SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA SCHOOL BOARDS ASSOCIATION and EDUCATION LEGAL ALLIANCE **v.** **MICHAEL COHEN, in his official capacity as the Director of Finance, et al.**	Case Number: 34-2015-80002192 **RULING ON SUBMITTED MATTER** Dept.: 29 Judge: Timothy M. Frawley

Petitioners filed this action to challenge the State's action in classifying certain "wraparound" childcare costs as education spending for purposes of meeting Proposition 98's minimum funding guarantee, without "rebenching" calculations to reflect the shift of these costs in calculating the amount of the State's minimum funding obligation. Petitioners seek a writ directing the State to implement and utilize a consistent rebenching methodology from year to year, and directing the State to recalculate the amount of funding required by Proposition 98 for FY 2015-16. The court shall grant the petition, reform the unconstitutional statute, and issue a writ directing the State to recalculate the amount of funding required for FY 2015-16.

Background Facts and Procedure

In 1988, California voters adopted "Proposition 98," an initiative measure amending article XVI, section 8 of the California Constitution. In general, Proposition 98 seeks to improve public education in California by changing the way the State treats its excess revenues and by establishing a "minimum funding guarantee" for public schools (defined as public school districts and community college districts). Only the minimum funding guarantee is at issue in this case.

With regard to the minimum funding guarantee, Proposition 98 provides, in relevant part:

> (b) Commencing with the 1990-91 fiscal year, the moneys to be applied by the state for the support of school districts and community college districts shall be not less than the greater of the following amounts:
>
> > (1) The amount which, as a percentage of General Fund revenues which may be appropriated pursuant to Article XIII B, equals the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87.
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> > (2) The amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes shall not be less than the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B. . . . (Cal. Const. art. XVI, § 8.)

As courts have observed, Proposition 98 does not appropriate funds. The power to appropriate funds remains in the hands of the Legislature. Proposition 98 merely provides formulas for determining the minimum amount to be appropriated by the Legislature. The State's obligation is to ensure the amount of moneys applied by the State for the support of schools meets or exceeds the specified minimum. (See *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1290; *White v. Davis* (2002) 108 Cal.App.4th 197, 220-21.)

The measure establishes two formulas for determining the minimum amount of "moneys to be applied by the state for the support" of public schools, and requires the State to spend the higher of the two amounts calculated by these formulas. The first formula – known as the "percentage-of-revenues" test or "Test 1" -- calculates the minimum funding level as a percentage of state General Fund revenues appropriated for public schools. Test 1 essentially requires the State to spend an amount at least equal to the percentage of "General Fund revenues" spent on public schools in 1986-87.

To apply Test 1, the State must determine the "percentage of [available] General Fund revenues appropriated for [public schools] . . . in fiscal year 1986-87," and the the amount of "General Fund revenues" available for appropriation in the current fiscal year.

The amount of "moneys to be applied" by the State for the support of public schools in the current fiscal year, as a percentage, must equal or exceed the amount of General Fund revenues appropriated for public schools in fiscal year 1986-87.

The second formula – known as the "maintenance-of-effort" test or "Test 2" – calculates the minimum funding level based on the amount spent on public schools (state and local) in the prior fiscal year, adjusted to account for changes in student enrollment and the cost of living.[1] To apply Test 2, the State must determine (i) the total amount allocated to public schools from state and local proceeds of taxes in the prior fiscal year (excluding any revenues allocated pursuant to Section 8.5 of article XVI of the California Constitution); and (ii) how much prior year spending should be adjusted to reflect changes in enrollment and cost of living.

After calculating the amounts required by Tests 1 and 2, the State must apply the test that results in the greatest amount of funding for public schools. Thus, under Proposition 98, the minimum funding level is the greater of (1) the amount which equals the percentage of General Fund revenues appropriated for public schools in FY 1986-87, or (2) the amount which equals the total (state and local) allocations to public schools in the prior fiscal year, as adjusted for costs of living and enrollment changes.

Proposition 98 establishes the broad parameters of the minimum funding guarantee, but does not define its key terms. The Legislature has discretion to define the key terms used in Proposition 98 by statute, provided the legislation furthers the constitutional purpose of measure.[2] (*White v. Davis, supra*, 108 Cal.App.4th at p.221; *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1533-1534.)

Shortly after passage of Proposition 98, the Legislature adopted legislation that interpreted and implemented Proposition 98's minimum funding guarantee.[3] (See Cal. Ed. Code § 41200 *et seq.*) In adopting the legislation, the Legislature declared:

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[1] By the passage of Proposition 111 in 1990, the voters added an alternate "maintenance-of-effort" test for slow growth years, which is known as "Test 3." The difference between Tests 2 and 3 is not important in this proceeding. Thus, for simplicity, the court shall refer to both maintenance-of-effort tests collectively as "Test 2."

[2] The implementing legislation is permitted under Section 13 of Proposition 98, which provides that "[n]o provision of this Act may be changed except to further its purposes by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature . . . ."

[3] The initial implementing legislation was Senate Bill No. 98 (Stats. 1989, ch.82). The same day, the Legislature enacted Assembly Bill No. 198 (Stats. 1989, ch.83) and, as a result, it appears that SB 98 was "chaptered out." The Legislature subsequently amended the legislation a few days later by enacting Assembly Bill No. 1087 (Stats. 1989, ch.92). All the bills were enacted by a two-thirds vote of the Legislature. For simplicity, the court shall use the language of the revised AB 1087 as the initial implementing legislation.

[B]y defining certain terms used in establishing a method of calculation for determining the guaranteed minimum level of funding, . . . this chapter further[s] the purposes of [Proposition 98]." (Ed. Code § 41200; see also Senate Analysis of SB 98 [Petitioners' Request for Judicial Notice, Exh. C, p.1.])

Education Code section 41202 defines key terms used in Proposition 98, including "General Fund revenues which may be appropriated," "General Fund revenues appropriated," and "moneys to be applied by the state" for education. As originally enacted, section 41202 provided, in relevant part:

> The words and phrases set forth in subdivision (b) of Section 8 of Article XVI of the Constitution of the State of California shall have the following meanings:
>
> (a) "Monies to be applied by the state," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution, means appropriations from the General Fund that are made for allocation to school districts . . . or community college districts . . . .
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> (b) "State General Fund revenues which may be appropriated pursuant to Article XIII B," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI, means General Fund revenues that are the proceeds of taxes as defined by subdivision (c) of Section 8 of Article XIII B of the California Constitution, ... The amount of the proceeds of taxes shall be computed for any fiscal year in a manner consistent with the manner in which the amount of the proceeds of taxes was computed by the Department of Finance for purposes of the Governor's Budget for the Budget Act of 1986.
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> (c) "State General Fund revenues appropriated for school districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, ... The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(d) "State General Fund revenues appropriated for community college districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to community college districts, ... The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(e) "Total allocations to school districts and community college districts from the State General Fund proceeds of taxes appropriated pursuant to Article XIII B," as used in paragraph (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, . . . and community college districts, ... The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (2) of Section 8 of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(f) "State General Fund revenues appropriated for school districts and community college districts, respectively" and "monies to be applied by the state for the support of school districts and community college districts," as used in Section 8 of Article XVI of the California Constitution, shall include funds appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6 and shall not include any of the following:

> (1) Any appropriation that is not made for allocation to a school district, as defined in Section 41302.5, or to a community college district regardless of whether the appropriation is made for any purpose that may be considered to be for the benefit to a school district, as defined in Section 41302.5, or a community college district. This paragraph shall not be construed to exclude any funding appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6. . . . (Former Ed. Code, § 41202 [emphasis added].)

In adopting the implementing legislation, the Legislature recognized that its definitions and implementation decisions affect the calculation of the minimum funding guarantee. The Legislature also recognized that any change in the way the key variables are defined or applied would affect (and potentially undermine) the minimum funding guarantee. Thus, as part of the initial implementing legislation, the Legislature adopted certain "guiding principles" for Proposition 98 in Education Code section 41204.

Section 41204 states the legislative intent that schools "annually receive a basic minimum portion" of General Fund revenues that is equivalent to the percentage of General Fund revenues received by schools in 1986-87. (Cal. Ed. Code § 41204(a).) It states that, in furtherance of this intent, the Legislature and Governor are "to be guided by" certain principles in implementing Proposition 98. The guiding principles include the following:

- If tax revenues that were deposited in the General Fund in the 1986-87 fiscal year are redirected to another fund, then the percentage of General Fund revenues appropriated by the state for the support of schools in fiscal year 1986-87shall be recalculated without those revenues.

- If local proceeds of taxes received by schools in the 1986-87 fiscal year are redirected away from education, additional General Fund support provided to replace the allocated local proceeds of taxes may not be counted toward meeting the year's Proposition 98 minimum guarantee unless there is a corresponding adjustment to reflect the amount of General Fund support that would have been provided in the 1986-87 fiscal year without the local tax proceeds.

- If an education program was supported by state funds from a source other than the General Fund during the 1986-87 fiscal year and General Fund moneys are subsequently provided in support of the program in lieu of the other source of funds, the supplanting General Fund revenues shall not be counted toward meeting the year's Proposition 98 minimum guarantee.

- Programs that were not the financial responsibility of schools in 1986-87 shall not be shifted to schools without appropriate corresponding adjustments to the minimum funding calculations.

- The term "enrollment" shall not be redefined, adjusted, or otherwise recalculated unless appropriate action is taken to neutralize the effect of the change for purposes of Proposition 98.

The legislative history of section 41204 reflects that it was intended to prevent the state from circumventing the funding requirements of Proposition 98 by, for example, transferring financial responsibility for educational programs from the state to local school districts. (See Petitioners' Request for Judicial Notice, Exh. C, p.2 [expressing intent that the "revenue guarantees be recalculated in the event that specified changes are made that would circumvent the funding requirements of the initiative"]; see also 89 Ops. Cal. Atty. Gen. 248,251 (2006).)

Thus, in enacting section 41204, the Legislature recognized that without a consistent methodology the constitutional guarantee of minimum funding could be circumvented by altering how key terms are defined or applied. To guard against this risk, section 41204 provides that if General Fund revenues are shifted away, or if education spending is re-defined in a way that shifts financial responsibility for programs to schools, the Proposition 98 calculations also must be adjusted to neutralize the effect of the changes. This process has been termed "rebenching." Rebenching essentially means going back in time and adjusting the "benchmark" figures to incorporate the changes in methodology, thereby neutralizing the effect of the changes on the minimum funding calculations.

Petitioners in this case challenge the State's action in classifying certain "wraparound" childcare costs as education expenditures for purposes of meeting Proposition 98's minimum funding guarantee for the 2015-16 budget year, without "rebenching" to reflect the costs as educational spending in prior fiscal years for purposes of calculating the guarantee.

Petitioners note that under the initial implementing legislation, childcare costs were treated as education spending, both in the calculation of "General Fund revenues appropriated for school districts and community college districts, respectively," and in the calculation of "moneys to be applied by the State for the support of school districts and community college districts." The initial implementing legislation generally defined "General Fund revenues appropriated" for schools and "monies to be applied by the State" for the support of schools to exclude any appropriation that is not made for allocation to a school district or community college district. However, the legislation made an exception for specified childcare costs.[4] The relevant language was:

> (f) "State General Fund revenues appropriated for school districts and community college districts, respectively" and "monies to be applied by the state for the support of school districts and community college districts," as

[4] By "childcare costs," the court means "funds appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6."

used in Section 8 of Article XVI of the California Constitution, shall include funds appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6 and shall not include any of the following:

> (1) Any appropriation that is not made for allocation to a school district, as defined in Section 41302.5, or to a community college district regardless of whether the appropriation is made for any purpose that may be considered to be for the benefit to a school district, as defined in Section 41302.5, or a community college district. This paragraph shall not be construed to exclude any funding appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6. (Former Cal. Ed. Code § 41202(f).)

By virtue of this language, childcare costs were counted as education expenditures for purposes of meeting the minimum guarantee,[5] and they also were included in both the Test 1 and Test 2 calculations for purposes of calculating the minimum funding obligation.

In 2011, the Legislature amended section 41202, subdivision (f) to exclude most child care funding from Proposition 98. As amended, section 41202(f) provided that "General Fund revenues appropriated for school districts and community college districts, respectively, and "moneys to be applied by the state for the support of school districts and community college districts" shall not include childcare costs, except for part-day state preschool programs and after school care. (Cal. Ed. Code §§ 41202(f).) The costs of "wraparound" childcare programs – see Education Code § 8239 – were not included.

In addition, a new section 41202.5 "clarified" the Legislature's intent that part-time state preschool programs and the After School Education and Safety Program fall within the Proposition 98 guarantee, but that other childcare programs (less directly associated with school districts) would be funded from appropriations that do not count toward the Proposition 98 minimum guarantee.

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[5] The Legislature's decision to treat childcare costs as education spending was upheld by the courts in *California Teachers Association v. Hayes* (1992) 5 Cal.App.4th 1513. In *Hayes*, the Third Appellate District Court of Appeal rejected claims that the Legislature was manipulating the minimum funding guarantee by including such costs as educational spending for purposes of Proposition 98.

In the same legislation, the Legislature "rebenched" Proposition 98 to reflect the shift in childcare funding when calculating the amount of the minimum guarantee under Test 1. (Cal. Ed. Code. § 41202.5.) Section 41202.5, subdivision (c)(1) provides:

> For purposes of paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, "General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87" does not include General Fund revenues appropriated for [childcare costs], with the exception of the part-day California state preschool programs set forth in Article 7 (commencing with Section 8235) and the After School Education and Safety Program in Article 22.5 (commencing with Section 8482). The Director of Finance shall adjust accordingly "the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87," for purposes of applying that percentage in the 2011-12 fiscal year and each subsequent fiscal year in making the calculations required under paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

(Cal. Ed. Code § 41202.5.) Section 41202.5(c)(2) includes similar language "rebenching" Proposition 98 for purposes of Test 2.

The net result of these amendments was to exclude childcare costs (other than pre-school and after-school care) both from the definition of education spending that may be applied toward meeting the guarantee and from the calculation of the minimum funding guarantee.

The legislative history of sections 41202 and 41202.5 confirm this intent. The Legislative Counsel's digest for AB No. 114 states:

> Under existing law (Proposition 98), the California Constitution requires the state to comply with a minimum funding obligation each fiscal year with respect to the support of school districts and community college districts. Existing statutory law specifies that state funding for the Child Care and Development Services Act is included within the calculation of state apportionments that apply toward this constitutional funding obligation.
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> This bill would, commencing July 1, 2011, specify that funds appropriated for the Child Care and Development Services Act do not apply toward the constitutional minimum funding obligation for school districts and

> community college districts, with the exception of state funding for the part-day California state preschool programs and the After School Education and Safety Program.
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> The bill would make related changes in the calculation of the minimum funding obligation required by Proposition 98.

(It is noteworthy that the 2011 legislative changes were adopted by a simple majority vote, despite language in Proposition 98 that its provisions may be changed only with a bill passed by a vote of two-thirds of the membership of both houses. [See *California Teachers Association, supra,* 5 Cal.App.4th at pp.1529-30.])

In the 2015-16 budget bills, the Legislature partially reversed course and decided that certain childcare costs excluded in 2011 – namely, the wraparound childcare costs – once again should be treated as education spending for purposes of meeting the Proposition 98 minimum funding guarantee. (Cal. Ed. Code § 41202(f).) This change is reflected in Education Code section 41202, subdivision (f), which provides, in relevant part:

> (f) "General Fund revenues appropriated for school districts and community college districts, respectively" and "moneys to be applied by the state for the support of school districts and community college districts," as used in Section 8 of Article XVI of the California Constitution, shall include . . . funds appropriated to local educational agencies, as defined in subdivision (ak) of Section 8208, to create a full day of care for children participating in the California state preschool program . . . .

However, the Legislature did not make any corresponding changes to Education Code section 41202.5(c). Thus, section 41202.5(c) continues to provide that, for purposes of Test 1, "General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87" does not include appropriations for childcare costs (except pre-school and after-school care).

In attempting to harmonize these two statutes, Petitioners concluded the Legislature intended to count wraparound childcare costs as education spending for purposes of meeting the Proposition 98 minimum funding guarantee, but to not count such costs as education spending for purposes of calculating the guarantee. In other words, Petitioners contend, the Legislature intentionally refused to “rebench” the Proposition 98 calculations to reflect the additional childcare costs as education spending, thereby undermining the minimum funding guarantee.

On September 22, 2015, Petitioners filed this petition for writ of mandate challenging the State's actions as violating Proposition 98. Petitioners do not challenge the Legislature's authority to define the wraparound costs as education spending for purposes of Proposition 98. However, Petitioners allege that the State cannot have it both ways; the State cannot exclude costs for purposes of calculating the minimum funding guarantee while simultaneously counting such costs to meet its minimum funding obligation. Petitioners contend that such attempts at manipulation are contrary to Proposition 98 and its implementing legislation.

Petitioners seek a writ of mandate ordering the State to implement and utilize a consistent rebenching methodology that treats "General Fund revenues" and "education spending" consistently.

As applied to fiscal year 2015-16, Petitioners seek a writ commanding the State, when performing its "true up," either to refrain from treating the wraparound childcare costs as education spending for purposes of meeting the minimum guarantee, or to rebench the Proposition 98 calculations to reflect the shift of these costs to education spending in determining the State's minimum funding obligation.

Respondents Michael Cohen (as Director of the Department of Finance) and the State of California (collectively, the State) argue that the doctrine of separation of powers bars Petitioners from challenging the Legislature's failure to enact legislation to rebench the Proposition 98 guarantee. As a result, the petition must be denied.

Further, even if Petitioners' claim is not barred, the State argues that the petition must be denied because Petitioners' arguments are based on the implementing legislation, not the Constitution. The State argues that there is nothing in the text of Proposition 98 itself that requires rebenching, and that the implementing legislation does not and cannot bind the Legislature.

The court held a hearing on the petition on June 24, 2016. After hearing, the court directed the parties to file supplemental briefs addressing two questions: Is there an irreconcilable conflict between Education Code sections 41202(f) and 41202.5(c)? And if so, which statute controls? Upon receipt of the supplemental briefs, the court took this matter under submission.

Standard of Review

When interpreting a statute or constitutional amendment, the court's primary task is to determine the legislative intent. (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826; see also *State Bd. of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 823 [constitutional amendments are subject to the rules of statutory construction].) In doing so, the court turns first to the statutory language, since the words chosen are the best indicators of intent. (*Freedom Newspapers, supra*, 6 Cal.4th at p.826.) If the words themselves are not ambiguous, we presume the Legislature meant what it said, and the plain meaning governs. On the other hand, the language is susceptible of more than one reasonable interpretation, courts may look to a variety of extrinsic aids to determine its meaning. (See *Sheppard v. North Orange County Regional Occupational Program* (2010) 191 Cal.App.4th 289, 299.)

Requests for Judicial Notice

The Requests for Judicial Notice filed by Petitioners and Respondents, all of which are unopposed, are granted.

Discussion

In their arguments, the parties have focused primarily on whether "rebenching" is constitutionally required to protect Proposition 98's minimum funding guarantee. In making these arguments, the parties have assumed that rebenching is not required by the implementing legislation.

In its Order for Further Briefing, the court suggested an alternative interpretation, namely, that the Legislature intended the recent amendments to section 41202(f) to count wraparound childcare costs as education spending for all purposes, i.e., both for purposes of *satisfying* the minimum guarantee and also for purposes of *calculating* the guarantee.

The court finds support for this interpretation in the language and structure of Proposition 98, which provides, in relevant part:

> (a) From all state revenues there shall first be set apart the moneys to be applied by the state for support of the public school system and public institutions of higher education.
> (b) Commencing with the 1990-91 fiscal year, the moneys to be applied by the state for the support of school districts and community college districts shall be not less than the greater of the following amounts:

> (1) The amount which, as a percentage of General Fund revenues which may be appropriated pursuant to Article XIII B, equals the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87.
>
> (2) The amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes shall not be less than the total amount from these sources in the prior fiscal year, . . . adjusted for changes in enrollment and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B. . . .

It is immediately apparent that the language of Proposition 98 uses certain key terms and phrases, including (1) "moneys to be applied by the state for the support of school districts and community college districts," which refers to the expenditures that would count toward meeting the minimum funding guarantee; (2) "General Fund revenues which may be appropriated," which refers to the General Fund revenues available in the current budget year; and (3) "General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87," which refers to the General Fund revenues appropriated for school districts and community college districts in the base fiscal year of 1986-87.

There is no language in Proposition 98 explicitly referring to the General Fund revenues appropriated for school districts and community college districts in the current fiscal year. This is not surprising because, as courts have observed, Proposition 98 does not appropriate funds; it merely provides formulas for determining the minimum amount to be appropriated by the Legislature. (See *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1290.) Accordingly, Proposition 98 makes an important distinction between moneys "to be applied" for the support of schools in the current fiscal year, and General Fund revenues that previously were "appropriated" in fiscal year 1986-87 (for Test 1) or in "prior fiscal years" (for Test 2).

Test 1 thus requires a comparison of the percentage of General Fund revenues "to be applied" for the support of schools in the current year against the percentage of General Fund revenues "appropriated" for schools in fiscal year 1986-87. The amount to be

applied in the current year must be at least equal, as a percentage, to what was appropriated in fiscal year 1986-87.

In the initial implementing legislation, the Legislature made no distinction between "moneys to be applied" in the current year and prior year "appropriations" by defining "moneys to be applied" to mean "appropriations from the General Fund that are made for allocation to school districts . . . or community college districts." (Cal. Ed. Code § 41202(a).) Under the implementing legislation, "moneys to be applied" for the support of schools and "General Fund revenues appropriated" for schools essentially mean the same thing. Thus, as construed by the Legislature, Test 1 requires a comparison of the percentage of General Fund revenues *appropriated* in the current year to the percentage of General Fund revenues *appropriated* in fiscal year 1986-87.

The State contends that, when the Legislature used the phrase "General Fund revenues appropriated for school districts and community college districts, respectively" in section 41202, subdivision (f), the Legislature intended that phrase to refer only to General Fund revenues appropriated in the current fiscal year.[6] Otherwise, the State argues, the Legislature would have included the qualifying language "in fiscal year 1986-87," as it appears in Proposition 98.

The problem with this argument is that the implementing legislation defines the phrase "General Fund revenues appropriated" for school districts and community college districts as it is "used" in Proposition 98. The phrase "General Fund revenues appropriated for school districts and community college districts, respectively" is "used" in Proposition 98 only in reference to calculating the minimum funding guarantee, based on the percentage of General Fund revenues appropriated "in fiscal year 1986-87." Thus, if the Legislature meant what it said, the phrase "General Fund revenues appropriated for school districts and community college districts, respectively," must refer to appropriations made in fiscal year 1986-87, and only those appropriations.

However, because the Legislature equated "moneys to be applied" with "appropriations," it is reasonable to conclude the Legislature intended the phrase "General Fund revenues appropriated for school districts and community college districts, respectively" to have a broader meaning, encompassing not only General Fund

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[6] As amended, section 41202, subdivision (f) provides:

> "General Fund revenues appropriated for school districts and community college districts, respectively," and "moneys to be applied by the state for the support of school districts and community college districts," as used in Section 8 of Article XVI of the California Constitution, shall include . . . funds appropriated . .. to create a full day of care for children participating in the California state preschool program . . . ."

revenues appropriated in fiscal year 1986-87, but also General Fund Revenues appropriated in the current fiscal year.

Such an interpretation would reflect the Legislature's understanding that "education spending" should have a consistent meaning under Proposition 98, i.e., that appropriations counted toward calculating the minimum guarantee also should count toward meeting the minimum guarantee. The Legislature's adoption of section 41204 seems to support such an approach, since section 41204 embodies the principle that changes to the manner in which Proposition 98 is defined or applied should not circumvent the minimum funding guarantee. This interpretation also is supported by the definitions in section 41202, subdivisions (c) and (d), which define "General Fund revenues appropriated" for school districts and community college districts as the "sum of appropriations made that are for allocation" to them, without qualification on when the appropriations were made. (See Cal. Ed. Code § 41202(c), (d).)

In contrast, the court finds no support for the State's position that the Legislature intended the phrase "General Fund revenues appropriated for school districts and community college districts, respectively," as that phrase is "used" in Proposition 98, to refer only to current-year appropriations. That phrase, as used in Proposition 98, clearly refers to "revenues appropriated . . . in fiscal year 1986-87." In enacting section 41202, subdivision (f), the Legislature may have intended to give the phrase a broader meaning, encompass both revenues appropriated in fiscal year 1986-87 and revenues appropriated in the current fiscal year, but there is no reason to conclude it intended to give the phrase a narrower meaning, encompassing only current year appropriations.

Indeed, if this were the Legislature's intent, there would be no reason to include the phrase since the subdivision also includes the phrase "moneys to be applied by the state for the support of school districts and community college districts," which is defined to mean current-year appropriations. The only reason to include both phrases -- "General Fund revenues appropriated for school districts and community college districts, respectively" and "moneys to be applied by the state for the support of school districts and community college districts" – is because they mean different things.

Thus, based strictly on the language of section 41202(f), it is reasonable to conclude that the Legislature intended to define what shall, and shall not, be counted as education spending for *all* purposes under Proposition 98. The State's interpretation, that subdivision (f) merely defines the programs that will count toward meeting the guarantee, is contrary to the language and structure of Proposition 98 and the implementing statutes.

The legislative history supports this view. The Legislative Counsel's Digest for the 2015 amendments to section 41202(f) states:

> (9) Section 8 of Article XVI of the California Constitution sets forth a formula for computing the minimum amount of revenues that the state is required to appropriate for the support of school districts and community college districts for each fiscal year. Existing law provides that "General Fund revenues appropriated for school districts and community college districts, respectively" and "moneys to be applied by the state for the support of school districts and community college districts," for purposes of that computation, include funds appropriated for part-day California state preschool programs and the After School Education and Safety Program.
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> This bill would provide that those funds appropriated to local educational agencies to create a full day of care for children participating in the California state preschool program are also "General Fund revenues appropriated for school districts and community college districts, respectively" and "moneys to be applied by the state for the support of school districts and community college districts" for purposes of that computation. (Emphasis added.)

This language supports an interpretation that the revised language applies for purposes of "the computation" of the "minimum amount of revenues that the state is required to appropriate for the support of school districts and community college districts for each fiscal year."

This interpretation also is supported by the State's conduct following the enactment of the initial implementing legislation. It is undisputed that, prior to the enactment of section 41202.5 in 2011, childcare costs were counted as education expenditures both for purposes of meeting the minimum guarantee and for purposes of calculating the minimum guarantee under Tests 1 and 2. (See § 41202.5(a) [finding and declaring that soon after the passage of Proposition 98 the Legislature defined "total allocations" to school districts (which is part of Test 2) to include childcare costs].)

However, in construing section 41202(f), the court also must consider section 41202.5, which was added to the Education Code in 2011. Section 41202.5 provides, in relevant part:

(c) Notwithstanding any other provision of law, for purposes of making the computations required by subdivision (b) of Section 8 of Article XVI of the California Constitution in the 2011-12 fiscal year and each subsequent fiscal year, both of the following apply:

(1) For purposes of paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, "General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87" does not include General Fund revenues appropriated for any program within Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1, with the exception of the part-day California state preschool programs set forth in Article 7 (commencing with Section 8235) and the After School Education and Safety Program in Article 22.5 (commencing with Section 8482). The Director of Finance shall adjust accordingly "the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87," for purposes of applying that percentage in the 2011-12 fiscal year and each subsequent fiscal year in making the calculations required under paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

(2) General Fund revenues appropriated in the 2010-11 fiscal year or any subsequent fiscal year for any program within Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1, with the exception of the part-day California state preschool programs set forth in Article 7 (commencing with Section 8235) and the After School Education and Safety Program in Article 22.5 (commencing with Section 8482), are not included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" for purposes of paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution. (Cal. Ed. Code § 41202.5(c).)

Section 41202.5 explicitly provides that for purposes of making the computations required by Tests 1 and 2, the phrase "General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87" does not include childcare costs (other than pre-school and after-school care). The language in

section 41202.5 is unambiguous and is the type of language used in rebenching statutes. (See Cal. Ed. Code § 41204.1.)

In 2015, when the Legislature decided to add wraparound childcare costs back into Proposition 98, the Legislature did not repeal or amend the language in section 41202.5. The question arises, therefore, whether the Legislature's failure to repeal or amend section 41202.5 in 2015 was intentional or inadvertent.

As the State argues, courts must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in statutes, and construe them to give force and effect to all of their provisions. (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805.) All presumptions are against repeal by implication. (*Ibid.*) Absent an express declaration of legislative intent, courts will find an implied repeal "only when there is no rational basis for harmonizing the two potentially conflicting statutes, and the statutes are 'irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.'" (*Ibid*; see also *Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 838.)

In this case, the seeming inconsistency in the statutes can be reconciled by adopting the State's interpretation that the Legislature wanted to count wraparound childcare costs as education expenses for purposes of meeting the minimum guarantee, but not for purposes of calculating the minimum guarantee.

This is consistent with the interpretation of the Legislative Analyst's Office, which has access to the detailed budget calculations and computations. (See Petitioners' Request for Judicial Notice, Exh. K [last page], Exh. L, p.25; Respondents' Request for Judicial Notice in Support of Supplemental Brief, Exh. 13, pp.25-26.) In both June and October, 2015, the LAO concluded that the legislation would count the new childcare spending for purposes of satisfying the guarantee, but would not "rebench" prior year spending to reflect the shift in costs.

Further, it is undisputed that the State actually counted the wraparound costs toward meeting the minimum guarantee, but excluded such costs when calculating the guarantee. Thus, at minimum, the Legislature implicitly ratified the LAO's interpretation when it enacted the Budget Act. (See *Professional Engineers in California Government v. Schwarzenegger* (2010) 50 Cal.4th 989, 1043-44 [discussing ratification of employee furloughs by means of 2008 Budget Act].)

The court therefore is compelled to agree with the State that the Legislature intended section 41202.5 to prevent the wraparound childcare costs from being counted for purposes of calculating the minimum guarantee, "notwithstanding" any contrary language in section 41202(f).

The court is persuaded that the Legislature intended to count wraparound costs as education expenses for purposes of meeting the minimum funding guarantee, while simultaneously excluding such costs for purposes of calculating the guarantee. This raises the question whether the State's actions are constitutionally permitted. Petitioners contend they are not, arguing that the constitutional guarantee of Proposition 98 requires consistency (internally and year-to-year) to ensure that school districts and community college districts annually receive a basic minimum portion of the State's General Fund revenues. The court agrees.

There is no dispute that the purpose of Proposition 98 is to provide a minimum level of state funding for the public school system. Because Proposition 98's tests are based, in part, on prior levels of public school spending -- either in fiscal year 1986-87 (for Test 1) or in the prior fiscal year (for Test 2) – the measure necessarily requires the Legislature to make a determinate appropriation of funds every year that meets or exceeds the specified minimum. (*White v. Davis, supra*, 108 Cal.App.4th at p.221.)

The Legislature implemented the constitutional requirements of Proposition 98 by adopting legislation to further its purposes. Contemporaneous legislative implementations are traditionally accorded great weight by courts because the legislation represents a considered legislative judgment as to the meaning of the constitutional provisions. (See *Greene v. Marin County Flood Control & Water Conservation Dist.* (2010) 49 Cal.4th 277, 290-91; *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245-46.)

The presumption of constitutionality accorded to legislative acts is particularly appropriate when the Legislature has enacted a statute with the relevant constitutional prescriptions in mind. (See *Pac. Legal Found. v. Brown* (1981) 29 Cal.3d 168, 180.) Where a constitutional provision may well have either of two meanings, it is a fundamental rule of constitutional construction that, if the Legislature has by statute adopted one, its action is "very persuasive." (*Methodist Hospital of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 692-93.) Although the ultimate interpretation rests with the judiciary, a focused legislative judgment enjoys significant weight and deference by the courts. (*Greene, supra*, 49 Cal.4th at p.291.)

Here, the implementation legislation adopted shortly after Proposition 98 confirms that its terms were intended to be interpreted and applied with consistency. Section 41204, in particular, states the intent that public schools annually receive a basic minimum portion of the revenues equivalent to the percentage of revenues that were deposited to the General Fund in fiscal year 1986-87. In recognition of this intent, the Legislature adopted the guiding principles set forth in section 41204 to ensure consistency and prevent the State from circumventing the funding guarantee by, for example, shifting the costs of educational programs from the State General Fund to the schools. (See 89 Ops. Cal. Atty. Gen. 248,251 (2006).)

The State argues that the initial implementing legislation cannot bind future legislative action because one legislative body cannot restrict the powers of its successors. This is true, but beside the point. Petitioners do not allege that the State has violated the implementing legislation; Petitioners allege that the State has violated the Constitution. Petitioners rely on section 42104 only as evidence as to what the Constitution requires. As described above, case law provides that a contemporaneous legislative construction of a constitutional provision is accorded "considerable weight." Thus, section 41204 is highly relevant as to the requirements of Proposition 98, even if its "guiding principles" are not binding on the Legislature.

Section 41204 reflects a basic understanding that to achieve the purpose of providing a minimum level of state funding for the public school system each year, the calculations made under Proposition 98 must be adjusted (or rebenched) if changes are made to the composition of "General Fund revenues" or to the definition of moneys applied by the State for the of support of public schools. Section 41204 construes Proposition 98 to require either consistent application of the formulas over time, or to require that changes be accompanied by corresponding adjustments to the calculations to "neutralize the effect of the change."

The court agrees with the Legislature's contemporaneous interpretation that consistency is required to ensure that the State does not manipulate the constitutional guarantee, such as, for example, by redefining school bond debt service payments as allocations that count toward meeting Proposition 98's minimum funding guarantee.[7] Thus, although changes to the definitions are possible, they must be evaluated against the standard of whether the change undermines or evades the minimum funding guarantee. (See 89 Ops. Cal. Atty. Gen. 248, 251 (2006) [asking whether an increase in the retirement contribution rate paid by school districts would cause a "net decrease" in state funding for public education guaranteed under Proposition 98]; see also *County*

[7] Although this is currently prohibited by section 41202(f), the implementing legislation does not bind the Legislature.

of San Diego v. State of California (1997) 15 Cal.4th 68, 103 [the Attorney General's opinion, although not binding, is entitled to considerable weight].)

The intent of rebenching is to ensure the minimum funding guarantee is unaffected by a change in the definitions applied under Proposition 98. The court agrees with Petitioners that rebenching is constitutionally required to achieve the purpose of the minimum funding guarantee.[8] Without rebenching, the Legislature could easily circumvent the minimum funding guarantee by making arbitrary changes to the definitions.

The court acknowledges that the State has in the past used more than one approach to "rebench" changes. (See Petitioners' Request for Judicial Notice, Exh. J.) The court expresses no opinion on whether any particular methodology is constitutionally required. For purposes of this action, it is sufficient to conclude that some type of "rebenching" is constitutionally required. Here, there was none.

For the reasons described above, the court concludes that the most recent amendments to section 41202, subdivision (f) violate the constitutional minimum funding guaranty because the legislation redefines "General Fund revenues appropriated for school districts and community college districts" to include wraparound childcare costs – i.e., counts the additional childcare costs toward the minimum guarantee – without making any corresponding adjustments to the Proposition 98 calculations.

Turning to the remedy, a writ is an appropriate means to invalidate legislative action that is unconstitutional. (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 812.) Thus, it is within the power of the court to invalidate the amendments to section 41202(f).

However, consistent with the separation of powers doctrine, a court has authority to reform statutes by rewriting them to preserve constitutionality when it can conclude with confidence that (i) it is possible to reform the statute in a manner that closely effectuates policy judgments clearly articulated by the enacting body, and (ii) the enacting body would have preferred such a reformed version of the statute to invalidation. (*Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 670.)

The court is persuaded that it is both possible to reform section 41202(f) to make it constitutional, and that the Legislature would have preferred a reformed version of the statute to invalidation.

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[8] The court takes judicial notice that the State historically has "rebenched" changes to prevent them from having unintended consequences on the Proposition 98 minimum guarantee. (See Petitioners' Request for Judicial Notice, Exh. J.)

The simplest reform might be to invalidate Education Code section 41202.5(c). However, because that statute is written in the negative, and because part-day state preschool programs and after school care are not at issue in this case, the court instead shall reform section 41202(f) by adding an affirmative rebenching requirement within that section, as follows:[9]

> Notwithstanding Education Code section 41202.5(c), "General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87," shall include funds appropriated to local education agencies, as defined in subdivision (ak) of Section 8208, to create a full day of care for children participating in the California state preschool program.

Disposition

The petition is GRANTED. The court shall issue a writ directing the State to refrain from counting the wraparound childcare costs toward the 2015-16 minimum funding guarantee unless and until the State takes steps to rebench the Proposition 98 calculations to reflect the same costs in calculating the minimum guarantee. The court's Judgment shall order Education Code section 41202, subdivision (f) reformed and rewritten in the manner described above. Petitioners' other requests for relief are denied; the court declines to opine on what constitutes an acceptable "rebenching methodology."

Counsel for Petitioners is directed to prepare a formal judgment (incorporating this ruling) and corresponding writ; submit them to opposing counsel for approval as to form; and thereafter submit them to the court for signature and entry of judgment in accordance with Rule of Court 3.1312.

Dated: October 28, 2016

Hon. Timothy M. Frawley
California Superior Court Judge
County of Sacramento

SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO

[9] In the absence of section 41202.5, the court would conclude this language is unnecessary, as the court does not agree the language in subdivision (f), properly construed, is concerned only with defining programs that count toward the guarantee. Nor does the court agree with Respondents that "rebenching" requires separate legislation. No separate rebenching legislation was required prior to the enactment of section 41202.5; there is no reason why the enactment of section 41202.5 in 2011 should compel a different result.

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CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing ORDER FOR FURTHER BRIEFING by depositing true copies thereof, enclosed in a sealed envelope in the United States Mail at Sacramento, California. The envelope was addressed to:

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I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: October 28, 2016

Superior Court of California, County of Sacramento

By: F. Temmerman,
Deputy Clerk