted the No Child Left Behind Act of 2001 (NCLB), amending Elementary and Secondary School Act, first adopted in 1965. It requires every school district receiving Title 1 funds “to comply with its requirements.” (*Race to the Top*, 10-TC-06, Statement of Decision (SOD), pp. 9-10.) Since California receives Title 1 federal funding, it must comply with NCLB requirements. The only potentially relevant NCLB requirement here is the one directing each state to develop, and its school districts to administer, assessments to determine students' levels of achievement. (*STAR II and III*, 05-TC-02, 05-TC-03, and 08-TC-06; SOD, p.10.)

Contrary to the assertion by the Department of Finance (DOF), the Commission's STAR decision did not conclude that the entire STAR assessment was a federal mandate. In August 2000, a test claim was filed regarding two assessment components, the national norm-referenced SAT/9 and foreign language SABE/2, within the STAR testing as it existed in 1997. The Commission determined that these two assessments constituted a reimbursable state mandate. (*STAR I*, 97-TC-23, SOD.)

In 2004, the Legislature ordered the Commission to reconsider this decision (Stats. 2004, ch. 216, § 34.) On reconsideration, the Commission found that the one of the two assessments (SABE/2) was a federal mandate – and, thus, not a reimbursable state mandate – while the other assessment (then renamed the CAT/6 from the SAT/9) was not required under NCLB. (*STAR I (Reconsideration)*, 04-RL-9723-01, SOD, pp. 27-33.)

The Commission further determined that all state funds specifically appropriated for STAR, and all federal Title VI funds specifically appropriated for assessment, must be used to offset the cost of the state mandated STAR activities and that such funds were sufficient to offset the mandate. (*STAR II and III*, 05-TC-02, 05-TC-03, and 08-TC-06; SOD, p.12.) As a result, the Commission concluded that it did “not need to reach the federal law issue.” (*STAR II and III*, 05-TC-02, 05-TC-03, and 08-TC-06; SOD, p.4.)

Moreover, regardless of whether STAR itself was a federal mandate, CAASPP certainly is not. California was compliant with NCLB's requirement to administer assessments to determine students' levels of achievement under STAR. Yet California chose – without any change to NCLB – to adopt a new assessment regime that was much more expansive (and expensive). That choice, and the added financial cost, is the responsibility of the State under article XIII B, section 6, not the federal government.

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Finally, it is important to note that the federal government waived California's AYP requirement for 2013-14 and for 2014-15. Thus, the relevant NCLB requirement to administer assessments to determine students' levels of achievement *does not exist* for 2013-14 and 2014-15.

C. *The offsetting revenues for CAASPP are minimal, are one-time, and are woefully insufficient to meet the need*

Neither the test claim statutes nor the relevant regulations include language that specifically provides for offsetting saving, resulting in no "net costs" to the claimants. Without such evidence, the first test of Government Code section 17556, subdivision (e) does not apply. Additionally, the second test does not apply since the test claim statutes and regulations fail to include additional revenue in an amount sufficient to specifically fund the cost of the state mandate. (Gov. Code, § 17556 (e).)

DOF incorrectly asserts a number of different revenue sources are legally offsetting. In almost every instance they are wrong.⁸

i. Restricted Common Core Implementation Funding

DOF asserts that the Common Core Standards Implementation Funding of \$1.25 billion included in the 2013-2014 budget, that is restricted for implementation of the Common Core State Standards, constitutes "additional revenue that is *specifically* intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate" (Gov. Code, § 17556(e), emphasis added.) DOF is wrong because these funds are not "*specifically* intended to fund the costs of the state mandate."

The Legislature intended the appropriation to "support the integration of academic content standards in instruction . . . for purposes of establishing high-quality instructional programs for all pupils." (Stats. 2013, ch. 48, § 85.) A recipient of the funds could do so by using the funds the following ways: (i) "Professional development . . . that is aligned to the academic content standards adopted," (ii) "Instructional materials aligned to the academic content standards," and (iii) technology "for purposes of improving the academic performance of pupils, including, but not necessarily limited to, expenditures necessary to support the administration of computer-based assessments and provide high-speed, high-bandwidth Internet

⁸ Department of Finance comments dated February 13, 2015 are defective (see CCR 1183.2(2) (d)) by failing to include the required declaration and must be disregarded.

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connectivity for the purpose of administration of computer-based assessments.” In order to use the funds, districts and county offices of education were required to “[d]evelop and adopt a plan delineating how funds . . . shall be spent” is one or more of these three areas. (*Ibid.*) In other words, districts have the discretion to use any, or none, of the Common Core funds on CAASPP-related technology and infrastructure expenses.

ii. Mandate Reimbursement Funding

DOF asserts that the \$400.5 million included in the 2013-2014 budget for the reimbursement of outstanding mandate debt constitutes “additional revenue that is *specifically* intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate” (Gov. Code, § 17556(e), emphasis added.) Again, DOF is wrong because these funds are not “*specifically* intended to fund the costs of the state mandate.”

The funds are first to be used to reimburse districts and county offices of education for outstanding mandate debt. Certainly, if a district’s or county office of education’s allocation here is less than its outstanding mandate debt, there can be no offsetting revenues for that district. Otherwise, the same funding is being used to reimburse districts and county offices of education for the cost of *two* state mandates.

Even for a district or county office of education where the district’s or county office of education’s allocation is greater than its outstanding mandate debt, there is no *legal* restriction on the use of the funds. It simply states that “[i]t is the *intent* of the Legislature that school districts will prioritize the use of these one-time funds for professional development, instructional materials, technology infrastructure, and any other investments necessary to support implementation of the common core standards in English Language Arts and Mathematics, the implementation of English language development standards, and the implementation of the Next Generation Science standards.” (Gov. Code, § 17581.8(d) (2).) In other words, the only *legal* restriction found in Government Code section 17581.8 regarding the use of the \$400.5 million is that it be for past mandate reimbursement.

Moreover, the “intended” use of the funds is not on CAASPP implementation. Instead, with one exception, the intended uses are all outside the scope of CAASPP implementation: professional development, instructional materials, and implementation of the common core standards, English language development standards, and Next Generation Science standards. The one exception – technology infrastructure – is quite broad and can easily include expenditures unrelated to CAASPP implementation.

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iii. K-12 High Speed Network Funding

DOF asserts that the \$26.7 million included in the 2013-2014 budget for the California K-12 High Speed Network constitutes "additional revenue that is specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate" (Gov. Code, § 17556(e).) DOF is wrong because districts and county offices of education do not actually receive these funds directly; they only receive the benefit. Thus, a district or county office of education would never incur actual costs that would be reimbursed by this funding source.

iv. Additional Funding Sources

DOF asserts that the \$22.7 million from Provision 6 of Item 6110-113-0890 of the 2014 Budget Act (Title VI funds) constitutes "additional revenue that is specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate" (Gov. Code, § 17556(e).) DOF is wrong because, as noted above, California received a waiver under NCLB of the requirement to administer an assessment in 2013-14 and 2014-15.

Finally, claimants do not contest that the \$126.8 million from Provision 7 of Item 6110-113-0001 of the 2014 Budget Act constitutes "additional revenues" under Government Code section 17556(e). This uncontested \$126.8 million (or even \$149.5 million if combined with the Title VI funds) is simply woefully inadequate to offset the significant financial need the test claimants have demonstrated in the claim.

III. Conclusion

The test claim legislation and regulations are a reimbursable state mandate. California chose to replace STAR with CAASPP and chose to become an SBAC member. Moreover, nothing in NCLB was amended to require this change in California. Finally, the number of offsetting revenue sources are limited and their total allocation is clearly insufficient to meet the demonstrated need.

I declare, by my signature below, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.



Arthur M. Palkowitz
Attorney for the Claimants

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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 16, 2015, I served the:

Claimant Rebuttal Comments and California Educational Technology Professionals Association Comments

California Assessment of Student Performance and Progress (CAASPP), 14-TC-01 Education Code Sections 60602, 60603, 60604, 60607, 60610, 60611, 60612, 60640, 60641, 60642.6, 60643, 60643.6, 60648, 60648.5, 60649, 60810, 99300, and 99301; Statutes 2013-2014, Chapter 489 (AB 484); Statutes 2014 Chapter 32, (SB 858); Statutes 2014, Chapter 327 (AB 1599); California Code of Regulations, Title 5, Section 850 through 864, inclusive; (Register 2014, No. 30; Effective Date: July 23, 2014)

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 16, 2015 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/13/15

Claim Number: 14-TC-01

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

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

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