

COMMISSION ON STATE MANDATES

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June 1, 2015

Mr. Arthur Palkowitz
Stutz Artiano Shinoff & Holtz
2488 Historic Decatur Road, Suite 200
San Diego, CA 92106

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

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
California Assessment of Student Performance and Progress (CAASPP), 14-TC-01
Education Code Sections 60602 et al.
Plumas County Office of Education, Plumas Unified School District, Porterville Unified
School District, Santa Ana Unified School District, Vallejo City Unified School District,
Claimants

Dear Mr. Palkowitz:

The draft proposed decision for the above-named matter is enclosed for review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **June 22, 2015**. You are advised that comments filed with the 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. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (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.

Hearing

This matter is set for hearing on **Friday, July 24, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about July 10, 2015. 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,

A handwritten signature in blue ink that reads "Heather Halsey".

Heather Halsey
Executive Director

ITEM __
TEST CLAIM
DRAFT PROPOSED DECISION

Education Code Sections 60602, 60602.5, 60603, 60604, 60607, 60610, 60611, 60612, 60640,
60641, 60642.6, 60643, 60643.6, 60648, 60648.5, 60649, 60810, 99300, and 99301;

as added or amended by

Statutes 2013, Chapter 489¹ (AB 484); Statutes 2014, Chapter 32 (SB 858);
Statutes 2014, Chapter 327 (AB 1599)

and California Code of Regulations, Title 5, Sections 850-864

as added or amended by

Register 2014, No. 30 and Register 2014, No. 35.

California Assessment of Student Performance and Progress (CAASPP)

14-TC-01

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

EXECUTIVE SUMMARY

Overview

This test claim alleges reimbursable costs mandated by the state for school districts to administer statewide academic assessments to students in accordance with the requirements of Statutes 2013, chapter 489; Statutes 2014, chapter 327; Statutes 2014, chapter 32; and title 5 of the California Code of Regulations, sections 850-864, as amended by Register 2014, Nos. 30 and 35. As the analysis herein explains, many of the code sections and regulations pled do not contain any mandatory or directory language, or mandate actions only by state-level entities such as the Superintendent of Public Instruction or the State Board of Education. Several more of the code sections pled make only clarifying changes, and do not impose new activities on local government. And, while just a few of the code and regulatory sections as amended by the statutes and registers pled do impose activities on local government that were not required under prior law, the analysis concludes that Local Education Agencies (LEAs) may have incurred increased costs mandated by the state during fiscal year 2013-2014, but beginning July 1, 2014 there are no costs mandated by the state, because the state has provided funding which is sufficient as a matter of law to cover the costs of the mandate.

¹ This statute was pled as “Statutes 2013-2014, Chapter 489 (AB 484)” in the test claim. However, it was chaptered by the Secretary of State and is later referred to by the Legislature, in the state budget as “Statutes 2013, Chapter 489”. Therefore, this analysis will refer to it as “Statutes 2013, Chapter 489”.

Procedural History

This test claim was filed with the Commission on State Mandates (Commission) on December 23, 2014,² and deemed complete and issued for comment on January 2, 2015. On January 28, 2015, the Department of Finance (Finance) requested an extension of time to comment on the test claim, which was granted for good cause.

On February 13, 2015, Finance filed written comments on the test claim.³ Between February 12, 2015, and February 24, 2015, the following local governments filed comments on the test claim: Orange County Board of Education; Visalia Unified School District; Tulare Joint Union High School District; Santa Rosa City Schools; San Lorenzo Valley Unified School District; Del Norte County Office of Education; Cupertino Union School District; Belmont-Redwood Shores School District; Santa Cruz City Schools; and Moreno Valley Unified School District.⁴ And, on February 12, 2015, Vallejo City Unified School District submitted a request to be joined as a claimant in the test claim,⁵ which request was granted and noticed on February 18, 2015. On March 13, 2015 the claimants filed rebuttal comments,⁶ and the California Educational Technology Professionals Association filed comments on the test claim.⁷ On March 17, 2015, the claimant filed an amendment to the test claim, which was deemed incomplete. On March 27, 2015, the claimant cured the filing, and the amendment was deemed complete, and deemed to replace the December 23, 2014 test claim filing.⁸ On April 27, 2015, Finance filed late comments in answer to claimants' rebuttal comments on the original test claim filing.⁹

On June 1, 2015, Commission staff issued the draft proposed decision.¹⁰

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class

² Exhibit A, Test Claim 14-TC-01. Based upon the filing date of December 23, 2014, the potential period of reimbursement begins July 1, 2013. However, since the effective dates of the test claims and regulations are later dates, the potential period of reimbursement begins on the effective date of the statute or regulation that imposes a state-mandate.

³ Exhibit B, Finance Comments on Test Claim 14-TC-01.

⁴ Exhibit X, Supporting Documentation.

⁵ Exhibit C, Vallejo City Unified School District Request to Join Test Claim and Declarations.

⁶ Exhibit D, Claimant Rebuttal Comments.

⁷ Exhibit X, Supporting Documentation.

⁸ Exhibit X, Notice of Complete Test Claim Filing.

⁹ Exhibit E, Finance Late Comments.

¹⁰ Exhibit F, Draft Proposed Decision.

actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.¹¹

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Subject	Description	Staff Recommendation
Education Code section 60602, as amended by Statutes 2013, chapter 489 (AB 484)	Section 60602, which states that it shall become inoperative on July 1, 2014, states the intent of the Legislature to create statewide standardized testing and evaluation instruments to improve public education.	<i>Deny</i> – this section states only the intent of the Legislature, and does not mandate any activities on local government.
Education Code section 60602.5, as added by Statutes 2013, chapter 489 (AB 484)	Section 60602.5, scheduled to become operative on July 1, 2014, states the intent of the Legislature to provide statewide testing to assist teachers, administrators, and pupils and their parents; to improve teaching and learning; and to promote high-quality teaching and learning using a variety of assessment approaches and item types.	<i>Deny</i> – this section states only the intent of the Legislature, and does not mandate any activities on local government.
Education Code section 60603, as amended by Statutes 2013, chapter 489 (AB 484); Statutes 2014, chapter 327 (AB 1599)	Section 60603 provides definitions of key terms “[a]s used in this chapter”, including, but not limited to, “achievement test”, “computer-based assessment”, “field test”, and “local educational agency”.	<i>Deny</i> – this section provides only definitions, and does not mandate any activities on local government.
Education Code section 60604, as amended by Statutes 2013, chapter 489 (AB 484); Statutes 2014, chapter 327 (AB	Section 60604 requires the Superintendent of Public Instruction to design and implement a statewide pupil assessment system consistent	<i>Deny</i> – this section imposes new activities only on the Superintendent of Public Instruction, and does not mandate any new activities on

¹¹ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

1599)	with the requirements of the article and the objectives set forth in section 60602.5.	local government.
Education Code section 60607, as amended by Statutes 2013, chapter 489 (AB 484); Statutes 2014, chapter 327 (AB 1599)	Section 60607 states that each pupil shall have an individual record by the end of grade 12 including the results of standardized and end-of-course examinations; and that the results or the individual record shall be private and may not be released without permission from the pupil or a parent or guardian. In addition, section 60607 states the intent of the Legislature that the results of the academic achievement tests be used by local educational agencies and schools to provide support and assist pupils in their academic development.	<i>Deny</i> – the amendments to this section are non-substantive, and merely replace the Standardized Testing and Reporting (STAR) program with the “Measurement of Academic Performance and Progress (MAPP)” and then later the “California Assessment of Student Performance and Progress (CAASPP)”.
Education Code section 60610, as amended by Statutes 2013, chapter 489 (AB 484); Statutes 2014, chapter 327 (AB 1599)	Section 60610 provides that at the request of the state board, and in accordance with its rules and regulations, each county superintendent shall cooperate with and assist school districts and charter schools under his or her jurisdiction in carrying out the testing programs and other duties imposed on school districts by this chapter.	<i>Deny</i> – the only change to section 60610 made by the test claim statutes is to add “charter schools” following “school districts”. This change may expand the number of schools that a county superintendent is required to cooperate with and assist, but it does not constitute a new activity or task. Nothing in the amended language imposes new activities on county offices of education.
Education Code section 60611, as amended by Statutes 2013, chapter 489 (AB 484); Statutes 2014, chapter 327 (AB 1599)	Section 60611 states that an LEA, district superintendent, principal or teacher of any elementary or secondary school, including a charter school, shall not carry on any program for the sole purpose of test preparation of pupils for the statewide pupil assessment system or a particular test used in the statewide assessment.	<i>Deny</i> – this section is prohibitive, not mandatory, and does not impose any new activities or tasks on local government.

<p>Education Code section 60612, as amended by Statutes 2013, chapter 489 (AB 484)</p>	<p>Section 60612 requires the Superintendent of Public Instruction, “[u]pon adoption or approval of assessments pursuant to this chapter” to “prepare and make available to parents, teachers, pupils, administrators, school board members, and the public, easily understood materials...describing the nature and purposes of the assessments, the systems of scoring, and the valid uses to which the assessments will be put.”</p>	<p><i>Deny</i> – this section imposes new duties on the Superintendent of Public Instruction, and does not, by its plain language, impose any activities or tasks on local government.</p>
<p>Education Code section 60641, as amended by Statutes 2013, chapter 489 (AB 484); Statutes 2014, chapter 327 (AB 1599)</p>	<p>Section 60641 requires local educational agencies to administer the CAASPP tests to all pupils, including charter school pupils but excluding pupils exempted pursuant to section 60640, and to report the results of the assessments described in section 60640 to a pupil’s parent or guardian, and to the school and teachers; and to report districtwide, school-level, and grade-level results to the governing board of the school district and the county office of education.</p>	<p><i>Deny</i> – this section provides for the administration of the CAASPP, and reporting the scores to pupils, parents, schools, and teachers, as specified. However, these requirements all existed with the former STAR test, and the changes are either technical or limiting, as compared with prior law, and there is no new or additional activity required.</p>
<p>Education Code section 60642.6, as added by Statutes 2013, chapter 489 (AB 484)</p>	<p>Section 60642.6 provides that the California Department of Education shall acquire and offer to LEAs at no cost interim and formative assessment tools for kindergarten and grades 1 through 12.</p>	<p><i>Deny</i> – this section imposes a requirement only on the California Department of Education, not on local government.</p>
<p>Education Code section 60643, as amended by Statutes 2013, chapter 489 (AB 484); Statutes 2014, chapter 327 (AB 1599)</p>	<p>Section 60643 provides the requirements of contracts entered into between the California Department of Education and “the contractor or contractors of the achievement tests provided for in Section 60640”.</p>	<p><i>Deny</i> – this section requires new activities only of the Department and the Superintendent; the contracting for the statewide assessment does not involve local government, and nothing in this section imposes new requirements on local</p>

		government.
Education Code section 60643.6, added by Statutes 2013, chapter 489 (AB 484); amended by Statutes 2014, chapter 327 (AB 1599)	Section 60643.6 provides that an LEA shall be reimbursed by the contractor for any unexpected expenses incurred due to scheduling changes that resulted from the late delivery of testing materials.	<i>Deny</i> – this section imposes a duty on the contractor selected to provide the assessments to reimburse an LEA in the case of late delivery causing unexpected expenses; it does not impose any new activities or costs on local government.
Education Code section 60648, as amended by Statutes 2013, chapter 489 (AB 484); Statutes 2014, chapter 327 (AB 1599)	Section 60648 provides that the Superintendent shall recommend, and the state board shall adopt, performance standards for the CAASPP summative tests, and the state board shall review those standards every five years to determine whether adjustments are necessary.	<i>Deny</i> – this section places requirements on the Superintendent and the state board, not on local governments. The section does not impose any new activities or tasks on local government.
Education Code section 60648.5, as added by Statutes 2013, chapter 489 (AB 484)	Section 60648.5 provides that the first full administration of the new assessments shall occur in the 2014-2015 school year unless the state board determines otherwise; and that the Department of Education shall determine how school districts are progressing toward implementation and the extent to which the assessments aligned to the common core standards in English and mathematics can be fully implemented.	<i>Deny</i> – this section provides a time for implementation of the CAASPP assessments provided for in sections 60640 and 60641, but does not itself contain the mandatory language requiring school districts to administer the assessments. The remaining mandatory requirements of this section are aimed at the Department of Education, not at local government.
Education Code section 60649, as added by Statutes 2013, chapter 489 (AB 484)	Section 60649 requires the department to develop a three year plan, with approval of the state board, supporting the continuous improvement of the assessments, and including a process for obtaining independent, objective technical advice and consultation. This section remains in effect only until July 1, 2021, by its own terms, unless extended by a later	<i>Deny</i> – this section imposes new requirements only on the Department of Education, not on local government. There are not new activities or tasks required of local government based on the plain language of this section.

	enactment.	
Education Code section 60810, as amended by Statutes 2014, chapter 327 (AB 1599)	Section 60810 requires the Superintendent to review existing tests that assess the English language development of pupils whose primary language is other than English and determine which, if any, is sufficient to assess pupils in grades 2 through 12, and provide sufficient information to determine proficiency. The Superintendent shall either select an appropriate test and report to the state board and the Legislature, or may, with approval of the state board, contract to develop a test or series of tests or modify an existing test to satisfy the requirements.	<i>Deny</i> – this section imposes duties only on the Superintendent of Public Instruction, and does not mandate any new activities or tasks on local government.
Education Code section 99300, as amended by Statutes 2013, chapter 489 (AB 484)	Section 99300 provides that for purposes of the Early Assessment Program established for the CSU system and the California Community Colleges, the former tests, the California Standards Test (CST) and the augmented CST “may be replaced with the grade 11 consortium computer-adaptive assessments...”	<i>Deny</i> – this section does not impose any new activities or tasks on local government. It merely clarifies that for purposes of the EAP, community colleges and the CSUs may now rely on the new CAASPP assessments, rather than the former CST.
Education Code section 99301, as amended by Statutes 2013, chapter 489 (AB 484), section 28.5	Section 99301 was amended to provide that the results of the grade 11 CAASPP tests, or a standards-aligned successor assessment, could be used by community colleges, and provided to the Chancellor of the California Community Colleges, to provide diagnostic advice to, or for the placement of, prospective community college students participating in the Early Assessment Program.	<i>Deny</i> – this requirement is not new; prior law provided for the same information to be made available to the Chancellor with respect to the CST, and the amendments to section 99301 are technical and clarifying in nature, and merely recognize the change from the CST program to the CAASPP program of assessment.

Code of Regulations, title 5 sections 862 862.5, 863, and 864.	Sections 862 862.5, 863, and 864, make up a portion of the body of law which implements the CAASPP testing program, including reporting requirements, a description of funding apportionments and allowable uses of those apportionments, and a requirement to comply with requests from contractors and the consortium.	<i>Deny</i> – Register 2014, No. 30 reenacted sections 862 862.5, 863, and 864 exactly as written in Register 2014, No. 6. ¹² Register 2014, No. 35 also made no changes to these sections. Therefore, Code of Regulations, title 5, sections 862 862.5, 863, and 864, which were not amended by Register 2014, Nos. 30 and 35, do not impose any new activities on local government.
Code of Regulations, title 5, sections 850; 851; 852; 853.5; 853.7; 855; 857; 858; 859;, as amended by Register 2014, Nos. 30 and 35.	Sections 850; 851; 852; 853.5; 853.7; 855; 857; 858; 859, as pled, implement the CAASPP testing program, including providing definitions of terms, specifying the timing of the tests during the school year, describing the designated supports and accommodations that must be included in the testing software, providing for the duties of LEA and test-site coordinators, and stating the contents of the security agreements.	<i>Deny</i> – Sections 850; 851; 852; 853.5; 853.7; 855; 857; 858; 859 as amended by Register 2014, Nos. 30 and 35 do not impose any new requirements or activities as compared with prior law.
Education Code section 60640, as amended by Statutes 2013, chapter 489 (AB 484) and Statutes 2014, chapter 32 (SB 858); and Code of Regulations, title 5, section 853, as amended by Register 2014, No. 35.	Education Code section 60640 describes the contents of the CAASPP, including the “consortium summative assessments”, and provides that the Superintendent of Public Instruction shall make available a paper and pencil version of the assessments for up to three years for pupils unable to access the computer-based assessments. Section 853 of the regulations provides that the primary mode of administration of the	<i>Partially Approve</i> – the test claim statutes require, and the regulations reiterate, that the new CAASPP assessments shall be administered on computers. Beginning July 1, 2014, there is substantial new funding provided that is specifically intended to pay for the mandated costs, and in an amount that is sufficient as a matter of law to cover the costs of the program. However, from January 1, 2014 to June 30, 2014, there is

¹² Compare Code of Regulations, title 5, section 864 (Register 2014, No. 6) with Code of Regulations, title 5, section 864 (Register 2014, No. 30).

	CAASPP shall be via a computing device.	funding available, but it is not required to pay for the mandated activities. Therefore, staff finds that costs incurred between January 1, 2014 and June 30, 2014 to prepare for and administer the CAASPP via computers, including, as necessary, the purchase of hardware, software, or peripherals, and technology infrastructure improvements, may be reimbursable to the extent LEAs utilize general revenue-limited funds to pay for those incurred costs.
Code of Regulations, title 5, section 861	Section 861 provides that LEAs shall provide any and all program and demographic data requested by the California Department of Education; and, in addition, shall report pupils that are not tested due to exemption or illness, and pupils who used designated supports, accommodations, or individualized aids.	<i>Deny</i> – Register 2014, No. 35 adds new express provisions to the report filed with the Department, beginning August 27, 2014, to include information on pupils who used designated supports or individualized aids. This constitutes an increased level of service. However, beginning July 1, 2014, there is substantial new funding provided that is specifically intended to pay for the mandated costs, and in an amount that is sufficient as a matter of law to cover the costs of the program. Therefore, this activity does not impose costs mandated by the state.

Analysis

A. Most of the code sections and regulations pled do not impose any activities on local government or are not new as compared to the law immediately prior to the statutory or regulatory sections pled, and, thus, do not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

1. Statutes Pled

The Statutes pled in this test claim are Statutes 2013, chapter 489; Statutes 2014, chapter 32; and Statutes 2014, chapter 327. The majority of the code sections amended by the statutes pled do

not impose any requirements at all, or do not impose new activities as compared with prior law. For example, sections 60602 and 60602.5, as added or amended, contain only Legislative intent language. Section 60603, as amended, is definitional, and section 60611 is prohibitive; neither contains any mandatory language. Sections 60604, 60612, 60642.6, 60643, 60643.6, 60648, 60648.5, 60649, and 60810 impose new activities only on state entities, rather than local governments. Sections 60607, 60610, 60641, 99300, and 99301 make only clarifying and consistency changes, and do not impose new activities. Staff finds that none of these sections impose any new requirements on local government, and each must be denied.

2. Regulations Pled

Government Code section 17553 requires that all test claims include “[a] written narrative that identifies specific sections of statutes or executive orders and the *effective date and register number* of regulations alleged to contain a mandate...”¹³ Accordingly, claimants are required to plead with specificity the statutes and chapters, and regulations with register number and effective date. Here, the amended test claim pleads Code of Regulations, title 5, sections 850-864, inclusive, as added or amended by Register 2014, No. 30 and Register 2014, No. 35.

However, Code of Regulations, title 5, sections 850-864 have long existed and, prior to the test claim regulations, were most recently amended by Register 2014, No. 6, which was transmitted to the Office of Administrative Law (OAL) as an emergency regulatory action, with an effective date of February 3, 2014, set to expire on August 5, 2014.¹⁴ Because only Register 2014, Nos. 30 and 35 were pled, only the changes made by those regulatory actions may be considered in this test claim. The Commission’s analysis focuses on activities that are new as compared with the law in effect prior to the statutes and regulations pled.¹⁵

Register 2014, No. 30 reenacted sections 862, 862.5, 863, and 864 exactly as written in Register 2014, No. 6.¹⁶ Register 2014, No. 35 also made no changes to these sections. Therefore, Code of Regulations, title 5, sections 862, 862.5, 863, and 864, which were not amended by Register 2014, Nos. 30 and 35, do not impose any new activities on local government.

Additionally, section 850 does not impose any requirements on local government.

Finally, sections 851; 852; 853.5; 853.7; 855; 857; 858; 859 as amended by Register 2014, Nos. 30 and 35 do not impose any new requirements or activities as compared with prior law

Accordingly, staff finds that sections 862, 862.5, 863, and 864, which were not amended by Register 2014, Nos. 30 and 35 and 850, 851, 852, 853.5, 853.7, 855, 857, 858, 859, as amended by Register 2014, Nos. 30 and 35, must be denied.

¹³ Government Code section 17553(b)(1) (Stats. 2007, ch. 329 (AB 1222)). See also Code of Regulations, title 5, section 1183.2

¹⁴ Exhibit X, February 2014 Emergency Regulations.

¹⁵ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁶ Compare Code of Regulations, title 5, section 864 (Register 2014, No. 6) with Code of Regulations, title 5, section 864 (Register 2014, No. 30).

B. Education Code section 60640 and section 861 of the title 5 regulations, as amended by the test claim statutes and regulations, impose two new activities on local government that mandate a new program or higher level of service.

1. Education Code section 60640, as amended by the test claim statutes, imposes a new one-time requirement on school districts to provide computer technology necessary for each student to take the CAASPP.

Section 60640, as amended by the test claim statutes, replaces the STAR exam with the CAASPP, beginning in the 2013-2014 school year. The statute replaces the former CSTs required for grades 2 to 11, inclusive, in English language arts and mathematics with the Smarter Balanced summative assessments, which are designed to be administered on computer, and to be adaptive to student responses. Grades 9 and 10 are no longer required to take the annual assessments previously required,¹⁷ and the California Modified Assessment is no longer necessary with the appropriate “universal tools” and “designated supports” available within the computer adaptive Smarter Balanced tests.¹⁸ Therefore, pursuant to section 60640, as amended, only the following tests are now required:

- A consortium summative assessment in English language arts and mathematics for grades 3-8 and 11, aligned with the Common Core State Standards;
- Science grade level assessments in grades 5, 8, and 10, aligned with standards adopted by SBE, until a successor assessment is implemented on the Superintendent’s recommendation;
- The California Alternate Performance Assessment in grades 2 to 11, inclusive, in English language arts and mathematics, and the CAPA for science in grades 5, 8, and 10, which measures content standards adopted pursuant to Section 60605 until a successor assessment is implemented; and
- The Early Assessment Program established by Chapter 6 (commencing with Section 99300).

School districts are authorized, but not required, to administer a primary language assessment aligned to the English language arts standards adopted pursuant to Section 60605 to pupils who are identified as limited English proficient and enrolled in any of grades 2 to 11, inclusive, until a subsequent primary language assessment aligned to the common core standards in English language arts is developed.¹⁹ A school district may also “administer achievement tests in grades other than those required by this section as it deems appropriate.”²⁰

Many of the plain language requirements of section 60640 are either not new, or constitute a lower level of service as compared with prior law. For example, the requirement to administer a

¹⁷ Assembly Third Reading, AB 484, as amended May 24, 2013.

¹⁸ See Exhibit X, CMA Pilot Test, California Department of Education.

¹⁹ Education Code section 60640(b) (Stats. 2013-2014, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858)).

²⁰ Education Code section 60640(i) (Stats. 2013-2014, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858)).

statewide assessment pursuant to section 60640(b), (f), and (k) is no different under prior law. Former section 60640(b) provided: “From the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 2 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5.” Section 60642.5, in turn, required the Superintendent to develop an assessment, “to be called the California Standards Tests,” which included “reading, spelling, written expression, and mathematics” for pupils in grades 2 to 8, and “reading, writing, mathematics, history-social science, and science” for pupils in grades 9 to 11.²¹ Amended section 60640 provides for the assessments to include “[a] consortium summative assessment in English language arts and mathematics for grades 3 to 8, inclusive, and grade 11...” and “[s]cience grade level assessments in grades 5, 8, and 10...” Therefore, the assessments required under section 60640(b) are a *lower level of service* than that required under former sections 60640 and 60642.5.

Moreover, section 60640(b)(1)(B) explains that “[i]n the 2013-14 school year, the consortium summative assessment in English language arts and mathematics *shall be a field test only*...” The field test is not intended to include all components of the assessments, and indeed the CDE report to the State Board and the Legislature indicates that many students only participated in either the computer-based test or the performance task, and not both.²² In addition, school districts were not required to report the results of the field test, either to parents, or for state and federal accountability purposes.²³ Therefore, the requirement of section 60640 to administer a field test for the 2013-2014 school year constitutes a lower level of service, and not new, except with respect to the use of computers, as discussed below.

Section 60640(k), as amended, restates exactly the requirements of former section 60640(e), except that the reference to Title 20, United States Code, section 1412(a)(17) now states “Section 11412(a)(16) of Title 20...”²⁴ And, the requirements of former section 60640(f), describing the primary language assessment, are restated in section 60640(b)(5).²⁵

None of the above-described provisions constitutes an increase in service or a new activity. However, there is an increase in the level of service, and a new requirement, inherent in the administration of the new CAASPP tests via computer. Section 60640(e) provides:

²¹ Education Code section 60642.5 (Stats. 2008, ch. 752 (AB 519)); See also, former Education Code section 60603 (Stats. 2004, ch. 233 (SB 1448)).

²² Education Code section 60640(f)(2) (Stats. 2013-2014, ch. 489 (AB 484)); Education Code section 60603 (Stats. 2013-2014, ch. 489 (AB 484)). See also, Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, pages 16; 41.

²³ Exhibit X, Smarter Balanced Field Test Questions and Answers, page 1.

²⁴ Compare Former Education Code section 60640(e) (as amended, Stats. 2009-2010, 5th Ex. Sess., ch. 2 (SBX5 1)) with Education Code section 60640(k) (as amended, Stats. 2013, ch. 489 (AB 484)).

²⁵ Compare Former Education Code section 60640(f) (as amended, Stats. 2009-2010, 5th Ex. Sess., ch. 2 (SBX5 1)) with Education Code section 60640(b) (as amended, Stats. 2013, ch. 489 (AB 484)).

The Superintendent shall make available a paper and pencil version of any computer-based CAASPP assessment for use by pupils who are unable to access the computer-based version of the assessment for a maximum of three years after a new operational test is first administered.²⁶

Additionally, the definitions found in section 60603 of “computer adaptive assessment” and “computer-based assessment” demonstrate the Legislature’s intent that the new assessments are to be computer-based. Moreover, section 853 of the title 5 regulations, as amended by Register 2014, No. 35, states the following: “The primary mode of administration of a CAASPP tests shall be via a computing device, the use of an assessment technology platform, and the adaptive engine.”²⁷

School districts were not required under prior law to provide computers and adequate technology necessary to administer standardized assessments under the STAR program. Thus, beginning January 1, 2014, the requirement to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers, is new. However, staff notes that this requirement is a one-time requirement. Each LEA CAASPP coordinator is required by section 857 of the title 5 regulations to “ensure current and ongoing compliance with the minimum technology specifications as identified by the CAASPP contractors.”²⁸ This ongoing duty, however, was added by Register 2014, No. 6, which was not pled in this test claim.²⁹ Thus, the Commission cannot, as a matter of law, find an ongoing requirement to ensure compliance with the technology.

Staff finds that the one-time requirement to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers provides a higher level of service to the public. The goal of CAASPP is to provide assessments that can assist teachers, administrators, students and parents/guardians with a better understanding of college and career readiness, which are aligned to the Common Core State Standards. The computer adaptive assessments are intended to provide more accurate and faster results for teachers and pupils.³⁰

2. California Code of Regulations, title 5, section 861, as amended by Register 2014, No. 35 (eff. August 27, 2014), requires school districts to include new information in their report to CDE.

Education Code section 60640(n), effective January 1, 2014, required school districts to report to the Superintendent all of the following information as a condition of receiving funds: (1) The pupils enrolled in the local educational agency in the grades in which assessments were

²⁶ Education Code section 60640(e) (Stats. 2013-2014, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858)).

²⁷ Code of Regulations, title 5, section 853(b) (Register 2014, No. 35).

²⁸ Code of Regulations, title 5, section 857 (Register 2014, No. 6).

²⁹ Exhibit A, Test Claim 14-TC-01, page 1.

³⁰ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 8. See also, www.smarterbalanced.org [entries “About” and “Computer Adaptive Testing”].

administered pursuant to subdivisions (b) and (c); (2) The pupils to whom an achievement test was administered pursuant to subdivisions (b) and (c) in the local educational agency; and (3) The pupils in paragraph (1) who were exempted from the test pursuant to this section.³¹ In addition, section 861 of the Title 5 regulations, effective February 3, 2014, required school districts to provide any and all program and demographic pupil data requested by CDE in order to assess pupils under the CAASPP requirements of Education Code section 60640 and for inclusion in the California Longitudinal Pupil Achievement Data System (CALPADS.)³²

However, section 861, as amended by Register 2014, No. 35, effective August 27, 2014, added two additional items to be reported to CDE in subdivision (b): if a pupil used a designated support, and if a pupil used an individualized aid.

Former Education Code section 60643, in accordance with the federal accountability requirements, provided that test publishers for the former STAR assessments must agree to provide disaggregated scores for limited-English-proficient pupils, as well as providing disaggregated scores for pupils who have individualized education programs.³³ However, even though information about designated supports and individualized aids provided for pupils subject to the CAASPP assessment may be necessary for the state to provide disaggregated scores for purposes of federal reporting requirements under No Child Left Behind (NCLB), there was no prior requirement in the law for school districts to provide this information to CDE.

Thus, these reporting requirements are new, and increase the level of service provided to the public by helping the state obtain NCLB funding for public education.³⁴ Since section 861, as amended by Register 2014, No. 35, became effective on August 27, 2014 (after the CAASPP field test) school districts will be required to first comply with the new reporting requirements of section 861 following the administration of the spring 2014-2015 CAASPP tests.

3. The new requirements imposed by Education Code Section 60640 and California Code of Regulations, title 5, section 861, as amended by the test claim statutes and regulations are mandated by state law.

Finance argues that the CAASPP program, like the STAR testing program that preceded it, is required to meet federal program requirements, and to avoid a loss of funding. Finance states: “we reiterate comments previously submitted as part of the proceedings for the STAR test claim...that NCLB is a federal mandate, and therefore the STAR program could not be found to be a state mandate because it is required to comply with NCLB.”^{35,36}

³¹ Education Code section 60640(n) (Stats. 2013, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858)).

³² CALPADS is a longitudinal data system used to maintain individual-level data including student demographics, course data, discipline, assessments, staff assignments, and other data for state and federal reporting.

³³ Former Education Code section 60643 (Stats. 2009-2010, 5th Ex. Sess., ch. 2 (SB 11)).

³⁴ *Long Beach Unified School Dist. v. State* (1990) 225 Cal.App.3d 155, 172, [finding that education is a peculiarly governmental function and is administered by local agencies to provide a service to the public].

³⁵ Exhibit C, Finance Comments, pages 1-2.

The claimants counter that the STAR test claim determined that some of the testing requirements *were* a reimbursable mandate, notwithstanding the underlying federal requirement to administer standardized academic assessments; and that the STAR II and III test claim did not reach the federal mandate issue. And, the claimants argue, “regardless of whether STAR itself was a federal mandate, CAASPP certainly is not.” The claimants reason that “California was compliant with NCLB’s requirement to administer assessments to determine students’ levels of academic achievement under STAR...[but the Legislature] chose – without any change to NCLB – to adopt a new assessment regime that was much more expansive (and expensive).”³⁷

Government Code section 17556(c) provides that the Commission shall not find costs mandated by the state where the test claim statute or regulations impose a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, “unless the statute or executive order mandates costs that *exceed the mandate in that federal law or regulation*.”³⁸

In *Hayes*, the court determined that even if the state enacts legislation to comply with a federal mandate, the activities required by the legislation may still impose a state-mandated program if the manner of implementation of the federal program is left to the true discretion of the state. “If the state freely chooses to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.”³⁹

In addition, the Court of Appeal in *Long Beach Unified School District v. State*⁴⁰ considered whether regulations requiring local educational agencies to take certain specific steps to alleviate or eliminate racial segregation in schools could constitute a state mandate, given that school districts already had a duty to do so based on the Constitution of the United States and case law interpreting the Constitution. The court held that while “school districts do indeed have a constitutional obligation to alleviate racial segregation...the courts have been wary of requiring specific steps in advance of a demonstrated need for intervention.” The court continued: “a review of the Executive Order and guidelines shows that a higher level of service is mandated because their requirements *go beyond constitutional and case law requirements*.”⁴¹ In other words, because the test claim regulation in *Long Beach Unified* was both more expansive and

³⁶ SBE, for its part, asserts that the test claim regulations do not impose a state mandate because they do not extend beyond the scope and purpose of the test claim statutes. See, e.g., Exhibit X, Final Statement of Reasons for CAASPP Regulations [discussing proposed changes to sections 853.5 and 853.7: “Mandating in the regulations that LEAs make an affirmative determination concerning every ELs need for a designated support(s) is not required by federal law and would create an unfunded mandate when there is nothing in the CAASPP law creating a state mandate.”].

³⁷ Exhibit D, Claimant Comments, page 5.

³⁸ Government Code section 17556(c) (Stats. 2010, ch. 719 (SB 856)) [emphasis added].

³⁹ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-1594.

⁴⁰ *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155.

⁴¹ *Id.*, at p. 173 [emphasis added].

more specific than what was required by federal law, the court found a reimbursable state mandate.

Section 60640, as amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 32 replaces the STAR with the CAASPP for the 2013-2014 school year. Like the STAR program that preceded it, there is no dispute that the CAASPP tests satisfy the accountability requirements of NCLB. However, the state was not forced to adopt the computerized CAASPP tests in order to comply with NCLB.

Therefore, staff finds that the following new requirements are mandated by the state:

- Beginning January 1, 2014, the one-time requirement to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers. (Ed. Code, § 60640, Stats. 2013, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858).)
- Beginning August 27, 2014, include in the report to CDE, if a pupil used a designated support or an individualized aid for purposes of the CAASPP assessment. (Cal. Code Regs., tit. 5, § 861(b), Register 2014, No. 35.)

C. There are Costs Mandated by the State Pursuant to Government Code Section 17514, From January 1, 2014 until June 30, 2014 Only.

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 17556(e) implements article XIII B, section 6, which requires subvention only when the costs in question can be recovered solely from tax revenues.

- 1. The 2013-2014 Budget Act contains only potentially offsetting revenues, pursuant to Government Code sections 17556(e) and 17557, and therefore some school districts may have incurred costs mandated by the state from January 1, 2014 through June 30, 2014 for the one-time activity to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers.**

Line Items 6110-113-0001 and 6110-113-0890, in the 2013-2014 Budget Act, address costs of the STAR assessments, which were replaced by CAASPP as of January 1, 2014. To the extent school districts applied the funds intended for STAR to the costs of the new assessments, their annual claims should reflect an adjustment to reimbursable costs mandated by the state,⁴² but nothing in the 2013-2014 Budget Act requires school districts to apply funding to a program that did not yet exist when the Budget Act was written.

Similarly, although Statutes 2013, chapter 48 (AB 86) recognizes the pending improvements in internet connectivity that may be necessary to administer computer-based assessments, the \$1.25

⁴² See *County of Fresno v. State of California* (1991) 53 Cal.3d 482, p. 487 [“...read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.”].

billion in Common Core implementation funding is not *required* to fulfill those needs first; it expressly states that a school district shall expend funds “for *any* of the following purposes...”⁴³

As noted above, the earliest of the three test claim statutes pled, Statutes 2013, chapter 489, has an effective date of January 1, 2014. The administration of the 2013-2014 field test of the Smarter Balanced computer-based assessments was scheduled to take place, in accordance with the February 2014 emergency regulations, “during a testing window of 25 instructional days that includes 12 instructional days before and after completion of 85 percent of the school’s, track’s, or program’s instructional days.”⁴⁴ As a result, all students were administered the field test between March 25 and June 13 of 2014.⁴⁵ Therefore, at least some school districts likely incurred mandated costs for the one-time activity to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers after January 1, 2014, but before the 2014-2015 Budget Act took effect on July 1, 2014. To the extent school districts can show that they incurred state-mandated increased costs to comply with this requirement between January 1, 2014 and June 30, 2014, those costs are mandated by the state and are eligible for reimbursement.

2. Absent evidence to the contrary, the State has appropriated revenues sufficient to fund the cost of both mandated activities in the 2014-2015 Budget Act and, thus, there are no costs mandated by the state beginning July 1, 2014.

Two budget line items in the 2014-2015 Budget Act, Statutes 2014, chapter 25 (SB 852), together provide over \$145 million⁴⁶ for local assistance to implement the CAASPP, and section 862 of Code of Regulations, title 5, clearly states that the apportionment made to each LEA includes costs for staffing, “staff training, and other expenses related to testing...”, as well as “[a]ll expenses incurred at the LEA and school/test site(s) related to testing.”⁴⁷ Moreover, the 2013-2014 Budget Act provided slightly less than \$100 million for the former STAR tests, and therefore the 2014 budget represents an increase of at least \$45 million in local funding for the new assessments.⁴⁸ The claimants have made no effort to introduce evidence in the record that the funding is insufficient as a matter of law; the record contains only estimates of the claimants’ costs for 2014-2015, totaling approximately \$15 million, and the bare assertion that estimated statewide costs will reach \$1 billion.⁴⁹ As indicated by the claimant in their rebuttal comments, “claimants do not contest that the \$126.8 million... constitutes ‘additional revenues’ under Government Code section 17556(e)...(or even \$149.5 million if combined with the Title VI

⁴³ Statutes 2013, chapter 48 (AB 86), section 85(d) [emphasis added].

⁴⁴ Code of Regulations, title 5, section 855 (Register 2014, No. 6).

⁴⁵ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 42.

⁴⁶ A small amount of each line item is not specifically identified for activities required by Statutes 2013-2014, chapter 489 (AB 484).

⁴⁷ Code of Regulations, title 5, section 862 (Register 2014, No. 6).

⁴⁸ Compare Statutes 2013, chapter 20 (AB 110) with Statutes 2014, chapter 25 (SB 852).

⁴⁹ Exhibit A, Test Claim, page 73; Exhibit B, Vallejo City Unified Request to Join Test Claim, pages 5-6.

funds).” However, claimants allege that the funding is “simply woefully inadequate...” These assertions are not supported by evidence in the record: section 1183.2 of the Commission’s regulations requires assertions of fact to be supported by documentary evidence.⁵⁰ And, pursuant to Government Code section 17559, the Commission’s findings must be based on substantial evidence in the record.⁵¹

Conclusion

Based on the foregoing analysis, staff finds that Education Code section 60640, as amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 32, imposes a reimbursable state-mandated program on school districts for the one-time activity of providing “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers from January 1, 2014 to June 30, 2014, only. Funding identified in the 2013-2014 Budget Act (Line Items 6110-113-0001 and 6110-113-0890) and the \$1.25 billion appropriated for Common Core implementation by Statutes 2013, chapter 48 are potentially offsetting revenues that must be deducted from annual costs claimed to the extent a school district uses those funds for the mandated activity.

All other statutes, regulations, and claims for reimbursement must be denied.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision to partially approve this test claim, for the period of January 1, 2014 to June 30, 2014 only.

⁵⁰ Code of Regulations, title 2, section 1183.2.

⁵¹ Government Code section 17559 (Stats. 1999, ch. 643 (AB 1679)).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 60602, 60602.5, 60603, 60604, 60607, 60610, 60611, 60612, 60640, 60641, 60642.6, 60643, 60643.6, 60648, 60648.5, 60649, 60810, 99300, 99301 as added or amended by

Statutes 2013, Chapter 489 (AB 484)⁵²; Statutes 2014, Chapter 32 (SB 858); Statutes 2014, Chapter 327 (AB 1599)

Code of Regulations, Title 5, Sections 850-864, as added or amended by Register 2014, Nos. 30 and 35.

Filed on December 23, 2014; Amended March 17, 2015

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

Case Nos.: 14-TC-01

California Assessment of Student Performance and Progress (CAASPP)

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

(Adopted July 24, 2015)

DRAFT PROPOSED DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on July 24, 2015. [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] the proposed decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the adopted decision].

⁵² This statute was pled as “Statutes 2013-2014, Chapter 489 (AB 484)” in the test claim. However, it was chaptered by the Secretary of State and is later referred to by the Legislature, in the state budget, as “Statutes 2013, Chapter 489”. Therefore, this analysis will refer to it as “Statutes 2013, Chapter 489”.

Summary of the Findings

The Commission finds that Education Code section 60640, as amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 32, imposes a reimbursable state-mandated program on school districts for the one-time activity of providing “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers, from January 1, 2014 to June 30, 2014, only. Funding identified in the 2013-2014 Budget Act (Line Items 6110-113-0001 and 6110-113-0890) and the \$1.25 billion appropriated for Common Core implementation by Statutes 2013, chapter 48 are potentially offsetting revenues that must be deducted from annual costs claimed for the above-described period to the extent a school district uses those funds for the mandated activity.

All other statutes, regulations, and claims for reimbursement are denied because:

- A. Most of the code sections and regulations pled do not impose any activities or tasks on local government, or are not new as compared to the law immediately prior to the statutes or regulatory registers pled and, thus, do not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.
- B. Education Code section 60640 and section 861 of the title 5 regulations, as amended by the test claim statutes and regulations, impose two new activities on local government that mandate new programs or higher levels of service.
 1. Beginning January 1, 2014, the one-time requirement to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers. (Ed. Code, § 60640, Stats. 2013, ch. 489; Stats. 2014, ch. 32.)
 2. Beginning August 27, 2014, include in the report to CDE, if a pupil used a designated support or an individualized aid for purposes of the CAASPP assessment. (Cal. Code Regs., tit. 5, § 861(b), Register 2014, No. 35.)
- C. There are costs mandated by the state pursuant to Government Code section 17514, from January 1, 2014 until June 30, 2014 for the first mandated activity only because:
 1. The 2013-2014 Budget Act contains only potentially offsetting revenues, pursuant to Government Code sections 17556(e) and 17557, and therefore some school districts may have incurred costs mandated by the state between January 1, 2014 and June 30, 2014 for the one-time activity to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers; and
 2. Absent evidence to the contrary, the state has appropriated revenues sufficient to fund the cost of both mandated activities in the 2014-2015 Budget Act and, thus, there are no costs mandated by the state beginning July 1, 2014.

COMMISSION FINDINGS

I. Chronology

- 12/23/2014 This test claim was filed with the Commission.
- 01/02/2015 The test claim was deemed complete and issued for comment.⁵³
- 01/28/2015 Department of Finance (Finance) requested an extension of time to file comments, which was approved for good cause.
- 02/12/2015 Vallejo City Unified School District requested to be joined as a claimant in the test claim, which was approved and noticed on February 18, 2015.⁵⁴
- 02/13/2015 Finance filed written comments on the test claim.⁵⁵
- 02/13/2015-
02/24/2015 The following local governments filed written comments on the test claim: Orange County Board of Education; Visalia Unified School District; Tulare Joint Union High School District; Santa Rosa City Schools; San Lorenzo Valley Unified School District; Del Norte County Office of Education; Cupertino Union School District; Belmont-Redwood Shores School District; Santa Cruz City Schools; and Moreno Valley Unified School District.⁵⁶
- 03/13/2015 The California Educational Technology Professionals Association filed comments on the test claim.⁵⁷
- 03/13/2015 The claimant filed rebuttal comments.⁵⁸
- 03/17/2015 The claimant filed an amendment to the test claim, which was deemed incomplete.
- 03/25/2015 The claimant cured the incomplete filing, and the amended test claim was deemed to replace the original test claim filing and was issued for comment.
- 04/27/2015 Finance submitted late comments purporting to rebut claimant's rebuttal to Finance's comments on the original test claim filing, which has now been superseded by the amended test claim filing.⁵⁹

⁵³ Based upon the filing date of December 23, 2014, the potential period of reimbursement begins July 1, 2013. However, since the test claim statutes and regulations became effective after July 1, 2013, the potential period of reimbursement begins on the effective date of the statute or regulation that imposes a state-mandate.

⁵⁴ Exhibit B, Vallejo City Unified Request to Join Test Claim.

⁵⁵ Exhibit C, Finance Comments on Test Claim.

⁵⁶ Exhibit X, Supporting Documentation.

⁵⁷ Exhibit X, Supporting Documentation.

⁵⁸ Exhibit D, Claimant Rebuttal Comments.

⁵⁹ Exhibit E, Finance Late Comments.

05/11/2015 Claimant submitted additional, late rebuttal comments on Finance’s late comments.

06/01/2015 Commission staff issued the draft proposed decision.⁶⁰

II. Background

A. Prior Federal Law

The Federal Elementary and Secondary Education Act

The Elementary and Secondary Education Act (ESEA) was signed into law in 1965 by President Lyndon Johnson. The ESEA provides basic and incentive grants to schools and school districts having a sizeable enrollment of disadvantaged pupils, as defined by census poverty estimates.⁶¹ Those grants are intended to be used for programs and projects ‘including the acquisition of equipment and where necessary the construction of school facilities...’ to meet the needs of “educationally deprived children from low-income families...”⁶²

The Improving America’s Schools Act

The Improving America’s Schools Act of 1994 made the Title I funding of the ESEA conditional upon states implementing statewide systems of assessment and accountability for participating schools, saying: “while title I and other programs funded under [the ESEA] contribute to narrowing the achievement gap between children in high-poverty and low-poverty schools, such programs need to become even more effective in improving schools in order to enable all children to achieve high standards...”⁶³

No Child Left Behind

The No Child Left Behind Act of 2001 (NCLB),⁶⁴ which Congress enacted as a reauthorization of the Elementary and Secondary Education Act of 1965, requires states that participate in and receive federal funds to administer:

[A] set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts, and science that will be used as the primary means of determining the yearly performance of the State and of each local educational agency and school in the State in enabling all children to meet the State’s challenging student academic achievement standards, except that no State shall be required to meet the requirements of this part relating to science assessments until the beginning of the 2007–2008 school year.⁶⁵

⁶⁰ Exhibit F, Draft Proposed Decision.

⁶¹ See Public Law 89-10, April 11, 1965, sections 201-205.

⁶² Public Law 89-10, section 205.

⁶³ Public Law 103-382, section 1001.

⁶⁴ CDE, Standardized Testing and Reporting Program: Annual Report to the Legislature,” July 2012, pages 3-4.

⁶⁵ 20 USC 6311 (b)(3)(A) (Pub. L. 107-110, Jan. 8, 2002).

Title I of NCLB also requires that the assessments measure pupil proficiency as follows:

Such assessments shall--

[(¶)]...[(¶)]

(II) beginning not later than school year 2007–2008, measure the proficiency of all students in science and be administered not less than one time during—

(aa) grades 3 through 5;

(bb) grades 6 through 9; and

(cc) grades 10 through 12;

(vi) involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding;

(vii) beginning not later than school year 2005–2006, measure the achievement of students against the challenging State academic content and student academic achievement standards *in each of grades 3 through 8 in, at a minimum, mathematics, and reading or language arts*, except that the Secretary may provide the State 1 additional year if the State demonstrates that exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State, prevented full implementation of the academic assessments by that deadline and that the State will complete implementation within the additional 1-year period;⁶⁶

NCLB also includes the following reporting provisions in Title I, requiring the assessments to:

(xii) produce individual student interpretive, descriptive, and diagnostic reports, consistent with clause (iii) that allow parents, teachers, and principals to understand and address the specific academic needs of students, and include information regarding achievement on academic assessments aligned with State academic achievement standards, and that are provided to parents, teachers, and principals, as soon as is practicably possible after the assessment is given, in an understandable and uniform format, and to the extent practicable, in a language that parents can understand;

(xiii) enable results to be disaggregated within each State, local educational agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged, except that, in the case of a local educational agency or a school, such disaggregation shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student.⁶⁷

⁶⁶ 20 USC 6011 (b)(3)(C) (Pub. L. 107-110, Jan. 8, 2002) [emphasis added].

⁶⁷ 20 USC 6011 (b)(3)(C) (Pub. L. 107-110, Jan. 8, 2002).

In a case that focused on the educational requirements and funding provisions of Title I of NCLB, a Federal Appellate court stated the following:

In contrast to prior ESEA iterations, NCLB “provides increased flexibility of funds, accountability for student achievement and more options for parents.” 147 Cong. Rec. S13365, 13366 (2001) (statement of Sen. Bunning). The Act focuses federal funding more narrowly on the poorest students and demands accountability from schools, with serious consequences for schools that fail to meet academic-achievement requirements. *Id.* at 13366, 13372 (statements of Sens. Bunning, Landrieu, and Kennedy). States may choose not to participate in NCLB and forgo the federal funds available under the Act, but if they do accept such funds, they must comply with NCLB requirements. See, e.g., 20 U.S.C. § 6311 (“For any State desiring to receive a grant under this part, the State educational agency shall submit to the Secretary a plan...”) (emphasis added); see also *Spellings*, 453 F.Supp.2d at 469 (“In return for federal educational funds under the Act, Congress imposed on states a comprehensive regime of educational assessments and accountability measures.”).

Title I, Part A, of NCLB, titled “Improving Basic Programs Operated by Local Educational Agencies,” continues to pursue the objectives of the ESEA and imposes extensive educational requirements on participating States and school districts, and, likewise, provides the largest amount of federal appropriations to participating States. For example, in fiscal year 2006, NCLB authorized \$22.75 billion in appropriations for Title I, Part A, compared to \$14.1 billion for the remaining twenty-six parts of NCLB combined. Title I, Part A’s stated purposes include meeting “the educational needs of low-achieving children in our Nation’s highest-poverty schools, limited English proficient children, migratory children, children with disabilities, Indian children, neglected or delinquent children, and young children in need of reading assistance.” 20 U.S.C. § 6301(2).

[¶...¶]

To qualify for federal funding under Title I, Part A, States must first submit to the Secretary a “State plan,” developed by the State’s department of education in consultation with school districts, parents, teachers, and other administrators. 20 U.S.C. § 6311(a)(1). A State plan must “demonstrate that the State has adopted challenging academic content standards and challenging student academic achievement standards” against which to measure the academic achievement of the State’s students. *Id.* § 6311(b)(1)(A). The standards in the State plan must be uniformly applicable to students in all of the State’s public schools, and must cover at least reading or language arts; math; and, by the fourth grade, science skills. *Id.* § 6311(b)(1)(C).

States also must develop, and school districts must administer, assessments to determine students' levels of achievement under plan standards. *Id.*

§ 6311(b)(2) (A). These assessments must show the percentage of students achieving “proficiency” among “economically disadvantaged students,” “students from major racial and ethnic groups,” “students with disabilities,” and “students with limited English proficiency.” *Id.* § 6311(b)(2)(C)(v)(II). Schools and

districts are responsible for making “adequate yearly progress” (“AYP”) on these assessments, meaning that a minimum percentage of students, both overall and in each subgroup, must attain proficiency. 34 C.F.R. § 200.20(a)(1).

[¶]...[¶]

... NCLB requires that States use federal funds made available under the Act “only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds.” 20 U.S.C. § 6321(b)(1). That is, States and school districts remain responsible for the majority of the funding for public education, and the funds distributed under Title I are to be used only to implement Title I programming, not to replace funds already being used for general programming.⁶⁸

Common Core State Standards

Not a federal law, but discussed here because the federal law provides the context, the Common Core State Standards (CCSS) were developed on the initiative of the National Governors Association and the Council of Chief State School Officers, in partnership with Achieve, Inc., ACT, and the College Board. The intention was to develop internationally-benchmarked standards of college-and career-readiness, which states could then voluntarily adopt, and which would aid educators in improving teaching and learning.⁶⁹ The final CCSS were released in June 2010, and as of June 2014, 43 states, the Department of Defense Education Activity, Washington, D.C., Guam, the Northern Mariana Islands, and the U.S. Virgin Islands had adopted the CCSS.⁷⁰

Race to the Top Grant Program

As part of the American Recovery and Reinvestment Act of 2009, the Race to the Top Assessment Program provided funding, on a grant-award basis, to state-led consortia with the goal of developing pupil assessments aligned with the CCSS. The Department of Education awarded two grants to parallel programs in September 2010; the Partnership for Assessment of Readiness for College and Careers; and the Smarter Balanced Assessment Consortium.⁷¹ Both grant recipient consortia have since developed computer-based assessments aligned with the CCSS that are intended to be implemented fully during the 2014-2015 school year.

In addition, the Race to the Top program included \$4.35 billion in grant funding to encourage and reward states that create conditions for education innovation and reform, and achieve improvement in student outcomes, including closing achievement gaps and improving high school graduation rates. Of 500 points available on a state’s grant application, adopting “a

⁶⁸ *School Dist. of City of Pontiac v. Secretary of U.S. Dept. of Education* (2009) 584 F.3d 253, 257-258.

⁶⁹ Exhibit X, “Forty-Nine States and Territories Join Common Core Standards Initiative”, National Governors Association press release, June 1, 2009.

⁷⁰ Exhibit X, “Development Process”, Common Core State Standards, www.commoncore.org.

⁷¹ Exhibit X, “U.S. Secretary of Education Duncan Announces Winners of Competition to Improve Student Assessments”, Department of Education press release, September 2, 2010.

common set of high-quality standards” and participating in a multistate consortium to develop and implement “common, high-quality assessments”, earn an applicant up to 50 points.⁷² In other words, the Race to the Top grant program incentivizes, to an extent, the adoption of common standards and common assessments. Despite having adopted CCSS in August of 2010, and participating in the Smarter Balanced Assessment Consortium to develop common standards-aligned assessments, as discussed below, California was not awarded a grant under this program.⁷³

B. Prior California Law

The state has required school districts to administer achievement tests to pupils for decades: achievement tests were required for pupils in grades 6 and 12 under the California School Testing Act of 1969.⁷⁴ In 1972, the Legislature expressed its intent regarding pupil testing as follows:

It is the intent of the Legislature . . . to determine the effectiveness of school districts and schools in assisting pupils to master the fundamental educational skills towards which instruction is directed. The program of statewide testing shall provide the public, Legislature, and school districts evaluative information regarding the various levels of proficiency achieved by different groups of pupils of varying socioeconomic backgrounds, so that the Legislature and individual school districts may allocate educational resources in a manner to assure the maximum educational opportunities for all pupils. The program or statewide testing shall identify unusual success or failure and the factors which appear to be responsible, so that appropriate action may be taken at the district and state level to obtain the highest quality education for all public school pupils.⁷⁵

In 1990, the Legislature expressed that the purpose of California’s public school system is to “facilitate the development of each and every one of its pupils to become a self-motivated, competent, and lifelong learner.”⁷⁶ The Legislature stated that: “the current pupil assessment system does not meet [these] purposes”:

There is no consistent system that pupils and parents can use to assess the performance of schools and school districts in providing effective programs and to measure the academic achievement of pupils. The five grade levels currently tested under the California school assessment program do not provide the most efficient assessment of overall pupil achievement.⁷⁷

Statutes of 1990, chapter 760 modified the state’s achievement testing to require the testing of pupils in grades 4, 5, 8, and 10. Former Education Code section 60600.1, as added by Statutes of

⁷² Exhibit X, Race to the Top Program, Executive Summary, November 2009, pages 2; 7-8.

⁷³ Exhibit X, Awards – Race to the Top Program Fund.

⁷⁴ Former Education Code sections 12820; 12823 (Stats. 1969, ch. 1552, p. 3152).

⁷⁵ Former Education Code section 12821 (added, Stats. 1972, ch. 930, p. 1678).

⁷⁶ Statutes 1990, chapter 760, section 1.

⁷⁷ Statutes 1990, chapter 760, section 1.3.

1990, chapter 760, provided that the testing requirement would remain in effect until January 1, 1995, unless a later-enacted statute deleted or extended that date.

The Leroy Green Act

The Legislature did not enact a statute before January 1, 1995 that either deleted or extended the date regarding the administration of achievement tests. However, later that year, Statutes 1995, chapter 975 enacted the Leroy Greene California Assessment of Academic Achievement Act,⁷⁸ which required the Superintendent of Public Instruction (SPI) to design and implement a statewide pupil assessment system, as specified.⁷⁹ The Act required the State Board of Education (SBE) to adopt statewide content and performance standards for each grade level, and to adopt tests that yield reliable data on school performance, district performance, and statewide performance for pupils in grades 4, 5, 8, and 10.⁸⁰ In addition, the Act provided an incentive of \$5 per pupil tested using an achievement test selected from among those approved by the SBE for pupils in grades 2 through 10.⁸¹ As a condition of receiving those funds, the Act required that a school district certify to the SPI its compliance with the requirements of former section 60641: tests were required to be administered at the time of year specified by the SPI; tests results must be reported to pupils' parents or guardians; test results must be reported to the school and teachers, and included in pupils' records; and district-wide and school-level results must be reported to the governing board of the school district at a regularly scheduled meeting.⁸² The 1995 act stated that it would remain in effect only until January 1, 2000 unless another statute deleted or extended that date.⁸³ The following year, Statutes 1996, chapter 69 (SB 430) extended that date to January 1, 2002.⁸⁴

The Standardized Testing and Reporting Program (STAR)

Statutes 1997, chapter 828 repealed the option for school districts to select standardized tests from a list approved by the SBE, and instead enacted the Standardized Testing and Reporting (STAR) program, which required all school districts, charter schools, and county offices of education to administer to all pupils in grades 2 to 11 (with exceptions, as specified) the single achievement test designated by the SBE.⁸⁵ The statewide testing was thus renamed STAR, expanded to include grade 11 pupils, and made compulsory by the amended code section. The amended section *permitted*, but did not require, school districts to provide to English learners an achievement test in their primary language, and required the same for pupils who had been

⁷⁸ Education Code section 60600 (Stats. 1995, ch. 975 (AB 265)).

⁷⁹ Education Code section 60604 (Stats. 1995, ch. 975 (AB 265)).

⁸⁰ Education Code section 60605 (Stats. 1995, ch. 975 (AB 265)).

⁸¹ Education Code section 60640 (Stats. 1995, ch. 975 (AB 265)).

⁸² Education Code section 60641 (Stats. 1995, ch. 975 (AB 265)).

⁸³ See former Education Code section 60601 (Stats. 1995, ch. 977 (AB 265)).

⁸⁴ See former Education Code section 60601 (Stats. 1996, ch. 69 (SB 430)).

⁸⁵ See Senate Floor Analysis, AB 2812 (2000); Education Code section 60640 (Stats. 1997, ch. 828 (SB 376)).

enrolled less than one year in any public school in the state.⁸⁶ The amended section continued to provide for per pupil funding to administer the tests, of “up to eight dollars (\$8) per test administered to a pupil in grades 2 to 11, inclusive.”⁸⁷ And, amended section 60640 made the apportionment conditional upon the school district reporting the number of pupils enrolled and to whom the achievement test was administered, and the number of students exempted from the test either under section 60640 or at the request of a parent or guardian.⁸⁸ In addition, amended section 60641 made the reporting requirements to pupils’ parents or guardians, their schools and teachers, and to the governing board of the school district and the county office of education mandatory, rather than conditioning the funding on satisfying these requirements, as before.⁸⁹

In accordance with the statute, the SBE selected the Stanford Achievement Test Series, Ninth Edition (Stanford 9) test, as the national norm-referenced achievement test for the 1997-1998 through 2001-2002 school years.⁹⁰

In 2000, the STAR program was further amended, repealing and simplifying some requirements of the augmented California achievement tests, but also requiring an additional standards-based achievement test pursuant to Education Code section 60642.5, including, at a minimum, reading, spelling, written expression, and mathematics to be tested in grades 2-8, and reading, writing, mathematics, history-social science, and science to be tested in grades 9 to 11. In addition, the new test required a writing assessment once during elementary school and once during middle or junior high school.⁹¹

In 2001, the sunset date for the STAR program was extended through January 1, 2005, and the achievement test called for by section 60642.5 was renamed the California Standards Tests (CST).⁹² In addition, the CST was amended to require a history-social science assessment and science assessment in at least one elementary or middle school grade level, as selected by SBE.⁹³ At the same time, the prior national norm-referenced achievement test (at that time the Stanford-9) was limited in scope, excluding the previously required yearly history-social science test for grades 9 to 11.⁹⁴ Beginning in the 2002-2003 school year, the Stanford 9 was replaced by the

⁸⁶ Education Code sections 60640(f-g) (Stats. 1997, ch. 828 (SB 376)).

⁸⁷ Education Code section 60640(h) (Stats. 1997, ch. 828 (SB 376)).

⁸⁸ Education Code section 60640(j) (Stats. 1997, ch. 828 (SB 376)).

⁸⁹ Compare Education Code section 60641 (Stats. 1997, ch. 828 (SB 376)) with Education Code section 60641 (Stats. 1995, ch. 975 (AB 265)).

⁹⁰ Exhibit X, California STAR Program; Former Education Code section 60642 (as added by Stats. 1997, ch. 828 (SB 376)).

⁹¹ See Senate Floor Analysis, AB 2812 (2000), dated August 25, 2000; Education Code section 60642.5 (added, Stats. 2000, ch. 576 (AB 2812)). See also, former section 60603 (as amended, Stats. 1999, ch. 83 (SB 966)).

⁹² Education Code sections 60601; 60642.5 (as amended, Stats. 2001, ch. 722 (SB 233)).

⁹³ Education Code section 60642.5 (Stats. 2001, ch. 722 (SB 233)).

⁹⁴ Education Code section 60642 (Stats. 2001, ch. 722 (SB 233)). Compare to former Education Code section 60603(e) (Stats. 1999, ch. 83 (SB 966)).

California Achievement Tests, Sixth Edition Survey (CAT/6), and the California Alternate Performance Assessment (CAPA) was added.⁹⁵

In 2004, the sunset date for the STAR program was extended again to January 1, 2011, and the required tests were limited by excluding pupils in grade 2 beginning July 1, 2007 from the standards-based achievement test required pursuant to section 60642.5 (the CST). In addition, beginning in the 2004-2005 school year, the CAT/6 was limited to grades 3 and 7.⁹⁶

In 2007 the sunset date for the STAR program was extended again to January 1, 2012, and the law was amended to now include pupils in grade 2 in the standards-based achievement tests provided for in section 60642.5 (the CST).⁹⁷ In 2008, the CAT/6 was repealed.⁹⁸

In 2010 the sunset date for STAR was extended again to July 1, 2013, and the Legislature expressed its intent that the state transition to “a system of high-quality assessments, as defined in the federal Race to the Top guidance and regulations.”⁹⁹ Finally, in 2011, the sunset date was extended through July 1, 2014,¹⁰⁰ but then the STAR program was superseded by the test claim statutes at issue here as of January 1, 2014.¹⁰¹

Thus, immediately prior to the test claim statutes pled in this claim, the STAR program consisted of the following components:

- The California Standards Tests (CSTs) for English language arts (ELA) and mathematics, in grades 2 to 11, inclusive;
- CSTs in science for grades 5, 8, and 10;
- CSTs in history-social science for grades 8 and 11;
- The California Modified Assessment (CMA) and the California Alternate Performance Assessment (CAPA), for eligible pupils in accordance with an individualized education plan (IEP), for English language arts and mathematics in grades 3 to 8 and 11; and for science in grades 5, 8, and 10.
- The Primary Language assessments for Reading/Language Arts and mathematics in grades 2 to 11 (also called the Standards-based Test in Spanish);
- Specified end-of-course assessments in mathematics and science; and,

⁹⁵ Exhibit X, California STAR Program.

⁹⁶ Education Code section 60640 (as amended, Stats. 2004, ch. 233 (SB 1448)).

⁹⁷ Education Code sections 60601; 60603; 60640 (as amended, Stats. 2007, ch. 174 (SB 80)).

⁹⁸ Former Education Code section 60642 (repealed, Stats. 2008, ch. 757 (AB 519)). See also section 60640 (as amended, Stats. 2008, ch. 757 (AB 519)).

⁹⁹ Education Code sections 60601; 60604.5 (as added or amended, Stats. 2009-2010, 5th Ex. Sess., ch. 2 (SBX5 1)).

¹⁰⁰ Statutes 2011, chapter 608 (AB 250), by making the STAR program inoperative on July 1, 2014, and repealing it on January 1, 2015.

¹⁰¹ Statutes 2013-2014, chapter 489 (AB 484) was effective January 1, 2014.

- The Early Assessment Program (EAP) in Grade 11.¹⁰²

As discussed below, the test claim statutes leave in place, pending recommendations of the SBE to replace them, the CSTs for science in grades 5, 8, and 10; the CMA and CAPA for science in grades 5, 8, and 10; The CAPA for ELA and mathematics in grades 2 through 11; the primary language assessments (STS) in reading/language arts; the EAP; and end-of-course examinations.¹⁰³ The Smarter Balanced Summative Assessments, as described below, replace the CSTs for English language arts and mathematics in grades 3 to 8 and 11.

C. The STAR Test Claims

STAR I/National Norm-Referenced Achievement Test

In August 2000, the Commission made a determination on the STAR program, as it existed in 1997, in test claim 97-TC-23. The Commission found reimbursable activities related to administering only the norm-referenced test (then the Stanford-9, and later the CAT/6) and the designated primary language test (SABE/2).

In 2004, the Legislature ordered the Commission to reconsider the STAR decision.¹⁰⁴ On reconsideration, the Commission found that the SABE/2 was a federal mandate and, thus, denied reimbursement to administer that test. The Commission determined that administering the CAT/6 exam in grades 3 and 7 imposed a reimbursable state mandate on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514, effective July 1, 2004.¹⁰⁵ Specifically, the Commission found the following activities to be reimbursable:

1. Administration of the CAT/6 (or a successor national norm-referenced test) to all pupils in grades 3 and 7. (Ed. Code, §§60640(b) and (c), 60641(a); Cal. Code Regs., tit. 5, §§ 851, 852, (b), 853, and 855.) Costs associated with teacher time to administer the test are not reimbursable.
2. Designation of a STAR Program district coordinator. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.) This would only be reimbursable to the extent it applies to the CAT/6.
3. Designation of a STAR Program test site coordinator at each test site. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.) This would only be reimbursable to the extent it applies to the CAT/6.
4. Inclusion of CAT/6 test results in each pupil's record of accomplishment. (Ed. Code, §§ 60607(a), 60641(a).

¹⁰² Exhibit X, STAR 2013 Legislative Report, June 2013, pages 5-6.

¹⁰³ Education Code sections 60640; 60603. See also, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, October 2014, page 9.

¹⁰⁴ Statutes 2004, chapter 216, § 34.

¹⁰⁵ *National Norm-Referenced Achievement Test (formerly Standardized Testing and Reporting)*, adopted July 28, 2005 (04-RL-9723-01).

5. Reporting of individual CAT/6 (or successor national norm referenced test) test results in writing to each pupil's parent or guardian and to the pupil's school and teachers. (Ed. Code, § 60641(b) and (c); Cal. Code Regs., tit. 5, § 863.)¹⁰⁶
6. Reporting of district-wide, school-level, and class-level CAT/6 test results to the school district's governing board or county office of education. (Ed. Code, § 60641(d)¹⁰⁷; 147 Cal. Code Regs., tit. 5, § 864.)
7. Submission of a report on the CAT/6 test to the Superintendent of Public Instruction. (Ed. Code, § 60640(j); Cal. Code Regs., tit. 5, § 862.)
8. Exemption of pupils from the CAT/6 test upon request of their parent or guardian. (Ed. Code, §§ 60615, 60640(j); Cal. Code Regs., tit. 5, § 852(a).)
9. Submission to the State Department of Education whatever information the Department deems necessary to permit the Superintendent of Public Instruction to prepare a report analyzing, on a school-by-school basis, the results and test scores of the CAT/6 test. (Ed. Code, § 60630(b); Cal. Code Regs., tit. 5, § 861.)
10. Training and review of the CAT/6 test requirements as outlined in the test claim legislation and regulations by school district staff.
11. Implementation of procedures relating the administration of the CAT/6 test.¹⁰⁸

The Commission also found that several of the following activities initially approved in the test claim decision were not reimbursable because they were mandated by the federal government:

1. Administration of an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given. (Ed. Code, § 60640(g); Cal. Code Regs., tit. 5, § 851(a).)
2. Exemption from testing for pupils if the pupil's IEP has an exemption provision. (Ed. Code, § 60640 (e) and (j); Cal. Code Regs., tit. 5, § 852(b).)
3. Determination of the appropriate grade level test for each pupil in a special education program. (Cal. Code Regs., tit. 5, § 852(b).)
4. Provision of appropriate testing adaptation or accommodations to pupils in special education programs. (Cal. Code Regs., tit. 5, § 852(b).)¹⁰⁹

¹⁰⁶ This requirement had been moved to Education Code section 60641(a)(2) since the adoption of the original test claim decision, but was still included as reimbursable as renumbered in the reconsideration and in the later adopted parameters and guidelines.

¹⁰⁷ This requirement was later moved to Education Code section 60641(a)(3) but was still included as reimbursable in the reconsideration and in the later adopted parameters and guidelines.

¹⁰⁸ *National Norm-Referenced Achievement Test (formerly Standardized Testing and Reporting)*, adopted July 28, 2005 (04-RL-9723-01).

¹⁰⁹ *Standardized Testing and Reporting*, adopted July 28, 2005 (04-RL-9723-01).

Finally, the Commission found that:

- All state funds appropriated for STAR must be used to offset all activities associated with administration of the CAT/6 exam; and that in any fiscal year in which school districts are legally required to, they must, “reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them” from appropriated state funds;¹¹⁰ and
- School districts are not required to use Title I funds to offset the activities in the STAR statement of decision (i.e., to administer the CAT/6); and
- All federal Title VI funds appropriated for STAR, in any fiscal year in which school districts are legally required to do so, must be used to offset all activities associated with administration of the CAT/6 exam, and that school districts must “reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them” from appropriated federal Title VI funds.¹¹¹

The Commission did not make findings in either STAR I or the reconsideration of STAR I, on any other tests or components of the program: only Statutes 1997, chapter 828, adding the Stanford-9 and the SABE 2 was pled in test claim 97-TC-23, and the Commission found in its reconsideration decision that its jurisdiction was limited to the statutes pled in the original test claim.¹¹²

On May 29 2009, the Commission amended the parameters and guidelines to end the program as of September 29, 2008, based on the effective date of Statutes 2008, chapter 757, which repealed the requirement of school districts to administer the CAT/6 in grades 3 and 7.¹¹³

STAR II and III

On August 2005, Claimant San Diego Unified School District (SDUSD) filed the Star II test claim (05-TC-02) with the Commission, alleging that Education Code sections 60601, 60602, 60603, 60604, 60605, 60605.6, 60606, 60607, 60611, 60640 and 60641, as added or amended by Statutes 2004, chapter 233, imposed a new program or higher level of service to administer the achievement test specified by the State Board of Education to all students in grades 3 and 7 and the standards based achievement test to all students in grades 3- 11, inclusive, commencing in the 2004-2005 fiscal year and each year thereafter.¹¹⁴

On September 21, 2005, Claimant Grant Joint Union High School District (GJUHSD) filed another STAR test claim (05-TC-03) with the Commission alleging that Education Code sections

¹¹⁰ Statutes 2004, chapter 208, Item 6110-113-0001, Schedule 3, Provision 8. Statutes 2005, chapter 38, Item 6110-113-0001, Schedule 2, Provision 8.

¹¹¹ Statutes 2004, chapter 208, Item 6110-113-0890, Schedule 2, Provision 11. Statutes 2005, chapter 38, Item 6110-113-0890, Schedules 4, 7 and 10, Provision 10.

¹¹² See *Standardized Testing and Reporting*, adopted July 28, 2005 (04-RL-9723-01), page 23.

¹¹³ See, Parameters and Guidelines Amendment for *National Norm-Referenced Achievement Test (STAR)*, adopted May 29, 2009. (05-PGA-03.)

¹¹⁴ Test Claim 05-TC-02, page 19.

60640, 60641, 60642.5, as added or amended by Statutes 2003, chapter 733, and California Code of Regulations, title 5, sections 850, 851, 852, 853, 855, 857, 858, 859, 861, 862, 863, 864.5, 865, 866, 867, 867.5, 868 as added or amended by Register 2005, No. 34 (eff. 9/21/2005) imposed a new program or higher level of service to administer the STAR testing program beginning in the 2004-2005 fiscal year and each year thereafter.¹¹⁵

Test claims 05-TC-02 and 05-TC-03 were consolidated on October 6, 2005 and named STAR II.

On June 25, 2009, Claimant Twin Rivers Unified School District (which succeeded and took over GJUHSD pursuant to Measure B) filed a test claim that was named STAR III (08-TC-06), alleging the following statutes and regulations imposed a new program or higher level of service to administer the STAR testing program beginning in the 2004-2005 fiscal year and each year thereafter:

Education Code Education Code Sections 60640, 60641, 60642.5 60607, 60615 and 60630 as added or amended by Statutes 1995, chapter 975; Statutes 1997, chapter 828; Statutes 1999, chapter 735; Statutes 2000, chapter 576; Statutes 2001, chapter 20; Statutes 2001, chapter 722; Statutes 2002, chapter 1168; Statutes 2003, chapter 773; Statutes 2004, chapter 183; Statutes 2004, chapter 233; Statutes 2005, chapter 676; Statutes 2007, chapter 174; Statutes 2007, chapter 730; Statutes, 2008, chapter 473; Statutes 2008, chapter 757, and, California Code of Regulations, Title 5, Sections 850, 851, 852, 853, 855, 857, 858, 859, 861, 862, 863, 864.5, 865, 866, 867, 867.5, and 868, as added or amended by Register 2005, No. 34 (Sept. 21, 2005), Register 2006, No. 45 (Dec. 8, 2006).

Test claims 05-TC-02, 05-TC-03 and 08-TC-06 were consolidated for hearing. On December 12, 2013, the Commission adopted a decision denying the consolidated test claim on two bases:

1. Many of the statutes pled were denied for lack of jurisdiction, since the test claim was filed after the statute of limitations had run. Most relevant to this test claim, are Statutes 2000, chapter 576 and Statutes 2001, chapter 72, (adding and amending section 60642.5) which originally imposed the CST. As a result, there has never been a mandate finding on the CST program which has been required since 2001.¹¹⁶
2. The state appropriated state and federal funds that were sufficient as a matter of law to cover the costs of the following new required activities:¹¹⁷
 - Beginning July 1, 2004, administer the primary language test to pupils of limited English proficiency enrolled for less than 12 months in a nonpublic school in grades 2 to 11. Beginning October 7, 2005, school districts are required to administer the primary language test to those pupils in nonpublic schools in

¹¹⁵ Test Claim 05-TC-03, page 18.

¹¹⁶ See Statement of Decision, STAR II and III (05-TC-02, 05-TC-03, 08-TC-06), pages 3-5.

¹¹⁷ See Statement of Decision, *STAR II and III* (05-TC-02, 05-TC-03, 08-TC-06). Note that since funding was sufficient to cover the costs of all required activities, this decision contained no analysis on whether the required activities mandated a new program or higher level of service.

grades 3 to 11, instead of grades 2 to 11. (Ed. Code, § 60640(g), as amended by Stats. 2004, ch. 233.)

- Effective September 21, 2005, district STAR coordinators are required to
 - Immediately notify CDE of any security breaches or testing irregularities in the district before, during, or after the test administration. (Cal. Code Regs., tit. 5, § 857(b)(9); Register 2005, No. 34.)
 - Ensure that an answer document is submitted for scoring for each eligible pupil enrolled in the district on the first day of testing. (Cal. Code Regs., tit. 5, § 857(b)(10), as added by Register 2005, No. 34.)
 - Train test site coordinators to oversee the test administration at each school. (Cal. Code Regs., tit. 5, § 857(b)(12); Register 2005, No. 34.)
- Effective September 21, 2005, the STAR test site coordinators are required to
 - Submit the signed security agreement to the district STAR coordinator prior to the receipt of test materials. (Cal. Code Regs., tit. 5, § 858(b)(4); Register 2005, No. 34.)
 - Ensure that an answer document is submitted for scoring for those pupils enrolled on the first day of testing, but excused from testing. (Cal. Code Regs., tit. 5, § 858(b)(9), as added by Register 2005, No. 34.)
 - Immediately notify the district STAR coordinator of any security breaches or testing irregularities that occur in the administration of the designated achievement test, the standards-based achievement tests, or the CAPA that violate the terms of the STAR Security Affidavit in Section 859. (Cal. Code Regs., tit. 5, § 858(b)(11); Register 2005, No. 34.)
 - Train all test examiners, proctors, and scribes for administering the tests. (Cal. Code Regs., tit. 5, §§ 851(e) and 858(b)(12); Register 2005, No. 34.)
- Effective September 21, 2005, provide all information specified in section 861(a) to the contractor for those pupils enrolled on the first day the tests are administered and who do not in fact take a STAR test. (Cal. Code Regs., tit. 5, § 861(a); Register 2005, No. 34.)
- Effective September 21, 2005, provide the following new information to the contractor for each pupil tested:
 - The pupil's full name;
 - Date of English proficiency reclassification;
 - If R-FEP pupil scored proficient or above on the California English-language arts test three (3) times since reclassification to English proficient;
 - California School Information Services (CSIS) Student Number once assigned;

- For English learners, length of time in California public schools and in school in the United States;
 - Participation in the National School Lunch Program;
 - County and district of residence for pupils with Individualized Education Programs (IEPs);
 - Special testing conditions and/or reasons for not being tested. (Cal. Code Regs., tit. 5, § 861(a); Register 2005, No. 34.)
- Effective September 21, 2005, establish a periodic delivery schedule, which conforms to section 866(a) and (b), to accommodate test administration periods within the school district. (Cal. Code Regs., tit. 5, § 866(b); Register 2005, No. 34.)

The STAR program activities remained in the law, and continued to be required for school districts until the STAR program was replaced with CAASPP by the test claim statutes.

D. Replacement of STAR with CAASPP by the Test Claim Statutes

Statutes 2013, chapter 489 replaces the STAR program, effective January 1, 2014, with the “Measurement of Academic Performance and Progress”, which in turn is renamed the California Assessment of Student Progress and Performance (CAASPP) by Statutes 2014, chapter 32, and further refined by Statutes 2014, chapter 327 (AB 1599). Statutes 2013, chapter 489, Statutes 2014, chapter 32, and Statutes 2014, chapter 327, as well as Code of Regulations, title 5, sections 850-864, as amended by Register 2014, Nos. 30 and 35, constitute the test claim statutes and regulations pled in this claim.

The test claim statutes and regulations require school districts to transition from a set of paper and pencil multiple choice tests by no later than 2017 to computer-based tests aligned to the Common Core State Standards (CCSS), and which are adaptive to the individual pupil’s response, considered highly reliable, and provide the best possible information to pupils, parents, teachers and schools, and help students prepare for college and careers. For the time being, CAASPP includes the Smarter Balanced Summative Assessments (which, beginning in 2014-2015 are computer-adaptive) for English language arts and mathematics in grades 3-8 and 11, and the CST remains for science in grades 5, 8, and 10. In addition, for certain eligible students, the CMA, the CAPA, and Alternative Assessment Field Testing remain in place.¹¹⁸ Section 60640 provides that the CST for science and the CAPA shall be replaced in the future with a new assessment recommended by the SPI.¹¹⁹ Thus, the CAASPP program replaces the CSTs for

¹¹⁸ See Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 9.

¹¹⁹ Education Code section 60640(b)(2-3) (Stats. 2013-2014, ch. 489 (AB 484)). See also, Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 21:

California students with significant cognitive disabilities did not participate in the 2013–14 Smarter Balanced Field Test, but continued to participate in the CAPA with test results reported and used for accountability. California is eager to move forward with an alternate assessment that is aligned with the CCSS in ELA and

English language arts and mathematics for grades 3 to 8 and grade 11, with the expressed intent of later replacing the CAPA and the CST for science, all of which are intended to be computer-adaptive assessments aligned with the CCSS.¹²⁰

Section 853 of the implementing regulations states that the primary mode of administration of the CAASPP shall be via computers, including “the use of an assessment technology platform, and the adaptive engine”, but that “[i]f available, an LEA may utilize a paper-pencil version” of the new assessment for up to three years, in accordance with section 60640(e), if the LEA first identifies the pupils that are unable to access the computer-based version.¹²¹ In order to comply with the test claim statutes and the regulations, the claimants have alleged that they have and will incur substantial new mandated costs to acquire adequate assessment technology in adequate quantities, to upgrade their internet connectivity infrastructure, and to hire and to train staff to effectively administer the new assessments on computer. Those alleged costs are the subject of this test claim.

The goal of CAASPP is “to provide assessments that can assist teachers, administrators, students and parents/guardians with a better understanding of college and career readiness.”¹²² Code of Regulations, title 5, section 850, identifies the “Smarter Balanced Assessment Consortium” as “the multi-state consortium responsible for the development of the English language arts and mathematics summative assessments administered pursuant to Education Code section 60640(b)(1)...”¹²³ The Smarter Balanced Assessment Consortium, for its part, states that it is one of two multistate consortia awarded funding from the U.S. Department of Education in 2010 to develop an assessment system aligned to the Common Core State Standards, and that the new computer-adaptive assessments are intended to provide more accurate and faster results for teachers and pupils.¹²⁴ California adopted the CCSS in 2010, and became a governing member of Smarter Balanced in 2011. After Statutes 2013, chapter 489 was enacted, but before it became operative, school districts began preparing for the 2014 field test.¹²⁵ The field test

mathematics and provide a similar opportunity for students with significant cognitive disabilities to receive the same valuable opportunity to “test the system” as our general education students did.

In the 2014–15 school year, California will implement a new computer-based alternate assessment in ELA and mathematics aligned with the CCSS with the intent of field testing all eligible students. This plan is in the best interest of our students, teachers, and schools and consistent with our successful Smarter Balanced Field Test.

¹²⁰ See Education Code sections 60602.5; 60640 (Stats. 2013, ch. 489 (AB 484)).

¹²¹ Code of Regulations, title 5, section 853 (Register 2014, No. 35).

¹²² Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 8.

¹²³ Code of Regulations, title 5, section 850 (Register 2014, No. 6).

¹²⁴ See www.smarterbalanced.org [entries “About” and “Computer Adaptive Testing”].

¹²⁵ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 11.

served multiple purposes: one purpose was to evaluate the effectiveness of the test, and give students and teachers a glimpse of the types of questions; the second was to allow school districts and CDE to gauge their readiness to administer the full test in 2014-2015.¹²⁶ In the Fall of 2013, prior to the 2014 field test, CDE asked school districts to rate their level of confidence of readiness to administer the Smarter Balanced assessments, and found that 85 percent of respondents stated they had considerable or some level of confidence that they had an adequate number of computers with the minimum operating system requirements, and 90 percent indicated considerable or some confidence that they had adequate network bandwidth.¹²⁷ Ultimately, 90 percent of eligible pupils in grades 3-8 completed the computer-based ELA field test, and 92 percent completed the computer-based field test in mathematics.¹²⁸ There was no paper-pencil alternative for the 2014 field test.¹²⁹ After the field test, several focus groups were held, beginning in July 2014, to discuss best practices, and areas of improvement.¹³⁰ In particular, LEA CAASPP coordinators identified the following needs for the 2015 test and beyond:

- Preparation – students and staff need to work with and practice with the test, and improve computer literacy and skills;
- Scheduling – a large proportion of coordinators reported difficulty in predicting the amount of time students need to complete the test;
- Technology – coordinators reported a need for increased bandwidth, and more devices for testing;
- Support – coordinators reported a need for onsite technology support;
- Accommodations and Designated Supports – coordinators reported needing a better understanding of designated supports and a process for identifying students’ eligibility for certain supports.¹³¹

In the 2013-2014 budget, the state provided \$1.25 billion to support the implementation of CCSS, including, “expenditures necessary to support the administration of computer-based assessments and provide high-speed, high-bandwidth Internet connectivity for the purpose of

¹²⁶ Exhibit X, Field Test – Smarter Balanced Assessment Consortium; Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 12.

¹²⁷ Exhibit X, Readiness Survey, page 2.

¹²⁸ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, Appendix E, pages 37; 39.

¹²⁹ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 13.

¹³⁰ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 14.

¹³¹ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 18.

administration of computer-based assessments.”¹³² Additionally, the 2013-2014 budget provided approximately \$72.7 million in state funds “for purposes of California’s pupil testing program”, approximately \$42 million of which was specifically tagged for the STAR program under Provision (2).¹³³ In addition, the 2013-2014 budget included \$25 million in federal funds for pupil testing, approximately \$9.4 million of which was specifically identified for the STAR program, with instructions that federal funding should be applied to mandated costs first, then the state funding.¹³⁴

In the 2014 budget, the Legislature identified \$8.2 million for the STAR program, \$23.5 million for apportionment for 2013-2014 costs, and \$75 million for “the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013.”¹³⁵ In addition, approximately \$8 million in federal funds was identified for statewide testing.¹³⁶

III. Positions of the Parties

Claimants

Claimants allege that the test claim statutes will result in reimbursable increased costs mandated by the state totaling \$1 billion in the next fiscal year. Specifically, Santa Ana Unified School District alleges \$3,217,495.70 in increased costs for fiscal year 2013-2014, and estimates \$8,609,854.23 for fiscal year 2014-2015. Porterville Unified School District alleges \$3,831,924.79 in increased costs for fiscal year 2013-2014, and estimates \$3,340,840.67 for fiscal year 2014-2015. Plumas Unified School District alleges \$509,533.07 in increased costs for fiscal year 2013-2014, and estimates \$1,934,744.40 for fiscal year 2014-2015. And the Plumas County Office of Education alleges \$356,783.08 in increased costs for fiscal year 2013-2014, and estimates \$380,061.64 for fiscal year 2014-2015.¹³⁷

The claimants allege that those increased costs result from the following mandated new or modified activities:

- Administration of the new assessments, in accordance with sections 60640 and 60641;

¹³² Statutes 2013, chapter 48, section 85 (AB 86).

¹³³ Statutes 2013, chapter 20 (AB 110), Line Item 6110-113-0001.

¹³⁴ Statutes 2013, chapter 20 (AB 110), Line Item 6110-113-0890 [The amounts cited reflect the figures specifically attributed to the STAR testing, and exclude funding for the California High School Exit Examination, the California English Language Development Test, and others].

¹³⁵ Statutes 2014, chapter 25 (SB 852), Line Item 6110-113-0001 [The amounts cited reflect the figures specifically attributed to the statewide pupil assessment system established pursuant to Statutes 2013-2014, chapter 489, and exclude funding for the California High School Exit Examination, the California English Language Development Test, and others].

¹³⁶ Statutes 2014, chapter 25 (SB 852), Line Item 6110-113-0890 [The amounts cited reflect the figures specifically attributed to the statewide pupil assessment system established pursuant to Statutes 2013-2014, chapter 489, and exclude funding for the California High School Exit Examination, the California English Language Development Test, and others].

¹³⁷ Exhibit A, Test Claim, pages 71-72.

- Administration of the 2013-2014 field tests;
- Administration of the tests at the time specified in the regulations;
- Making arrangements to test all eligible pupils, including those in alternative education programs or programs conducted off campus;
- Administration of an additional test to pupils with limited English proficiency, as specified;
- Exempting students from CAASPP testing upon request by a pupil's parent or guardian, or if called for by the pupil's individualized education plan (IEP);
- Determination of the appropriate grade level test for pupils enrolled in a special education program;
- Notifying parents or guardians, each year, of their pupil's participation in CAASPP, and of their right to opt-out pursuant to section 60615;
- Administering, scoring, transmitting, and returning the assessments in accordance with the manuals or other instructions provided by the contractor or by CDE;
- Administering the CAASPP test via computer, unless the LEA identifies pupils that are unable to access the computer-based version of the test for the first three years of implementation;
- Providing embedded and non-embedded universal tools, designated supports, and accommodations, as specified;
- Requesting and providing individualized aids, as necessary;
- Providing embedded and non-embedded supports to English learners, as specified;
- Designating a CAASPP coordinator for the LEA, who shall be available through September 30 to complete the LEA testing activities;
- Designating a CAASPP test site coordinator for each test site, who shall be available through September 30 following the school year to resolve discrepancies in materials or errors;
- Ensuring that all LEA CAASPP coordinators and CAASPP test site coordinators sign the security agreement and affidavit, prior to receiving any test materials; and that all coordinators immediately report any security breaches or testing irregularities;
- Including CAASPP assessment results in each pupil's records;
- Providing any and all program and demographic data requested by CDE for inclusion in the California Longitudinal Pupil Achievement Data System;
- Forwarding or transmitting pupil results to the pupil's parent or guardian within 20 days of receipt from the contractor;

- Reporting district-wide, school-level, and class-level results to the school district’s governing board or county office of education;
- Abiding by any and all instructions provided by the CAASPP contractor or consortium;
- Providing interim and formative assessments for kindergarten and grades 1-12;
- Training and reviewing the CAASPP program requirements imposed by the test claim statutes and regulations; and
- Developing and implementing policies, training, procedures and forms.¹³⁸

Claimants further allege that they are “unaware” of any dedicated state or federal funds, except the “Common Core Implementation Block Grant.”¹³⁹

In rebuttal comments, the claimants further argue that CAASPP is “fundamentally new” as compared to the prior STAR tests. Specifically, claimants point out that the computer-based assessment is adaptive: “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.” In addition, claimants argue that the CAASPP is a new program or higher level of service because “the assessment *mechanism* is entirely different.”¹⁴⁰

The claimants further argue that the CAASPP is not mandated by the federal No Child Left Behind Act. Although previous test claims on the STAR requirements did not reach the federal mandate issue, the claimants argue that “California was compliant with NCLB’s requirement...[to test its pupils, but]...California chose – without any change to NCLB – to adopt a new assessment regime that was much more expansive (and expensive).”¹⁴¹

And finally, the claimants argue that the funding cited by Finance as applicable to or available for the implementation of the CAASPP is not sufficient to fund the costs of the mandate, and is mostly one-time. Specifically, the claimants argue that \$1.25 billion in the 2013-2014 budget appropriated for (Common Core State Standards) CCSS implementation does not constitute additional revenue specifically intended to fund the costs of the mandate, within the meaning of section 17556(e), because the \$1.25 billion is not specifically aimed at funding CAASPP. Upgrading technology, including network bandwidth “necessary to support the administration of computer-based assessments...” is only one of several permissible purposes of the added funding, and districts are free to use the funds in other ways or for other purposes.¹⁴² Similarly, an additional \$400.5 million included in the 2013-2014 budget for reimbursement of outstanding mandate debt is not “specifically intended to fund the costs of the state mandate...”, the claimants argue, because it is intended first to satisfy old debt, not new programs, and once

¹³⁸ Exhibit A, Test Claim, pages 88-94.

¹³⁹ Exhibit A, Test Claim, page 74.

¹⁴⁰ Exhibit D, Claimant Rebuttal Comments, page 4.

¹⁴¹ Exhibit D, Claimant Rebuttal Comments, page 5.

¹⁴² Exhibit D, Claimant Rebuttal Comments, pages 6-7.

outstanding debt is satisfied, there is no legal restriction on the use of any remaining funds.¹⁴³ And, the claimants argue that \$26.7 million in the 2013-2014 budget for the California K-12 High Speed Network does not constitute additional revenue to satisfy costs of the mandate because “districts and county offices of education do not actually receive these funds directly; they only receive the benefit.”¹⁴⁴ Finally, claimants argue that \$22.7 million federal pass-through funding in the 2014 Budget Act should not be considered additional revenues specifically intended to fund the mandate, because California schools received a waiver under the federal No Child Left Behind Act for 2013-2014 and 2014-2015. However, claimants concede that \$126.8 million in state funding constitutes additional revenues within the meaning of section 17556(e), but the amount “is simply woefully inadequate to offset the significant financial need the test claimants have demonstrated in the claim.”¹⁴⁵

Department of Finance

Finance asserts in its comments that the test claim statutes are not reimbursable primarily because:

- A. The No Child Left Behind Act (NCLB) is a federal mandate; therefore administering the CAASPP System is not a state mandate because it is required to ensure California’s compliance with the NCLB.
- B. The CAASPP System replaced the Standardized Testing and Reporting (STAR) Program. The Commission has previously denied similar claims relating to the administration of the STAR Program, concluding that the test claim statutes and regulations did not impose a reimbursable state-mandated program on school district because the state has appropriated state and federal funds sufficient to pay for the costs of the claimed activities that were beyond those activities necessary to implement the testing requirements of federal law.¹⁴⁶

Finance asserts that the adoption of CCSS by the State Board of Education on August 2, 2010 created “a need to replace STAR with the CAASPP System, which is aligned to the standards.” The new system of assessments, Finance asserts, “will be operational in Spring 2015.” And, Finance states that while the new assessments are “computer-adaptive”, Statutes 2013, chapter 489 (AB 484) “authorizes schools to administer any computer-based CAASPP assessments on paper for up to three years after a new operational test is first administered.”¹⁴⁷

Finance goes on to assert that because Statutes 2013, chapter 489 “repealed STAR and replaced it with the CAASPP System”, the new assessments “should not be considered a new program.” In addition, Finance notes that prior to the enactment of the No Child Left Behind Act, the Improving America’s Schools Act (IASA) required “statewide systems of assessment and accountability for schools and districts receiving Title I funds.” Those assessment requirements included: “(1) the testing of all students in each of three grade spans (grades 3 through 5, 6

¹⁴³ Exhibit D, Claimant Rebuttal Comments, page 7.

¹⁴⁴ Exhibit D, Claimant Rebuttal Comments, page 8.

¹⁴⁵ Exhibit D, Claimant Rebuttal Comments, page 8.

¹⁴⁶ Exhibit C, Finance Comments on Test Claim 14-TC-01, page 1.

¹⁴⁷ Exhibit C, Finance Comments on Test Claim 14-TC-01, page 1.

through 9, and 10 through 12); (2) the provision of reasonable adaptations and accommodations for students with special learning needs; and (3) the provision of individual student assessment results to parents.” Finance notes that NCLB replaced the IASA in 2002, and required states to develop assessments that met specific criteria; specifically, annual testing in mathematics and reading is required for grades 3 through 8 and once in grades 9 through 12, and states are required to begin assessing students in science in the 2007-2008 school year and thereafter. Finance notes that a state not meeting these requirements “would jeopardize the receipt of federal NCLB funds.” Therefore, Finance concludes that “CAASPP is a federal mandate, as defined in Government Code Section 17513...and subsection (c) of Government Code Section 17556...”¹⁴⁸

Finance further asserts that in order to receive Title I and Title VI funding under NCLB, a state must submit a plan to the Secretary of Education “that satisfies the requirements of this section...”, including establishing a statewide assessment and accountability system for all public school students, which must be based on academic standards, and must demonstrate what constitutes “adequate yearly progress of the State, and of all public elementary schools, secondary schools, and local educational agencies in the State, based on those academic assessments.” Finance also notes that “Title I funds are clearly provided for school districts for the CAASPP System, which is the central element of the State’s assessment and accountability system used to satisfy the federal requirements under NCLB.” Moreover, Finance notes that under Title VI of the NCLB Act, “Section 6111 provides that the grants be available for states to enable them to ‘pay the costs of the development of the additional State assessments and standards required by section 1111(b)’, which is referenced above under Title I.”¹⁴⁹

Additionally, Finance asserts that if the Commission determines that the CAASPP is not a federal mandate, “the following items and provisions of the 2014 Budget Act explicitly require the offset of state-mandated reimbursable costs for the CAASPP System”:

- \$126.8 million in local assistance provided in item 6110-113-0001. Provision 7 of that item states that funds “shall be first used to offset any state-mandated reimbursable costs...for the remaining costs of the STAR 2013-2014 test administration, the California English Language Development Test, the California High School Exit Examination, and the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013.”
- \$22.7 million in Federal Trust Fund local assistance provided in item 6110-113-0890. Provision 6 states that “[f]unds provided to local educational agencies from Schedules (2), (3), and (5) shall first be used to offset any state-mandated reimbursable cost...for the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013...”¹⁵⁰

¹⁴⁸ Exhibit C, Finance Comments on Test Claim 14-TC-01, page 2.

¹⁴⁹ Exhibit C, Finance Comments on Test Claim 14-TC-01, page 3.

¹⁵⁰ Exhibit C, Finance Comments on Test Claim 14-TC-01, page 3.

Finance argues that these appropriations provide sufficient funds to cover the costs of the CAASPP activities and “should result in no costs mandated by the state pursuant to Government Code section 17556(e).”¹⁵¹

Finance further argues that this test claim presents essentially the same facts and issues as prior test claims on STAR, which the Commission denied. Finance notes that the Commission previously denied a test claim on STAR II and III because the state has appropriated state and federal funds, and there was no evidence in the record showing increased costs beyond the funding provided.¹⁵²

Finance further argues that if the Commission were to approve the test claim, it should also consider the \$1.25 billion in common core implementation funds as offsetting revenues, in part because the budget provision states that the funds shall be used for technology upgrades, including “expenditures necessary to support the administration of computer-based assessments and provide high-speed, high-bandwidth Internet connectivity for the purpose of administration of computer-based assessments.”¹⁵³ And, Finance notes that the 2014 Budget Act included \$400.5 million in one-time funding for outstanding mandate claims, which could be used for any one-time purpose determined by the LEAs, including technology infrastructure.¹⁵⁴ Additionally, Finance asserts that \$26.7 million included in the 2014 budget is intended to help schools “enhance their network connectivity...”

And, Finance argues that “schools are naturally compelled to invest in technology to adapt instructional delivery and student learning for the 21st century.” Finance asserts: “We believe the claimants have the burden to show that any costs cited under this test claim were incurred solely to accommodate the CAASPP System, and not in part for other education or instructional purposes.”¹⁵⁵ Finance then notes that even though the test claim statutes call for computer-based assessments, the schools are authorized to administer the CAASPP assessments on paper for up to three years, if necessary, and therefore any new costs prior to the 2016-2017 school year are voluntarily incurred.

In answer to claimants’ rebuttal comments, Finance filed additional late comments, in which it argued that the K-12 High Speed Network funding, even though it provides a service, rather than directly providing funds, results in a school district that is able to avoid incurring new costs, because CDE assumes the procurement and contract costs on a grant basis. Finance reasons as follows: “Had the \$26.7 million not been available, grant recipients that identified lack of adequate internet connectivity as a barrier to administering the CAASPP would have incurred costs to enter into the private market to procure increased broadband services.”¹⁵⁶

In addition, Finance’s comments assert that even though California received a waiver under NCLB for 2013-2014 and 2014-2015, “[t]he waiver granted by the federal government...does

¹⁵¹ Exhibit C, Finance Comments on Test Claim 14-TC-01, page 4.

¹⁵² Exhibit C, Finance Comments on Test Claim 14-TC-01, page 4.

¹⁵³ Exhibit C, Finance Comments on Test Claim 14-TC-01, pages 5-6.

¹⁵⁴ Exhibit C, Finance Comments on Test Claim 14-TC-01, page 6.

¹⁵⁵ Exhibit C, Finance Comments on Test Claim 14-TC-01, page 7.

¹⁵⁶ Exhibit E, Finance Late Comments, page 1.

not exempt California from the requirement to administer assessments as a condition of meeting NCLB.” Rather, Finance asserts that the waiver “was contingent on California local education agencies ensuring that, with the exception of students with the most significant cognitive disabilities, all students in grades 3 through 8 participated in the...field test...”¹⁵⁷

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.”¹⁵⁸ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹⁵⁹

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.¹⁶⁰
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.¹⁶¹
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.¹⁶²
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

¹⁵⁷ Exhibit E, Finance Late Comments, pages 1-2.

¹⁵⁸ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁵⁹ *County of Los Angeles v. State of California (County of Los Angeles I)* (1987) 43 Cal.3d 46, 56.

¹⁶⁰ *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, 874.

¹⁶¹ *Id.* at 874-875 (reaffirming the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56.)

¹⁶² *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

reimbursable if an exception identified in Government Code section 17556 applies to the activity.¹⁶³

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 6.¹⁶⁴ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹⁶⁵ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁶⁶

A. Most of the code sections and regulations pled do not impose any activities on local government, or are not new as compared to the law immediately prior to the statutory or regulatory sections pled, and thus, do not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

1. Statutes and Code Sections Pled

- a) Education Code section 60602, as amended by Statutes 2013, chapter 489, does not impose any activities on local government.

Section 60602, as amended by the test claim statute, provides for the Legislature’s intent “to provide a system of individual assessment of pupils that has the primary purpose of assisting teachers, administrators, and pupils and their parents to improve teaching and learning.” The section continues: “In order to accomplish these goals, the Legislature finds and declares that California should adopt a coordinated and consolidated testing program to do all of the following...” The remainder of section 60602 describes the Legislature’s intent that the new testing regime should provide information to pupils, parents, and teachers designed to improve teaching and learning; that the new tests should help assess academic achievement of individual pupils, as well as schools, school districts, and California as a whole; that the assessments should be reliable and statistically valid, and not racially, culturally, or gender biased; that the assessments should be “comparable to the National Assessment of Educational Progress and other national and international assessment efforts...”; that the assessments include a broad range of academic skills and knowledge; that the assessments include “an appropriate balance of types of assessment instruments”; and that the assessments “[m]inimize the amount of instructional time devoted to assessments administered pursuant to this chapter.” In addition, section 60602 states the intention of the Legislation “to begin a planning and implementation process to enable the Superintendent to accomplish the goals set forth in this section as soon as feasible.”¹⁶⁷ And

¹⁶³ *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.

¹⁶⁴ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

¹⁶⁵ *County of San Diego, supra*, 15 Cal.4th 68, 109.

¹⁶⁶ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

¹⁶⁷ Education Code section 60602 (Stats. 2013-2014, ch. 489 (AB 484)).

finally, section 60602 provides that it shall become inoperative on July 1, 2014, and as of January 1, 2015 is repealed, unless a later-enacted statute deletes or extends the date on which it becomes inoperative or is repealed.

The plain language of this section does not contain any mandatory language applicable to local government, but instead states the intent of the Legislature that the Superintendent of Public Instruction shall develop a statewide system of academic assessment in accordance with the goals set forth in the section. There are no specific activities required by the plain language of section 60602, and no language directing local government to do anything.

In addition, there is nothing new at all in the plain language of section 60602, as compared with the prior section.¹⁶⁸ A reimbursable mandate requires a mandated activity that 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.¹⁶⁹ The court of appeal in *Long Beach Unified School District* declared that “[a] mere increase in the cost of providing a service which is the result of a requirement mandated by the state is *not tantamount to a higher level of service.*”¹⁷⁰ The Supreme Court has also spoken on the requirement of a new program in *Lucia Mar Unified School District, supra*, in terms often repeated in later decisions: “We recognize that, as its made indisputably clear from the language of the constitutional provision, *local entities are not entitled to reimbursement for all increased costs mandated by state law*, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.”¹⁷¹ Here, there is nothing new required by the amended section and it cannot therefore impose a mandated new activity.

And finally, as explained above, section 60602 has been repealed, as of January 1, 2015, and therefore no longer has any force or effect.¹⁷²

Based on the foregoing, the Commission finds that section 60602, as amended by Statutes 2013, chapter 489, does not impose any activities on local government.

- b) Education Code section 60602.5, as added by Statutes 2013, chapter 489, does not impose any activities on local government.

¹⁶⁸ See Education Code section 60602 (as amended, Stats. 2004, ch. 233 (SB 1448)) [As repealed and added by Statutes 2013-2014, chapter 489, section 60602 changed “State Board of Education” to “state board” and “Superintendent of Public Instruction” to “Superintendent”, and deleted the word “and” within a list.].

¹⁶⁹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁷⁰ *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 173 [citing *County of Los Angeles, supra*, 43 Cal.3d at pp. 54-56] [emphasis added].

¹⁷¹ *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, at p. 835 [emphasis added].

¹⁷² A replacement provision, section 60602.5, added to the code by Statutes 2013-2014, chapter 489 (AB 484), became operative on July 1, 2014, and also provides legislative intent language directed to the Superintendent’s development of a statewide system of academic assessments. However, that section was not pled in this test claim, and is therefore not analyzed herein.

Section 60602.5, as added, provides:

It is the intent of the Legislature in enacting this chapter to provide a system of assessments of pupils that has the primary purposes of assisting teachers, administrators, and pupils and their parents; improving teaching and learning; and promoting high-quality teaching and learning using a variety of assessment approaches and item types. The assessments, where applicable and valid, will produce scores that can be aggregated and disaggregated for the purpose of holding schools and local educational agencies accountable for the achievement of all their pupils in learning the California academic content standards. The system includes assessments or assessment tools for multiple grade levels that cover the full breadth and depth of the curriculum and promote the teaching of the full curriculum.¹⁷³

In addition, section 60602.5 provides that it is the intent of the Legislature “to initiate planning for the implementation process to enable the Superintendent to accomplish the goals set forth in this section...” and “that parents, classroom teachers, other educators, pupil representatives, institutions of higher education, business community members, and the public be involved, in an active and ongoing basis, in the design and implementation...”¹⁷⁴ The section further states the intent of the Legislature “insofar as is practically and fiscally feasible...that the content, test structure, and test items that are part of the statewide pupil assessment system become open and transparent to teachers, parents, and pupils...” and “that the results of the statewide pupils assessments be available for use, after appropriate validation, for academic credit, or placement and admissions processes, or both, at postsecondary educational institutions.”¹⁷⁵

All of the above is Legislative intent language, and not only refers to future plans and policies, but also is directed toward the state and the Superintendent, not local government.

Based on the foregoing, the Commission finds that the plain language of section 60602.5, as added by Statutes 2013, chapter 489, does not impose any activities on local government.

- c) Education Code section 60603, as amended by Statutes 2013, chapter 489, does not impose any activities on local government.

Section 60603 provides definitions of several terms “[a]s used in this chapter”, including, but not limited to: “Achievement test”, “Computer-based assessment”, “Consortium”, “Performance standards”, and “Summative assessment”. There is no mandatory or directory language in this section, and nothing in this section requires local governments to perform any new activities.¹⁷⁶ However, the definition of “computer-based assessment” and “computer-adaptive assessment”, when taken in context of the remainder of the test claim statutes implementing the CAASPP, help to define the scope of the mandated activity to provide computer technology necessary for each student to take the CAASPP pursuant to Education Code section 60640, beginning with the

¹⁷³ Education Code section 60602.5 (Stats. 2013-2014, ch. 489 (AB 484)).

¹⁷⁴ Education Code section 60602.5(b-c) (Stats. 2013-2014, ch. 489 (AB 484)).

¹⁷⁵ Education Code section 60602.5(d-e) (Stats. 2013-2014, ch. 489 (AB 484)).

¹⁷⁶ Education Code section 60603 (Stats. 2013-2014, ch. 489 (AB 484)).

2013-2014 field test, and the full implementation in the 2014-2015 school year, as discussed further below.

Based on the foregoing, the Commission finds that the plain language of section 60603, as amended by Statutes 2013, chapter 489, does not impose any new activities on local government.

- d) Education Code section 60604, as amended by Statutes 2013, chapter 489, and Statutes 2014, chapter 327, does not impose any activities on local government.

Section 60604 provides that the Superintendent “shall design and implement, consistent with the timetable and plan required...a statewide pupil assessment system consistent with the testing requirements of this article in accordance with the objectives set forth in Section 60602.5.” The section further provides that the Superintendent “shall develop and annually update for the Legislature a five-year cost projection, implementation plan ... and a timetable for implementing the system described in Section 60640”; and that the Superintendent “shall make resources available that are designed to assist” with the interpretation and use of assessment data to improve educational programs. And finally, the section requires the Superintendent to make information and resources available to parents, teachers, pupils, administrators, school board members, and the public, and to consider comments and recommendations from teachers, administrators, pupil representatives, institutions of higher education, and the public.¹⁷⁷

The plain language of this section is directed to the Superintendent of Public Instruction, not to local government. Nothing in this section directs local government to perform any activities, or incur any new costs.

Based on the foregoing, the Commission finds that section 60604, as amended by Statutes 2013, chapter 489, and Statutes 2014, chapter 327, does not impose any activities on local government.

- e) Education Code section 60607, as amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 327, does not impose any new activities on local government.

Section 60607, as amended, provides as follows:

Each pupil shall have an individual record of accomplishment by the end of grade 12 that includes the results of the achievement test required and administered annually as part of the Measurement of Academic Performance and Progress (MAPP), or any predecessor assessments, established pursuant to Article 4 (commencing with Section 60640), results of end-of-course exams he or she has taken, and the vocational education certification exams he or she chose to take.¹⁷⁸

In addition, amended section 60607 provides that “It is the intent of the Legislature that local educational agencies and schools use the results of the academic achievement tests administered annually as part of the MAPP to provide support to pupils and parents or guardians in order to

¹⁷⁷ Education Code section 60604 (Stats. 2013, ch. 489 (AB 484); Stats. 2014, ch. 327 (AB 1599)).

¹⁷⁸ Education Code section 60607 (Stats. 2013-2014, ch. 489 (AB 484); Stats. 2014, ch. 327 (AB 1599)).

assist pupils in strengthening their development as learners, and thereby to improve their academic achievement...”¹⁷⁹

Amended section 60607 further provides that “[e]xcept for research provided for in Section 49079.6, a pupil’s results or a record of accomplishment shall be private, and may not be released to any person, other than the pupil’s parent or guardian and a teacher, counselor, or administrator directly involved with the pupil, without the express written consent of either...” the pupil or the pupil’s parent or guardian if the pupil is a minor. And, section 60607 provides that notwithstanding those prohibitions, a pupil or the pupil’s parent or guardian may release the results of the MAPP or record of accomplishment to a postsecondary educational institution for the purpose of credit, placement, or admission; and, the results of the an individual pupil on the MAPP may be released to a postsecondary institution for the purpose of credit, placement, or admission.¹⁸⁰

The claimant cites the entirety of amended section 60607 in its test claim, alleging that the section imposes new activities.¹⁸¹ However, the language of former section 60607 was substantially the same, with respect to the California Standards Test (CST), and only minor, non-substantive changes were made by the amendment. Former section 60607(a), for example, provided:

Each pupil shall have an individual record of accomplishment by the end of grade 12 that includes the results of the achievement test required and administered annually as part of the Standardized Testing and Reporting (STAR) Program established pursuant to Article 4 (commencing with Section 60640), results of end-of-course exams he or she has taken, and the vocational education certification exams he or she chose to take.¹⁸²

Therefore, the only change to subdivision (a) is the replacement of “STAR” with “MAPP”. The later amendments made by Statutes 2014, chapter 327, changed all references to the MAPP to CAASPP, and clarified a referenced to “*former* Section 49079.6, as it read on December 31, 2013...”¹⁸³ There are no new activities or requirements in the later-amended section.

Other changes made by Statutes 2013, chapter 489 include substituting “local educational agencies” for “schools” in subdivision (b), and “MAPP” for “statewide pupil assessment program” in subdivision (b) and “California Standards Test” in subdivision (c).¹⁸⁴ In each case “MAPP” was then amended to “CAASPP” by Statutes 2014, chapter 327.¹⁸⁵ These changes are non-substantive in nature; subdivision (a) requires that schools or school districts must maintain

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ Exhibit A, Test Claim, page 17.

¹⁸² Education Code section 60607(a) (as amended, Stats. 1997, ch. 828 (SB 376); Stats. 2001, ch. 722 (SB 233); Stats. 2004, ch. 233 (SB 1448)).

¹⁸³ Statutes 2014, chapter 327 (AB 1599).

¹⁸⁴ Education Code section 60640 (Stats. 2013-2014, ch. 489 (AB 484)).

¹⁸⁵ Education Code section 60640 (Stats. 2014, ch. 327 (SB 858)).

each pupil’s “individual record of accomplishment”, but prior section 60607 imposed the same requirement. The amendment effected by the test claim statute only substitutes the “MAPP” for the “STAR”, and therefore does not change the nature or scope of any required activities.¹⁸⁶ Subdivision (b) states only the *intent of the Legislature* that LEAs use the results of the MAPP to support and assist pupils; that language is not new, and is intent language, which is not, in itself, mandatory or directory.¹⁸⁷

The only remaining change to the section made by the test claim statute is to add the phrase “[e]xcept for research provided for in Section 49079.6...” when describing the requirement that pupils’ records of accomplishment and results of their assessments be kept private without written consent from the pupil or a parent or guardian.¹⁸⁸ However, because that provision does not contain any mandatory or directory language, but is instead prohibitive, or limiting in nature, the change does not result in a mandated new activity or task.

Based on the foregoing, the Commission finds that section 60607, as amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 327, does not impose any new activities on local government.

- f) Education Code section 60610, as amended by Statutes 2013, chapter 489, does not impose any new activities on local government.

Section 60610, as amended, provides that at the request of the state board, and in accordance with the rules and regulations of the state board, “each county superintendent of schools shall cooperate with and assist school districts and charter schools under his or her jurisdiction in carrying out the testing programs...and other duties imposed on school districts by this chapter.”¹⁸⁹ The plain language is mandatory, and imposes upon the county superintendent a duty to cooperate with and assist the schools within its jurisdiction with respect to the testing requirements of the test claim statutes. However, former section 60610 required county superintendents to perform the same activity, except that charter schools were not expressly named in the prior statute.¹⁹⁰ Former section 60610 stated that the county superintendent of schools “shall cooperate with and assist school districts under his or her jurisdiction in carrying out the testing programs of those districts and other duties imposed on school districts by this chapter.” Charter schools were required under prior law to carry out the testing programs pursuant to Education Code section 60640(b), and county superintendents also had jurisdiction over charter schools under prior law.¹⁹¹

¹⁸⁶ Compare Education Code section 60607(a) (Stats. 2004, ch. 233 (SB 1448)) with Education Code section 60607(a) (Stats. 2013-2014, ch. 489 (AB 484); Stats. 2014, ch. 327 (AB 1599)).

¹⁸⁷ See Former Education Code section 60607 (Stats. 2004, ch. 233 (SB 1448); Education Code section 60607(b) (Stats. 2013-2014, ch. 489 (AB 484); Stats. 2014, ch. 327 (AB 1599)).

¹⁸⁸ Education Code section 60607(c) (Stats. 2013-2014, ch. 489 (AB 484); Stats. 2014, ch. 327 (AB 1599)).

¹⁸⁹ Education Code section 60610 (Stats. 2013-2014, ch. 489 (AB 484)).

¹⁹⁰ Education Code section 60610 (Stats. 1995, ch. 975).

¹⁹¹ Education Code section 60640, as last amended by Statutes 2009-2010, chapter 2 (5th Ex Sess.); Education Code section 47605, as last amended by Statutes 2008, chapter 179.

Based on the foregoing, the Commission finds that section 60610, as amended by Statutes 2013, chapter 489, clarifies existing law, and does not impose any new activities on local government.

- g) Education Code section 60611, as amended by Statutes 2013, chapter 489, and Statutes 2014, chapter 327, does not impose new activities on local government.

Section 60611, as amended, provides that an LEA, district superintendent, or principal or teacher of any elementary or secondary school, including charter schools, “shall not carry on any program for the sole purpose of test preparation of pupils for the statewide pupil assessment system or a particular test used in the statewide pupil assessment system.” The section goes on to state that “[n]othing in this section prohibits the use of materials to familiarize pupils with item types or the computer-based testing environment...”¹⁹²

There is no mandatory or directory language in this section; the language is prohibitive in nature, and does not require any activity or task of local government. Moreover, the prohibition against “any program for the sole purpose of test preparation” is found also in former section 60611, as amended by Statutes 2005, chapter 676 (SB 755), and therefore this provision is not new, as compared to prior law.

Based on the foregoing, the Commission finds that section 60611, as amended by Statutes 2013, chapter 489, and Statutes 2014, chapter 327, does not impose any activities on local government.

- h) Education Code section 60612, as amended by Statutes 2013, chapter 489, does not impose any activities on local government.

Section 60612, as amended, provides that once the assessments are adopted or approved, “the Superintendent shall prepare, and make available to parents, teachers, pupils, administrators, school board members, and the public, easily understood materials...describing the nature and purposes of the assessments, the systems of scoring, and the valid uses to which the assessments will be put.” Those materials are required also to be provided “in languages other than English in accordance with Section 48985.”¹⁹³

Nothing in this section directs local government to perform any new activities. The language is directed solely at the state Superintendent.

Based on the foregoing, the Commission finds that section 60612, as amended by Statutes 2013, chapter 489, does not impose any activities on local government.

- i) Education Code section 60641, as amended by Statutes 2013, chapter 489, and Statutes 2014, chapter 327, does not impose any new activities on local government.

Section 60641, as amended, provides that the assessments “are scheduled to be administered to all pupils,” including charter school pupils, except those exempted pursuant to section 60640, “during the period prescribed in subdivision (b) of Section 60640.” In addition, the section requires that each pupil’s individual results “shall be reported, in writing, to the parent or guardian of the pupil.” That report must include a clear explanation of the purpose of the test, the pupil’s score, and the LEA’s intended use of that score. The section further provides that

¹⁹² Education Code section 60611 (Stats. 2013-2014, ch. 489 (AB 484); Stats. 2014, ch. 324 (AB 1599)).

¹⁹³ Education Code section 60612 (Stats. 2013-2014, ch. 489 (AB 484)).

valid individual results shall be reported to the school and teachers of a pupil, and shall be included in pupil records. And, the section provides that districtwide, school-level, and grade-level results in each of the grades designated pursuant to section 60640, “but not the score or relative position of any individually ascertainable pupil,” shall be reported to the governing board of the school district and the county office of education at a regularly scheduled meeting. The section further provides that the state board shall adopt regulations for these reporting requirements, including “a calendar for delivery” of the results. And, the section prohibits any reporting other than to the school or LEA where a group of scores includes 10 or fewer pupil assessments; except as required by section 60630, “in no case shall any group score or report be displayed that would deliberately or inadvertently make the score or performance of any individual pupil or teacher identifiable.” Finally, the section provides that pupils in grade 11, or their parents, may request results “for the purpose of determining credit, placement, or readiness for college-level coursework be released to a postsecondary educational institution.”¹⁹⁴ The later amendments made by Statutes 2014, chapter 327 changed all “MAPP” references to “CAASPP”, and eliminated an obsolete reference to section 49079.6.

The provision stating that the assessments “are scheduled to be administered” in accordance with section 60640 is not mandatory or directory; rather, it refers to the time in which an activity will be conducted. It appears from the context of this section and section 60640 that LEAs are required to administer the assessments. In any event, however, LEAs were required to administer the STAR tests under prior law, as explained above, and therefore if a requirement can be read into this section it is not new.

Furthermore, subdivision (d) provides that CDE “shall ensure that pupils in grade 11, or parents or legal guardians of those pupils may request results from grade 11 assessments...” for the purpose of determining credit, placement, or readiness for college-level coursework. The plain language refers to a requirement placed on CDE, but it may be expected that schools and LEAs will control the results that pupils or parents seek, and therefore this section might be argued to implicate duties also for schools or LEAs. However, this requirement, too, is found in the prior section: “The department shall ensure that a California Standards Test that is augmented for the purpose of determining credit, placement, or readiness for college-level coursework of a pupil in a postsecondary educational institution inform a pupil in grade 11 that he or she may request that the results from that assessment be released to a postsecondary educational institution.”¹⁹⁵

Indeed, none of the substantive requirements of section 60641 are new. The CAASPP assessment replaces the STAR tests, and specifically the Smarter Balanced summative assessments replace the CSTs for English language arts and mathematics. Therefore a new and different test is required to be administered, but as the foregoing analysis demonstrates, the activities and tasks associated with administering the test are no different, based on the plain language of section 60641. Former section 60641 provided: “The standards based achievement test provided for in Section 60642.5 is scheduled to be administered to all pupils during the period prescribed in subdivision (b) of Section 60640.”¹⁹⁶ As amended, section 60641 now

¹⁹⁴ Education Code section 60641 (Stats. 2013-2014, ch. 489 (AB 484); Stats. 2014, ch. 372 (AB 1599)).

¹⁹⁵ Education Code section 60641 (Stats. 2009, ch.187 (SB 511)).

¹⁹⁶ As amended, Statutes 2009, chapter 187 (SB 511).

provides: “The achievement tests provided for in Section 60640 are scheduled to be administered to all pupils, inclusive of pupils enrolled in charter schools and exclusive of pupils exempted pursuant to Section 60640, during the period prescribed in subdivision (b) of Section 60640.” The only difference is the source of the test, whether section 60640 (the summative assessments, and the other tests preserved in the law pending a successor test being adopted) or 60642.5 (the CSTs), and the express inclusion of charter school pupils, who were required to be tested under prior law also.¹⁹⁷ Additionally, the reporting requirements, including maintaining pupil records, were substantially the same in prior law. For example, former section 60641 provided:

The individual results of each pupil test administered pursuant to Section 60640 shall be reported, in writing, to the parent or guardian of the pupil. The written report shall include a clear explanation of the purpose of the test, the score of the pupil, and the intended use by the school district of the test score. This subdivision does not require teachers or other school district personnel to prepare individualized explanations of the test score of each pupil.¹⁹⁸

As amended by Statutes 2013, chapter 489, section 60641 provides:

For assessments that produce valid individual pupil results, the individual results of each pupil tested pursuant to Section 60640 shall be reported, in writing, to the parent or guardian of the pupil. The report shall include a clear explanation of the purpose of the test, the score of the pupil, and the intended use by the local educational agency of the test score. This subdivision does not require teachers or other local educational agency personnel to prepare individualized explanations of the test score of each pupil. It is the intent of the Legislature that nothing in this section shall preclude a school or school district from meeting the reporting requirement by the use of electronic media formats that secure the confidentiality of the pupil and the pupil’s results. State agencies or local educational agencies shall not use a comparison resulting from the scores and results of the Measurement of Academic Performance and Progress (MAPP) assessments and the assessment scores and results from assessments that measured previously adopted content standards.¹⁹⁹

The amended section thus limits the reporting requirement to “assessments that produce valid individual pupil results,” as well as replacing “school district” with “local educational agency”, and stating the intent of the Legislature that nothing in this section should *preclude* a school or district from providing results electronically, so long as the form is secure. When the former and amended sections are compared further, the reporting requirements that apply to the school and

¹⁹⁷ Compare Education Code section 60641 (as amended, Stats. 2009, ch. 187 (SB 511)) with Education Code section 60641 (as amended, Stats. 2013-2014, ch. 489 (AB 484)). See also, Exhibit X, Bill Analysis, Assembly Bill 484.

¹⁹⁸ As amended, Statutes 2009, chapter 187 (SB 511).

¹⁹⁹ As amended by Statutes 2014, chapter 327, “MAPP” is replaced with “CAASPP”.

teachers, and the inclusion in pupil records, are also found in the prior law. In other words, nothing in this section imposes new activities on local government.²⁰⁰

Based on the foregoing, the Commission finds that section 60641, as amended by Statutes 2013, chapter 489, and Statutes 2014, chapter 327, does not impose any new activities on local government.

- j) Education Code section 60642.6, as added by Statutes 2013, chapter 489, does not impose any activities on local government.

Section 60642.6 provides that the California Department of Education “shall acquire, and offer at no cost to [LEAs], interim and formative assessment tools for kindergarten and grades 1 to 12, inclusive...”²⁰¹ This section imposes a requirement on the California Department of Education, not on local agencies or school districts. The interim and formative assessments are optional at the local level, not required.²⁰²

Based on the foregoing, the Commission finds that section 60642.6, as added by Statutes 2013, chapter 489, does not impose any activities on local government.

- k) Education Code section 60643, as amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 327, does not impose any activities on local government.

Section 60643 provides the requirements of contracts to be entered into “in connection with the test provided for in Section 60640.” The section exempts the Department of Education from certain requirements of the Public Contract Code and the Military and Veterans Code, but requires an open and competitive process to select a contractor or contractors to administer the CAASPP. The section requires the Department of Education to develop the contract or contracts, and the Superintendent of Public Instruction and the state board to approve the contract(s). In addition, the section provides for some specific requirements of the contract(s), including how completion of components shall be evaluated, and how payments shall be made.²⁰³

The only mandatory language in this section is directed toward the Department of Education, a state agency. Nothing in this section imposes any new required activities on local government.

Based on the foregoing, the Commission finds that section 60643, as amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 327, does not impose any activities on local government.

- l) Education Code section 60643.6, as added by Statutes 2013, chapter 489 and amended by Statutes 2014, chapter 327, does not impose any activities on local government.

²⁰⁰ Compare Education Code section 60641 (Stats. 2009, ch. 187 (SB 511)) with Education Code section 60641 (Stats. 2013-2014, ch. 489 (AB 484); Stats. 2014, ch. 327 (AB 1599)).

²⁰¹ Education Code section 60642.6 (Stats. 2013-2014, ch. 489 (AB 484)).

²⁰² Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 10.

²⁰³ Education Code section 60643 (Stats. 2013-2014, ch. 489 (AB 484); Stats. 2014, ch. 327 (AB 1599)).

Section 60643.6 provides that an LEA “shall be reimbursed by the contractor selected pursuant to this article for any unexpected expenses incurred due to scheduling changes that resulted from the late delivery of testing materials in connection with the [CAASPP].”²⁰⁴ The section does not require an LEA to perform any activities. The only mandatory or directory language in this section is directed toward the contractor.

Based on the foregoing, the Commission finds that section 60643.6, as added by Statutes 2013, chapter 489 and amended by Statutes 2014, chapter 327, does not impose any activities on local government.

- m) Education Code section 60648, as amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 327, does not impose any activities on local government.

Section 60648 requires the Superintendent of Public Instruction to recommend for the state board’s adoption performance standards applicable to the CAASPP. The performance standards are required to “identify and establish the minimum performance required for meeting a particular achievement level expectation...” and shall be reviewed and adjusted as necessary by the state board every five years.²⁰⁵ The requirements of this section are directed to the Superintendent and the state board, and no requirements or activities are imposed on local government.

Based on the foregoing, the Commission finds that section 60648, as amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 327, does not impose any activities on local government.

- n) Education Code section 60648.5, as added by Statutes 2013, chapter 489, does not impose any activities on local government.

Section 60648.5 states that the “first full administration of assessments aligned to the common core standards...shall occur in the 2014-2015 school year unless the state board determines that the assessments cannot be fully implemented.” The section further requires the Department of Education to “determine how school districts are progressing toward implementation of a technology-enabled assessment system, and the extent to which the assessments...can be fully implemented.” The Department is required to “provide a report and recommendations to the state board, the Department of Finance, and the appropriate fiscal and policy committees of the Legislature on or before October 1, 2014.” And finally, based on that report, “the state board shall determine whether the state shall fully implement...” the assessments, as specified.²⁰⁶

The express mandatory and directory language contained in this section is directed toward the Department and the state board, and does not impose any required activities on local government. In addition, although the section does state that the first full administration of the assessments “shall occur in the 2014-2015 school year...”, that language does not directly impose any new requirements or activities relating to the administration of the assessments; indeed, section 60648.5 does not by itself make clear what entity shall administer the

²⁰⁴ Education Code section 60643.6 (Stats. 2013-2014, ch. 489 (AB 484); Stats. 2014, ch. 327 (AB 1599)).

²⁰⁵ Education Code section 60648 (Stats. 2013-2014, ch. 489 (AB 484); Stats. 2014, ch. 327 (AB 1599)).

²⁰⁶ Education Code section 60648.5 (Stats. 2013-2014, ch. 489 (AB 484)).

assessments, or when, except during the 2014-2015 school year. The activities related to administering the assessments are found in other sections, while section 60648.5 provides only for the timing of the assessments.

Based on the foregoing, the Commission finds that section 60648.5, as added by Statutes 2013, chapter 489 and amended by Statutes 2014, chapter 327, does not impose any activities on local government.

- o) Education Code section 60649, as added by Statutes 2013, chapter 489, does not impose any activities on local government.

Section 60649 requires the Department of Education to develop a three-year plan, with approval of the state board, “supporting the continuous improvement of the assessments developed and administered pursuant to Section 60640.” In addition, the section requires the Department to contract for a “three-year independent evaluation” of the “consortium computer-adaptive assessments...in grades 3 to 8, inclusive, and grade 11...”²⁰⁷

This section imposes new requirements only on the Department of Education, and not on local governments.

Based on the foregoing, the Commission finds that section 60649, as added by Statutes 2013, chapter 489, does not impose any activities on local government.

- p) Education Code section 60810, as amended by Statutes 2014, chapter 327, does not impose any activities on local government.

Section 60810 requires the Superintendent to “review existing tests that assess the English language development of pupils whose primary language is a language other than English”, and determine which, if any, are appropriate to the goals of the section, including having “sufficient range to assess pupils in grades 2 to 12, inclusive, in English listening, speaking, reading, and writing skills...” and otherwise providing “sufficient information about pupils at each grade level to determine levels of proficiency” and being “capable of administration”. The Superintendent shall report its determination to the Legislature, or “[i]f no suitable test exists, the Superintendent shall explore the option of a collaborative effort with other states to develop a test or series of tests and share test development costs...” or, “with approval of the state board, may contract to develop a test or series of tests that meets the criteria...”²⁰⁸

Nothing in this section directs local government to perform any activities, or incur any new costs. The language is directed only to the Superintendent.

Based on the foregoing, the Commission finds that section 60810, as amended by Statutes 2014, chapter 327, does not impose any activities on local government.

- q) Education Code section 99300, as amended by Statutes 2013, chapter 489, does not impose any activities on local government.

Section 99300 provides that for purposes of the Early Assessment Program, established by the California State University in 2004, the former California Standards Test (CST) and augmented CST “may be replaced with the grade 11 consortium computer-adaptive assessments in English

²⁰⁷ Education Code section 60649 (Stats. 2013-2014, ch. 489 (AB 484)).

²⁰⁸ Education Code section 60810 (Stats. 2014, ch. 327 (AB 1599)).

language arts and mathematics.” The section does not contain any mandatory or directory language aimed at local government, and primarily states the intent of the Legislature with respect to the EAP.

Based on the foregoing, the Commission finds that section 99300, as amended by Statutes 2013, chapter 489, does not impose any activities on local government.

- r) Education Code section 99301, as amended by Statutes 2013, chapter 489, does not impose any new activities on local government.

Section 99301, as amended, provides for “individual grade 11 assessment results”, “or a standards-aligned successor assessment,” to be used by community college districts and the CSU system “to provide diagnostic advice to, or for the placement of, prospective community college students participating in the [Early Assessment Program].” Pupils’ individual results are “provided to the office of the Chancellor of the California Community Colleges”, which “shall coordinate” with community college districts voluntarily participating in the EAP, and the Chancellor shall release the results to participating districts so that they may provide diagnostic advice to prospective students. The results shall also be used to assess college readiness, and to provide “additional preparation in grade 12 for prospective community college students” but not as a criterion for admission.²⁰⁹

The claimant cites only paragraph (b)(1), and subparagraph (b)(2)(C). Section 99301(b)(1) provides: “...the individual assessment results, as referenced in Section 60641, or a standards-aligned successor assessment, shall be provided to the office of the Chancellor of the California Community Colleges.” Section 99301(b)(2)(C) provides that the Chancellor shall: “Provide access to the individual assessment results, as referenced in Section 60641, or a standards-aligned successor assessment, to participating community college districts.”²¹⁰

Prior to this amendment, however, section 99301 provided substantially the same with respect to pupils’ individual results on the CST.²¹¹ For example, section 99301(b)(1) stated as follows:

As authorized pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 60641, the individual results of the CST and the augmented CST, as referenced in Section 60641, shall be provided to the office of the Chancellor of the California Community Colleges.²¹²

The amended section replaces “the California Standards Test (CST) and the augmented CST” with “grade 11 assessment” or “assessment” or “assessment referenced in Section 60641”, in accordance with section 99300, discussed above. The amendment makes no substantive change to the requirement to provide results to the Chancellor, or to participating community college districts’ requirements to use the assessments to provide diagnostic advice or for placement purposes. Therefore, this requirement, though now applicable to a different academic achievement test, is not new.

²⁰⁹ Education Code section 99301 (Stats. 2013-2014, ch. 489 (AB 484)).

²¹⁰ Exhibit A, Test Claim, page 24.

²¹¹ Education Code section 99301 (Stats. 2008, ch. 473 (SB 946)).

²¹² Education Code section 99301 (Stats. 2008, ch. 473 (SB 946)).

Based on the foregoing, the Commission finds that section 99301, as amended by Statutes 2013, chapter 489, section 28.5, does not impose any new activities on local government.

2. Regulations Pled

- a) California Code of Regulations, title 5, sections 850-864, as amended by Register 2014, No. 6, were not pled by the claimants.

Government Code section 17553 requires that all test claims include “[a] written narrative that identifies specific sections of statutes or executive orders and the *effective date and register number* of regulations alleged to contain a mandate...”²¹³ Accordingly, claimants are required to plead with specificity the statutes and chapters, and regulations with register number and effective date.

Here, the amended test claim pleads Code of Regulations, title 5, sections 850-864, inclusive, as added or amended by Register 2014, No. 30 and Register 2014, No. 35.

However, Code of Regulations, title 5, sections 850-864 imposed many of the same or similar requirements under the STAR program, and were most recently amended *prior to the test claim regulations* by Register 2014, No. 6, which was transmitted to the Office of Administrative Law (OAL) as an emergency regulatory action, with an effective date of February 3, 2014, set to expire on August 5, 2014.²¹⁴ Before the expiration of those February regulations, SBE re-filed sections 850-864 as an emergency regulatory action, effective July 23, 2014, and set to expire on October 22, 2014.²¹⁵ Those July regulations were designated Register 2014, No. 30. A certificate of compliance, along with additional amendments to the July emergency regulations was filed with OAL on July 16, 2014, and designated Register 2014, No. 35.²¹⁶

- 1) *Sections 862 862.5, 863, and 864 were not amended by the test claim statutes.*

Prior law, section 862, as amended by Register 2014, No. 6, required LEAs to report the number of pupils enrolled and tested using the CAASPP tests, and the alternate assessments, as well as the number of students exempted from testing. In addition, LEAs were required to report the number of pupils who were administered any portion of the CAASPP using paper-pencil assessments.²¹⁷

Prior law, section 862.5, describes the funding apportioned to LEAs by the State Board of Education and its intended uses, including all staffing costs, all expenses incurred at the LEA and test sites related to testing, all transportation costs of delivering and retrieving tests and test materials, and all costs associated with satisfying the various reporting requirements.²¹⁸

²¹³ Government Code section 17553(b)(1) (Stats. 2007, ch. 329 (AB 1222)). See also Code of Regulations, title 2, section 1183.2.

²¹⁴ Exhibit X, February 2014 Emergency Regulations.

²¹⁵ Exhibit A, Test Claim, page 291.

²¹⁶ See Exhibit A, Test Claim, page 314 and following.

²¹⁷ Code of Regulations, title 5, section 862 (Register 2014, No. 6).

²¹⁸ Code of Regulations, title 5, section 862.5 (Register 2014, No. 6).

Under prior law, section 863 described the reporting requirements, including transmitting pupil reports to parents or guardians, and maintaining each pupil's scores with his or her permanent school records.²¹⁹ This requirement is essentially the same as was required under STAR.

Under prior law, section 864 required LEAs to comply with any and all requests from the CAASPP contractor(s) and abide by any and all instructions of the contractor or consortium.²²⁰

Register 2014, No. 30 reenacted sections 862 862.5, 863, and 864 exactly as written in Register 2014, No. 6.²²¹ Register 2014, No. 35 also made no changes to these sections.

Based on the foregoing, the Commission finds that Code of Regulations, title 5, sections 862 862.5, 863, and 864, which were not amended by Register 2014, Nos. 30 and 35, do not impose any new activities on local government.

2) *862.5 will be addressed, as relevant in the analysis of costs below.*

Although section 862.5 is not new, it does describe the required uses of available funding, and will be addressed below as relevant to the analysis of costs under Government Code section 17556(e).

Because only Register 2014, Nos. 30 and 35 were properly pled, only the changes made by those regulatory actions may be considered in this test claim. The Commission's analysis focuses on activities that are new as compared with the law in effect prior to the statutes and regulations pled.²²² To the extent the language and requirements of Register 2014, Nos. 30 and 35 are no different than under prior law, the Commission must find that there are no new activities imposed by the test claim regulations. This analysis will be applied below, where necessary and appropriate.

a) Code of Regulations, title 5, section 850, does not impose any activities on local government.

Code of Regulations, title 5, section 850 provides as follows:

For the purposes of these regulations, the Measurement of Academic Performance and Progress assessment system (as established in Education Code section 60640 and known as "MAPP") shall be designated the California Assessment of Student Performance and Progress (CAASPP), and the following terms shall have the following meanings:

The section goes on to provide definitions, for purposes of the CAASPP program, of terms including, but not limited to: "Accommodations", "Achievement tests", "Alternate assessment", and so forth.²²³

²¹⁹ Code of Regulations, title 5, section 863 (Register 2014, No. 6).

²²⁰ Code of Regulations, title 5, section 864 (Register 2014, No. 6).

²²¹ Compare Code of Regulations, title 5, section 864 (Register 2014, No. 6) with Code of Regulations, title 5, section 864 (Register 2014, No. 30).

²²² *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

²²³ Code of Regulations, title 5, section 850 (Register 2014, No. 30.)

This section is purely definitional and does not require any activities of local government. In addition, nothing in section 850, as amended by Register 2014, No. 30, is new, as compared with Register 2014, No. 6, operative February 3, 2014. The language of Register 2014, No. 30 is unchanged from those earlier emergency regulations, which were still in force at the time Register 2014, No. 30 was filed with the OAL.

The only change to section 850 that has been properly pled is found within Register 2014, No. 35, which repealed the definition of “accessibility supports” in prior subsection (b), and added the definitions of “adaptive engine” in subsection (c); “data warehouse” in subsection (j); “individualized aid” in subsection (o); “registration system” in subsection (v); and “resource(s)” in subsection (w). In addition, several other definitions were altered, some substantively, and others in non-substantive respects. The amendments to section 850 remain definitional in nature, and do not impose any activities on local government.

However, the definition of “assessment technology platform” and “embedded,” when taken in context of the remainder of the test claim statutes and regulations implementing the CAASPP, help to define the scope of the required activity “to provide adequate assessment technology in order to administer the CAASPP via computers” beginning with the 2013-2014 field test, and the full implementation in the 2014-2015 school year, as discussed further below.

Based on the foregoing, the Commission finds that Code of Regulations, title 5, section 850, as amended by Register 2014, Nos. 30 and 35, does not impose any activities on local government.

- b) Code of Regulations, title 5, section 851, as amended by Register 2014, Nos. 30 and 35, does not impose any new activities on local educational agencies.

Section 851 of the regulations implementing the CAASPP system generally requires LEAs to administer the assessments to each pupil enrolled within the LEA within a specified window of time, and to make arrangements for testing pupils in alternative education programs or programs conducted off campus.

Prior to the test claim regulations, section 851 required that charter schools “shall test with, dependent on, the LEA that granted the charter or was designated the oversight agency...”²²⁴

Register 2014, No. 30 made no changes to Section 851. Register 2014, No. 35, however, made the following change:

No later than [the] start of the 2014-2015 school year...a charter school which is not an LEA as defined in Education Code section 60603(o) shall test with...the LEA that granted the charter or was designated the oversight agency by the State Board of Education.”²²⁵

However, these changes are non-substantive, because the amendment only dictates the time in which a charter school shall administer the test, and clarifies the definition of a charter school.

Moreover, charter schools were long required to test pupils under the STAR program in effect prior to the CAASPP and this regulatory amendment.²²⁶ The former Education Code provisions

²²⁴ Code of Regulations, title 5, section 851 (Register 2014, No. 6).

²²⁵ Code of Regulations, title 5, section 851 (Register 2014, No. 35).

²²⁶ See, e.g., Exhibit X, Bill Analysis, AB 484.

pertaining to the STAR tests show that charter schools were required to participate in statewide testing under prior law. For example, former section 60611 states that a city, county, city and county, district superintendent of schools, principal, or a teacher of an elementary or secondary school, *including a charter school*, shall not carry on any program or specific preparation of pupils for the statewide pupil assessment program...²²⁷ Therefore, charter schools were required to administer the statewide assessments under prior law, and the provisions of section 851 pertaining to charter schools do not impose new activities. The amendment to section 851 does not alter the scope or cost of any activities required of local government; it only changes the way in which charter schools are identified within the Education Code for purposes of this program.

Based on the foregoing, the Commission finds that Code of Regulations, title 5, section 851, as amended by Register 2014, Nos. 30 and 35, does not impose any new activities on local government.

- c) Code of Regulations, title 5, section 852, as amended by Register 2014, Nos. 30 and 35, does not impose any new activities on local government.

Prior to the test claim regulations, section 852 required school districts to notify parents or guardians each year of their pupil's participation in the CAASPP assessments, and include a notice of the opt-out provisions in Education Code section 60615.²²⁸ Register 2014, Nos. 30 and 35 made no changes to this section. Therefore, nothing in the test claim regulations requires any new activities of local government.

Based on the foregoing, the Commission finds that Code of Regulations, title 5, section 852, as amended by Register 2014, Nos. 30 and 35, does not impose any new activities on local government.

- d) Code of Regulations, title 5, sections 853.5, as amended by Register 2014, Nos. 30 and 35, and 853.7, as added by Register 2014, No. 35, do not impose any new activities on local government.

Prior to the test claim regulations, section 853.5 defined "embedded universal tools on the CAASPP tests" that shall be available to all pupils, including a calculator, digital notepad, English dictionary, and others, as specified.²²⁹ The section further defined "non-embedded universal tools" available to all students, including "scratch paper", a thesaurus for certain item types, math tools such as a ruler and protractor, and others, as specified and provided for embedded and non-embedded "designated supports...when determined for use by an educator or group of educators..." And, when specified in a pupil's "IEP or Section 504 Plan", prior section 853.5 provided for embedded and non-embedded accommodations, including magnification, a scribe for reading, listening, and mathematics, separate setting for test taking, American Sign Language, Braille, and others, as specified.

²²⁷ Education Code section 60611 (as amended, Stats. 2005, ch. 676 (SB 755) [emphasis added]; see also, Education Code section 60640 (as amended by Stats. 2009-2010, ch. 2 (5th Ex Sess.)).

²²⁸ Section 852, as amended by Code of Regulations, title 5, Register 2014, No. 6.

²²⁹ Code of Regulations, title 5, section 853.5(a) (Register 2014, No. 6).

No changes were made to section 853.5 by Register 2014, No. 30.²³⁰

The only substantive change made by Register 2014, No. 35, was to separate subsections (c) and (d) into a separate section, added as section 853.7, which applies specifically and exclusively to English learner pupils.²³¹ Section 853.7, therefore, is a new section, but its requirements are taken entirely from former section 853.5, and therefore no new activities are imposed, as compared with section 853.5, as amended by prior law (i.e., Register 2014, No. 6).

Based on the foregoing, the Commission finds that Code of Regulations, title 5, sections 853.5, as amended by Register 2014, Nos. 30 and 35, and 853.7, as added by Register 2014, No. 35, do not impose any new activities on local government.

- e) Code of Regulations, title 5, sections 855, as amended by Register 2014, Nos. 30 and 35, does not impose any new activities on local government.

Prior to the test claim regulations, section 855 described the testing period for the 2013-2014 school year, and for the 2014-2015 school year and after. It provided that the tests “shall be administered...” by each LEA within specified time periods.²³² However, school districts were required to administer tests under the STAR program as well, and section 855 only identifies the timing of the tests.²³³

No changes to section 855 were made by Register 2014, No. 30.²³⁴ The testing windows described for the 2013-2014 and 2014-2015 school years are exactly the same as described in prior law, and the test claim regulation contains no new mandatory or directory language. Register 2014, No. 35 also did not amend section 855, and therefore imposes no new activities.²³⁵

Based on the foregoing, the Commission finds that Code of Regulations, title 5, section 855, as amended by Register 2014, Nos. 30 and 35, does not impose any new activities on local government.

- f) Code of Regulations, title 5, sections 857, as amended by Register 2014, Nos. 30 and 35, does not impose any new activities on local government.

Prior to the test claim regulations, section 857 provided that on or before September 30 of the school year, each LEA superintendent shall designate an LEA CAASPP coordinator; identify

²³⁰ Compare Code of Regulations, title 5, section 853.5 (Register 2014, No. 6) with Code of Regulations, title 5, section 853.5 (Register 2014, No. 30).

²³¹ Compare Code of Regulations, title 5, section 853.5 (Register 2014, No. 30) with Code of Regulations, title 5, section 853.5 (Register 2014, No. 35). See also Code of Regulations, title 5, section 853.7 (Register 2014, No. 35).

²³² Code of Regulations, title 5, section 855 (Register 2014, No. 6).

²³³ See, Code of Regulations, title 5, section 855 (Register 2011, No. 15).

²³⁴ Compare Code of Regulations, title 5, section 855 (Register 2014, No. 6) with Code of Regulations, title 5, section 855 (Register 2014, No. 30).

²³⁵ Compare Code of Regulations, title 5, section 855 (Register 2014, No. 30) with Code of Regulations, title 5, section 855 (Register 2014, No. 35).

pupils unable to access the computer-based version of the CAASPP tests; and report to the CAASPP contractor the number of pupils unable to access the computer-based version of the test.²³⁶ The LEA CAASPP coordinator, or the LEA superintendent, pursuant to section 857, was required to be available through September 29 of the following school year as a liaison and representative to complete the LEA testing activities; the responsibilities of the coordinator “shall be those defined in the contractor’s(s’) or consortium’s administrative manuals and documentation...”²³⁷ In addition, the LEA CAASPP coordinator was required to “ensure current and ongoing compliance with the minimum technology specifications as identified by the CAASPP contractor(s) or consortium...” and “ensure the training of all CAASPP test site coordinators...”²³⁸

Register 2014, No. 30 reenacted section 857 exactly as it appeared under prior law.²³⁹ Register 2014, No. 35 amended section 857(b) to provide that the LEA CAASPP coordinator or LEA superintendent shall be available through September 30 to complete the LEA testing activities. However, the extension of availability from September 29 to September 30 does not impose a new activity. At most, it requires the scope of existing duties to increase by one calendar day. The expansion of time to perform an existing activity required under prior law is not the imposition of a new activity, or a new program or higher level of service provided to the public. In addition, there is no evidence in the record that the additional day requires school districts to incur increased costs to perform the same activities required under prior law.²⁴⁰

Based on the foregoing, the Commission finds that Code of Regulations, title 5, section 857, as amended by Register 2014, Nos. 30 and 35, does not impose any new activities on local government.

- g) Code of Regulations, title 5, section 858, as amended by Register 2014, Nos. 30 and 35, does not impose any new activities on local government.

Prior to the test claim regulations, section 858 provided that at each test site, including schools, charter schools, and other programs operated by an LEA, the superintendent of the LEA or the CAASPP coordinator shall designate a CAASPP test site coordinator, who is required to be available through September 29 of the following school year to resolve “discrepancies or inconsistencies in materials or errors in reports.”²⁴¹ In addition, it provided that the test site coordinator’s responsibilities are those defined in the contractor’s and CDE’s administrative manuals and documentation, and include overseeing test site preparation, coordination, training,

²³⁶ Code of Regulations, title 5, section 857(a) (Register 2014, No. 6).

²³⁷ Code of Regulations, title 5, section 857(b-c) (Register 2014, No. 6).

²³⁸ Code of Regulations, title 5, section 857(d-e) (Register 2014, No. 6).

²³⁹ Compare Code of Regulations, title 5, section 857 (Register 2014, No. 6) with Code of Regulations, title 5, section 857 (Register 2014, No. 30).

²⁴⁰ *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 173 [citing *County of Los Angeles, supra*, 43 Cal.3d at pp. 54-56 (“A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is *not tantamount to a higher level of service.*” [emphasis added])].

²⁴¹ Code of Regulations, title 5, section 858 (Register 2014, No. 6).

registration, administration, security, and reporting; and, “[t]he CAASPP test site coordinator shall be responsible for the training of test examiners, translators, proctors, and scribes.”

However, Register 2014, No. 30 reenacted section 858 exactly as appeared under prior law.²⁴² Register 2014, No. 35 amended section 858(a) to provide that the CAASPP test site coordinator shall be available through September 30 (instead of September 29, as under prior law) to complete the LEA testing activities; however, as discussed above, the extension of time to perform duties by one calendar day is not a new mandated activity, and does not constitute a new program or higher level of service.²⁴³ In addition, there is no evidence in the record that the additional day requires school districts to incur increased costs to perform the same activities required under prior law.

Register 2014, No. 35 also added new subsection (d), which provides that the CAASPP test site coordinator “shall be responsible for ensuring that all designated supports, accommodations and individualized aids are entered into the registration system and provided to the pupil(s) identified to receive the designated supports and/or accommodations.”²⁴⁴ That provision, however, does not impose a new program or higher level of service. The LEA was already required to provide “designated supports, accommodations and individualized aids” to students, as appropriate, pursuant to section 853.5, discussed above (which was divided into sections 853.5 and 853.7 by Register 2014, No. 35). The plain language requiring the test site coordinator to “ensure” that those supports and accommodations are provided and are tracked appropriately does not alter what was required of the LEA under prior law; at most, it more specifically describes how those services are to be tracked and delivered to the correct pupils.

Based on the foregoing, the Commission finds that Code of Regulations, title 5, section 858, as amended by Register 2014, Nos. 30 and 35, does not impose any new activities on local government.

- h) Code of Regulations, title 5, section 859, as amended by Register 2014, Nos. 30 and 35, does not impose any new activities on local government.

Prior law, section 859, as amended by Register 2014, No. 6, outlined the security agreement and affidavit that all LEA CAASPP coordinators and CAASPP test site coordinators must sign before receiving the test materials. The agreement is similar what was formerly required under the STAR program, as last amended by Register 2011, No. 15, but is somewhat different because the CAASPP tests are to be primarily computer-based. However, the activity of ensuring that all relevant personnel sign the agreement is no different than under the STAR program.

Register 2014, No. 30 reenacted section 859 exactly as it appeared under prior law.²⁴⁵ Register 2014, No. 35 made some minor clarifying changes to the security affidavit required,²⁴⁶ but the

²⁴² Compare Code of Regulations, title 5, section 858 (Register 2014, No. 6) with Code of Regulations, title 5, section 858 (Register 2014, No. 30).

²⁴³ *Long Beach Unified School District*, *supra*, 225 Cal.App.3d 155, 173].

²⁴⁴ Code of Regulations, title 5, section 858 (as amended, Register 2014, No. 35).

²⁴⁵ Compare Code of Regulations, title 5, section 859 (Register 2014, No. 6) with Code of Regulations, title 5, section 859 (Register 2014, No. 30).

²⁴⁶ Code of Regulations, title 5, section 859(d)(4, 10, 13) (as amended, Register 2014, No. 35).

requirement to sign the agreement and affidavit was not changed, and therefore the amendment does not require any new activities of local government.

Based on the foregoing, the Commission finds that Code of Regulations, title 5, section 859, as amended by Register 2014, Nos. 30 and 35, does not impose any new activities or tasks on local government.

B. Education Code section 60640 and section 861 of the title 5 regulations, as amended by the test claim statutes and regulations, impose two new activities on local government that mandate a new program or higher levels of service.

1. Education Code section 60640, as amended by the test claim statutes, imposes a new one-time requirement on school districts to provide computer technology necessary for each student to take the CAASPP.

Section 60640, as amended by the test claim statutes, replaces the STAR exam with the CAASPP, beginning in the 2013-2014 school year. The statute replaces the former CSTs required for grades 2 to 11, inclusive, in English language arts and mathematics with the Smarter Balanced summative assessments, which are designed to be administered on computer, and to be adaptive to student responses. Grades 9 and 10 are no longer required to take the annual assessments previously required,²⁴⁷ and the California Modified Assessment is no longer necessary with the appropriate “universal tools” and “designated supports” available within the computer adaptive Smarter Balanced tests.²⁴⁸ Therefore, pursuant to section 60640, as amended, only the following tests are now required:

- A consortium summative assessment in English language arts and mathematics for grades 3-8 and 11, aligned with the Common Core State Standards;
- Science grade level assessments in grades 5, 8, and 10, aligned with standards adopted by SBE, until a successor assessment is implemented on the Superintendent’s recommendation;
- The California Alternate Performance Assessment in grades 2 to 11, inclusive, in English language arts and mathematics, and the CAPA for science in grades 5, 8, and 10, which measures content standards adopted pursuant to Section 60605 until a successor assessment is implemented; and
- The Early Assessment Program established by Chapter 6 (commencing with Section 99300).

School districts are authorized, but not required, to administer a primary language assessment aligned to the English language arts standards adopted pursuant to Section 60605 to pupils who are identified as limited English proficient and enrolled in any of grades 2 to 11, inclusive, until a subsequent primary language assessment aligned to the common core standards in English

²⁴⁷ Assembly Third Reading, AB 484, as amended May 24, 2013.

²⁴⁸ See Exhibit X, CMA Pilot Test, California Department of Education.

language arts is developed.²⁴⁹ A school district may also “administer achievement tests in grades other than those required by this section as it deems appropriate.”²⁵⁰

Section 60640(b) further provides that for the 2013-2014 school year, the summative assessments in English language arts and mathematics “shall be a field test only,” meaning that the results will not be used for state and federal accountability purposes.²⁵¹ The field test is intended to “enable the consortium to gauge the validity and reliability of these assessments and to conduct all necessary psychometric procedures and studies, including, but not necessarily limited to, achievement standard setting, and to allow the department to conduct studies regarding full implementation of the assessment system.” The full administration of the CAASPP test is in the spring of 2015.²⁵²

Section 60640(f) then requires each LEA to “administer assessments to each of its pupils pursuant to subdivision (b),” except that recently arrived English learner pupils are exempted from taking the assessment in English language arts. Section 60640(f)(2) further provides that for the 2013-2014 school year, each local educational agency is required to administer the field test in a manner described by the department in consultation with the president or executive director of the state board. “As feasible, the CAASPP field tests shall be conducted in a manner that will minimize the testing burden on individual schools...” and shall not produce individual pupil scores unless it is determined that these scores are valid and reliable.²⁵³

In addition, section 60640(k) states that pursuant to NCLB, individuals with exceptional needs shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and the individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.

Education Code section 60640(g) then requires each LEA, “from funds available for that purpose,” to administer any additional assessments approved by the SBE pursuant to subdivision (c)(5) “upon approval by the state board and the appropriation of funding for this purpose ...”

And finally, section 60640(n) provides that “[a]s a condition to receiving an apportionment pursuant to subdivision (l), a local educational agency shall report to the Superintendent all of the following:”

- (1) The pupils enrolled in the local educational agency in the grades in which assessments were administered pursuant to subdivisions (b) and (c).

²⁴⁹ Education Code section 60640(b) (Stats. 2013-2014, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858)).

²⁵⁰ Education Code section 60640(i) (Stats. 2013-2014, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858)).

²⁵¹ Education Code section 60640(b) (Stats. 2013-2014, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858)).

²⁵² Exhibit X, Field Test – Smarter Balanced Assessment Consortium; Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 12.

²⁵³ Education Code section 60640(h) (Stats. 2013-2014, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858)).

(2) The pupils to whom an achievement test was administered pursuant to subdivisions (b) and (c) in the local educational agency.

(3) The pupils in paragraph (1) who were exempted from the test pursuant to this section.²⁵⁴

The remaining provisions of the statute address the apportionment of funding for the administration of the test and direct the SBE to adopt emergency regulations to implement the statute.

- a) Many of the requirements in section 60640, as amended by the test claim statutes are not new, or require a lower level of service when compared to prior law.

Many of the requirements in section 60640, as amended by the test claim statutes, are not new or require a lower level of service when compared to prior law. For example, the requirement to administer a statewide assessment pursuant to section 60640(b), (f), and (k) is no different under prior law. Former section 60640(b) provided: “From the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 2 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5.” Section 60642.5, in turn, required the Superintendent to develop an assessment, “to be called the California Standards Tests,” which included “reading, spelling, written expression, and mathematics” for pupils in grades 2 to 8, and “reading, writing, mathematics, history-social science, and science” for pupils in grades 9 to 11.²⁵⁵ Amended section 60640 provides for the assessments to include “[a] consortium summative assessment in English language arts and mathematics for grades 3 to 8, inclusive, and grade 11...” and “[s]cience grade level assessments in grades 5, 8, and 10...” Therefore, the assessments required under section 60640(b) are a *lower level of service* than that required under former sections 60640 and 60642.5.

Moreover, section 60640(b)(1)(B) explains that “[i]n the 2013-14 school year, the consortium summative assessment in English language arts and mathematics *shall be a field test only*, to enable the consortium to gauge the validity and reliability of these assessments... and to allow the department to conduct studies regarding full implementation of the assessment system.” The field test is not intended to include all of the otherwise-applicable components of the assessments, and indeed the field test was implemented in that manner. In the CDE report to the State Board and the Legislature, it is clear that students in grade 11 were not required to participate in the field test, and many students only participated in either the computer-based test or the performance task, and not both.²⁵⁶ In addition, school districts were not required to report the results of the field test, either to parents, or for state and federal accountability purposes.²⁵⁷

²⁵⁴ Education Code section 60640(n) (Stats. 2013-2014, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858)).

²⁵⁵ Education Code section 60642.5 (Stats. 2008, ch. 752 (AB 519)); See also, former Education Code section 60603 (Stats. 2004, ch. 233 (SB 1448)).

²⁵⁶ Education Code section 60640(f)(2) (Stats. 2013-2014, ch. 489 (AB 484)); Education Code section 60603 (Stats. 2013-2014, ch. 489 (AB 484)). See also, Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, pages 16; 41.

²⁵⁷ Exhibit X, Smarter Balanced Field Test Questions and Answers, page 1.

Therefore, the requirements of section 60640 for the 2013-2014 school year to administer assessments to all eligible pupils are a lower level of service, and not new, except with respect to the use of computers, as discussed below.

Former section 60640(e) provided that “[p]ursuant to Section 1412(a)(17) of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.” And former section 60640(f) permitted, but did not require, a district to administer achievement tests in a pupil’s primary language, as specified.²⁵⁸

Section 60640(k), as amended, restates exactly the requirements of former section 60640(e), except that the reference to Title 20, United States Code, section 1412(a)(17) now states “Section 11412(a)(16) of Title 20...”²⁵⁹ And, the requirements of former section 60640(f), describing the primary language assessment, are restated in section 60640(b)(5).²⁶⁰

In addition, the requirement in Education Code section 60640(g) to administer future assessments developed by the Superintendent and the SBE is not new and does not create an unfunded mandated activity. Section 60640(g) states the following:

From the funds available for this purpose, each local educational agency shall administer assessments as determined by the state board pursuant to paragraph (5) of subdivision (c).

Section (c)(5) states the following:

Upon approval by the state board and the appropriation of funding for this purpose, the Superintendent shall develop and administer approved assessments. The state board shall approve test blueprints, achievement level descriptors, testing periods, performance standards, and a reporting plan for each approved assessment.

As indicated above, school districts have long been required to administer standardized assessments to pupils under the STAR program and, thus, the requirement to administer assessments is not new. Moreover, based on the plain language of section 60640 (c) and (g), the state will not develop and administer future assessments until funds have been appropriated for that purpose, and the school districts’ administration of future assessments will be financed from “funds available for this purpose.” There is no evidence in the law or the record that section 60640(g) imposes any new, unfunded, requirements on school districts.

²⁵⁸ Former Section 60640 (as amended, Stats. 2009-2010, 5th Ex. Sess., ch. 2 (SBX5 1)).

²⁵⁹ Compare Former Education Code section 60640(e) (as amended, Stats. 2009-2010, 5th Ex. Sess., ch. 2 (SBX5 1)) with Education Code section 60640(k) (as amended, Stats. 2013, ch. 489 (AB 484)).

²⁶⁰ Compare Former Education Code section 60640(f) (as amended, Stats. 2009-2010, 5th Ex. Sess., ch. 2 (SBX5 1)) with Education Code section 60640(b) (as amended, Stats. 2013, ch. 489 (AB 484)).

And finally, section 60640(n) provides that “[a]s a condition to receiving an apportionment pursuant to subdivision (l), a local educational agency shall report to the Superintendent all of the following:”

- (1) The pupils enrolled in the local educational agency in the grades in which assessments were administered pursuant to subdivisions (b) and (c).
- (2) The pupils to whom an achievement test was administered pursuant to subdivisions (b) and (c) in the local educational agency.
- (3) The pupils in paragraph (1) who were exempted from the test pursuant to this section.²⁶¹

This requirement was added to section 60640 by Statutes 2009-2010, 5th Extraordinary Session, chapter 2 (SB 1), and is therefore not new.

Based on the foregoing, there is very little in the plain language of amended section 60640 that imposes any new requirements or activities, and indeed some of the prior requirements have been reduced or eliminated.

- b) Section 60640, as amended by the test claim statutes and interpreted in light of the whole program, imposes a new requirement that increases the level of service provided to the public to provide adequate assessment technology in order to administer the CAASPP via computers.

However, there is an increase in service, and a new requirement, inherent in the administration of the new CAASPP tests via computer. Section 60640(e) provides:

The Superintendent shall make available a paper and pencil version of any computer-based CAASPP assessment for use by pupils who are unable to access the computer-based version of the assessment for a maximum of three years after a new operational test is first administered.²⁶²

The Superintendent’s duty to make available a paper and pencil version of the assessments, which the section calls “computer-based CAASPP assessment[s]”, demonstrates that school districts are required to provide the new assessments, including the field test in Spring 2014, using computers. Additionally, the definitions found in section 60603 demonstrate the Legislature’s intent that the new assessments are to be computer-based. Education Code section 60603(d-e), as amended by Statutes 2013, chapter 489, provides that: “‘Computer-adaptive assessment’ means a computer-based test that utilizes a computer program to adjust the difficulty of test items through a testing session based on a test taker’s responses to previous test items during that testing session”; and, “‘Computer-based assessment’ means a test administered using an electronic computing device.”²⁶³ Moreover, section 853 of the title 5 regulations, as amended

²⁶¹ Education Code section 60640(n) (Stats. 2013-2014, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858)).

²⁶² Education Code section 60640(e) (Stats. 2013-2014, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858)).

²⁶³ See also, California Code of Regulations, title 5, section 850(i) (definition originally added by Register 2014, No. 6).

by Register 2014, No. 35, states the following: “The primary mode of administration of a CAASPP tests shall be via a computing device, the use of an assessment technology platform, and the adaptive engine.”²⁶⁴ And, section 850(e) defines “assessment technology platform” as follows:

...the electronic means used to display items, accept item responses, store, deliver, score the tests and restrict access to outside sources, as well as report and manage assessment results. Testing technology includes, but is not limited to, computing devices, testing software applications, network hardware, and other technology required to administer the tests.

And finally, the testing technology is required to include embedded tools for individuals with exceptional needs and English learners to enable them to take the CAASPP tests for English language arts and mathematics as required by section 60640. Section 853.5 of the regulations requires that English learners and all pupils with disabilities be provided embedded tools on the CAASPP tests for English language arts and mathematics, and while that requirement to permit the appropriate tool for an individual student during testing is denied because it was added by a regulation that has not been pled, the phrase “embedded tools” is important in the interpretation of what is required to provide the technology necessary for the CAASPP. Section 850(l) of the regulations defines “embedded” to mean “a support, whether a universal tool, designated support, or accommodation, *that is part of the assessment technology platform* for the computer-administered CAASPP tests.” Thus, the testing technology is required to include embedded tools.

School districts were not required under prior law to provide computers and adequate technology necessary to administer standardized assessments under the STAR program. Thus, beginning January 1, 2014, the requirement to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers, is new.

The Commission further finds that this requirement is a one-time requirement. As indicated in the sections above, the LEA CAASPP coordinator is required by section 857 of the title 5 regulations to “ensure current and ongoing compliance with the minimum technology specifications as identified by the CAASPP contractors.”²⁶⁵ This ongoing duty, however, was added by Register 2014, No. 6, which was not pled in this test claim.²⁶⁶ Thus, the Commission cannot, as a matter of law, find an ongoing requirement to ensure compliance with the technology.

Moreover, the one-time requirement to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers provides a higher level of service to the public. As indicated in the Background, the goal of CAASPP is to provide assessments that can assist teachers, administrators, students and parents/guardians with a better understanding of college and career readiness, which are aligned

²⁶⁴ Code of Regulations, title 5, section 853(b) (Register 2014, No. 35).

²⁶⁵ Code of Regulations, title 5, section 857 (Register 2014, No. 6).

²⁶⁶ Exhibit A, Test Claim 14-TC-01, page 1.

to the Common Core State Standards. The computer adaptive assessments are intended to provide more accurate and faster results for teachers and pupils.²⁶⁷

Based on the foregoing, the Commission finds that Education Code section 60640, as amended by Statutes 2013, chapter 489, beginning January 1, 2014, imposes a new requirement that increases the level of service provided to the public.

2. California Code of Regulations, title 5, section 861, as amended by Register 2014, No. 35 (eff. August 27, 2014), requires school districts to include new information in their report to CDE.

Prior law, in Education Code section 60640(n), effective January 1, 2014, requires school districts to report to the Superintendent all of the following information as a condition of receiving funds: (1) The pupils enrolled in the local educational agency in the grades in which assessments were administered pursuant to subdivisions (b) and (c); (2) The pupils to whom an achievement test was administered pursuant to subdivisions (b) and (c) in the local educational agency; and (3) The pupils in paragraph (1) who were exempted from the test pursuant to this section.²⁶⁸

In addition, under prior law, section 861 of the Title 5 regulations, effective February 3, 2014, required school districts to provide any and all program and demographic pupil data requested by CDE in order to assess pupils under the CAASPP requirements of Education Code section 60640 and for inclusion in the California Longitudinal Pupil Achievement Data System (CALPADS.)²⁶⁹ And section 861(b) under prior law, required school districts to report to CDE additional information, including information about the pupils who do not take the CAASPP, or pupils that received special testing conditions for the CAASPP.

However, section 861, as amended by Register 2014, No. 35, effective August 27, 2014, added two additional items to be reported to CDE in subdivision (b): if a pupil used a designated support, and if a pupil used an individualized aid. “Designated supports” are “resources which the pupil regularly uses in the classroom for instruction and/or assessment(s) and that are available for use by any pupil for whom the need has been indicated, prior to the assessment administration, by an educator or group of educators or specified in a pupil’s IEP or Section 504 Plan.”²⁷⁰ “Individualized aid” means “a type of resource that a pupil regularly uses in a classroom for instruction and/or assessment that has not been previously identified as a universal tool, designated support or accommodation. Because an individualized aid has not been previously identified as a universal tool, designated support or accommodation, it may or may

²⁶⁷ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 8. See also, www.smarterbalanced.org [entries “About” and “Computer Adaptive Testing”].

²⁶⁸ Education Code section 60640(n) (Stats. 2013, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858)).

²⁶⁹ CALPADS is a longitudinal data system used to maintain individual-level data including student demographics, course data, discipline, assessments, staff assignments, and other data for state and federal reporting.

²⁷⁰ California Code of Regulations, title 5, section 850(k) (Register 2014, No. 35).

not invalidate the measurement of the test(s).”²⁷¹ The final statement of reasons states that the reporting of this information is “necessary for purposes of data reporting.”²⁷²

The Commission finds that these two reporting requirements are new. Pursuant to section 6311 of NCLB, states are required to submit a plan to the Secretary of the Department of Education that details academic assessments that enable the state to measure “adequate yearly progress”, including “separate measurable annual objectives for continuous and substantial improvement for...” disadvantaged students, students from racial and ethnic groups, *students with disabilities*, and *students with limited English proficiency*.²⁷³ Accordingly, the academic assessments implemented in each state must “enable results to be disaggregated within each State, local educational agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged...”²⁷⁴

Former Education Code section 60643, in accordance with the federal accountability requirements, provided that test publishers for the former STAR assessments must agree to provide disaggregated scores for limited-English-proficient pupils, as well as providing disaggregated scores for pupils who have individualized education programs.²⁷⁵ However, even though information about designated supports and individualized aids provided for pupils subject to the CAASPP assessment may be necessary for the state to provide disaggregated scores for purposes of federal reporting requirements under NCLB, there was no prior requirement in the law for school districts to provide this information to CDE.

Thus, these reporting requirements are new, and increase the level of service provided to the public by helping the state obtain NCLB funding for public education.²⁷⁶ Since section 861, as amended by Register 2014, No. 35, became effective on August 27, 2014 (after the CAASPP field test) school districts will be required to first comply with the new reporting requirements of section 861 following the administration of the spring 2014-2015 CAASPP tests.

3. The new requirements imposed by Education Code Section 60640 and California Code of Regulations, title 5, section 861, as amended by the test claim statutes and regulations are mandated by state law.

As indicated above, the Commission finds that the following activities mandate a new program or higher level of service on school districts:

²⁷¹ California Code of Regulations, title 5, section 850(o) (Register 2014, No. 35).

²⁷² Exhibit X, CAASPP Final Statement of Reasons, pages 14-15.

²⁷³ 20 U.S.C. § 6311(b)(2)(C) (Pub. L. 107-110).

²⁷⁴ 20 U.S.C. § 6311(b)(3)(C) (Pub. L. 107-110).

²⁷⁵ Former Education Code section 60643 (Stats. 2009-2010, 5th Ex. Sess., ch. 2 (SB 11)).

²⁷⁶ *Long Beach Unified School Dist. v. State* (1990) 225 Cal.App.3d 155, 172, [finding that education is a peculiarly governmental function and is administered by local agencies to provide a service to the public].

- Beginning January 1, 2014, the one-time requirement to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers.
- Beginning August 27, 2014, report to CDE if a pupil used a designated support or an individualized aid for purposes of the CAASPP assessment.

Finance argues that the CAASPP program, like the STAR testing program that preceded it, is required to meet federal program requirements, and to avoid a loss of funding. Finance states: “we reiterate comments previously submitted as part of the proceedings for the STAR test claim...that NCLB is a federal mandate, and therefore the STAR program could not be found to be a state mandate because it is required to comply with NCLB.”^{277,278}

The claimants counter that the STAR test claim determined that some of the testing requirements *were* a reimbursable mandate, notwithstanding the underlying federal requirement to administer standardized academic assessments; and that the STAR II and III test claim did not reach the federal mandate issue. And, the claimants argue, “regardless of whether STAR itself was a federal mandate, CAASPP certainly is not.” The claimants reason that “California was compliant with NCLB’s requirement to administer assessments to determine students’ levels of academic achievement under STAR...[but the Legislature] chose – without any change to NCLB – to adopt a new assessment regime that was much more expansive (and expensive).”²⁷⁹

The Commission finds that the new requirements are mandated by state law.

Government Code section 17556(c) provides that the Commission shall not find costs mandated by the state where the test claim statute or regulations impose a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, “unless the statute or executive order mandates costs that *exceed the mandate in that federal law or regulation.*”²⁸⁰

In *Hayes*, the court determined that even if the state enacts legislation to comply with a federal mandate, the activities required by the legislation may still impose a state-mandated program if the manner of implementation of the federal program is left to the true discretion of the state. “If the state freely chooses to impose the costs upon the local agency as a means of implementing a

²⁷⁷ Exhibit C, Finance Comments, pages 1-2.

²⁷⁸ SBE, for its part, asserts that the test claim regulations do not impose a state mandate because they do not extend beyond the scope and purpose of the test claim statutes. See, e.g., Exhibit X, Final Statement of Reasons for CAASPP Regulations [discussing proposed changes to sections 853.5 and 853.7: “Mandating in the regulations that LEAs make an affirmative determination concerning every ELs need for a designated support(s) is not required by federal law and would create an unfunded mandate when there is nothing in the CAASPP law creating a state mandate.”].

²⁷⁹ Exhibit D, Claimant Comments, page 5.

²⁸⁰ Government Code section 17556(c) (Stats. 2010, ch. 719 (SB 856)) [emphasis added].

federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.”²⁸¹

In addition, the Court of Appeal in *Long Beach Unified School District v. State*²⁸² considered whether regulations requiring local educational agencies to take certain specific steps to alleviate or eliminate racial segregation in schools could constitute a state mandate, given that school districts already had a duty to do so based on the Constitution of the United States and case law interpreting the Constitution. The court held that while “school districts do indeed have a constitutional obligation to alleviate racial segregation...the courts have been wary of requiring specific steps in advance of a demonstrated need for intervention.” The court continued: “a review of the Executive Order and guidelines shows that a higher level of service is mandated because their requirements *go beyond constitutional and case law requirements*.”²⁸³ In other words, because the test claim regulation in *Long Beach Unified* was both more expansive and more specific than what was required by federal law, the court found a reimbursable state mandate.

The federal No Child Left Behind Act of 2001 requires:

[A] set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts, and science that will be used as the primary means of determining the yearly performance of the State and of each local educational agency and school in the State in enabling all children to meet the State’s challenging student academic achievement standards, except that no State shall be required to meet the requirements of this part relating to science assessments until the beginning of the 2007–2008 school year.²⁸⁴

Title I of NCLB also requires that the assessments measure pupil proficiency as follows:

Such assessments shall--

[¶]...[¶] (v)(I) except as otherwise provided for grades 3 through 8 under clause vii, measure the proficiency of students in, at a minimum, mathematics and reading or language arts, and be administered not less than once during—

(aa) grades 3 through 5;

(bb) grades 6 through 9; and

(cc) grades 10 through 12;

(II) beginning not later than school year 2007–2008, measure the proficiency of all students in science and be administered not less than one time during—

(aa) grades 3 through 5;

²⁸¹ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-1594.

²⁸² *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155.

²⁸³ *Id.*, at p. 173 [emphasis added].

²⁸⁴ 20 USC 6311 (b)(3)(A).

- (bb) grades 6 through 9; and
- (cc) grades 10 through 12;
- (vi) involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding;
- (vii) beginning not later than school year 2005–2006, measure the achievement of students against the challenging State academic content and student academic achievement standards in each of grades 3 through 8 in, at a minimum, mathematics, and reading or language arts, except that the Secretary may provide the State 1 additional year if the State demonstrates that exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State, prevented full implementation of the academic assessments by that deadline and that the State will complete implementation within the additional 1-year period;²⁸⁵

Under prior law, the STAR program provided that “[f]rom the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 2 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5.”²⁸⁶ Section 60642.5, in turn, provided for a test consisting of: “an assessment instrument, to be called the California Standards Tests, that measures the degree to which pupils are achieving the academically rigorous content standards and performance standards...”, and which contain assessments of “reading, spelling, written expression, and mathematics” for grades 2 to 8, inclusive; at least one assessment of history/social science and one assessment of science during elementary or middle school; and “reading, writing, mathematics, history-social science, and science” for grades 9 to 11.²⁸⁷ There is no dispute that the STAR tests complied with NCLB, and that the testing regime resulted in sufficient data to analyze and report AYP for the state and each school district.

Section 60640, as amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 32 replaces the STAR with the CAASPP for the 2013-2014 school year. Like the STAR program that preceded it, there is no dispute that the CAASPP tests satisfy the requirements of NCLB. However, the state was not forced to adopt the computerized CAASPP tests in order to comply with NCLB. The state, within its discretion, chose to adopt the CAASPP program, in part, to receive grant funding under the Race to the Top program.²⁸⁸ The Race to the Top program, enacted as a part of the American Recovery and Reinvestment Act of 2009, provided grant funding to two multistate consortia for the development of new high-quality standards-aligned assessments: the Smarter Balanced Assessment Consortium and the Partnership for Assessment of Readiness for College and Careers (PARCC). That funding was provided to the consortia, respectively, to develop new assessments; it was not intended to incentivize the states to adopt

²⁸⁵ 20 USC 6011 (b)(3)(C).

²⁸⁶ Education Code section 60640 (Stats. 2009-2010, 5th Ex. Sess., ch. 2 (SB 1)).

²⁸⁷ Education Code sections 60642.5 (Stats. 2008, ch. 757 (AB 519)); 60603 (Stats. 2007, ch. 174 (SB 80)).

²⁸⁸ Exhibit X, Race to the Top Summary of Criteria, page 3.

and implement the new assessments.²⁸⁹ An additional fund of \$4.35 billion was made available on a competitive basis to states that could demonstrate a commitment to improving education outcomes and closing achievement gaps among different populations. One criteria for the awarding of those grants was the adoption of common standards (i.e., the Common Core State Standards, issued in 2010 and adopted by California, among others) and a commitment to adopt standards-aligned common high-quality assessments (i.e., either the Smarter Balanced or the PARCC consortium assessments).²⁹⁰ However, that grant funding was awarded between July 2010 and March 2013, prior to the effective dates of any of the test claim statutes, and California was not awarded any of that funding, despite having promptly adopted the Common Core and actively participating in the Smarter Balanced consortium to develop the new assessments which would eventually be adopted as a part of CAASPP.²⁹¹

Therefore, the Commission finds that the following new requirements are mandated by the state:

- Beginning January 1, 2014, the one-time requirement to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers. (Ed. Code, § 60640, Stats. 2013, ch. 489 (SB 484); Stats. 2014, ch. 32 (SB 858).)
- Beginning August 27, 2014, include in the report to CDE, if a pupil used a designated support or an individualized aid for purposes of the CAASPP assessment. (Cal. Code Regs., tit. 5, § 861(b), Register 2014, No. 35.)

C. There are Costs Mandated by the State Pursuant to Government Code Section 17514, From January 1, 2014 until June 30, 2014 Only.

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. The claimants have alleged a total of \$8,568,068 in increased costs for the fiscal year 2013-2014,²⁹² and have stated that they are “unaware at this time” of any dedicated state or federal funds “available for this program.”²⁹³ The claimants identify the “Common Core Implementation Block Grant” as a potential source of “other nonlocal agency funds,” but do not identify the legislation or any budget language that provides for the block grant.²⁹⁴

Finance has argued that several sources of funding are or may be available to cover the costs of any mandate, and therefore the Commission must not find costs mandated by the state, pursuant

²⁸⁹ Exhibit X, US Department of Education, “US Secretary of Education Duncan Announces Winners of Competition to Improve Student Assessments”.

²⁹⁰ Exhibit X, Race to the Top Program, Executive Summary, November 2009, pages 2; 7-8.

²⁹¹ Exhibit X, Race to the Top Summary of Criteria; Awards – Race to the Top Program Fund; “Four Years Later, Are Race to the Top States on Track?” Center for American Progress;

²⁹² Exhibit A, Amended Test Claim, page 72; Exhibit B, Vallejo City Unified School District Request to Join claim, pages 5-6.

²⁹³ *Id.*, at pages 73-74.

²⁹⁴ *Id.*, at page 74.

to section 17556(e).²⁹⁵ Government Code section 17556(e) provides 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.²⁹⁶

Government Code section 17556(e) implements article XIII B, section 6, which requires subvention only when the costs in question can be recovered solely from tax revenues. The Supreme Court has determined that

[Article XIII B, section 6] was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. [Citations omitted.] Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditures of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse . . . local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.

. . . . As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes.²⁹⁷

Accordingly, in *Kern*,²⁹⁸ the Supreme Court held that claimant school districts were *not entitled to reimbursement* for costs incurred in complying with notice and agenda requirements for meetings of a school site council, without reaching the issue of whether the underlying funded school site council program was itself mandated, “because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary notice and agenda-related expenses.” In that case, the court “found nothing to suggest that a school district is precluded from using a portion of the [program] funds obtained from the state for the implementation of the underlying funded program to pay the associated [mandated] costs.” In fact, the court found that the program “explicitly authorizes school districts to do so,” quoting the statute authorizing the appropriation of program funds to allow school districts to “claim funds appropriated for purposes of this article for expenditures in, but not limited to, reasonable district administrative expenses.”²⁹⁹ The court concluded, therefore, that “we view the state’s provision of *program funding as satisfying, in advance, any reimbursement requirement.*” (Emphasis added.)

²⁹⁵ See Exhibit C, Finance Comments; Exhibit E, Finance Late Comments.

²⁹⁶ Government Code section 17556(e) (Stats. 2010, ch. 719 (SB 856)).

²⁹⁷ *County of Fresno, supra*, 53 Cal.3d at p. 487.

²⁹⁸ *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727.

²⁹⁹ *Kern, supra*, at pp. 747.

Below, the Commission finds that during fiscal year 2013-2014, there are sources of funding available that may be applied to the one-time activity of providing “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers, but none that are specifically intended to cover the costs of the mandate within the meaning of Government Code section 17556(e). Thus, to the extent a school district complied with the one-time requirement to provide the technology to administer the CAASPP at any time from January 1, 2014, through June 30, 2014, and did not receive and apply funds (which are not local proceeds of taxes) to cover the entire cost of this activity, then reimbursement is required under article XIII B, section 6 for the increased local costs.

However, beginning July 1, 2014, there is additional funding provided, both in the test claim statutes and in the Budget Act for 2014-2015, which is specifically intended to cover the costs of both mandated activities. Absent substantial evidence in the record, the funding is sufficient as a matter of law to cover the costs of the mandated activities, is required to be applied to the activities, and bars a finding of costs mandated by the state pursuant to Government Code section 17556(e). Thus, beginning July 1, 2014, reimbursement under article XIII B, section 6 is not required for the new mandated activities.

- 1. The 2013-2014 Budget Act contains only potentially offsetting revenues, pursuant to Government Code sections 17556(e) and 17557, and therefore some school districts may have incurred costs mandated by the state from January 1, 2014 through June 30, 2014 for the one-time activity to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers.**

The 2013-2014 Budget Act and other appropriations made for fiscal year 2013-2014 include the following funding sources available to cover costs of this mandated program:

- Line Item 6110-113-0001, Statutes 2013, chapter 20 (AB 110) provides \$72,706,000 in local assistance, “for purposes of California’s pupil testing program...”, and states: “The funds appropriated in this item shall be for the pupil testing programs authorized by Chapter 3 (commencing with Section 48410) of Part 27 of Division 4 of Title 2 of the Education Code and Chapter 5 (commencing with Section 60600), Chapter 6 (commencing with Section 60800), Chapter 7 (commencing with Section 60810), and Chapter 9 (commencing with Section 60850) of Part 33 of Division 4 of Title 2 of the Education Code.” In addition, Provision 7 of Item 6110-113-0001 states: “Funds provided to local educational agencies from Schedules (2), (3), (4), and (5) shall first be used to offset any state-mandated reimbursable costs within the meaning of Section 17556 of the Government Code, that otherwise may be claimed through the state mandates reimbursement process for the STAR Program, the California English Language Development Test, and the California High School Exit Examination. Local educational agencies receiving funding from these schedules shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from these schedules.”
- Line Item 6110-113-0890, Statutes 2013, chapter 20 (AB 110) provides \$25,111,000 in local assistance from “Department of Education – Title VI Flexibility and Accountability, payable from the Federal Trust Fund.” Provision

6 of this Item states: “Funds provided to local educational agencies from Schedules (2), (3), and (4) shall first be used to offset any state-mandated reimbursable costs, within the meaning of subdivision (e) of Section 17556 of the Government Code, that otherwise may be claimed through the state mandates reimbursement process for the STAR Program, the California English Language Development Test, the California High School Exit Examination, and the California Alternate Performance Assessment. Local educational agencies receiving funding from these schedules shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from these schedules.

- Statutes 2013, chapter 48 (AB 86), section 85 provides for \$1.25 billion to “support the integration of academic content standards...” which may include, “expenditures necessary to support the administration of computer-based assessments and provide high-speed, high-bandwidth Internet connectivity for the purpose of administration of computer-based assessments.”

However, none of these revenues are specifically intended to cover the costs of the mandated activities for the CAASPP program during the 2013-2014 fiscal year within the meaning of Government Code section 17556(e). Line Items 6110-113-0001 and 6110-113-0890 of the 2013-2014 Budget Act address costs of the STAR assessments, which were replaced by CAASPP as of January 1, 2014. To the extent school districts applied the funds intended for STAR to the costs of the new assessments, their annual claims should reflect an adjustment to reimbursable costs mandated by the state,³⁰⁰ but nothing in the 2013-2014 Budget Act requires school districts to apply funding to a program that did not yet exist when the Budget Act was written.

Similarly, although Statutes 2013, chapter 48 (AB 86) recognizes the pending improvements in internet connectivity that may be necessary to administer computer-based assessments, the \$1.25 billion in Common Core implementation funding is not *required* to fulfill those needs first; it expressly states that a school district shall expend funds “for *any* of the following purposes...”³⁰¹

As noted above, the earliest of the three test claim statutes pled, Statutes 2013, chapter 489, , has an effective date of January 1, 2014. The administration of the 2013-2014 field test of the Smarter Balanced computer-based assessments was scheduled to take place, in accordance with the February 2014 emergency regulations, “during a testing window of 25 instructional days that includes 12 instructional days before and after completion of 85 percent of the school’s, track’s, or program’s instructional days.”³⁰² As a result, all students were administered the field test between March 25 and June 13 of 2014.³⁰³ Therefore, at least some school districts likely

³⁰⁰ See *County of Fresno v. State of California* (1991) 53 Cal.3d 482,p. 487 [“...read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.”].

³⁰¹ Statutes 2013, chapter 48 (AB 86), section 85(d) [emphasis added].

³⁰² Code of Regulations, title 5, section 855 (Register 2014, No. 6).

³⁰³ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 42.

incurred mandated costs for the one-time activity to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers after January 1, 2014, but before the 2014-2015 Budget Act took effect on July 1, 2014. To the extent school districts can show that they incurred state-mandated increased costs to comply with this requirement between January 1, 2014 and June 30, 2014, those costs are mandated by the state and are eligible for reimbursement. Such increased costs *do not include* the activities required to administer the former STAR assessments, as discussed above, including, but not limited to: designating coordinators, maintaining security of the test, tracking, scoring, and returning test materials, and training teachers and other staff to administer the assessments.

In addition, the funding identified in the 2013-2014 Budget Act (Line Items 6110-113-0001 and 6110-113-0890) and the \$1.25 billion appropriated for Common Core implementation by Statutes 2013, chapter 48 (AB 86) are potentially offsetting revenues that must be deducted from annual costs claimed, to the extent that a school district expended the described revenues for the one-time activity to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers.

2. Absent evidence to the contrary, the State has appropriated revenues sufficient to fund the cost of both mandated activities in the 2014-2015 Budget Act and, thus, there are no costs mandated by the state beginning July 1, 2014.

Finance has identified the following additional revenues appropriated by the state for the CAASPP program beginning July 1, 2014, and alleges that these revenues are specifically intended to cover the costs of the mandate therefore barring a finding of costs mandated by the state pursuant to Government Code section 17556(e):

- \$126.8 million in local assistance for statewide pupil assessments provided in the 2014-2015 Budget Act, which states: “Funds provided to local agencies from Schedules (2), (3), (4), (5), (6), (7), and (8) *shall first be used to offset any state-mandated reimbursable costs...that may otherwise be claimed through the state mandates reimbursement process for the remaining costs of the STAR 2013-14 test administration, the California English Language Development Test, the California High School Exit Examination, and the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013.*”³⁰⁴
- \$22.7 million in Federal Trust Fund local assistance for statewide pupils assessments provided in the 2014-2015 Budget Act, which states: “Funds provided to local educational agencies from Schedules (2), (3), and (5) *shall first be used to offset any state-mandated reimbursable cost...that otherwise may be claimed through the state mandates reimbursement process for the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013, the California English Language Development Test, the California High School Exit Examination, and the California Alternate Performance Assessment.*”³⁰⁵

³⁰⁴ Statutes 2014, chapter 25 (SB 852), Line Item 6110-113-0001.

³⁰⁵ Statutes 2014, chapter 25 (SB 852), Line Item 6110-113-0890.

- \$400.5 million added in Statutes 2014, chapter 32 and Line Item 6110-488 of the 2014 Budget Act for outstanding mandate claims, which, Finance argues “after satisfying any outstanding mandate claims the funds could be used for any one-time purpose determined by a local educational agency’s (LEA’s) governing board, including technology infrastructure.”
- \$26,689,000 appropriated in Provision 2 of Line Item 6110-182-0001 of the 2014 Budget Act “to support network connectivity infrastructure grants and completion of a statewide report of network connectivity infrastructure by the K-12 High-Speed Network...”³⁰⁶

The two budget line items in the 2014-2015 Budget Act, Statutes 2014, chapter 25 (SB 852), together provide over \$145 million³⁰⁷ for local assistance to implement the CAASPP, and section 862 of Code of Regulations, title 5, clearly states that the apportionment made to each LEA includes costs for staffing, “staff training, and other expenses related to testing...”, as well as “[a]ll expenses incurred at the LEA and school/test site(s) related to testing.”³⁰⁸ Moreover, the 2013-2014 Budget Act provided slightly less than \$100 million for the former STAR tests, and therefore the 2014 budget represents an increase of at least \$45 million in local funding for the new assessments.³⁰⁹ The claimants have made no effort to introduce evidence in the record that the funding is insufficient as a matter of law; the record contains only estimates of the claimants’ costs for 2014-2015, totaling approximately \$15 million, and the bare assertion that estimated statewide costs will reach \$1 billion.³¹⁰ As indicated by the claimant in their rebuttal comments, “claimants do not contest that the \$126.8 million... constitutes ‘additional revenues’ under Government Code section 17556(e)...(or even \$149.5 million if combined with the Title VI funds).” However, claimants allege that the funding is “simply woefully inadequate...” These assertions are not supported by evidence in the record: section 1183.2 of the Commission’s regulations requires assertions of fact to be supported by documentary evidence.³¹¹ And, pursuant to Government Code section 17559, the Commission’s findings must be based on substantial evidence in the record.³¹² The claimants argue that the \$400.5 million in outstanding mandate reimbursement is not specifically intended to fund the mandate, but instead is intended to apply to existing mandates, rather than the new mandated activities. Additionally, claimants argue that the \$26.7 million in K-12 High Speed Network funding is not specifically intended to cover the costs of the mandate “because districts and county offices of education do not actually receive these funds directly; they only receive the benefit.”³¹³ The claimants further assert that

³⁰⁶ See Exhibit C, Finance Comments, pages 6-7.

³⁰⁷ A small amount of each line item is not specifically identified for activities required by Statutes 2013-2014, chapter 489 (AB 484).

³⁰⁸ Code of Regulations, title 5, section 862 (Register 2014, No. 6).

³⁰⁹ Compare Statutes 2013, chapter 20 (AB 110) with Statutes 2014, chapter 25 (SB 852).

³¹⁰ Exhibit A, Test Claim, page 73; Exhibit B, Vallejo City Unified Request to Join Test Claim, pages 5-6.

³¹¹ Code of Regulations, title 2, section 1183.2.

³¹² Government Code section 17559 (Stats. 1999, ch. 643 (AB 1679)).

³¹³ Exhibit D, Claimant Rebuttal Comments, page 8.

the \$22.7 million in federal pass-through funding in the 2014 budget is not additional revenue specifically intended to cover the costs of the mandate because California received a waiver under NCLB of the requirement to administer an assessment in 2013-14 and 2014-15.

Finance has argued, in response to claimant’s rebuttal comments, that to the extent a district or county office of education receives a portion of the K-12 High Speed Network funding, which is a grant-based program, that school district would not incur actual increased costs mandated by the state to improve its internet connectivity. Finance further argues that the waiver received by CDE for NCLB does not render the federal funding inapplicable to the mandate; the waiver applies only to the federal accountability reporting requirements, and “was contingent on California local education agencies ensuring that, with the exception of students with the most significant cognitive disabilities, all students in grades 3 through 8 participated in the Smarter Balanced Assessment Consortium (SBAC) field test in English language arts/literacy and mathematics.”³¹⁴

The Commission finds that with respect to the \$26,689,000 appropriated for K-12 High Speed Network and the \$400.5 million in funding for outstanding mandate debt, there is no requirement that school districts apply those funds to the mandated activities, and therefore these funds are only potentially offsetting under Government Code section 17557, rather than funding “specifically intended” to cover the costs of the mandated activities under section 17556(e).

However, the first two sources of funding identified by Finance in the 2014 Budget Act, totaling \$145 million appropriated to school districts, are indeed specifically intended to cover the costs of the mandate since the budget language expressly refers to the test claim statutes that added CAASPP: “*Chapter 489 of the Statutes of 2013.*” Section 862 of the title 5 regulations implementing the CAASPP program clearly states that the apportionment made to each LEA includes costs for staffing, “staff training, and other expenses related to testing...”, as well as “[a]ll expenses incurred at the LEA and school/test site(s) related to testing.”³¹⁵ Thus, the funding appropriated meets the standard in section 17556(e) that the funding was “specifically intended” to cover the costs of the two new activities mandated by the CAASPP program.

The Commission further finds, based on the evidence in the record, that the amounts appropriated in the first two line items in the 2014 Budget Act are sufficient to cover the costs of the two mandated activities, beginning July 1, 2014, and thus Government Code section 17556(e) applies. These line items appropriated \$145 million, which must “*first* be used to offset any state-mandated costs that otherwise may be claimed through the state mandates reimbursement process” for CAASPP, the remaining costs incurred for the STAR 2013-2014 test administration, the *California English Language Development Test (CELDT)*, and the *California High School Exit Examination*. The 2013-2014 Budget Act provided slightly less than \$100 million for these other tests, and therefore the 2014 budget represents an increase of at least \$45 million in local funding for the new CAASPP assessments.³¹⁶ The Commission, however, denied the test claims filed on the *California English Language Development Test* (00-TC-16

³¹⁴ Exhibit E, Finance Late Comments, pages 1-2.

³¹⁵ Code of Regulations, title 5, section 862 (Register 2014, No. 6).

and 03-TC-06), and, thus, there are no reimbursable state-mandated costs for that program and none of the funding appropriated in the 2014 Budget Act is required to go to the *California English Language Development Test* program. Reimbursement for the state-mandated *STAR* program (which only approved as a reimbursable state-mandated cost, the administration of the CAT/6 test in grades 3 and 7) ended on September 29, 2008, with the enactment of Statutes 2008, chapter 757.³¹⁷ Thus, there are no state-mandated costs for the *STAR* program in fiscal year 2013-2014 and, thus, none of the funding appropriated in the 2014 Budget Act is required to go for *STAR*. The Commission approved the first *High School Exit Examination* test claim filed (00-TC 06) and, according to the Controller’s most recent “Annual Deficiency Report,” the program costs for *High School Exit Examination* in fiscal year 2013-2014 totaled less than \$1 million (at \$564,080).³¹⁸ Except for *High School Exit Examination* costs, nearly the entire \$145 million appropriation is available and required to first be used to pay for the two new mandated activities.

Although the claimants allege increased costs, claimants have not introduced evidence in the record that the funding appropriated in the 2014 Budget Act is insufficient as a matter of law; the record contains only estimates of the claimants’ costs for 2014-2015, totaling approximately \$15 million, and the bare assertion that estimated statewide costs will reach \$1 billion.³¹⁹ As indicated by the claimant in their rebuttal comments, “claimants do not contest that the \$126.8 million... constitutes ‘additional revenues’ under Government Code section 17556(e)...(or even \$149.5 million if combined with the Title VI funds).” However, claimants allege that the funding is “simply woefully inadequate...” These assertions are not supported by evidence in the record: section 1183.2 of the Commission’s regulations requires assertions of fact to be supported by documentary evidence.³²⁰ And, pursuant to Government Code section 17559 and section 1187.5 of the Commission’s regulations, the Commission’s findings must be based on substantial evidence in the record.³²¹ In addition, claimants’ assertions are based on every activity alleged to impose a reimbursable state-mandated program. Most of those activities, however, are denied as not mandating a new program or higher level of service.

In order for the Commission to find increased costs mandated by the state in this case, claimants have to show that the costs incurred beginning July 1, 2014, for the one-time activity to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers (if not performed between January 1, 2014 and June 30, 2014), and the activity to include in the report to CDE information about whether a

³¹⁷ See, Parameters and Guidelines Amendment for *National Norm-Referenced Achievement Test (STAR)*, adopted May 29, 2009. (05-PGA-03.)

³¹⁸ Exhibit X, Annual Deficiency Report, issued on April 30, 2015, by the State Controller’s Office, at p. 17. (http://www.sco.ca.gov/Files-ARD-Local/LocRep/locreim_reports_deficiency2015.pdf)

³¹⁹ Exhibit A, Test Claim, page 73; Exhibit B, Vallejo City Unified Request to Join Test Claim, pages 5-6.

³²⁰ Code of Regulations, title 2, section 1183.2.

³²¹ Government Code section 17559 (Stats. 1999, ch. 643); Code of Regulations, title 2, section 1187.5 (Register 2014, No. 21).

pupil used a designated support or an individualized aid for purposes of the CAASPP assessment, exceed the \$40 million in funding provided by the state, and any additional funding described above that can be used for the CAASPP program. Absent this evidence in the record the Commission must find, as a matter of law, that the amount of funding currently appropriated is sufficient to preclude a finding of costs mandated by the state pursuant to Government Code section 17556(e), beginning July 1, 2014. If, in the future, the state fails to appropriate funds sufficient to cover the cost of the second ongoing activity to report the two items of additional information to CDE, school districts can then file another test claim within the statute of limitations required by Government Code section 17551(c) on the ground that they are, then, first incurring increased local costs.

Based on the foregoing, the Commission finds that there are no costs mandated by the state for the two new mandated activities within the meaning of Government Code section 17556(e), beginning July 1, 2014.

V. Conclusion

Based on the foregoing analysis, the Commission finds that Education Code section 60640, as amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 32, imposes a reimbursable state-mandated program on school districts for the one-time activity of providing “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers from January 1, 2014 to June 30, 2014, only. Funding identified in the 2013-2014 Budget Act (Line Items 6110-113-0001 and 6110-113-0890) and the \$1.25 billion appropriated for Common Core implementation by Statutes 2013, chapter 48 are potentially offsetting revenues that must be deducted from annual costs claimed to the extent a school district uses those funds for the mandated activity.

All other statutes, regulations, and claims for reimbursement are denied.

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 June 1, 2015, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
California Assessment of Student Performance and Progress (CAASPP), 14-TC-01
Education Code Sections 60602 et al.
Plumas County Office of Education, Plumas Unified School District, Porterville Unified School District, Santa Ana Unified School District, 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 June 1, 2015 at Sacramento, California.



Heidi J. Palchik
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/27/15

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

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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