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17 Attorneys for Petitioners and Plaintiffs

18 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SACRAMENTO

20 (UNLIMITED JURISDICTION)

21 CALIFORNIA SCHOOL BOARDS
22 ASSOCIATION and its EDUCATION LEGAL
23 ALLIANCE,

24 Petitioners and Plaintiffs,

25 vs.

26 BETTY YEE, in her official capacity as Controller
27 of the State of California,

28 Respondent and Defendant.

No.: _____

Action Filed: July 15, 2021

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Hearing:

Date: TBD

Time: TBD

Dept.: TBD

Judge: TBD

FILED
Superior Court Of California,
Sacramento
07/15/2021
Kepichka
By _____, Deputy
Case Number:
34-2021-90003680

BY FAX

1 funding formulas and, importantly, for purposes of the minimum school funding guarantee embedded
2 in article XVI, section 8 of the California Constitution, commonly referred to as “Proposition 98.”
3 Cal. Educ. Code § 47612(c).

4 4. In the 2020-21 Budget Act and relevant trailer bills, the State Controller was
5 tasked with developing guidance for local county auditor-controllers on how to distribute their local
6 property tax revenues to school districts through a statutorily-created fund known as the Educational
7 Revenue Augmentation Fund or “ERAF.” The ERAF statute was enacted to secure additional funding
8 for school districts from local property tax revenues, thereby lessening the burden on the state General
9 Fund. In developing that guidance, the Controller looked to Revenue and Taxation Code provisions
10 that are within her ordinary jurisdiction. However, the Controller entirely ignored the Education Code
11 provisions that dictate how the tax code is applied when the county has both school districts and charter
12 schools within its boundaries. The Controller also ignored prior guidance from the Department of
13 Finance that “charter school ADA must be included when calculating excess ERAF,” and the
14 Governor’s January 2021 budget proposal, which aligned with the Department of Finance’s legal
15 interpretation of the ERAF statutes and assumed for purposes of the Proposition 98 guarantee that
16 property tax revenues owed to schools were calculated by including charter school ADA.

17 5. It is a fundamental rule of statutory construction that when different statutes
18 overlap with regard to a particular subject, those statutes must be read to harmonize with each other, so
19 as to ensure all are given effect. Rather than harmonize the statutes, the Controller read them with
20 tunnel vision, as though each operated only in an entirely separate realm. The result has been a loss to
21 school districts and county offices of education throughout the state of hundreds of millions of dollars,
22 sure to grow in the future, and an affront to the local taxpayers whose property tax payments are being
23 redirected from public schools to local government. While school funding is surprisingly robust this
24 year coming out of the pandemic, history proves it will be scarce again in the future when the next
25 economic downturn hits. Unless the Controller’s erroneous guidance is declared unlawful, it will create
26 a permanent decrease in the Proposition 98 minimum funding guarantee for K-14 education, unlawfully
27 suppressing the amount of funding constitutionally guaranteed to schools and community colleges now
28

1 and in the future by redirecting it to counties, cities and special districts. Such a result cannot be
2 allowed to stand.

3 **PARTIES**

4 6. Petitioner CALIFORNIA SCHOOL BOARDS ASSOCIATION (“CSBA”) is a
5 statewide nonprofit education association composed of the governing boards of nearly 1,000 K-12
6 school districts and county boards of education that supports local school board governance, advocates
7 on behalf of school districts and county offices of education, and initiates and supports litigation in
8 cases of statewide significance to California schools. CSBA has been liable to pay, and within one year
9 before the commencement of this action has paid, a tax within the County of Yolo. CSBA supports
10 sufficient funding to meet the educational needs of K-12 students in public schools and opposes efforts
11 to circumvent, bypass or manipulate constitutional funding guarantees. CSBA’s purposes are, among
12 other things, to ensure that local school boards retain the authority and financial capacity to fully
13 exercise the responsibilities vested in them by law, to advance appropriate educational policies on
14 behalf of school districts, and to ensure that the State of California, its officers, agents, and employees
15 properly execute those responsibilities for public education vested in them by law, including ensuring
16 that schools are funded in accordance with statutory law and the California Constitution. Any error or
17 manipulation of the calculation of the State’s minimum funding guarantee pursuant to article XVI,
18 section 8 that results in less funding for education than legally required directly and adversely impacts
19 CSBA and its members in the year it occurs and for every year thereafter. CSBA brings this
20 proceeding on its own behalf and on behalf of its member school districts that are charged with
21 providing the enacted programmatic element of the public school system. CSBA members would
22 otherwise be entitled to bring this suit in their own right, the interests that CSBA seeks to protect in this
23 lawsuit are germane to its purpose, and neither the claims asserted nor the relief sought herein are
24 unique to specific districts and therefore do not require the participation of each and every member of
25 CSBA.

26 7. Petitioner EDUCATION LEGAL ALLIANCE (“ELA”) of the CALIFORNIA
27 SCHOOL BOARDS ASSOCIATION is composed of approximately 725 members of the CSBA. ELA
28 consists of CSBA members that are committed to addressing legal issues of statewide concern to school

1 **FACTUAL ALLEGATIONS**

2 **California School Finance Relies on Local Property Tax Revenues**

3 11. Under Article IX of the California Constitution, the Legislature is required to
4 provide for a system of public education for all grades starting in kindergarten through state college,
5 and to ensure a free public education from kindergarten through secondary school. California school
6 finance is enormously complex, but the state’s funding system for its free public schools has long been
7 based on a fundamental principle that local schools should be funded by property tax revenues. *See*
8 *Cal. Redevelopment Ass’n v. Matosantos*, 53 Cal. 4th 231, 243 (2011) (citations omitted).

9 12. Local property tax revenues have historically been a primary source of school
10 funding in California. *See Serrano v. Priest*, 5 Cal. 3d 584, 592 & n.2 (1971). After the California
11 Supreme Court declared unconstitutional on equal protection grounds a school funding system based
12 solely on local property tax wealth, the state Legislature enacted a funding system that supplemented
13 local property tax revenue with state General Fund proceeds of taxes in a manner that more nearly
14 equalized funding on a per pupil basis.¹ Even after Proposition 13 (1978) capped local property taxes
15 at a 1% tax rate, the Legislature acted quickly to ensure that local property tax revenues within each
16 county would continue to be allocated to local schools. The Legislature enacted what was referred to as
17 the “AB 8” allocation system, which distributed local property tax revenues to school districts,
18 community college districts, county superintendents of schools, cities, counties, local agencies and
19

20 ¹ Because property tax revenues are a stable source of funding that varies widely across localities,
21 reliance on local property tax revenues without an effective equalization mechanism produced vast
22 wealth-based inequalities among school districts and was declared unconstitutional in 1971. *Serrano*, 5
23 Cal. 3d 584. Following *Serrano*, the State developed a mechanism to equalize funding across districts.
24 Each school district was assigned a base revenue limit that depended on average daily attendance and
25 varied by size and type of district. “The revenue limit for a district included the amount of property tax
26 revenues a district can raise, with other specific local revenues, coupled with an equalization payment by
27 the State, thus bringing each district into a rough equivalency of revenues.” *Wells v. One2One Learning*
28 *Foundation*, 39 Cal. 4th 1164, 1186 n.10 (2006) (citing and quoting 56 Cal. Jur. 3d (2003) Schools, § 7,
p. 198). In 2013, the Legislature restructured the school finance system by creating the Local Control
Funding Formula. Cal. Educ. Code § 42238.02. Each district now receives a base funding allocation per
student, plus supplemental funding depending on the district's population of English learners, low-
income students and foster youth as well as the concentration of those students in the district. *Campaign*
for Quality Educ. v. Cal., 2016 Cal. LEXIS 8386, *11-12 (2016) (Liu, J., dissenting from denial of
review). Local property tax revenues are counted toward each district’s LCFF entitlement, with the state
responsible for any shortfall. Cal. Educ. Code § 42238.02(j).

1 special districts in proportion to the share of property taxes they received prior to Proposition 13’s
2 passage. *See* Cal. Rev. & Tax. Code § 95 et seq.

3 13. To ensure that this mix of local property tax revenues and state funding resulted in
4 a certain and reliable funding level for schools, California voters enacted Proposition 98 (1988),
5 modified by Proposition 111 (1990), which together² create a constitutional minimum funding guarantee
6 for public K-12 schools and community colleges. Proposition 98’s guaranteed minimum level of public
7 school funding takes into account both state General Fund revenue and local property tax revenue. Cal.
8 Const. art. XVI, § 8.

9 14. Proposition 98 sets the minimum guaranteed funding for school districts and
10 community college districts by application of one of three tests, with schools getting the greater of the
11 amount calculated under Test 1 and either Test 2 or 3, whichever is applicable. Test 1 requires that
12 districts receive at least a set percentage of General Fund revenues – currently about 38 percent – in
13 addition to their share of local property tax revenues. Cal. Const., art. XVI, § 8(b)(1). Test 2 requires
14 that schools receive at least the same amount of total funding they received the prior year from General
15 Fund revenues and local property tax revenues combined, adjusted for changes in the cost of living and
16 changes in enrollment. *Id.* § 8(b)(2). Test 2 ensures that schools continue to receive at least as much
17 funding as they received in the prior year and is the heart of Proposition 98’s guarantee of stable school
18 funding. Test 3 is similar to Test 2 but adjusts the total by changes in per capita General Fund revenues,
19 and can temporarily lower the amount of funding provided to schools in a recessionary year, while also
20 guaranteeing that the funding is restored to the Test 2 level when the economy recovers. *Id.* § 8(b)(3),
21 8(d) & (e). In other words, schools generally are guaranteed to receive at least as much as they received
22 in the prior year, adjusted for changes in the cost of living and enrollment, but they can receive more in
23 very good times (under Test 1, when General Fund revenues and/or property tax revenues are high) or
24 they can temporarily receive less in recessionary times (under Test 3). When schools receive more in a
25 good Test 1 year, that becomes the new, higher minimum benchmark against which succeeding years’
26 funding is measured.

27 _____
28 ² Subsequent references to “Proposition 98” include the amendments made by Proposition 111.

1 education in their county “in total” during the 1991-92 fiscal year. They then “determine the amount [of
2 the ERAF] to be allocated to each school district and county office of education *in inverse proportion to*
3 the amounts of property tax revenue per average daily attendance in each school district and county
4 office of education,” excluding districts and county offices that are “excess tax school entit[ies].”⁵ Rev.
5 & Tax. Code § 97.2(d)(2)(A) (emphasis added); *see also id.* § 97.2(d)(3) (requiring similar calculation
6 for community college districts based on the number of full-time equivalent students). The county
7 auditor-controller determines each district’s ERAF entitlement based on that calculation. *Id.* In other
8 words, the auditor first determines how much goes into the ERAF based on the “total” proportion of
9 property tax revenues that had been distributed to all school districts and county offices in 1991-92, but
10 then allocates that ERAF funding based on a different formula that considers current-year ADA and
11 excludes any districts or county offices that would become “excess tax entities” as a result. Importantly,
12 although the Controller asserts that school districts must “directly receive property tax revenue”⁶ in order
13 to be eligible to be included in the ERAF distribution calculation, nothing in the statute itself requires
14 that.

15 18. As noted above, local property tax revenues are counted toward each district’s
16 LCFF entitlement, with the state General Fund responsible for any shortfall. *See supra* n. 1; Cal. Educ.
17 Code § 42238.02(j). Each district’s ERAF allotment also counts toward that district’s LCFF entitlement
18 and reduces the amount of General Fund revenues that otherwise must be provided. Cal. Educ. Code
19 §§ 42238.02(j)-(k), 47635(a), 47662. The sum of ERAF revenue that must be allocated to each school
20 district within a county to meet the LCFF funding entitlements pursuant to these calculations, plus the
21 amount that must be allocated to the county’s community college districts, is referred to as the county’s
22 “ERAF capacity.” Pet. RJN, Ex. A at 6, figure 3 (Legislative Analyst’s Off., *Excess ERAF: A Review of*
23 *the Calculations Affecting School Funding* (Mar. 6, 2020) [hereafter “LAO Report”]).

24 ⁵ Certain school districts and county offices of education receive more property tax revenue than the sum
25 total of their LCFF entitlement. These are known as “excess tax entities” or “basic aid districts,”
26 because the only funding they receive from the state General Fund are the basic amounts of \$180 per
27 pupil required by article IX, section 6 of the state Constitution and the \$200 per pupil required by article
28 XIII, § 36(e)(3)(B).

⁶ Petitioners’ Request for Judicial Notice (“Pet. RJN”), Ex. F at n. 3 (Cal. State Controller, *Excess*
Educational Revenue Augmentation Fund Revenue Guidance (Feb. 21, 2021)).

1 19. In some counties with very high levels of property tax revenues relative to their
2 overall student population, the amount of property tax funds in their ERAF is more than the amount
3 necessary to meet the ERAF capacity of the school districts and community college districts in the
4 county. The county auditor-controller compares the county’s total ERAF revenue with its ERAF
5 capacity. If there is more revenue than capacity, that is known as “excess ERAF.”

6 20. The Legislature first specified that the portion of ERAF funds beyond that
7 necessary to fund schools (“excess ERAF”) should be allocated to the county superintendent of schools
8 for special education programs. Assemb. Bill. 825, ch. 308, 1995 Cal. Leg. 1995–1996 Sess. In 2000,
9 the Legislature again amended the ERAF statute to allow any additional excess ERAF beyond which is
10 allocated to the county superintendent of schools for special education programs to be allocated to
11 counties, cities and special districts for any local purpose. S. Bill 1396, ch. 611, 2000 Cal. Leg. 1999 –
12 2000 Sess.; Cal. Rev. & Tax. Code § 97.2(d)(4)(B). Until recently, Marin County was the only county
13 reporting so much excess ERAF that it was being allocated back to the counties, cities and special
14 districts. By 2018, however, four other counties in the Bay Area – San Mateo, San Francisco, Santa
15 Clara, and Napa – had joined Marin in reporting more ERAF than necessary to meet their obligations to
16 school districts and community college districts. By claiming to have fully satisfied their ERAF
17 obligations to school districts and community college districts, these five counties were able to re-direct
18 the excess ERAF to counties, cities and special districts within their boundaries.

19 21. The sudden increase in excess ERAF going to non-school district entities
20 prompted inquiries by the California Department of Finance, the Legislature, and the Legislative
21 Analyst’s Office (“LAO”). The LAO reported that at first just a few, and then eventually all five of
22 these counties had begun improperly undercalculating their educational ERAF obligations in the first
23 instance by declining to include charter schools in the calculation of their ERAF capacity. Pet. RJN, Ex.
24 A at 10 [LAO Report]. In other words, when those county auditors-controllers determine the amount of
25 ERAF to be allocated to school districts per unit of average daily attendance, they were not including the
26 average daily attendance of the charter schools within the county. This change in practice was not
27 precipitated or justified by any change in law. Rather, by excluding the average daily attendance of
28 students attending charter schools from their ERAF capacity calculations, the counties were able to claim

1 more discretionary “excess ERAF” funds were available for re-distribution to non-educational entities
2 within their borders (cities, special districts, and counties).

3 **State Law Requires that ERAF Revenues be Allocated to Charter Schools**

4 22. The exclusion of charter school ADA in ERAF allocation calculations, thereby
5 undercalculating the amount of ERAF funds that should flow to school districts, is unfounded as a matter
6 of law. Neither section 97.2(d) of the Revenue and Taxation Code, which sets forth the formula for
7 counties’ ERAF allocations, nor the companion provisions of the Education Code governing allocations
8 of property taxes to charter schools, permit counties to leave their charter school student population out
9 of the ERAF calculations. To the contrary, state law has always recognized that charter schools, and the
10 students they serve, are public schools entitled to their full share of state funding, including local
11 property tax revenues and, accordingly, ERAF funding.

12 23. In 1993, the State first sanctioned the creation of charter schools and began
13 allowing public schools to be organized under charters. Charter Schools Act of 1992, ch. 781, 1992 Cal.
14 Leg. 1991–1992 Sess. Although charters would “operate independently from the existing school district
15 structure,” Cal. Educ. Code § 47601, the Legislature ensured that charter schools would still be overseen
16 by a “sponsoring local educational agency,” or chartering authority, which is typically the local school
17 district. *Id.* § 47632(i); *see e.g., id.* § 47604.33 (establishing financial oversight of charter schools by the
18 chartering authority). Moreover, the law stated that “[a] charter school shall be deemed to be a ‘school
19 district’ for purposes of Article 1 (commencing with Section 14000) of Chapter 1 of Part 9 of Division 1
20 of Title 1, Section 41301, Section 41302.5, Article 10 (commencing with Section 41850) of Chapter 5 of
21 Part 24 of Division 3, Section 47638, and Sections 8 and 8.5 of Article XVI of the California
22 Constitution.” *Id.* § 47612(c) (emphasis added). Thus charter schools are “school districts” under the
23 provisions of law establishing and calculating the minimum school funding guarantee, those governing
24 property tax estimates for purposes of school apportionments, and those defining ADA for school
25 funding purposes.

1 24. Although they are part of the public school system (and expressly defined as
2 “school districts” for purposes of school funding⁷), charter schools do not receive a direct allocation of
3 property tax revenue from their counties. Property tax allocations within the counties were established
4 by the Revenue and Taxation Code prior to the enactment of the Charter School Act of 1992. Instead,
5 the Education Code provides for charter schools to receive a proportionate share of the property tax
6 revenue collected in the jurisdiction of their sponsoring school districts, including ERAF funds. Cal.
7 Educ. Code § 47635. The school district receives property tax revenue, including ERAF, on behalf of
8 charter schools sponsored by the district, and then passes this revenue through to charter schools. *See*
9 Cal. Educ. Code § 47662 (ERAF funds received by authorizing school districts are passed through to
10 charter schools as “in lieu” property tax revenues). In this way, the Education Code establishes that
11 property tax revenues are to be used to help satisfy the charter schools’ LCFF entitlement, just as they
12 help satisfy the LCFF entitlement of local school districts.

13 25. By excluding charter school ADA from their ERAF calculations, these counties
14 are in effect treating charter schools as though they are funded outside the LCFF formula, and like
15 private schools, should receive no benefit from local property tax revenues, contrary to state law.⁸

16 26. To clear up any possible confusion by the five counties, the Department of
17 Finance issued written guidance on June 5, 2020 to the county auditor-controllers and county office of
18 education chief business officials from the five counties spelling out in detail how they were to
19 incorporate charter school ADA into the calculation of ERAF capacity at the county level. *Pet. RJN, Ex.*
20 *B (Dep’t. of Fin., Guidance for Calculation of K-12 ERAF Revenues & Excess ERAF (June 5, 2020).*
21 That guidance followed publication by the Department of Finance in May 2020 of proposed budget
22 trailer bill language amending Revenue and Taxation Code section 97.2(d)(2)(B) to require county

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24 ⁷ *See Wilson v. State Bd. of Educ.*, 75 Cal. App. 4th 1125, 1137 (1999) (citing Cal. Con. art. IX, § 6); Cal.
Educ. Code § 47612(c).

25 ⁸ Indeed, the Marin County Finance Director Roy Given was quoted stating that charter schools are not
26 entitled to ERAF funds at all because they are not public schools: “The Department of Finance wants to
27 classify charter schools as public schools so we have to backfill them with ERAF. We don’t think they are
28 public schools because they are independently run and not owned by a public agency.” Richard Halstead,
State Claim Jeopardizes Marin Property Tax Revenues, *Marin Independent Journal*, June 22, 2020,
<https://www.marinij.com/2020/06/21/marin-might-lose-bales-of-property-taxes-in-state-dispute/>.

1 auditor-controllers to allocate ERAF revenue beginning in 2018-19 according to guidance set by the
2 Department of Finance, and authorizing the Department to file a writ against any county auditor-
3 controller who failed to comply with the guidance. Pet. RJN, Ex. C (Dep’t. of Fin., Excerpt of Proposed
4 Education Omnibus Trailer Bill with May Revision Amendments, 96 (May 14, 2020).

5 **The Legislature’s Response**

6 27. Following the LAO Report in March 2020, the 2020-21 May Revision to the
7 Governor’s Budget, and the June 2020 Department of Finance guidance, the five counties that had been
8 benefitting by omitting charter school students from their ERAF calculations claimed to have been
9 confused by Revenue and Taxation Code section 97.2(d)(2)(A), which requires that the ERAF capacity
10 calculation turn on the average daily attendance for “school districts” but does not expressly reference
11 charter schools. Pet. RJN, Ex. E (Letter from Cty. Auditor-Controllers to Keely Bosler, Dir. of Fin.,
12 Dep’t of Fin. (June 8, 2020)). This despite the statement in Education Code section 47612 that charter
13 schools are “deemed to be a school district” for purposes of the various Education Code provisions
14 calculating all “per pupil” aspects of school apportionments, including the LCFF and the Proposition 98
15 minimum guarantee.

16 28. In response, the Legislature amended Revenue and Taxation Code section 97.2 as
17 part of a legislative compromise. S. Bill 98, ch. 24, 2020 Cal. Leg. 2019–2020 Sess. The legislation did
18 not change the language of Revenue and Taxation Code section 97.2(d)(2)(A), which sets in place the
19 rule for calculating ERAF per “school district” ADA, defined in the Education Code to include charter
20 school ADA:

21 The county superintendent of schools shall determine the [ERAF] amount
22 to be allocated to each school district and county office of education in
23 inverse proportion to the amounts of property tax revenue per average
daily attendance in each school district and county office of education.

24 Cal. Rev. & Tax. Code § 97.2(d)(2)(A).

25 29. Instead, the Legislature enacted a “hold harmless” provision for the counties’
26 ERAF calculations up to and including fiscal year 2018-19. *Id.* § 97.2(d)(2)(C) & (D). The “hold
27 harmless” provision would not have been necessary had the Legislature agreed with the counties that
28 their disputed calculations complied with existing law. To eliminate any further disputes, the

1 Legislature required the Controller to issue guidance to counties on how to calculate and allocate excess
2 ERAF revenues from 2019-20 forward:

3
4 (B) The Controller shall issue, on or before December 31, 2020, guidance
5 to counties for implementation of subparagraph (A). Any guidance issued
6 to counties pursuant to this subparagraph shall not be subject to the
7 Administrative Procedure Act (Chapter 3.5 (commencing with Section
8 11340) of Part 1 of Division 3 of Title 2 of the Government Code)
9 or Section 30200 of Government Code. Commencing with the 2019–20
10 fiscal year, if a county auditor-controller fails to allocate Educational
11 Revenue Augmentation Fund revenues in accordance with the guidance
12 issued by the Controller pursuant to this subparagraph, the Controller may
13 request a writ of mandate to require the county auditor-controller to
14 immediately perform this duty. Such actions may be filed only in the
15 County of Sacramento and shall have priority over other civil matters.

16 (C) Calculations made pursuant to subparagraph (A) for fiscal years before
17 the 2018–19 fiscal year shall be considered final as of the 2018–19 fiscal
18 year second principal apportionment.

19 (D) Calculations pursuant to subparagraph (A) for the 2018–19 fiscal year
20 shall be considered final as of the February 20, 2020, certification.

21 *Id.* § 97.2(d)(2).

22 30. Crucially, the Legislature’s enacted 2020-21 Budget Act, passed
23 contemporaneously with the amendments to section 97.2, assumed that the Controller’s guidance would
24 conform to section 97.2(d)(2)(A) and include charter school ADA for those five counties that had not
25 previously included charter school ADA in their ERAF calculations. Accordingly, the final revenue
26 projections underlying the 2020-21 budget included charter school ADA in the projections of ERAF
27 property tax revenues allocated to school districts and community college districts starting in 2019-20
28 forward, and set the Proposition 98 guarantee level accordingly. *See* Pet. RJN, Ex. D (2021-22 May
Revision to the Governor’s Budget at 47 (noting that the Proposition 98 minimum guarantee without the
charter school ADA in these five counties will have to be adjusted “to include property tax decreases of

1 \$283 million in 2019-20, \$298 million in 2020-21, and \$315.9 million in 2020-21 [sic]⁹, related to recent
2 State Controller’s Office guidance on counties’ calculation of local excess Educational Revenue
3 Augmentation Fund.”).

4
5 **The Controller’s Guidance Unlawfully and Permanently Lowers**
6 **the Proposition 98 School Funding Guarantee**

7 31. On February 16, 2021, the Controller issued guidance for the implementation of
8 ERAF allocations to schools and the determination of excess ERAF. Pet. RJN, Ex. F (Cal. State
9 Controller, Excess Educational Revenue Augmentation Fund Revenue Guidance (Feb. 21, 2021). The
10 guidance, which is less than one page long, mentions charter schools only in a one-sentence footnote:

11 Charter schools are not included in the definition of school districts for the
12 calculation of excess ERAF because they do not directly receive property
13 tax revenue pursuant to [Revenue and Taxation Code] sections 97.2 and
14 97.3, but from the sponsoring district in accordance with Education Code
15 section 47635.

16 *Id.* at 2 n.3.

17 32. Accordingly, rather than conform to the text of section 97.2(d)(2)(A) and the
18 Legislature’s intent, the Controller’s guidance erroneously sanctioned the counties’ recent practice of
19 excluding charter school ADA from their ERAF calculations. This is without basis in law. Contrary to
20 the Controller’s guidance, the Revenue and Taxation Code provisions governing ERAF calculations
21 cannot be read in isolation to exclude charter schools just because they do not receive a direct allocation
22 of property taxes. Rather, the statutory framework requires that the Revenue and Taxation Code be read
23 in conjunction with the Education Code, which plainly equates charter schools with school districts for
24 purposes of the school funding allocation formulas. These formulas expressly require that property taxes
25 be shared with both charter schools and school districts on a per-ADA basis. Cal. Educ. Code §§
26 42238.02(j)-(k), 47635(a), 47662; *see L.A. Unified Sch. Dist. v. Cty. of L.A.*, 181 Cal. App. 4th 414, 426

27 ⁹ The 2021 May Revision lists the Proposition 98 guarantee for 2019-20, 2020-21 and 2021-22, and then
28 the property tax decreases due to the State Controller’s Office ERAF guidance over the three fiscal
years. For the property tax decreases, fiscal year 2020-21 is listed twice. This is a typographical error;
the second “2020-21” should instead be “2021-22.”

1 (2010) (“[w]hen faced with overlapping statutes such as the ERAF and passthrough legislation, we must
2 read them together so as to give effect, to the extent possible, to all of their provisions”); Cal. Code Civ.
3 Proc. § 1858.

4 33. The Controller’s misinterpretation of the relevant law impacts the statewide
5 funding of schools. Because in recent years the Proposition 98 Test 1 formula has been operative, the
6 minimum level of school funding has been the sum of 38% of the State’s General Fund *plus* the total
7 amount of property taxes allocated to schools, including ERAF. Current budget projections anticipate
8 that school funding will continue to be based on Test 1 for the foreseeable future. Pet. RJN, Ex. G
9 (Legislative Analyst’s Off., *Proposition 98 Overview, LAO May Outlook Estimates of Proposition 98*
10 *Guarantee* (May 2021) (Test 1 will be operative for every fiscal year through 2025)). Excluding charter
11 schools from ERAF funding has had a detrimental impact on school funding and by reducing the
12 minimum guarantee, will continue to harm school districts going forward.

13 34. First, when counties under-allocate ERAF to school districts during a Test 1 year,
14 there is less overall funding for school and community college programs; any decrease in property tax
15 revenues in a Test 1 year has a dollar-for-dollar impact on the Proposition 98 guarantee. As a direct
16 result of the Controller’s guidance, the fiscal year 2019-20 Proposition 98 minimum funding guarantee
17 will be lowered by \$283 million because of the lower property tax revenue allocations to school districts
18 in the five counties. Current fiscal projections assume that Test 1 will continue to be operative through
19 at least 2025 which means that excluding charter schools from ERAF allocations will drop the guarantee
20 further: by an additional \$298 million in 2020-21, and by \$315.9 million in 2021-22. Pet. RJN, Ex. D
21 (K-12 Chapter of the 2021-22 May Revision to the Governor’s Budget 47 (May 14, 2021)).

22 35. When Tests 2 or 3 again become operative, because the calculations determining
23 the minimum school funding guarantee under those tests rely on the prior year’s state General Fund
24 allocations in addition to allocated local proceeds of taxes (e.g., ERAF funds), reducing those local
25 proceeds of taxes will have the effect of lowering the required school funding level statewide.
26 Accordingly, any under-allocation of ERAF funds will have a cascading effect on each subsequent
27 year’s funding guarantee, resulting in an ongoing, permanent decrease in the level of school funding by
28 hundreds of millions, and eventually billions of dollars.

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c. By allowing the exclusion of charter school ADA from counties' calculation of ERAF capacity and excess ERAF, the Controller's February 16, 2021 guidance is unlawful and of no force and effect.

d. By allowing the exclusion of charter school ADA from counties' calculation of ERAF capacity and excess ERAF, the Controller's February 16, 2021 guidance is unconstitutional in violation of article XVI, section 8(b) of the California Constitution, and of no force and effect.

- 2. That this Court issue a permanent injunction that:
 - a. Enjoins Respondent from enforcing the February 16, 2021 Excess ERAF Revenue Guidance for all fiscal years from 2019-20 forward.
- 3. That this Court issue a peremptory writ of mandate:
 - a. Commanding Respondent to issue a revised guidance pursuant to Revenue and Taxation Code section 97.2(d)(2)(B) requiring that charter school ADA be included in the calculation of ERAF capacity and excess ERAF.
 - b. Commanding Respondent to order compliance with the revised guidance and to seek a writ of mandate should any county auditor-controller fail to immediately perform their duty.
- 4. Award Petitioners attorneys' fees and costs incurred in connection with this matter; and
- 5. Grant other such and further relief as the Court deems appropriate.

Dated: July 15, 2021

Respectfully submitted,
OLSON REMCHO, LLP

By: 
Karen Getman

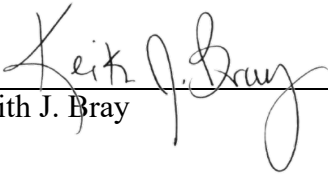
Attorneys for Petitioners and Plaintiffs
California State School Boards Association and its
Education Legal Alliance

1 **VERIFICATION**

2 I, Keith J. Bray, hereby declare as follows:

3 I am the General Counsel & Chief of Staff of Petitioners California School Boards
4 Association and its Education Legal Alliance. I have read the foregoing Verified Petition for Writ of
5 Mandate and Complaint for Declaratory and Injunctive Relief and know the contents thereof. I certify
6 that the facts contained therein are true of my own knowledge except as to those facts which are stated
7 on information and belief, and as to those matters I believe them to be true.

8 I declare under penalty of perjury that the foregoing is true and correct. Executed this
9 15th day of July, 2021, at West Sacramento, California.

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11 Keith J. Bray

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