SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME **JUDGE**	**HON. STACY BOULWARE EURIE**	**DEPT. NO** **CLERK**	**18** **B. SIERRA**
CALIFORNIA SCHOOL BOARDS ASSOCIATION and its EDUCATION LEGAL ALLIANCE, **Petitioners/Plaintiffs,** **v.** **BETTY T. YEE, individually in her official capacity as CONTROLLER OF THE STATE OF CALIFORNIA,** **Respondent/Defendant.**		**Case No.: 34-2021-80003680**	
COUNTY OF SANTA CLARA, COUNTY OF MARIN, and CITY AND COUNTY OF SAN FRANCISCO, **Real Parties in Interest.**			
Nature of Proceedings:	**RULING ON SUBMITTED MATTER RE: PETITION FOR WRIT OF MANDATE**		

This matter came on for hearing on the petition on May 20, 2022. After hearing oral argument, the Court took the matter under submission. For the reasons set forth below, the petition for writ of mandate is denied and Petitioners' requests for declaratory relief and injunctive relief likewise fail.

TENTATIVE RULING

For ease of review, the following was the Court's tentative ruling regarding Petitioners/Plaintiffs California School Boards Association and its Education Legal Alliance's ("CSBA" or "Petitioners") petition for writ of mandate:

Petitioners allege that Respondent Betty T. Yee, in her capacity as Controller of the State of California, ("Respondent" or "Controller") issued guidance on February 16, 2021 that unlawfully directs the amounts allocated to school districts from counties' Education Revenue

Augmentation Funds ("ERAF"; "the ERAF Guidance"). The ERAF Guidance excludes charter schools in the definition of school districts, and Petitioners contend that the ERAF Guidance violates various statutes and article XVI, section 8(b), of the California Constitution. Respondent issued the ERAF Guidance at the directive of the California Legislature pursuant to Revenue and Taxation Code section 97.2(d)(2)(B). Through this action, Petitioners "urge this Court to order the Controller to withdraw her guidance and issue revised guidance that properly considers the term school districts to include charter schools, as the Legislature plainly intended." Petitioners also ask for a declaratory judgment that Revenue and Taxation Code section 97.2 must be read to harmonize with Education Code sections 14000 et seq., 47612, 47615, 47630, 47635, 47636, and 42238.02, inter alia, and that Respondent is required to provide guidance to counties that states that charter schools must be included in counties' calculation of ERAF capacity and excess ERAF. Petitioner asks that Respondent's ERAF Guidance issued February 16, 2021 be declared unlawful and given no force and effect, and that the ERAF Guidance is unconstitutional in violation of article XVI, section 8(b) of the California Constitution.

I. Request for Judicial Notice

Petitioners include with their moving papers a request for judicial notice and supplemental request for judicial notice of numerous documents. (ROA 5, 35.) Respondent opposes the request with regard to nine of the 14 documents: Exhibits A-D and G-K, consisting of reports published by the Legislative Analyst's Office ("the LAO") (Exhibits A and G), reports published by the Department of Finance ("the DOF") (Exhibits B-D, and H), and publications by the California Department of Education (Exhibits I-K).

The Court takes judicial notice of the existence of these documents, but not for the truth of the statements contained therein. (See Evid. Code § 452; *Love v. Wolf* (1964) 226 Cal.App.2d 378, 403 ("While courts take judicial notice of public records, we do not take judicial notice of the truth of all matters stated therein."); *Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 836, emphasis in original ("[A]lthough the *existence* of a document, such as a document recorded in the official records of a government body, may be judicially noticeable, the truth of statements contained in the document and their *proper interpretation* are not subject to judicial notice."); *Contractors' State License Bd. v. Superior Court* (2018) 23 Cal.App.5th 125, 134 (the interpretations of agency officials "are irrelevant to the purely legal issue of statutory construction).) The truth of matters contained in a document is

not subject to judicial notice if those matters are reasonably in dispute. (*Freemont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113.)

II. Background

Pursuant to Article IX of the California Constitution, the Legislature must provide a system of public education for all grades from kindergarten through state college, and ensure a free public education from kindergarten through secondary school. In 1976, the California Supreme Court declared it unconstitutional on equal protection grounds to fund schools based on local property tax wealth. (*Serrano v. Priest* (1976) 18 Cal.3d 728, 775-776.) Thereafter, the Legislature enacted a funding system that supplements revenue from local property taxes with General Fund proceeds of taxes in a manner that more equalizes funding among school districts. In 1978, Proposition 13 capped local property taxes at 1%. (See Cal. Gov. Code § 26912.) Each school district's share of property taxes counts towards its entitlement to Local Control Funding Formula ("LCFF"), and the State's General Fund covers any shortfall in funds needed for the district's schools. Education Code section 42238.02(j) provides, in part:

> (j) The Superintendent shall adjust the sum of each school district's or charter school's amount determined in subdivisions (g) to (i), inclusive, pursuant to the calculation specified in Section 42238.03, less the sum of the following:
> (1)(A) *For school districts, the property tax revenue received* pursuant to Chapter 3.5 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code.
> (B) *For charter schools, the in-lieu property tax amount provided* to a charter school pursuant to Section 47635. (Emphasis added.)

Assembly Bill No. 8 of the 1979-1980 Regular Session (Stats. 1979, c. 282, § 59) ("AB 8") distributed local property tax revenues to school districts, community college districts, county superintendents of schools, cities, counties, local agencies, and special districts within the county in proportion to the share of property taxes they received prior to the passage of Proposition 13. (See Rev. & Tax. Code § 95, et seq.)

In 1988, California voters enacted Proposition 98, modified by Proposition 111 in 1990, (collectively, "Proposition 98") which together create a constitutional minimum funding guarantee for public K-12 schools and community colleges. This guaranteed minimum level of public school funding takes into account both the General Fund revenue and local property tax

revenue. (Cal. Const. art. XVI, § 8.) Proposition 98 sets the minimum guaranteed funding for school districts and community colleges by application of one of three tests, with schools receiving the higher of Test 1 and either Test 2 of 3, whichever applies. Test 1 requires the districts receive at least a set percentage of General Fund revenues in addition to their share of local property tax revenues. (Cal. Const. art. XVI, § 8(b)(1).) Test 2 requires schools receive at least the same amount of funding they receive the prior year from General Fund revenues and local property tax revenues combined, adjusted for changes in the cost of living and changes in enrollment. (*Id.* § 8(b)(2).) Test 3 is similar to Test 2 but adjusts the total by changes in per capita General Fund revenues and can temporarily lower the amount of funding provided to schools in a recessionary year, while guaranteeing the funding is restored to the higher level when the economy recovers. (*Id.* §§ 8(b)(3), 8(d), 8(e).)

In 1992, another law was enacted to divert local property tax revenues from cities, counties, and special districts into an ERAF for each county. (Stats. 1992, chs. 699, 700, pp. 3081-3125; Rev. & Tax. Code §§ 97.2, 97.3.) The ERAF statutes require county auditors to reduce the local property tax revenues that would otherwise go to counties, cities, and special districts by the amount specified in statute, and deposit those revenues in the county ERAF. (Rev. & Tax. Code §§ 97.1, 97.2, 97.3.) The property taxes diverted to ERAF are used to offset the State's minimum funding requirements for schools. (Rev. & Tax. Code §§ 97.2, 97.3; Educ. Code § 42238.02(j)(1)(A).) Each school district's ERAF amount also counts towards that school district, county office of education, and community college district's LCFF entitlement and reduces the amount of State General Fund review that would otherwise be required. (Educ. Code §§ 42238.02(j)-(k), 47635(a), 47662; Rev. & Tax. Code § 97.2(d)(1), 97.3(d)(1).)

In certain counties, the amount of property tax funds in the ERAF exceeds the amount necessary to meet the funding requirements of the county's school districts, resulting in "excess ERAF" beyond that necessary to fund the schools in those counties. In the mid-1990s, to address the issue of excess ERAF, the Legislature directed the excess ERAF funds be allocated to the county superintendent of schools for special education programs. (Assemb. Bill 825, ch. 308, 1995 Cal.Leg. 1995-1996 Sess.) In 2000, the Legislature amended the ERAF statute to allow any additional excess ERAF to be allocated to counties, cities, and special districts for any local purpose. (Sen. Bill 1396, ch. 611, 2000 Cal. Leg 1999-2000 Sess.; Rev. & Tax. Code § 97.2(d)(4)(B).)

In 2012, redevelopment agencies were dissolved and the resulting reductions in local property tax revenue diverted to redevelopment agencies led to more property tax dollars being allocated to cities, counties, school districts, special districts, and ERAF. The increase in excess ERAF being directed to non-school district entities caught the attention of the California Department of Finance ("the DOF") and the Legislative Analyst's Office ("the LAO"). (Ferguson Decl. ¶¶ 15-17.) The LAO reported in March 2020 that Marin, San Mateo, San Francisco, Santa Clara, and Napa counties had begun under-calculating their ERAF obligations by not including charter schools along with traditional school districts in the calculation of school districts' ERAF capacity. (RJN, Exh. A, p. 10; Ferguson Decl. ¶ 15.)

The DOF then issued written guidance on June 5, 2020, to county auditor-controllers and county office of education chief business officials from the five counties, stating that the calculation of ERAF capacity at the county level must incorporate charter schools. The guidance included:

> State law provides for charter schools to receive a proportionate share of the property tax revenue collected in the jurisdiction of their sponsoring school districts, including ERAF (Education Code section 47635). There is nothing in current law that excludes charter schools from the K-12 ERAF allocation calculations. If the state had intended for charter schools to not receive ERAF, confirming language would have been added to the Revenue and Taxation Code section 97 et seq. and to the relevant Education Code sections. Thus, charter school ADA must be included when calculating excess ERAF.

(Ferguson Decl., Exh. A (Cal. Dept. of Finance, Guidance for Calculation of K-12 ERAF Revenues & Excess ERAF (June 5, 2020).) The DOF had previously issued a publication in May 2020 of proposed budget trailer language amending Revenue and Taxation Code section 97.2(d)(2)(B) to require county auditor-controllers to allocate ERAF revenue beginning in 2018-2019 according to guidance set by the DOF, and authorizing the Department to file a writ against any county auditor-controller who did not comply with the Department's guidance. (Ferguson Decl., Exh. B (Cal. Dept. of Finance, Excerpt of Proposed Education Omnibus Trailer Bill with May Revision Amendments, 96 (May 14, 2020).) The proposed budget trailer bill language was not adopted or enacted.

The Legislature then directed the State Controller to issue guidance concerning ERAF calculations and gave the State Controller enforcement power to ensure compliance with the guidance. (Rev. & Tax. Code § 97.2(d)(2)(B).) That subdivision states:

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

(*Id.*) Contrary to the DOF proposed guidance, the Legislature enacted "hold harmless" provisions for the five counties' ERAF calculations up to and including the 2018-2019 fiscal year. (See *id.* § 97.2(d)(2)(C), (D).

In accordance with the Legislature's directive, the State Controller later issued the ERAF Guidance, which explains that "charter schools are not included in the definition of school districts for the calculation of Excess ERAF because they do not directly receive property tax revenue pursuant to Rev. & Tax. Code sections 97.2 and 97.3, but from the sponsoring district in accordance with Education Code section 47635." (RJN, Exh. F, p. 2, fn. 3 (Cal. State Controller, Excess Educational Revenue Augmentation Fund Revenue Guidance (Feb. 21, 2021).) The ERAF Guidance explains the methodology for calculation and allocation ERAF, which is consistent with the manner the counties at issue had performed their ERAF calculations.

III. Standard of Review

The parties dispute the applicable standard of review, and whether this action is subject to writ of mandate. "Code of Civil Procedure section 1085 permits the issuance of a writ of mandate 'to compel the performance of an act which the law specially enjoins.' The writ will lie where the petitioner has no plain, speedy and adequate alternative remedy, the respondent has a clear, present and usually ministerial duty to perform, and the petitioner has a clear, present and

beneficial right to performance." (*Sacramento County Alliance of Law Enforcement v. County of Sacramento* (2007) 151 Cal.App.4th 1012, 1020.) "'A traditional writ of mandate under Code of Civil Procedure section 1085 is a method for compelling a public entity to perform a legal and usually ministerial duty. [Citation.] The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether an agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure the and give the notice the law requires.'" (*City of Scotts Valley v. County of Santa Cruz* (2011) 201 Cal.App.4th 1, 23, quoting *Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 955, fn. omitted.)

Petitioners allege that Respondent's ERAF Guidance is subject to de novo review. Petitioners claim the ERAF Guidance "was clearly interpretive in nature" and claim that "all relevant factors militate against according the Controller's guidance any deference," citing *Yamaha Corp. of Am. V. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15 (stating that the weight given to an agency interpretation is situational and depends on whether the agency has a comparative interpretive advantage over the courts based on expertise and technical knowledge, the thoroughness evident in the agency's consideration of the issue, the validity of the agency's reasoning, and the consistency of the interpretation with earlier and later pronouncements of the agency).)

By contrast, Respondent claims the ERAF Guidance is quasi-legislative and subject to a narrow standard of review. Respondent argues that, regardless of the standard of review applied, the ERAF Guidance must be upheld. Respondent also cites to *Yamaha* in support of its argument that "where an agency is exercising legislative lawmaking power, as is the case here, the 'scope of [a court's] review is narrow.'" (*Id.* at 10.) If a court is "satisfied that the rule in question lay within the rulemaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end." (*Id.* at 10-11.) Respondent argues that, even if the ERAF Guidance is treated as a matter of statutory interpretation, it is entitled to "great weight and respect." (See *id.* at 12.)

The Court first reviews the directive by the Legislature to the State Controller de novo. (See *City of Scotts Valley*, 201 Cal.App.4th at 24.) The Court then provides a separate level of review to Respondent's ERAF Guidance, as explained below:

> We review questions of statutory interpretation de novo. (*Reid v. Google* (2010) 50 Cal.4th 512, 527.) "Deference to administrative interpretations always is 'situational' and depends on 'a complex of factors' [citation], but where the agency has special expertise and its decision is carefully considered by senior agency officials, that decision is entitled to correspondingly greater weight." (*Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 436.) Where an agency's action is "quasi-legislative" or "the substantive product of a delegated *legislative* power conferred on the agency," the scope of our review is "limited to determining whether the regulation [or guidance] is 'within the scope of the authority conferred' [citation] and (2) is 'reasonably necessary to effectuate the purpose of the statute' [citation]." (*Yamaha,* 19 Cal.4th at 8, 11.) By contrast, where an agency's action is interpretive or merely "represents the agency's view of the statute's legal meaning and effect," the agency's "interpretation of the meaning and legal effect of a statute is entitled to consideration and respect," but "commands a commensurably lesser degree of judicial deference." (*Id.* at 7, 11.)
>
> Although the classification of an agency's action as quasi-legislative or interpretive often guides our analysis, we have observed that "some rules defy easy categorization." (*Association of California Ins. Companies v. Jones* (2017) 2 Cal.5th 376, 397.) At times, it is "helpful . . . to imagine 'quasi-legislative' and 'interpretive' as the outer boundaries of a continuum measuring the breadth of the authority delegated by the Legislature. [Citation.] Thus, in certain circumstances, a regulation may have both quasi-legislative and interpretive characteristics—'as when an administrative agency exercises a legislatively delegated power to interpret key statutory terms.'" (*Id.* at 397.)

(*Christensen v. Lightbourne* (2019) 7 Cal.5th 761, 771-772; see also *People v. Venice Suites, LLC* (2021) 71 Cal.App.5th 715, 731, review denied (Feb. 23, 2022), citations omitted ("The court's function 'is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted . . . .'")) This is the situation at issue here.[1]

[1] The Court is not persuaded by Respondent's argument that "the ERAF Guidance lies on that continuum [between 'quasi-legislative' and 'interpretive'] and, as such, does not constitute the type of ministerial act that can be the subject of a writ petition, which explains why the Legislature found it necessary to except issuance of the Guidance from the rulemaking requirements of the APA." In addition to failing to cite authority in support of this contention, it is not supported by *Christensen*, which outlines the range of deference provided in determining a writ of mandate.

IV. Analysis

Petitioners ask the Court to order Respondent to withdraw the ERAF Guidance issued and to issue revised guidance in conformity with Petitioners' argued interpretation for calculating and allocating ERAF, which includes charter schools in the definition of "school districts."

"In the first step of the interpretive process we look to the words of the statute themselves. The Legislature's chosen language is the most reliable indicator of its intent because it is the language of the statute itself that has successfully braved the legislative gauntlet. It is axiomatic that in the interpretation of a statute where the language is clear, its plain meaning should be followed. Furthermore, we are not empowered to insert language into a statute, as doing so would violate the cardinal rule of statutory construction that courts must not add provisions to statutes." (*Lateef v. City of Madera* (2020) 45 Cal.App.5th 245, 253, citations and internal quotations omitted.)

As stated above, the Legislature enacted Revenue and Taxation Code section 97.2(d)(2)(B), which directed Respondent to issue guidance on how to calculate ERAF. Section 97.2(d)(2)(A), in turn, provides:

> The auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate the proportion of the Education Revenue Augmentation Fund to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district and county office of education in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district and county office of education. In no event shall any additional money be allocated from the fund to a school district or county office of education upon that school district or county office of education becoming an excess tax school entity.

"Excess tax school entity" is defined in section 95(n) as "an educational agency for which the amount of the state funding entitlement determined under subdivision (e), (f), or (g) of Section 2575, or Section 84750.4, 84750.5, or 84751 of the Education Code, as appropriate, is zero, and as described in subdivision (o) of Section 42238.02 of the Education Code, as implemented by Section 42238.03 of the Education Code." Section 2575 relates to funding for county superintendent of schools; section 85750.4, 84750.5, and 84751 relate to community

college district funding; and section 42238.02(o) relates to basic aid K-12 school districts. In enacting section 97.2(d)(2)(B), the Legislature gave a broad directive to Respondent to issue guidance on how subparagraph (A) is to be implemented.

The Revenue and Taxation Code includes an explicit "definition" section that applies "[f]or purposes of this chapter." (Rev. & Tax. Code § 95.) "Jurisdiction" is defined as "a local agency, school district, community college district, or county superintendent of schools." (*Id.* § 95(b)(1)(A).) It also states that "[a] jurisdiction as defined in this subdivision is a 'district' for purposes of Section 1 of Article XIII A of the California Constitution." (*Id.* § 95(b)(1)(B).)[2] Article XIII A, section 1(a), states: "The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties." In turn, Article XIII A, section (b)(3) states:

> Bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph. This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements...

The section does not include reference to charter schools whatsoever. Respondent contends that the definition of "school district" in the constitutional provision is the basis for the definition of "school district" in Revenue and Taxation Code section 97.2.

Respondent argues that the definitions in Revenue and Taxation Code section 95 are sufficient grounds to reject Petitioners' argument, on grounds that when statutory language contains a definitional provision, "the express definition should not be disturbed to reach an implicit, not readily apparent, or convoluted result." (*Chen v. Franchise Tax Bd.* (1998) 75 Cal.App.4th 1110, 1123; *Campos v. Anderson* (1997) 57 Cal.App.4th 784, 791 ("If the legislature has provided an express definition, a court must take it as found."); *Cal. Assn. of Med.*

[2] Section 95 also defines "school entities" as "school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendents of schools. (Rev. & Tax. Code § 95(f).)

Prods. Suppliers v. Maxwell-Jolly (2011) 199 Cal.App.4th 286, 313, citations omitted ("[W]e are not empowered to insert language, such as CAMP's proposed limitation, into the statutory definition of 'abuse.' 'Doing so would violate the cardinal rule of statutory construction that courts must not add provisions to statutes.'"). Code of Civil Procedure section 1858 states that, "[i]n the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such as construction is, if possible, to be adopted as will give effect to all." The Court agrees that the statutory language is clear. The statutory scheme includes a definition section that governs the applicable statutes and that definition does not include charter schools.

Despite the definitions and statutory language set forth above, Petitioners argue that the Revenue and Taxation Code must be read in conjunction with Education Code section 47612(c) and the Charter Schools Act generally. Petitioners allege that the amount distributed from the ERAF to school districts is calculated by adding the LCFF funding needs of the districts and the charter schools in the county. Accordingly, Petitioners contend that charter schools should be included in calculating how much ERAF revenue is to be sent to districts because districts in turn send a proportional amount of their ERAF revenue to charter schools, through in-lieu payments.

Petitioners contend that "[t]he Legislature has long defined the term 'school district' for purposes of education funding to include charter schools," quoting Education Code section 47612(c)[3], which states:

> A charter school shall be deemed to be a "school district" for purposes of Article 1 (commencing with Section 14000) of Chapter 1 of Part 9 of Division 1 of Title 1, Section 41301, Section 41302.5, Article 10 (commencing with Section 41850) of Chapter 5 of Part 24 of Division 3, Section 47638, and Sections 8 and 8.5 of Article XVI of the California Constitution.

Section 47612 governs "Control of charter schools; appropriations; apportionment; school district; calculation of average daily attendance; compliance." It is within Part 26.8,

[3] Respondent argues it is "not generally true" that the Education Code defines "school district" to include charter schools. (See, e.g., Educ. Code § 42238.02(j)(1)(A) ("For school districts, the average daily attendance of the school district in the corresponding grade level ranges computed pursuant to Section 42238.05, excluding the average daily attendance computed pursuant to paragraph (2) of subdivision (a) of Section 42238.05 for purposes of the computation specified in subdivision (d)."); *id.* § 42238.02(j)(1)(B) ("For charter schools, the in-lieu property tax amount provided to a charter school pursuant to Section 47635.").)

addressing charter schools, and chapter 3, covering charter school operations. Petitioner's argument would require that, in order to properly interpret Revenue and Taxation Code section 97.2, Respondent would need to expand beyond the definition within the statute at issue, and beyond the definition provisions provided for the chapter at issue, and even beyond the Revenue and Taxation Code.

Petitioners also argue that Respondent Controller's ERAF Guidance produces results the Legislature could not possibly have intended. Petitioners claim that the reduction in ERAF funds by the five excess ERAF counties decreases the Proposition 98 guarantee statewide, and will have the effect of lowering funding for every district in the state. Petitioners argue that school districts even within these five counties are also facing financial insecurity. Petitioners argue that counties and school districts have challenged ERAF legislation as a means to recover property tax revenues, and each time the ERAF legislation has been upheld. (See *County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442; *San Miguel Consol. Fire Protect. Dist. v. Davis* (1994) 25 Cal.App.4th 134; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264.) However, none of these cases address the question presented here.

The Court finds that Petitioners have failed to demonstrate that the ERAF Guidance provided by Respondent is improper and that this Court should order it withdrawn to issue guidance that includes charter schools "as the Legislature plainly intended." First, the Legislature's directive to Respondent Controller was broad. Respondent's ERAF Guidance was consistent with the definition in Revenue and Taxation Code section 95, referenced in subdivision (A) and this interpretation appears clear from its face. When the plain language of a statute is clear, its plain meaning should be followed. It is a "cardinal rule" that, in performing statutory construction, a court must not add provisions to a statute. (See *People v. Campbell* (1902) 138 Cal. 11, 15; *Ross v. City of Long Beach* (1944) 24 Cal.2d 258, 260, quoting *San Francisco v. McGovern* (1915) 28 Cal.App. 491, 499 ("Possible or even probable meanings, when one is plainly declared in the instrument itself, the courts are not at liberty to search for elsewhere.").) Petitioners do not demonstrate that Respondent's ERAF Guidance is at odds with the Legislature's intent.[4]

[4] The Court also notes that Education Code sections 42238.02(j), which provides for the Superintendent's adjustments to funding, addresses school districts and charter schools separately. It also references the property tax revenue discussed in the Revenue and Taxation Code separately from the in-lieu property tax amounts separately.

The Court need not rule on Respondent's motions to strike the declarations submitted in support of Petitioners' briefing. As such, under either standard of review, the Court finds that the petition for writ of mandate is DENIED. Based on the petition, Petitioners' requests for declaratory relief and injunctive relief likewise fail.

FINAL RULING

The Court affirms the tentative ruling with the following additional findings:

At the hearing, Petitioners reiterated their argument that the Revenue and Taxation Code at issue should be read in conjunction with the Education Code section, and that Respondent is required to provide guidance to counties that states that charter schools must be included in counties' calculation of ERAF capacity and excess ERAF.

Petitioners rely largely on *Los Angeles Unified School District v. County of Los Angeles* (2010) 181 Cal.App.4th 414. Petitioners cite to page 423, which states: "The trial court reasoned that because the pass-through legislation does not mention the ERAF legislation, the statutes 'are separate statutory schemes that were not intended to be read together. Conflating the statutes as LAUSD requests would result in LAUSD obtaining a financial windfall to the detriment of non-school taxing entities. The Legislature does not appear to have intended such a result.'" The decision states that when statutory schemes overlap, courts must read them together to give effect to all provisions to the extent possible. (*Id.* at 426.) The Court of Appeal found that adopting the interpretation advocated by the County of Los Angeles "would effectively eliminate" subdivision (d)(5) from Revenue and Taxation Code sections 97.2 and 97.3. In fact, the Court states that this was the basis for its decision. (See *id.* at 424, footnote omitted ("For the reasons that follow, we conclude that the answer to this appeal is found in the clear and unambiguous language of subdivision (d)(5) of sections 97.2 and 97.3 (jointly, subdivision (d)(5).)"); see also *id.* at 426 ("Subdivision (d)(5) plainly and unambiguously states that property tax revenue shifted to ERAF's under sections 97.2 and 97.3 is deemed property tax revenue allocated to the ERAF's. Given that, in the County's words, 'ERAFs are merely an accounting device,' we are compelled to conclude that any property tax revenue deemed allocated to ERAF's under subdivision (d)(5) necessarily qualifies as property tax revenue to the school that received it.").)

(See Educ. Code § 42238.02(j)(1)(A), (B).) Section 42238.03 also addressed school districts and charter schools separately throughout.

The facts in this case are distinguishable. Here, the statutory provisions at issue do not incorporate or reference one another, as was the case in *Los Angeles County*. In that case, Revenue and Taxation Code sections 97.2(d)(5) specifically names Health and Safety Code section 33681. Section 97.3(d)(5) then incorporates section 97.2(d). There is no such parallel in the facts of the instant case. Additionally, Revenue and Taxation Code section 96.1 states, in relevant part: "For purposes of allocations made pursuant to Section 96.1 . . . , the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than amounts deposited in the Education Revenue Augmentation Fund pursuant to . . . the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year." (*Id.* at 424-425, footnote omitted.) The Court found that "[b]y incorporating the ERAF legislation into section 96.1's yearly allocation of property taxes, the Legislature implemented an annual shift of property taxes to ERAF's for distribution to the schools. Although this shift was implemented at the expense of cities, counties, and special districts, the Legislature was clearly authorized to make this redistribution. (*Id.* at 425, citations omitted.)

Here, as discussed in the tentative ruling, the Legislature did not include charter school within the definition of "school district" for the relevant statutory provisions. School districts receive property tax revenue and charter schools receive in-lieu property tax payments. In this case, adopting Petitioners' interpretation of the Revenue and Taxation Code would be contrary to the plain language of the statutes at issue and would be extending beyond their incorporated definitions.

The petition for writ of mandate is DENIED. Petitioners' requests for declaratory relief and injunctive relief likewise fail.

* * *

In accordance with Local Rule 1.06, Respondent's counsel is directed to prepare an order denying the petition, incorporating this ruling as an exhibit to the order, and a separate judgment; submit them to opposing counsel and counsel for Real Parties in Interest for approval as to form in accordance with CRC 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with CRC 3.1312(b).

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D Schaber Courthouse
720 Ninth STREET
Sacramento, CA 95814-1311

SHORT TITLE: California School Boards Association vs. Betty Yee, in her official capacity as Controller of the State of California

CLERK'S CERTIFICATE OF SERVICE BY MAIL	CASE NUMBER: **34-2021-80003680-CU-WM-GDS**

I certify that I am not a party to this cause. I certify that a true copy of Ruling on Submitted Matter was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Sacramento, California, on 06/07/2022.

Clerk of the Court, by: */s/ B. Sierra* , Deputy

STEVEN S ROSENTHAL
LOEB & LOEB LLP
10100 SANTA MONICA BOULEVARD # 2200
LOS ANGELES, CA 90067 US

STEPHEN RAAB
3501 CIVIC CENTER DRIVE # 275
SAN RAFAEL, CA 94903 US

JAMES R WILLIAMS
70 WEST HEDDING STREET # 9TH FLOOR
SAN JOSE, CA 95110-1770 US

BENJAMIN GEVERCER
OLSON REMACHO, LLP
1901 HARRISON STREET # 1550
OAKLAND, CA 94612 US

TARA M STEELEY
DEPUTY CITY ATTORNEYS CITY HALL
1 DR. CARLTON GOODLETT PLACE
SAN FRANCISCO, CA 94102 US

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