
September 21, 2023

To: District and Charter Business Services
From: Sarah Lampenfeld, Director, External Fiscal Services
Subject: September 2023 Edition

State of the State

Preliminary General Fund agency cash receipts were \$1.344 billion, or 11.1%, above the forecast of \$12.158 billion in August as receipts from nearly all revenue sources exceeded the forecast, per the California Department of Finance's September Finance Bulletin. The first two months of the 2023-24 fiscal year were \$75 million, or 0.3 percent, above the forecast of \$21.906 billion. Also, noted in the Finance Bulletin was inflation. After 12 consecutive months of deceleration, U.S. headline inflation accelerated to 3.7% year-over-year in August 2023 from 3.2% in July.

- ✚ **Personal income tax (PIT) receipts** for August were \$416 million above the forecast of \$7.298 billion, largely due to withholding.
- ✚ **Corporation tax receipts** for August were \$102 million, or 26.6%, above the forecast of \$384 million due to higher Pass-Through Entity Elective Tax (PTE) payments.
- ✚ **Sales and use tax receipts** for August were \$441 million, or 12.4%, above the forecast of \$3.557 billion. The gain is related to the timing of collections as higher-than-expected cash receipts shifted from July to August.

AB 141 State Budget Cleanup Bill

The Trailer Bill Clean-Up makes several technical as well as substantive changes to programs funded in the Principal Apportionment. On September 13th, the Governor signed the education budget clean-up trailer bill, Senate Bill (SB) 141.

Key elements of AB 141 are:

- ✚ Extends the encumbrance period for the California Prekindergarten Planning and Implementation Grant Program.
- ✚ Authorize the CDE to collect Learning Recovery Emergency Funds through the Principal Apportionment. Also, adds language to handle uncollectible funds from closed charter schools.
- ✚ Clarify how the 10:1 adult-to-pupil ratio is calculated and revise the definition of early enrollment child to instead mean a child whose 4th birthday will be between June 3 and September 1, inclusive, preceding the school year during which they are enrolled in a transitional kindergarten classroom.
 - Additionally, the bill would require verification of compliance with certain requirements related to early enrollment children into the Guide for Annual

Audits of K-12 LEAs and State Compliance Reporting for the 2023-24 and 2024-25 fiscal years.

- ✚ Revises the definition of long-term English learner to instead mean a pupil who has not attained English language proficiency within 7 years of initial classification as an English learner.

Fall 2023 Stimulus Funding Reporting Window Anticipated to Open September 24

The reporting window is anticipated to open September 24th and remain open through October 13th for LEAs to report their July 1, 2023 through September 30, 2023 expenditures on the following funds:

CRRSA Act:

- ✚ ESSER II, Resource 3212

ARP Act:

- ✚ ESSER III, Resource 3213 and 3214
- ✚ Homeless Children and Youth (HCY) Fund II, Resource 5634

ELO-G funds (State Reserve funds)

- ✚ ESSERII, Resource 3216
- ✚ GEER II, Resource 3217
- ✚ ESSER III, Resource 3218
- ✚ ESSER III, Resource 3219

Related upcoming webinars:

- ✚ On **Thursday, September 21, 2023, from 10 to 11 a.m.**, the CDE Federal Stimulus Team will be hosting a **CRRSA Act Liquidation Extension Application Introduction** webinar to walk LEAs through the CDE CRRSA Act Liquidation Extension application and process. CDE Federal Stimulus Team members will also be available for CRRSA Act Liquidation Extension related questions and answers. [Register](#) here if interested
- ✚ On **Tuesday, September 26, 2023, from 10 to 11 a.m.**, the CDE Federal Stimulus Team will be hosting a **CRRSA Act Close Out Reporting Overview** webinar to review reporting requirements and address accurate expenditure reporting for LEAs that have a balance remaining of available unexpended CRRSA Act funds to support fund close out. CDE Federal Stimulus Team members will also be available for CRRSA Close Out Reporting-related questions and answers. [Register](#) here if interested

Categorical Allocations Updates

As a part of the 2024 Budget Act, Section 102 of SB 114, the Art, Music, Instructional Materials, and Discretionary Block Grant reduction was finalized. CDE is preparing the revised allocation and will release the funds in October. Additionally, the CDE will be recovering overpayments for the Learning Recovery Block Grant via the Principal Apportionment but it's not anticipated sooner than October.

Reminder: 2023-24 California School Dashboard Coordinator Registration

On Monday, August 21, 2023, the California Department of Education (CDE) announced the opening of the new myCDEconnect unified system hosting the 2023–24 California School

Dashboard (Dashboard) Coordinator Registration and the 2023–24 Dashboard Web Application. The website for myCDEconnect is located at <https://www.mycdeconnect.org/>.

Dashboard Coordinators report results to the public through the Dashboard utilizing the SBE-adopted self-reflection tools for each local indicator. **The 2023 Dashboard reporting window for local indicators will close on September 29, 2023, at 5 p.m.** If a local educational agency (LEA) does not submit results within the reporting window, a performance rating of “Standard Not Met” or “Standard Not Met for Two or More Years,” as applicable, will appear on the LEA’s 2023 Dashboard.

Sonoma County Farm to School Coalition

The Sonoma County Farm to School Coalition is a new county-wide network for school food leaders to share experiences, receive free technical assistance and resources, and collaborate to enhance local, healthy food offerings for students. Representatives will meet quarterly in person and occasionally with partner organizations to receive support. All opportunities to participate in the Coalition are voluntary and free of charge to the Districts. The Coalition is facilitated by Shared Plate Strategies and support comes from ConservationWorks through the CDFA Farm to School Incubator Grant Program. Please reach out to Ben Thomas (ben@sharedplatestrategies.com) to find out more.

2023-24 Charter School 20 Day Report is now available

The California Department of Education (CDE) 2023–24 Charter School 20 Day Attendance Report (Charter 20 Day) is available on the CDE’s [website](#). While charter schools are on the same funding cycle as other local educational agencies, per Education Code Section 47652, newly operational and expanding charter schools are eligible to receive funding through the Charter School Special Advance apportionment. Newly operational charter schools are defined as those in their first year of operation that commenced instruction by September 30, 2023, and expanding charter schools are those that are expanding to add one or more grade levels in 2023–24.

To be eligible for funding, new charter schools must have submitted a Pupil Estimates for New and Significantly Expanding Charter Schools (PENSEC) report, as well as the Charter 20 Day. Expanding charter schools can submit a Charter 20 Day even if they did not submit a PENSEC report.

2022-23 Books are Closed, What’s Next?

Each LEA’s Unaudited Actuals should have been board-approved on or before September 15th and submitted to SCOE. It’s now time to begin reviewing your budget and assumptions for 2023-24. It’s never too early to start reviewing, updating, and compiling changes for First Interim.

- Revenue updates – one-time revenue review and adjustments
 - Title preliminary estimates are now available [here](#)
- LCFF calculations – with updated enrollment from the start of school, unduplicated student count updates, and average daily attendance calculations
 - Census Day for Calpads is October 4, 2023
 - The certification period for the Fall 1 collection closes on December 15, 2023

- Amendment Window for Fall 1 is December 16, 2023 to January 26, 2024
- Basic aid calculations – recalculating projected property taxes using prior-year actuals as a starting point (P-1 2023-24 property tax estimates will be sent out in early November)
- Personnel costs - now that school has started, and first payrolls have run and positions are now filled, estimated costs will be more concrete, and step and column can be re-calculated
- Negotiations – The cost of 1% can be calculated with more accuracy
- Health and welfare costs – project base in Unaudited Actuals as a starting point with actual premium increase/change and open enrollment information
- Review your Fiscal Advisor’s technical comments on your Adopted Budget

School Level Finance Survey (SLFS)

New reporting for the School Level Finance Survey (SLFS) will start in fiscal year 2024-25 for the following areas: instruction, student support services, instructional staff support, and school administration. Additionally, three exhibit areas will be required for reporting within instructional functions. The plan to implement will be: 2022-23 information provided in the ESSA PPE Reporting, 2023-24 – modified and new elements to the ESSA PPE Reporting, and 2024-25 and beyond – details/reporting will be shared once determined. Stay tuned....

First Amendment Audit Memo from SCLS and RESIG

Please see attached Memo No. 07-2023 from School and College Legal Services, in partnership with RESIG, regarding Responding to a “First Amendment Audit”

2023-24 Instructional Time and Attendance Accounting Webinar presentation

On September 26, 2023, the CDE is hosting Instructional Time and Attendance Accounting webinar for the fiscal year 2023-24. If interested, please register [here](#).

Fiscal Reports by School Services of California

School Services does an excellent job of providing explanations to current topics. If you are a member of School Services of California you can also see these reports by logging in to view their web page or subscribe to their email services. Attached for your convenience are:

- 📄 Substitute Flexibility Returns – August 29, 2023
- 📄 Early Intervention Preschool Grants FAQs – August 31, 2023
- 📄 Economic Resilience Persists Despite Inflation – September 18, 2023

<p>Reminders</p>

2nd Reminder: Instructional Materials Public Hearing Requirements for Fiscal Year 2023-24

Education Code Section 60119 requires that local governing boards hold an annual public hearing **on or before the end of the eighth week from the first-day pupils attend classes** and adopt a [resolution](#) stating whether each pupil in the LEA has sufficient textbooks or instructional materials. This public hearing and resolution are required annually. LEAs should keep the resolution on file for the LEA’s annual audit.

For more detailed information, go to <http://www.cde.ca.gov/ci/cr/cf/> and click on “Instructional Materials Frequently Asked Questions” for direct responses to realistic/practical questions. **The**

resolution sample can be found on the CDE web page by clicking on the link embedded in FAQ #43.

CARS Close Date Reminder for 2023–24 ConApp "Spring Release"

The submission deadline for the 2023–24 CARS "Spring Release" was Thursday, August 31, 2023. While the deadline has passed, the forms are still open and can be completed or edited (if necessary) until the final close date, which is 11:59 p.m. on Saturday, September 30, 2023. All of the 2021–22 and 2022–23 fiscal year forms will close on September 30th. **If your LEA DID NOT complete the 2023-24 ConApp "Spring Release" please do so by September 30th!**

Educator Effectiveness Funds (EEF) Block Grant Updates and Reporting

LEAs are required to report annual data and an expenditure report each year on or before September 30th. A final data and expenditure report will be due on or before September 30, 2026. All local educational agencies (LEAs) will need to submit a report on or before September 30, 2023. If the reports are not submitted on or before September 30, 2023, then all of the allocated funds will need to be returned. If your LEA needs a PIN to access the database, please email EEF2021@cde.ca.gov. To report: [Click here](#)

UPK Program Reporting

The required 2022–23 Universal PreKindergarten (UPK) Planning and Implementation Program Reports for LEAs and COEs are available for completion. The purpose of these reports is to collect the responses to the required questions from the updated 2022–23 UPK Planning and Implementation Grant Planning Templates. The information collected from these **required** reports will inform the CDE on UPK implementation and will help identify what additional support may be needed for LEAs and COEs to support UPK implementation. The survey must be completed by September 30, 2023.

2022–23 UPK Program Report for LEAs: <https://surveys3.cde.ca.gov/go/upk-program-rpt2-lea.asp>

Expiration of ESSA Funds and CSI

FY 2021-22 ESSA and CSI balances are set to expire on September 30th. A list of expiring funds was sent to applicable Sonoma County LEAs on September 13th. **These funds expire September 30, 2023, and must be spent or obligated by September 30, 2023. Any LEAs with obligated funds and unpaid balances need to report to CMDC and/or GMART in October or they won't be paid.** Please plan accordingly.

Form J-13A Reference Guide – School Closures

The CDE has prepared a reference guide for Form J13A – School Closures. Please find the reference guide [here](#). ***Important* Please remember the J-13A waivers still need to be sent to the County Office of Education (SCOE) for approval/signatures. SCOE will submit the J-13A waivers via email to the CDE once a review is complete and signatures are obtained. SCOE will copy the LEA on the email as confirmation of the submission.**

Dates to Remember:

09/27/2023	LCAP Development Support Series – Session 1 Register Here
10/04/2023	2023-24 Census Day (used for CalPads Fall 1)
10/13/2023	Escape – AP/AR User Group 9:00 – 11:00 RSVP Here
10/19/2023	2023-24 Interim Reporting Workshop
10/19/2023	DBUG

Mark your calendars now!

2023-24 District Business User Group (DBUG) meeting dates:

All meetings are on Thursdays at 12:30 p.m.

Dates: 10/19/2023, 11/16/2023, 1/18/2024, 2/15/2024, 3/28/2024, 4/18/2024, 5/16/2024, and 6/20/2024

Mini-Training Sessions/Working Sessions

Understanding YOUR Budget: November 16th immediately following DBUG

Audit Review: December 7th, 9:00 – 10:30 a.m. (in-person only)

The Basic (Difference between Budget and Actuals) plus General Ledger Mid-Year Cleanup:

January 25, 2024, 9:00 – 11:00 a.m. (working session)

CARS and Unearned Revenue Understanding: February 1, 2024, 9:00 – 11:00 a.m. (working session)

LCAP check-in (annual update, what’s new, and staying on track): March 21st immediately following DBUG

Workshops

Interim Workshop: October 19, 2023, 9:00 a.m. to 12:00 p.m.

Next Fiscal Year Workshop: May 16, 2024, 9:00 a.m. to 12:00 p.m.

Year-End Close Workshop: June 6, 2024, 9:00 a.m. to 12:00 p.m.

NOTE:

- Want to add something to a DBUG Agenda? Want a topic added to SCOE Biz? Contact DBUG Chair, Christina Menicucci
- Documents presented at [DBUG](#) are posted at <http://www.scoe.org/pub/htdocs/fiscal-dbug.html>
- [Workshop manuals](#) and [Fiscal Services/IT forms](#) may be found at <http://www.scoe.org/escape> under the heading of Resources on the left side of the page.



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LEGAL UPDATE

September 13, 2023

To: Superintendents, Member School Districts (K-12), County
Offices of Education and Community College Districts

From: Frank Zotter Jr., Senior Associate General Counsel *FZ*

Subject: Responding to a “First Amendment Audit”
Memo No. 07-2023

“First Amendment Audits” have increasingly become an issue of concern for public entities around the State of California. This Legal Update is intended to provide some factual and legal background about this phenomenon, and also to suggest some practical approaches to dealing with someone who shows up at a District, County Office or Community College District to conduct an audit.

1. What is a “First Amendment Audit”?

The term describes a visit to a public agency from one or more individuals who describe themselves as “auditors.”¹ Auditors enter the public spaces of a public office while recording the entire encounter and have, in extreme cases, been known to shout epithets, insults, or to challenge public employees to take action to stop them. The recordings of the audits (typically shot from the auditor’s point of view) are then posted online.

When entering public buildings, they will sometimes ask for a form so that they can file a complaint against the agency or an employee. They often do not intend to file such a complaint; instead, part of the audit is to determine whether the agency keeps a ready supply of such forms available and provides one upon request.

The auditors sometimes make oral comments about their treatment or the agency’s readiness with any forms that are solicited. In other cases, before posting the video on YouTube they will add written commentary over the

¹Auditors also approach law enforcement officers in the field.

video (“Watch what this guy does next!” or “See where she moves as I move to the right!” etc.)²

2. Why do they engage in this behavior?

The auditors claim that they are “checking” or “testing” the behavior of public employees, allegedly to determine whether the employees appropriately respond to requests from citizens coming into public offices. In many cases, the auditor is simply attempting to determine if they are allowed to make the recordings unimpeded by the agency’s employees. Depending on the auditor, some of the behavior exhibited toward public employees may seem aggressive and an attempt to entice the employees to react angrily or in kind toward them. On the other hand, some of the auditors simply walk around the public areas, asking for forms or asking questions.

Despite these justifications, in the words of humorist Kin Hubbard, “When a fellow says, ‘It ain’t the money but the principle of the thing,’—it’s the money.” It is important to understand that the videos from these encounters generate content for YouTube Channels, such as “Bay Area Transparency” (the person likeliest to visit public offices in this area), “Audit the Audit,” or “First Amendment Rights.” Having just a few thousand subscribers and “Likes” on their videos can generate substantial income, and many of the “auditors” solicit donations to “continue the work.”

YouTube channels are fiercely competitive for subscribers and “Likes.” Angry or aggressive confrontations with public employees are more likely to generate page views—and income for those who post them.

3. Are these “audits” legal?

With certain exceptions, recording what is happening in your immediate presence while in a public area is not illegal. Although Penal Code section 632 prohibits recording a “confidential conversation” between two people unless both people consent, this prohibition primarily applies to audio-recording of a conversation.³ For example, section 632 clearly prohibits one party from audio-recording another with a hidden device or over the telephone without the other party’s consent. It could also apply to a video recording if the recordings were made in a place like a bathroom or a bedroom.

This statute, however, would likely not apply to a location like the counter at a public entity, or the reception desk at a County Office, even if the parties to the conversation state that they are not consenting to the recording. For the most part, courts have concluded that audio and video recording of others, even without their consent, is permissible if the recording occurs in a public area.⁴

² For further description of a First Amendment Audit, see https://en.wikipedia.org/wiki/First_Amendment_audits.

³ *People v. Drennan* (2000) 84 Cal.App.4th 1349.

⁴ The case most often cited for this proposition is *Fields v. City of Philadelphia* which involved two members of a self-described “police watchdog” organization. (*Fields v. City of Philadelphia*, 862 F.3d 353 (3d Cir.2017).) In response to attempts to observe and record police activity, the police prevented them from making recordings. The federal appeals court ultimately held that the First Amendment’s right of access to information also grants the public the “right to record—photograph, film, or audio record—police officers conducting official police activity in public areas.” (*Id.* at 360). The California legislature has similarly recognized the right to peacefully record in public



4. What should I do if confronted by a “First Amendment auditor”?

Ignore that the person is making a video recording. Treat the person the same way that you would anyone else who was not holding a recording device. To the extent that you behave in any way differently from how you would if someone approached you at the counter without a camera, you are in essence feeding the market for this kind of material.

DO:

- Ignore the camera (this cannot be emphasized enough).
- Ask the person, in a neutral tone of voice, how you can help them.
- If the person requests a document, such as a complaint form, explain whether you have any, or if there is a different process to obtain one (e.g., downloading it from the District’s website).

DON’T:

- Raise your voice.
- Call the police or campus security (*unless* the person attempts to do something such as enter a private area, as discussed below).
- Refuse to allow the person to continue to make a recording of the public counter area. There is no time limit by which the person must conclude their recording provided they are not otherwise disruptive or impeding service to members of the public. Allow them to record, but be aware of the person’s movements in case they attempt to go behind the counter or into private offices.

5. What can my agency do to prepare for such a visit?

- Signage:** Check the signage in the public areas of your site. If certain doors lead to private offices or similar areas where the public normally is not allowed, either ensure that they are accessible only to staff or are clearly marked, e.g., “Staff Only. No Public Admittance” or the like. The “auditors” are generally willing to abide by such signs.
- Limit Accessibility:** If the private areas of your office are easily accessible, such as through a lower-level swinging door, then check that it cannot easily be opened from the outside. Consider installing less “friendly” catches on such doors to ensure that only employees or invited members of the public are able to access private areas from the public service counter.

spaces. (See Penal Code § 148: “The fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of [this statute] nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.”)

School Sites Should Require Registration: Any person who is an “outsider,” as defined by section 627.1 of the Penal Code, is required to register with the school upon entering a school site.⁵ Confirm that signage notifying visitors that they must register and sign in is in place at your school site.⁶ Require all visitors to state their business and gain permission to enter the school before allowing them to proceed. (*Note: this would not apply to stand-alone district, county or community college offices unless there are classrooms on the premises.*)

Secure Confidential Information: All public agencies, and especially LEAs with confidential student records, should take steps to ensure that confidential material is not accessible or visible in public spaces. For example, agencies should ensure that content on computer screens are not visible to members of the public from public areas of the office. Similarly, confidential documents containing student or employee information should not be visible or legible from public areas.

6. Are there any things that “auditors” do that would be illegal?

Yes. While an auditor likely has the right to film public employees in public areas, and should be treated no differently than any other member of the public, an auditor may not:

Enter Private Spaced Uninvited. As noted above, areas behind a counter, private offices, workers’ cubicles and the like are all areas to which no member of the public except someone who has legitimate business in the building would be admitted. Areas not normally open to the public often have confidential files or records that only employees should have access to, such as pupil records or personnel files.

Enter a Public School Without Permission. Members of the public (also referred to as “outsiders” in the Penal Code) do not have the right to enter student areas without registration and permission to enter. For pupil safety, visitors cannot just wander down school corridors looking for “interesting” things to film; safeguarding children is still paramount.

Recording In a Classroom Without Permission. Education Code section 51512 requires permission of the classroom teacher and principal before recording in a classroom.

⁵ Penal Code § 627.1 defines an “outsider” as any person other than:

- (1) A student of the school; except that a student who is currently suspended from the school shall be deemed an outsider for purposes of this chapter.
- (2) A parent or guardian of a student of the school.
- (3) An officer or employee of the school district that maintains the school.
- (4) A public employee whose employment requires him or her to be on school grounds, or any person who is on school grounds at the request of the school.
- (5) A representative of a school employee organization who is engaged in activities related to the representation of school employees.
- (6) An elected public official.
- (7) A person who comes within the provisions of Section 1070 of the Evidence Code by virtue of his or her current employment or occupation.

⁶ Auditors may claim that they are members of the press in order to gain greater access to a school site. If this occurs, we recommend that you contact legal counsel for support. Even if an auditor meets the narrow definition of press, a school site may still require them to register and provide their name, age, purpose of the visit, and identity.



7. What should I do if an auditor becomes aggressive?

Whenever possible, try to keep confrontations to a minimum. However, if an auditor becomes aggressive and tries to enter private non-public areas of a building:

- Calmly remind them that they are not permitted to enter areas clearly marked “Private” or “Staff Only.” Most auditors will not attempt to enter these areas when asked not to do so.
- Ask them again what their business is, and how agency personnel can assist them in achieving it.

Do Not attempt to physically restrain an auditor; these are the kinds of confrontations that they hope to provoke and can cause you or others to become injured.

Finally, if all of these efforts fail, and an auditor attempts to do something that is clearly improper (entering a private office, entering school grounds without registering or without lawful business, or using any force on a staff member) then and only then should agency personnel contact the police.

Again, use of law enforcement should be judicious and only when it is absolutely necessary to do so.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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FISCAL REPORT

PUBLIC EDUCATION'S POINT OF REFERENCE FOR MAKING EDUCATED DECISIONS

Substitute Flexibility Returns

 [BY LEILANI AGUINALDO](#)

 [BY DANYEL CONOLLEY](#)

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posted August 29, 2023

Pending Governor Gavin Newsom's signature and official votes by the Legislature, Assembly Bill (AB) 141 provides much-needed temporary flexibility for substitute employment through July 1, 2024. Recall, similar flexibilities were previously provided in AB 167 and through executive orders to help alleviate the significant substitute employment needs experienced by local educational agencies.

Current regulations provide that substitute teachers have limitations regarding how long they are permitted to serve in a substitute capacity in a school year for any one teacher of record:

- No more than 30 cumulative days in any one general education classroom; and
- No more than 20 cumulative days in any one special education classroom

AB 141 extends to 60 cumulative days the length of time that substitute teachers may serve in any one assignment, inclusive of general education settings, and career technical education and special education assignments. Once signed into law, this temporary change will be effective immediately. We recommend human resources departments communicate this change in certificated substitute service allowance to all educational partners, including staff who manage substitute employment, site personnel, and certificated substitutes. We'll provide an update in a future *Fiscal Report* article when the legislation is signed into law.

FISCAL REPORT

PUBLIC EDUCATION'S POINT OF REFERENCE FOR MAKING EDUCATED DECISIONS

Early Intervention Preschool Grants FAQs



BY ANJANETTE PELLETIER

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posted August 31, 2023

The Early Intervention Preschool Grant (EIPG), Resource 6547, is an ongoing \$260 million per year for school districts serving preschool (Pre-K) students.

How are EIPG funds generated?

These supplemental funds are generated by counting first grade students served by school districts in special education. The total grant amount of \$260 million is distributed to school districts based on the current-year Census Day count of first graders with Individual Educational Programs (IEPs).

What are the guidelines for allowable use of EIPG funds?

To summarize, the funding has the following allowable uses:

1. Early intervention services for pupils that are not meeting age-appropriate developmental milestones and are at risk of being identified as eligible for special education and related services
2. Support for Pre-K children with exceptional needs which the district has determined will positively impact a young child
3. Supporting inclusive educational practices, strategies, and activities to ensure a pupil's right to placement in the least restrictive educational environment (LRE)
4. Wraparound services for Pre-K children with exceptional needs not required by federal or state law
5. Professional development for preschool staff on evidence-based practices to build capacity to provide education in more inclusive settings; on the development of physical, social, emotional, and academic skills; and on developing appropriate IEPs for Pre-K children in the LRE

Which pupils are included in the allowable use of EIPG funds?

The funds are intended to support infants, toddlers, and Pre-K pupils from birth to five years of age, inclusive, who are at risk of needing special education, were not eligible for special education, or who may benefit from support and services beyond what is required under law on their special education plan.

Can local educational agencies use EIPG for transitional kindergarten (TK) or kindergarten (K)?

No. Funds cannot be used to support students who are in TK or K. Although the age levels overlap, the grant is clear that programs serving students enrolled in TK or K are excluded from use of the EIPG funds. For the purposes of the EIPG, a Pre-K child with exceptional needs is a child between three and five years of age, inclusive, who has been identified as eligible for and is receiving IEP services, except those enrolled in a K or a TK program. It further clarifies TK includes the first year of a two-year K program using a modified K curriculum that is age and developmentally appropriate.

How does the district receive these funds?

Funds are paid through the Principal Apportionment. Principal Apportionment amounts are calculated three times for each fiscal year: the First Principal Apportionment (P-1) is certified by February 20, the Second Principal Apportionment (P-2) is certified by June 25, and the Annual calculation is certified by February 20 of the following year (with that year's P-1 certification).

Will use of EIPG impact the district's maintenance of effort (MOE) obligation?

As with all expenditures that could be coded to special education, the MOE obligation will be impacted if districts use Goal 5xxx when expending these funds. As there is specific supplement language in the legislative intent, districts should consider whether use of these funds is appropriately coded as a special education expenditure and could keep expenditures out of the MOE obligation by using general education coding even if some or many students with IEPs are impacted by the programmatic changes or improvements.

Can a district use these funds for existing special education Pre-K programs?

The grant language includes four specific allowable uses for eligible Pre-K students currently receiving services on an IEP:

1. One-time programs, services, or resources that may not be medically or educationally necessary or required by an IEP or in an individualized family support plan, which the district has determined will have a positive impact on a young child
2. Strategies to improve outcomes, including inclusive educational programming that ensures the right to placement in the LRE
3. Wraparound services, or integrated services and supports that address a child's holistic needs, including, but not limited to, academic, health, and social services not required by federal or state law
4. Expansion of inclusive practices to ensure pupils have access to learn in the LRE

The Education Code for the EIPG states, "The funds allocated pursuant to this section shall supplement existing special education resources currently required to be provided pursuant to federal and state law and promote a targeted focus on services and supports being offered in inclusive settings, to the extent practicable." Districts should consider this supplement language when determining which supports and

activities will be provided that are not required in the IEPs of currently served students. It seems clear that using the EIPG funds to directly offset local General Fund contributions to existing special education Pre-K programs would not meet the grant's parameters.

Do the words "to the extent practicable" create enough wiggle room that these funds could be used for anything that does not supplant existing special education resources (i.e., unrestricted)?

The intent of the EIPG is for preventative, early intervention, and supplemental activities that could prevent the need for special education or improve the impact of special education services beyond what is required by law. Given the broad range of flexibility for activities under the grant, it would be unusual to not be able to use the funds in a way that would align with the grant's intent.

As with any legislative intent language, there are always potential loopholes, strategies, or procedures a district could choose to use locally, depending on the philosophy, risk tolerance, or concern about audits, ethics, or morals. If districts work with a focus on students, finding ways around the intended use of these funds is not needed, as the decisions districts make will benefit pupils and improve local programs.

How are other districts using these funds?

Many districts are using these funds to shore up the early intervention components of a Multi-Tiered System of Support (MTSS). This could mean offering small group opportunities for Pre-K students who could benefit but are not yet in a program, or offering pre-IEP support to see if interventions have an impact making an IEP not necessary.

Some districts are offering MTSS Pre-K, which includes screening high-risk students and providing access to the full Pre-K program, without an IEP, and include them in all the services offered in those settings. These students could receive speech support for fluency or articulation, language development support, play and behavior support access, exposure to the academic setting, etc. Many of these Pre-K attendees are not formally assessed, and are not on an IEP, nor a 504 plan.

If three-year-old children are referred from early start, but do not qualify for school-age special education services, some districts are offering them enrollment in a program using the EIPG. The thinking is that the provision of continued early intervention (typically speech and some academic environment time) will reduce the need for special education in TK/K.

Another set of innovative practices is to use the funds to run a weeklong bootcamp for transitioning Pre-K children the week prior to TK/K starting, to offer an enrichment program for Pre-K students aligned with extended school year (ESY) or after school programs, or to offer Pre-K students with IEPs a summer program, even if they are not eligible for ESY.

A creative option is to offer speech and occupational therapy consultation services to the staff at local community Pre-K settings where districts have partnerships. The related services professionals can observe classroom environments, make recommendations for preventative activities to the staff at those programs,

or those specialists could provide periodic hands-on support in those environments.

As noted in the professional development section of the grant uses, providing training and capacity building to every preschool aide, teacher, and administrator is a core allowable activity. Districts are then inviting others to these trainings, whether it is TK teachers or community practitioners, to build relationships, share knowledge, and reduce referrals. Behavior support training is a high value and high benefit training that can be offered on demand virtually or to small groups watching together and can benefit students placed in all Pre-K environments.

The EIPG funds can also be used for facilities improvements that ensure inclusive programming and practices. Remodeling, upgrading, and otherwise making preschool spaces accessible for all levels of ability, and ensuring appropriate materials and supplies are available are approved uses for these funds. Ideas include flexible seating options, obtaining copies of the TK curriculum for the Pre-K teachers to ensure smooth transition and alignment of curriculum, updating materials, and expanding inclusive options, including materials in a variety of languages.

Regional collaboratives, including Special Education Local Plan Areas, have pooled funds to get the results and outcomes they want at the regional level for early intervention for infants, toddlers, and Pre-K students. In a shared pool agreement, an individual district may transfer its funding to a regional provider, partner, or setting. In this manner, the district may not have a specific student to which the funds are connected, but the pooled expenditure gets district students access to more support and services at the regional level than they could have locally.

Many districts are spending these dollars directly on existing Pre-K special education programs and justify the decision by indicating that the funds are to support Pre-K students in inclusive settings and with inclusive practices. Districts will need to complete their own analysis and ensure appropriate documentation of how these activities are compliant with the goals of the EIPG.

Where can I find more information on the EIPG?

The Education Code for this funding source can be found on the following pages:

[Education Code Section \(EC §\) 56836.39](#)

EC § [56836.40](#)

The funding profile and exhibits for these funds can be found [here](#).

FISCAL REPORT

PUBLIC EDUCATION'S POINT OF REFERENCE FOR MAKING EDUCATED DECISIONS

Economic Resilience Persists Despite Inflation

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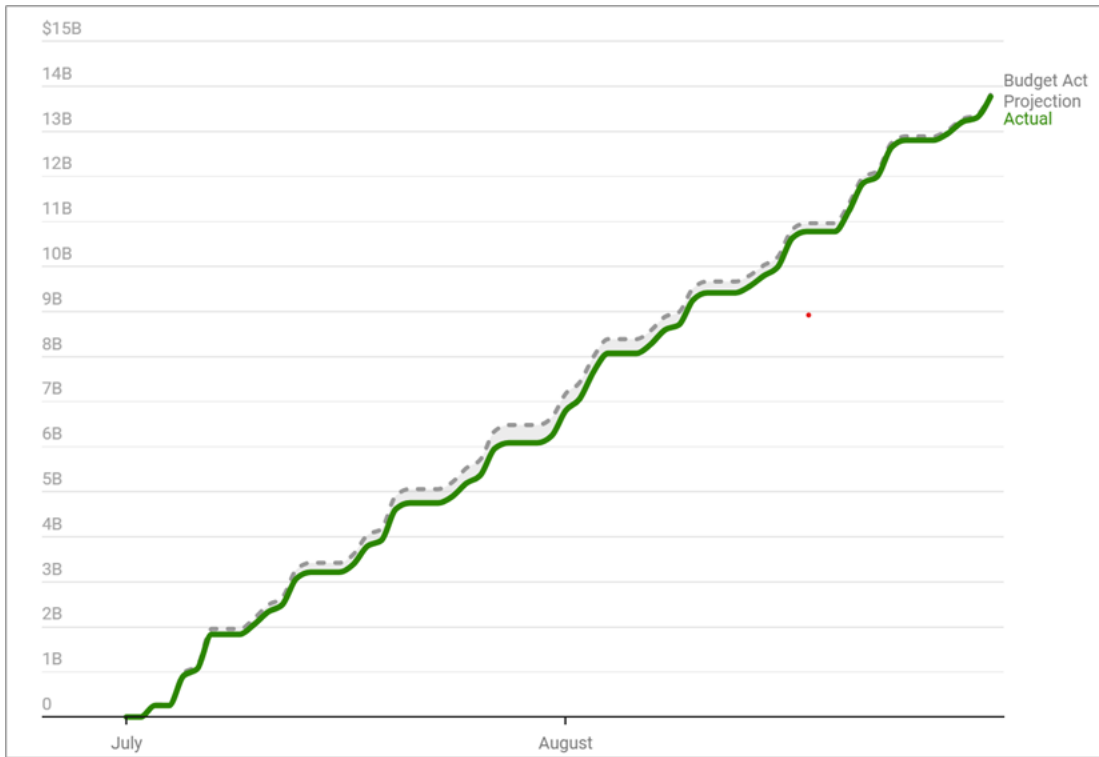
The latest national inflation numbers suggest that the economy is still challenged by rising costs, namely in fuel and shelter, as headline inflation jumped 0.6% in August (up from 0.2% in July) to an unadjusted annual rate of 3.7%. The more stable core inflation rate, which excludes food and energy costs, rose 4.3% annually. The good news is that the rate at which costs increase is abating largely in response to the monetary tightening policies of the Federal Reserve (Fed), which began aggressively increasing interest rates last year in an effort to tame consumer demand.

At its peak of tightening, the Fed raised the federal funds rate by 75 basis points (or 0.75%) four consecutive times in 2022 following more modest increases to address what the Fed then believed would be transient inflationary pressures. The historic pace with which borrowing costs were rising raised fears that the Fed would catapult the economy into a recession. And there were many indicators that began blinking red forewarning a downturn, including the most predictive measure of an impending recession in the inverted yield curve (see "[Inverted Yield Curve Signals Looming Economic Downturn](#)" and "[Economy Gets Bad Signal](#)" in the *Fiscal Report*).

The nation's productivity, while slowing, continues to be positive following two consecutive quarters of negative growth in the first half of 2022. By any measure, the economy is enjoying full employment, and the stock market continues to rebound from where it was a year ago.

For California, economic resilience is manifesting as stabilizing state revenues. Recent revenue data show that the state's revised forecast is more accurately reflecting trends. Where predictions were once off by billions of dollars, the forecast gap has narrowed. According to the Legislative Analyst's Office (LAO), income tax withholdings are tracking with 2023-24 Budget Act projections—performing even modestly better than expected.

2023-24 Income Tax Withholdings



Source: LAO

The LAO reports that the regular income tax withholding payments employers make for their employees was \$367 million above budget act predictions in August, offsetting equivalent below-forecast performance in July. With the October 16 tax filing deadline for many Californians and corporations looming, the question is if revenues will continue to track accordingly. Recall that \$4.2 billion of state revenues were projected to materialize in October—\$2.8.4 billion in delayed personal income taxes and \$1.3 billion in corporation taxes, respectively 23% and 32% of total anticipated revenues of the two taxes for the 2022-23 fiscal year.

State budget officials recognized the considerable risk the deferred tax deadline creates for the 2023-24 Enacted Budget, which of course impacts local planning. We are hopeful that the economy's resilience will be reflected in next month's state tax collections, and that economic stability will be the theme moving towards Governor Gavin Newsom's 2024-25 budget proposal in January.