



September 27, 2019

Ms. Amber Alexander
Department of Finance
915 L Street, 7th Floor
Sacramento, CA 95814

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

Re: First Hearing Decision

First Hearing: Adequate Showing

Academic Performance Index (01-TC-22), 18-MR-01

Education Code Section 52056(c); Statutes 1999, 1st Extraordinary Session,

Chapter 3 (SBX1-1); Statutes 2000, Chapter 695 (SB 1552); as alleged to be modified by
Statutes 2013, Chapter 47 (AB 97)

Department of Finance, Requester

Dear Ms. Alexander:

On September 27, 2019, the Commission on State Mandates (Commission) adopted the Decision on the adequate showing issue for the above-named matter and directed staff to notice a second hearing to determine whether to adopt a new Test Claim Decision to supersede the previously adopted Test Claim Decision. (Cal. Code Regs., tit. 2, § 1190.5(b).)

Sincerely,

Heather Halsey
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
FIRST HEARING: ADEQUATE
SHOWING ON:

Education Code Section 52056(c)
Statutes 1999, 1st Extraordinary Session,
Chapter 3 (SBX1-1) and Statutes 2000,
Chapter 695 (SB 1552)
As Alleged to be Modified by:
Statutes 2013, Chapter 47 (AB 97)
Filed on March 8, 2019
By the Department of Finance, Requester

Case No.: 18-MR-01
Academic Performance Index (01-TC-22)
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500, ET SEQ.; CALIFORNIA CODE
OF REGULATIONS, TITLE 2,
DIVISION 2, CHAPTER 2.5,
ARTICLE 7.
(Adopted September 27, 2019)
(Served September 27, 2019)

DECISION

The Commission on State Mandates (Commission) heard and decided this Mandate Redetermination during a regularly scheduled hearing on September 27, 2019. Dan Hanower appeared on behalf of the Department of Finance.

Government Code section 17570 and section 1190.1 et seq. of the Commission’s regulations establish the mandate redetermination process. In addition, the laws applicable to the Commission’s determination of a reimbursable state-mandated program are article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181.1 et seq., and related case law.

The Commission adopted the Proposed Decision at the hearing by a vote of 7-0, and directed staff to notice a second hearing to determine whether to adopt a new Test Claim Decision to supersede the previously adopted Test Claim Decision as follows:

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

Summary of the Findings

The Commission finds that the Department of Finance (Finance) has made an adequate showing that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *Academic Performance Index*, 01-TC-22 mandate may be modified based on a subsequent change in law, such that Finance has a substantial probability of prevailing at the second hearing. Specifically, Statutes 2013, chapter 47, section 102 expressly repealed the statute that imposed the mandate. Pursuant to Government Code section 17570(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted Test Claim Decision.

COMMISSION FINDINGS

I. Chronology

- | | |
|------------|--------------------------------------------------------------------------------------------------------|
| 03/08/2019 | Finance filed the Request for Mandate Redetermination. ¹ |
| 05/08/2019 | The State Controller's Office (Controller) filed comments on the Mandate Redetermination. ² |
| 06/28/2019 | Commission staff issued the Draft Proposed Decision, First Hearing. ³ |

II. Background

On July 31, 2009, the Commission adopted the Test Claim Statement of Decision in *Academic Performance Index*, 01-TC-22, finding that Education Code section 52056(c), as added and amended by the test claim statutes imposed a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Education Code section 52056(c) was part of the Public Schools Accountability Act of 1999 (PSAA),⁴ which established a new statewide school accountability system.⁵ To measure the level of achievement under the new accountability system, PSAA established the Academic Performance Index (API) as a method for measuring the performance of schools, especially the academic performance of pupils, and for demonstrating comparable improvement in academic

¹ Exhibit A, Request for Mandate Redetermination.

² Exhibit D, Controller's Comments on the Request for Mandate Redetermination.

³ Exhibit E, Draft Proposed Decision, First Hearing.

⁴ Former Education Code sections 52050 -52058.

⁵ As enacted, the Public Schools Accountability Act of 1999 consisted of three component parts: (1) the Academic Performance Index (API) [§ 52052], a method of measuring pupil performance; (2) the Intermediate Intervention/Underperforming Schools Program (II/USP) [§§ 52053 - 52055], an intervention and sanctions program to assist low-performing schools; and (3) the Governor's High Achieving/Improving Schools Program, an incentive program that rewards high-performing schools pursuant to a Governor's Performance Award Program [§§ 52056 - 52058].

achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.⁶ The Test Claim Statement of Decision explains the API as follows:

A school's API is a number that ranges from 200 to 1000 and is calculated from the results for each school's students on statewide tests. The state has set 800 as the API target for all schools to meet. Schools that fall short of 800 are required to meet annual growth targets until that goal is achieved. API targets vary for each school.⁷

The PSAA also established the High Achieving/Improving Schools Program in Education Code sections 52056-52058, an incentive program that monitored schools' progress, and provided monetary and non-monetary rewards pursuant to a Governor's Performance Award Program for schools that meet or exceed performance targets or demonstrate high achievement. As part of the program, the Superintendent of Public Instruction (SPI) was required to annually rank all public schools by the value of the API in decile categories by grade level, and by the value of the API when compared to schools with similar characteristics (such as pupil ethnicity, pupil socioeconomic status, etc.), and to report the target annual growth rates of schools and the actual growth rates attained.⁸ The SPI was also required to publish the rankings on the Internet.⁹ The school district governing boards were then required to "discuss the results of the annual ranking" at a regularly scheduled meeting, pursuant to section 52056(c).

The Commission found that only subdivision (c) of section 52056 imposed a reimbursable state-mandated activity for the governing board to discuss the results of its annual ranking at the next regularly scheduled meeting following the annual publication of the API and the SPI's school rankings.¹⁰ All other statutes and regulations pled in the Test Claim were denied.¹¹

On May 27, 2010, the Commission adopted the Parameters and Guidelines, which also approved the following reasonably necessary activities pursuant to Government Code section 17557 and former section 1183.1 of the Commission's regulations: obtaining the annual API data from the State's website and preparing a staff report, including a PowerPoint presentation, for the governing board's discussion.¹² Thus, section IV of the Parameters and Guidelines identifies the reimbursable activities as follows:

For each eligible claimant, the following activity is reimbursable:

⁶ Former Education Code section 52052.

⁷ Exhibit B, Test Claim Statement of Decision, page 3 (citing to California Department of Education "Parent and Guardian Guide to California's 2008-09 Accountability Progress Reporting System").

⁸ Former Education Code section 52056(a).

⁹ Former Education Code section 52056(a).

¹⁰ Exhibit B, Test Claim Statement of Decision, page 41.

¹¹ Exhibit B, Test Claim Statement of Decision, page 41.

¹² Exhibit F, Final Staff Analysis and Proposed Parameters and Guidelines (Item 7), pages 6-7.

For a school district governing board to discuss the results of its annual Academic Performance Index (API) ranking at the next regularly scheduled meeting following the annual publication of the API and SPI school rankings. Reimbursement is allowed for obtaining the annual API data from the State’s website and preparing a staff report, including a PowerPoint presentation, for the governing board’s discussion. (Ed. Code §, 52056, subd. (c), Stats. 1999-2000 1st Ex. Sess., ch. 3, eff. Jun. 25, 1999, Stats. 2000, ch. 695.)

This activity is **not** reimbursable for schools with fewer than 100 valid test scores, or schools in the alternative accountability system that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, alternative schools, including continuation high schools and opportunity schools and independent study schools. (Ed. Code, § 52052, subd. (f)(1), Stats. 2001, ch. 887 & Cal. Code Regs., tit. 5, § 1032, subd. (b).)

In addition, reimbursement is **not** required to analyze the API data, including STAR test scores, for changes in longitudinal performance of schools, to identify schools that change ranks, to measure achievement gaps between student groups, and to compare district performance with other urban districts pursuant to Education Code section 52056, subdivisions (c) and (d), as amended by Statutes 2003, chapter 45.¹³

The Alleged Subsequent Change in Law

Statutes 2013, chapter 47, was a budget bill that replaced existing revenue limits and categorical funding provided to schools with the Local Control Funding Formula (LCFF), effective July 1, 2013. As part of the bill, section 102 repealed Article 4 of Chapter 6.1 of Part 28 of Division 4 of Title 2 of the Education Code, commencing with section 52056, thereby repealing the High Achieving/Improving Schools Program.

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process for a test claim decision to be redetermined and superseded by a new test claim decision if a subsequent change in law, as defined, has modified the state’s liability for reimbursement. The redetermination process calls for a two-step hearing process. At the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6(a) of the California Constitution.”¹⁴ A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on

¹³ Exhibit C, Parameters and Guidelines, pages 2-3, emphasis in original.

¹⁴ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.¹⁵

An “adequate showing” is determined in the Commission’s regulations as follows:

The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.¹⁶

If the Commission finds, at the first hearing, that:

The requester has made an adequate showing, when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.¹⁷

III. Positions of the Parties, Interested Parties, and Interested Persons

A. Department of Finance, Requester

Finance asserts that Statutes 2013, chapter 47 “repealed the requirement that school district governing boards must discuss their annual ranking following the annual publication of the API school rankings.”¹⁸

Finance concludes that “the reimbursable activities identified in the Academic Performance Index Statement of Decision (01-TC-22) cease to be eligible for reimbursements effective July 1, 2018. Therefore, based on the change in law, the state’s liability for mandate reimbursement pursuant to Article XIII B, Section 6 of the California Constitution should be zero.”¹⁹

¹⁵ Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

¹⁶ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

¹⁷ California Code of Regulations, title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

¹⁸ Exhibit A, Request for Mandate Redetermination, page 4. Finance also states that “[g]iven the repeal of the authorizing statute, any required activities pursuant to the California Code of Regulations related to the API are unsupported by statute and should no longer be a basis for mandated activities.” (Exhibit A, Request for Mandate Redetermination, page 4.) The Commission denied all regulations pled in the Test Claim, and approved only Education Code section 52056(c), as added and amended by Statutes 1999, 1st Extraordinary Session, Chapter 3 (SBX1-1), and Statutes 2000, Chapter 695 (SB 1552). (Exhibit B, Test Claim Statement of Decision, page 41.)

¹⁹ Exhibit A, Request for Mandate Redetermination, page 5.

In addition, Finance states that “According to the State Controller's Office April 30, 2018, "State Mandated Program Cost Report of Unpaid Claims and Deficiency Pursuant to Government Code Section 17562(b)(2)," school districts claimed \$1,203 in 2016-17, \$1,090 in 2015-16, and \$1,182 in 2014-15 for activities related to the Academic Performance Index.”²⁰

Finance did not comment on the Draft Proposed Decision.

B. State Controller’s Office

The Controller concurs with Finance’s request to adopt a new test claim decision “to supersede the prior decision on the Academic Performance Index mandate program based upon the repeal of the authorizing statute.”²¹ The Controller did not comment on the Draft Proposed Decision.

C. School Districts

No comments have been filed by any of the eligible claimant school districts or any of the school district associations that represent them.

IV. Discussion

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability.

The first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission’s regulations, only whether the requester has made an adequate showing that the state’s liability has been modified based on a subsequent change in law, as defined. Therefore, the analysis will be limited to whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”²² If answered in the affirmative, a thorough mandates analysis to determine whether and to what extent the state’s liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will then be prepared for the second hearing on this matter.

²⁰ Exhibit A, Request for Mandate Redetermination, page 5.

²¹ Exhibit D, Controller’s Comments on the Request for Mandate Redetermination, page 1.

²² California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21). This regulation describes the standard for the first hearing as follows:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.

A. Statutes 2013, Chapter 47 Constitutes a Subsequent Change in Law, Within the Meaning of Government Code Section 17570.

Government Code section 17570(b) states that the Commission may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that, pursuant to article XIII B section 6, the state's liability has been modified based on a subsequent change in law. A subsequent change in law is defined in Government Code section 17570(a)(2) as:

A change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a "subsequent change in law" does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A "subsequent change in law" also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.²³

Finance, in its request, alleges that a subsequent change in law requires a finding that there are no longer any costs mandated by the state, in that Statutes 2013, chapter 47 repealed Education Code section 52056, the statutory provision that makes up the mandate.²⁴

Statutes 2013, chapter 47, section 102, effective July 1, 2013, repealed "Article 4 (commencing with Section 52056) of Chapter 6.1 of Part 28 of Division 4 of Title 2 of the Education Code."²⁵ This repeal includes Education Code section 52056(c), which mandated school district governing boards to discuss the results of its annual ranking at the next regularly scheduled meeting following the annual publication of the API and SPI school rankings. Education Code section 52056(c) was the only test claim statute approved in the Commission's July 31, 2009 Statement of Decision,²⁶ and was the only authority found to impose reimbursable activities in the Parameters and Guidelines.²⁷ Therefore, as a result of the repeal of Education Code section 52056(c) by Statutes 2013, chapter 47, school districts are no longer incurring costs mandated by the state pursuant to Government Code section 17514 to discuss the results of the annual ranking at the next regularly scheduled meeting following the annual publication of the API and SPI school rankings.

Based on the foregoing, the Commission finds that Statutes 2013, chapter 47, constitutes a subsequent change in law, as defined.

²³ Government Code section 17570(a)(2).

²⁴ Exhibit A, Request for Mandate Redetermination, pages 4-5.

²⁵ Exhibit A, Request for Mandate Redetermination, page 76 (Statutes 2013, chapter 47, section 102 (AB 97)).

²⁶ Exhibit B, Test Claim Statement of Decision.

²⁷ Exhibit C, Parameters and Guidelines, pages 1-3.

B. The Requester Has Made an Adequate Showing that the State’s Liability May Be Modified Based on a Subsequent Change in Law.

At this hearing, the Commission is required only to determine whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”²⁸ If the Commission determines that the request has a substantial possibility of prevailing at the second hearing, the Government Code provides that the Commission shall notice a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted Test Claim Decision.²⁹

Here, as discussed above, the requester has identified the subsequent change in law, Statutes 2013, chapter 47, which repealed Education Code section 52056(c), the only code section approved by the Commission to impose a reimbursable state-mandated activity.

Therefore, Finance has made an adequate showing that the state’s liability may be modified based on Statutes 2013, chapter 47, such that there is a substantial possibility that the request for a new test claim decision will prevail at the second hearing on this matter.

V. Conclusion

Based on the foregoing, the Commission finds that the requester has made an adequate showing that the state’s liability for the *Academic Performance Index*, 01-TC-22, mandate may be modified based on a subsequent change in law and that Finance has a substantial probability of prevailing at the second hearing. The Commission hereby directs Commission staff to notice the second hearing for November 22, 2019 to determine whether to adopt a new test claim decision to supersede the Commission’s previously adopted Test Claim Decision on *Academic Performance Index*, 01-TC-22.

²⁸ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

²⁹ Government Code, section 17570(d)(4) (Stats. 2010, ch. 719 (SB 856)).



RE: **Decision**

First Hearing: Adequate Showing

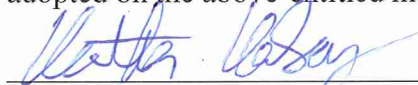
Academic Performance Index (01-TC-22), 18-MR-01

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Chapter 3 (SBX1-1); Statutes 2000, Chapter 695 (SB 1552); as alleged to be modified by
Statutes 2013, Chapter 47 (AB 97)

Department of Finance, Requester

On September 27, 2019, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.



Heather Halsey, Executive Director

Dated: September 27, 2019

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On September 27, 2019, I served the:

- **First Hearing Decision adopted September 27, 2019**

First Hearing: Adequate Showing

Academic Performance Index (01-TC-22), 18-MR-01

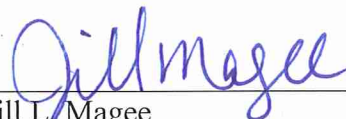
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Chapter 3 (SBX1-1); Statutes 2000, Chapter 695 (SB 1552); as alleged to be modified by Statutes 2013, Chapter 47 (AB 97)

Department of Finance, Requester

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 September 27, 2019 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/13/19

Claim Number: 18-MR-01

Matter: Academic Performance Index (01-TC-22)

Requester: Department of Finance

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.)

Edmundo Aguilar, Chief Counsel, *Department of Education*

1430 N Street, Sacramento, CA 95814-5901

Phone: (916) 319-0860

EAguiar@cde.ca.gov

Amber Alexander, *Department of Finance*

Requester Representative/Requester Contact

915 L Street, Sacramento, Ca

Phone: (916) 445-0328

Amber.Alexander@dof.ca.gov

Michael Ambrose, Associate General Counsel, *California School Boards Association*

3251 Beacon Boulevard, West Sacramento, CA 95691

Phone: (916) 669-3266

mambrose@csba.org

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842

Phone: (916) 727-1350

harmeet@calsdrc.com

Lacey Baysinger, Fiscal Analyst, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,

Sacramento, CA 95816

Phone: (916) 324-7876

lbaysinger@sco.ca.gov

Mike Brown, *School Innovations & Advocacy*
5200 Golden Foothill Parkway, El Dorado Hills, CA 95762
Phone: (916) 669-5116
mikeb@sia-us.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916)595-2646
Bburgess@mgtamer.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Gwendolyn Carlos, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

David Cichella, *California School Management Group*
3130-C Inland Empire Blvd., Ontario, CA 91764
Phone: (209) 834-0556
dcichella@cscentral.com

Andra Donovan, *San Diego Unified School District*
Legal Services Office, 4100 Normal Street, Room 2148, , San Diego, CA 92103
Phone: (619) 725-5630
adonovan@sandi.net

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Chris Ferguson, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Ferguson@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Heather Halsey, Executive Director, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Ed Hanson, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
ed.hanson@dof.ca.gov

Michael Johnston, *Clovis Unified School District*
1450 Herndon Ave, Clovis, CA 93611-0599
Phone: (559) 327-9000
michaeljohnston@clovisusd.k12.ca.us

Doug Kimberly, *Superintendent, Lake Elsinore Unified School District*
545 Chaney Street, Lake Elsinore, CA 92530
Phone: (951) 253-7000
Doug.Kimberly@leusd.k12.ca.us

Jennifer Kuhn, *Deputy, Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8332
Jennifer.kuhn@lao.ca.gov

Lisa Kurokawa, *Bureau Chief for Audits, State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Jill Magee, *Program Analyst, Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Kathryn Meola, *General Counsel, California School Boards Association*
3251 Beacon Blvd., West Sacramento, CA 95691
Phone: (916) 669-3273
kmeola@csba.org

Yazmin Meza, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Yazmin.meza@dof.ca.gov

Meredith Miller, *Director of SB90 Services, MAXIMUS*
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithmiller@maximus.com

Robert Miyashiro, *Education Mandated Cost Network*
1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
robertm@sscal.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Debra Morton, Manager, Local Reimbursements Section, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-0256
DMorton@sco.ca.gov

Michelle Nguyen, *Department of Finance*
Education Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Michelle.Nguyen@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kpbsixten@aol.com

Ned Resnikoff, Fiscal & Policy Analyst, K-12, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95816
Phone: (916) 319-8332
Ned.Resnikoff@lao.ca.gov

Mark Rewolinski, *MAXIMUS*
808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (949) 440-0845
markrewolinski@maximus.com

Sandra Reynolds, President, *Reynolds Consulting Group, Inc.*
P.O. Box 891359, Temecula, CA 92589-1359
Phone: (888) 202-9442
reginc19@gmail.com

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Steve Shields, *Shields Consulting Group, Inc.*
1536 36th Street, Sacramento, CA 95816

Phone: (916) 454-7310
steve@shieldscg.com

Natalie Sidarous, Chief, *State Controller's Office*

Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: 916-445-8717
NSidarous@sco.ca.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Kent Stephens, Chief Financial Officer, *San Juan Unified School District*

Business Services, 3738 Walnut Avenue, Carmichael, CA 95609

Phone: (916) 971-7238
kent.stephens@sanjuan.edu

Joe Stephenshaw, Director, *Senate Budget & Fiscal Review Committee*

California State Senate, State Capitol Room 5019, Sacramento, CA 95814

Phone: (916) 651-4103
Joe.Stephenshaw@sen.ca.gov

Amy Tang-Paterno, Educational Fiscal Services Consultant, *California Department of Education*

Government Affairs, 1430 N Street, Suite 5602, Sacramento, CA 95814

Phone: (916) 322-6630
ATangPaterno@cde.ca.gov

Jolene Tollenaar, *MGT of America*

2251 Harvard Street, Suite 134, Sacramento, CA 95815

Phone: (916) 243-8913
jolenetollenaar@gmail.com

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Michelle Valdivia, *Department of Finance*

Education Systems Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-0328
Michelle.valdivia@dof.ca.gov

Marichi Valle, *San Jose Unified School District*

855 Lenzen Avenue, San Jose, CA 95126

Phone: (408) 535-6141
mvalle@sjusd.org

Elena Wilson, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: 916-323-3562
elena.wilson@csm.ca.gov