



June 6, 2024

VIA EMAIL

Joe Stephenshaw, Director
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Senator Scott D. Wiener, Chair
Assembly Member Jesse Gabriel, Vice Chair
Joint Legislative Budget Committee
1020 N Street, Room 553
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Re: Objection to Proposed 2022-23 Proposition 98 Certification

To Director Stephenshaw, Senator Wiener, and Assembly Member Gabriel:

The California School Boards Association (CSBA), a statewide organization composed of the governing boards of nearly 1,000 K-12 school districts and county boards of education, supports local school board governance and advocates on behalf of school districts and county offices of education. Any manipulation of the calculation used to determine the State's minimum funding guarantee for school districts, county offices of education, and community college districts pursuant to California Constitution article XVI, section 8 ("Proposition 98") that results in less funding for education than is legally required, directly and adversely impacts CSBA's members.

Accordingly, as an interested party to the certification of the Proposition 98 minimum guarantee, CSBA formally objects to the Department of Finance's proposed 2022-2023 Proposition 98 certification. This objection is based on our understanding of what the certification will be, given that the Department of Finance has not yet issued the certification.

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Attached please find a letter from our legal counsel setting forth the grounds for our objection.

Sincerely,



Vernon M. Billy
CEO & Executive Director

Attachment

cc: via email, w/attachment
Senator John Laird, Chair, Senate Budget Subcommittee on Education
(senator.laird@senate.ca.gov)
Assemblymember David A. Alvarez, Chair, Assembly Subcommittee on Education
(assemblymember.alvarez@assembly.ca.gov)
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Re: California School Boards Association’s Objection To Proposed 2022-23
Proposition 98 Certification
Our file 1011.10206

To Director Stephenshaw, Senator Wiener, and Assembly Member Gabriel:

We write on behalf of our client, the California School Boards Association (“CSBA”), to formally object to the proposed 2022-23 Proposition 98 Certification pursuant to Education Code section 41206.1. CSBA objects to the proposed certification on the grounds that the Department of Finance has represented the certification will improperly exclude from its calculations funds previously allocated to school districts and community college districts. While CSBA does not, in principle, oppose prospective deferrals where necessary, this proposal is different because it attempts to alter prior year allocations for purposes of the Proposition 98 certification, artificially lowering the Proposition 98 guarantee going forward.

CSBA would further note that, to date, the Director of Finance has failed to comply with their statutory duty to publish the Department of Finance’s calculation and the underlying data supporting the Proposition 98 Certification for 2022-23 and therefore, CSBA reserves its right to submit further objections once the Director of Finance provides the required information. Absent the publication of the calculation by the

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Director of Finance, the below objections are based on information provided by Department of Finance staff to CSBA regarding the proposed 2022-23 Proposition 98 Certification. Specifically, CSBA understands the Department of Finance proposes that, in making the certification, it will exclude \$2.6 billion allocated to school districts and community college districts in 2022-23, and instead score those allocations against 2023-24. While the Department of Finance has not explained the legal justification for this approach, it would appear excluding funds previously allocated to school districts and community college districts from the certification is contrary to the Constitution, the voters' intent in adopting Proposition 98, and could set a concerning precedent for manipulating the guarantee at the close of the Certification window almost an entire year after the end of the 2022-23 fiscal year. Accordingly, based on the information the Department of Finance has provided to date, CSBA objects to the proposed 2022-23 Proposition 98 Certification.

I. CSBA Reserves Its Right To Submit Further Objections When The Director Of Finance Publishes The Certification

Education Code section 41206.1 requires that: "Every year, by no later than May 14 following the end of the prior fiscal year, ... the Director of Finance shall recalculate the state's minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution for the prior fiscal year." (Ed. Code, § 41206.1, subd. (d).) Further, it requires that: "As part of the May Revision to the Governor's Budget ..., the Director of Finance shall publish the Department of Finance's calculation and the underlying data supporting the calculation...." Subdivision (e) of the same statute then allows interested parties to "submit any comments on the Department of Finance's proposed calculations and published data to the Director of Finance and to the Joint Legislative Budget Committee by no later than June 6 of each year."

In prior years the Director of Finance has published a separate "Schedule 13" detailing the "Proposition 98 Final Certification" along with the May Revise, which has historically included the total State and local Proposition 98 expenditures for the fiscal year in question. However, to date this year, the Director of Finance has not published the Department of Finance's certification for the 2022-23 fiscal year. By failing to provide the certification and underlying data supporting the calculation by the statutory deadline, including the total State and local Proposition 98 expenditures for 2022-23, the Director of Finance has impaired the ability of CSBA to evaluate and object to a yet-to-be documented certification. Accordingly, notwithstanding the June 6 deadline, CSBA reserves its right to submit further objections once the Director of Finance publishes the statutorily-required information.

II. The Proposed Manipulation Of 2022-23 Allocations For Certification Purposes Could Artificially Lower The Proposition 98 Guarantee Contrary To The Constitution

While the Director of Finance has yet to publish the 2022-23 Proposition 98 Certification and the underlying data supporting the calculation, Department of Finance staff have indicated to CSBA and others that, as part of the Certification, the Department of Finance will exclude \$2.6 billion from the total 2022-23 allocations to school districts and community college districts

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when making the Certification. While this amount was allocated by the 2022-23 budget, the Department of Finance has indicated that for purposes of the Certification it will score this amount against 2023-24, instead of the 2022-23 allocations. Excluding this amount from the total 2022-23 allocations could lower the calculation of the Proposition 98 guarantee in future years. Department of Finance staff have stated that the exclusion of \$2.6 billion from the total 2022-23 allocations is justified because the funds have yet to be "apportioned." However, Department of Finance staff have not provided any further detail or identified any legal basis for this distinction.

CSBA understands that, in some situations, prospective deferrals of payments to school districts is necessary. For example, the current budget proposal includes deferral of payments from 2024-25 to 2025-26. CSBA does not object to those prospective deferrals which shift the accounting of the funds at the beginning of a budget year before any allocations are made. In contrast, the proposal to exclude \$2.6 billion from the 2022-23 allocations, almost an entire year after the end of the 2022-23 fiscal year after the allocations have already been made raises concerns that this practice could be used to unconstitutionally manipulate the Proposition 98 guarantee.

Excluding these funds from the total expenditures is problematic because of the integral role that the amount of prior year expenditures serve in the implementation of Proposition 98. Proposition 98, "establishes a minimum level of funding for public schools and community colleges." (*California Teachers Association v. Hayes* (1992) 5 Cal.App.4th 1513, 1517 [quoting Legislative Analyst analysis of Proposition 98].) It accomplishes this by requiring that "the moneys to be applied by the State for the support of school districts and community college districts shall not be less than the greater of" three alternate tests. (Cal. Const., art. XVI, § 8, subd. (b).)

While the first of those tests, "Test 1," looks solely to the percentage of General Fund revenues appropriated in 1987-88 in determining the amount of the guarantee, "Test 2" and "Test 3" are maintenance-of-effort tests requiring funding at "the amount necessary to ensure that total state and local allocations [are] equal to the prior year's allocations, adjusted for cost of living and enrollment changes," (*Hayes, supra*, 5 Cal.App.4th at p. 1519, n. 2) and therefore are directly impacted by the amount of prior fiscal year funding.

Specifically, Test 2 and Test 3 require funding at:

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 [factors specific to Test 2 and Test 3].

(Cal. Const., art XVI, § 8, subds. (b)(2) & (3), emphasis added.) In other words, Test 2 and Test 3 begin with the "total amount" of "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B

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and allocated local proceeds of taxes” in the prior fiscal year. Where the total amount of allocations to school districts and community college districts in the prior fiscal year is set artificially below the actual amount of allocations, the ultimate impact is a lower guaranteed amount calculated by Test 2 or 3.

There appears to be no dispute as to the amount allocated to school districts and community college districts in 2022-23. Prior budget documentation provided by the Department of Finance indicate this allocation was approximately \$106.3 billion in 2022-23. A plain reading of the constitutional language quoted above indicates that the base amount for Tests 2 and 3 must be equal to *all* funds allocated to K-14 education from proceeds of taxes (both from the General Fund and local taxes). The Constitution does not suggest that any amount would be excluded, regardless of whether or not it was “apportioned.”

This is in contrast to prospective deferrals where funds would not have been allocated or apportioned before the deferral was adopted. Key to this distinction is the plain language of the Constitution which requires Test 2 and 3 to take into account “total allocations to school districts and community college districts” in the prior fiscal year. A prospective deferral of funds to a future year would mean the funds are never “allocated” for the fiscal year in question, thus the application of Test 2 and 3 are not impacted. However, an after-the-fact deferral, as is proposed here, is constitutionally different because the funds have already been allocated and the language of Test 2 and 3 require all allocations from the prior year to be included in the calculation. The allocations used for Test 2 and 3 cannot be altered in retrospect.

As CSBA successfully argued to the Superior Court the *CSBA v. Cohen*, there can be little doubt that the voters intended Proposition 98 to provide an objectively-determined minimum level of education spending each year. Because it does not set an amount of funding, but establishes formulas to do so each year, the constitutional guarantee is therefore dependent upon the integrity of the underlying formulas. If the underlying formulas are manipulated in a way that allows the State to avoid its minimum funding requirements, the constitutional guarantee of Proposition 98 is violated.

The delay in the Director of Finance’s publication of the 2022-23 Proposition 98 Certification combined with the suggestion that it will exclude a substantial amount from its calculation based on a yet-unexplained rationale is concerning to CSBA. This approach not only deviates from past practice, particularly from the use of prospective deferrals, but also appears contrary to the California Constitution. Moreover, it could set a worrisome precedent which could be used by future Governors and Legislatures to fund public education in a manner that does not meet the spirit of, or the constitutional requirements enshrined in, Proposition 98.

Accordingly, CSBA requests that the Department of Finance publish its proposed 2022-23 Proposition 98 Certification as soon as possible. Further, it urges the Department of Finance and Legislature to forego the proposal to manipulate the Test 2 and 3 inputs by excluding

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previously allocated funds from the calculation in a way that undercuts the language and purpose of Proposition 98.

Sincerely,

DANNIS WOLIVER KELLEY



William B. Tunick

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