

July 30, 2024

Honorable Scott D. Wiener, Chair
Joint Legislative Budget Committee
Senate Budget and Fiscal Review
Committee

Honorable Jesse Gabriel, Chair
Assembly Budget Committee

Honorable Anna M. Caballero, Chair
Senate Appropriations Committee

Honorable Buffy Wicks, Chair
Assembly Appropriations Committee

Department of Finance's Response to Proposition 98 Certification Comments Submitted by the California School Boards Association on July 8, 2024

Pursuant to Section 41206.01 of the Education Code, the comments received from the California School Boards Association (CSBA) are respectfully rejected for the following reasons:

Subdivision (a) of Section 41206.01 of the Education Code provides that for purposes of the calculation of the Proposition 98 minimum guarantee pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution, "all determinations of percentages, amounts, revenues, appropriations, allocations, proceeds of taxes, increases in cost of living, or enrollments shall be based upon the best available estimate until actual data becomes available, and then upon actual data when it is available." Section 41206.01 therefore specifically contemplates the use of actual data that is consistent with statute once final.

Because General Fund revenues were significantly lower than estimated at the 2023 Budget Act, the recalculated minimum guarantee for fiscal year 2022-23 is roughly \$8.8 billion less than previously calculated and appropriated. To help address this decrease in the minimum guarantee for 2022-23 without impacting school district and community college district budgets, subdivision (b) of Section 42252 and subdivision (b) of Section 84750.6 of the Education Code defer approximately \$2.6 billion Proposition 98 General Fund from the 2022-23 fiscal year to the 2023-24 fiscal year. These statutes were enacted as part of the 2024 Budget Act and as they are current law, are reflected in the recalculated Proposition 98 minimum guarantee.

Finance would also note that CSBA contends the \$2.6 billion deferral contains amounts that were already allocated to school districts and community college districts in 2022-23, but this is not the case; the deferred funding had not yet been allocated to and/or expended by local educational agencies by June 30, 2023. Pursuant to paragraph (1) of subdivision (b) of Section 42252 and paragraph (1) of subdivision (b) of Section 84750.6, the approximately \$2.6 billion deferred from 2022-23 to 2023-24 is comprised of funding for categorical programs that was unallocated, unexpended, or not liquidated as of June 30, 2023.

If you have any questions or need additional information regarding this matter, please call Brittany Thompson, Principal Program Budget Analyst, at (916) 445-0328.

JOE STEPHENSHAW

Director

By:

A handwritten signature in blue ink that reads "Erika Li".

ERIKA LI

Chief Deputy Director

Attachment

cc: Honorable David Alvarez, Chair, Assembly Budget Subcommittee No. 3
Honorable John Laird, Chair, Senate Budget and Fiscal Review Subcommittee No. 1
Honorable Roger W. Niello, Vice Chair, Senate Budget and Fiscal Review
Committee
Honorable Heath Flora, Vice Chair, Assembly Budget Committee
Gabriel Petek, Legislative Analyst (3)
Elisa Wynne, Staff Director, Senate Budget and Fiscal Review Committee
Kirk Feely, Fiscal Director, Senate Republican Fiscal Office
Christopher W. Woods, Senate President pro Tempore's Office (2)
Christian Griffith, Chief Consultant, Assembly Budget Committee
Joseph Shinstock, Fiscal Director, Assembly Republican Caucus, Office of Policy
and Budget
Paul Dress, Caucus Co-Chief of Staff, Assembly Republican Leader's Office
Katja Townsend, Capitol Director, Assembly Republican Leader's Office
Jason Sisney, Assembly Speaker's Office (2)
Mark McKenzie, Staff Director, Senate Appropriations Committee
Jay Dickenson, Chief Consultant, Assembly Appropriations Committee



July 8, 2024

VIA EMAIL

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assemblymember.gabriel@assembly.ca.gov

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. We previously submitted an objection to the Proposition 98 certification for 2022-2023 on June 6, 2024. At the time, the Proposition 98 certification had not been released. The certification was released on or about July 1, 2024 and, based on that, we are renewing and updating our objection. 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.

Attached please find an updated 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@asm.ca.gov)
Kari Krogseng, Chief Counsel, Department of Finance (kari.krogseng@dof.ca.gov)
Hans Hemann, Consultant, Joint Legislative Budget Committee
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July 8, 2024

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Re: California School Boards Association’s Objection To 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 2022-23 Proposition 98 Certification (“Certification”) published on July 1, 2024, pursuant to Education Code section 41206.1. CSBA objects to the Certification on the grounds that it improperly excludes from its calculations funds previously allocated to school districts and community college districts, effectively deferring these allocations to the subsequent fiscal year. While CSBA does not, in principle, oppose prospective deferrals where necessary, this approach is different because it attempts to alter prior year allocations for purposes of the Certification artificially lowering the Proposition 98 guarantee going forward.

Specifically, the Certification excludes nearly \$2.6 billion allocated to school districts and community college districts in 2022-23, and instead scores those allocations against 2023-24. This is contrary to the Constitution, the voters’ intent in adopting Proposition 98, and sets a concerning precedent for manipulating the guarantee at the close of the fiscal year. Accordingly, CSBA objects to the Certification.

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The Manipulation Of 2022-23 Allocations For Certification Purposes Artificially Lowers The Proposition 98 Guarantee Contrary To The Constitution

The Certification excludes nearly \$2.6 billion from the total 2022-23 allocations to school districts and community college districts. It notes the "K-14 Appropriations" for 2022-23 as \$103.7 billion when the Department of Finance has previously acknowledged that the amount allocated to school districts and community college districts by the 2022-23 budget was actually \$106.3 billion, a difference of nearly \$2.6 billion. Excluding this amount from the total 2022-23 allocations lowers the calculation of the Proposition 98 guarantee in future years.

CSBA understands that, in some situations, prospective deferrals of payments to school districts may be necessary. For example, the recently adopted 2024-25 budget 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 exclusion of \$2.6 billion from the 2022-23 allocations, 11 months after the end of the fiscal year – and after the allocations have already been made – raises concerns that this practice could be used to manipulate the Proposition 98 guarantee.

While the Certification may be relying on newly added subdivision (b)(1) of Education Code section 42252 as the rationale for excluding this amount, CSBA would note that legislative enactments may not countermand the clear constitutional language of Proposition 98 adopted by voters. Excluding the funds from the total is problematic because of the integral role that the amount of prior year expenditures serves in the implementation of the constitutional guarantee. 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 through constitutional language which requires 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].

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(Cal. Const., art XVI, § 8, subds. (b)(2) & (3), emphasis added.) In other words, the Constitution requires that 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 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 and statute may not alter this constitutional requirement.

This approach 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 in *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 Certification’s exclusion of funds which had been previously allocated to school districts and community college districts 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 objects to the Certification as published on July 1, 2024 and requests that it be revised to reflect the constitutionally required calculations.

Joe Stephenshaw
Senator Scott D. Wiener
Assembly Member Jesse Gabriel
July 8, 2024
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Sincerely,

DANNIS WOLIVER KELLEY



William B. Tunick

cc: Senator John Laird, Chair, Senate Budget Subcommittee on Education
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