Senate Budget and Fiscal Review—Nancy Skinner, Chair

SUBCOMMITTEE NO. 1

Agenda

Senator John Laird, Chair Senator Dave Min Senator Rosilicie Ochoa Bogh



Tuesday, February 8, 2022 9:00 a.m. State Capitol - Room 3191

Consultant: Yong Salas

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Issue	1: Expanded Learning Opportunities Program	
	2: Special Education Funding Proposals	
	3: Funding for County Offices of Education and Excess Property Tax	

Public Comment

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6100 DEPARTMENT OF EDUCATION

Issue 1: Expanded Learning Opportunities Program

Panel.

- Álvaro Meza, Assistant Superintendent/Chief Business Official, Gilroy Unified School District
- Amanda Reedy, Program Administrator, Gilroy Unified School District
- Lina Grant, Department of Finance
- Michael Alferes, Legislative Analyst's Office
- Michael Funk, California Department of Education

Background.

After School Education and Safety Program. Proposition 49 of 2002 established the After School Education and Safety (ASES) Program, and supported local after school education and enrichment programs with a continuous appropriation of up to \$550 million each year for ASES, which would depend on the growth in the General Fund outside of Proposition 98. No more than 1.5 percent of these funds is available to the Department of Education for technical assistance, evaluation, and training services. These programs are created through partnerships between schools and the local community to provide resources to support literacy, academic enrichment, and activities for students in kindergarten through ninth grade. ASES programs must include an educational and literacy element that provides tutoring or homework assistance, as well as an educational enrichment element.

The ASES program supports over 4,000 elementary and middle schools offering afterschool and summer programs to more than 400,000 students daily. The ASES program had a guaranteed funding level of \$550 million annually through Proposition 49. The 2017-18 budget included an additional \$50 million in ongoing funding for the ASES program, bringing total guaranteed ongoing funding levels to \$600 million which is then distributed on a per-pupil basis to schools with at least 50 percent of elementary, middle, or junior high school students who are eligible for free or reduced cost meals.

21st **Century Community Learning Centers (CCLC).** The 21st CCLC is a federal program that supports community learning centers providing academic enrichment opportunities during non-school hours for children, particularly students who attend high-poverty and low-performing schools.

The No Child Left Behind Act of 2001 was signed into law in January 2002, authorizing the California Department of Education to administer California's 21st CCLC Program. This state-administered, federally funded program provides five-year grant funding to establish or expand before-and after-school programs that provide transitional kindergarten through twelfth-grade students with academic enrichment opportunities and supportive services to help the students meet state and local standards in core content areas.

Community learning centers must offer families of these students literacy and related educational development. Centers – which can be located in elementary or secondary schools or other similarly accessible facilities – provide a range of services to support student learning and development, including tutoring and mentoring, homework help, academic enrichment, and community service opportunities, as well as music, arts, sports and cultural activities.

In California, this funding is broken into two: 21st CCLC serves students in transitional kindergarten through ninth grade. After School Safety and Enrichment for Teens (ASSETs) serves students in high school.

Expanded Learning Opportunities Grant. The 2021 Budget included \$4.6 billion in Expanded Learning Opportunities Grants that was provided to local educational agencies proportionate to each agency's share of the Local Control Funding Formula allocation. These funds are for local educational agencies to provide supplemental instruction and support to students. Specified uses included extended instructional learning time, accelerated learning strategies, summer school, tutoring or one-on-one support, professional development, and social-emotional wellbeing supports, among others.

Expanded Learning Opportunities Program. In addition to the Expanded Learning Opportunities Grant, the 2021 Budget established the Expanded Learning Opportunities Program to provide students access to after school and intersessional expanded learning opportunities for nine hours of developmentally appropriate academics and enrichment activities per instructional day and for six weeks each summer. Classroom-based local educational agencies are allocated funds based on their enrollment of unduplicated pupils (low-income, foster youth, and English learners) in grades TK through sixth grade.

For the 2021-22 fiscal year, local educational agencies with unduplicated enrollment at 80 percent or more of total enrollment receive a higher rate. The budget provided \$754 million in one-time Proposition 98 funding and, combined with funds allocated in the budget act, a total of \$1.75 billion was provided for this program in the 2021-22 fiscal year. Subject to future appropriations, the program is intended to grow to provide funding of \$2,500 per unduplicated pupil, and reach a total scale of \$5 billion in annual funding. In the 2021- 22 school year, local educational agencies must offer specified expanded learning to all pupils in grades TK through sixth on school days and for at least 30 non-school days during intersessional periods, and provide access to these services to at least fifty percent of unduplicated enrollment in the specified grade span.

Beginning with the 2022-23 fiscal year, local educational agencies with an unduplicated pupil percentage of 80 percent or above must offer expanded learning opportunity program services to all of its students and provide access to services to any student in kindergarten through sixth grade whose parent or guardian requests it. Local educational agencies with an unduplicated pupil percentage below 80 percent are required to offer it to all of its K-6 unduplicated students and provide program access to at least 50 percent of its unduplicated population. Funds provided to local educational agencies for the Expanded Learning Opportunities Program in the 2021-22 fiscal year must be used to develop an expanded learning opportunity program or provide services in accordance with program requirements, and may also be used in the 2022-23 fiscal year.

Local educational agencies are allowed to incorporate all three programs and funding streams – ASES, 21st CCLCs, and the Expanded Learning Opportunities Program – into one comprehensive program for its communities. For example, unduplicated students who are counted towards ASES program funding are allowed to be counted towards the expanded learning program requirements, and funds provided through the expanded learning opportunities program are allowed to be used for the local match in ASES. However, ASES and 21st CCLC are funded at the school site level, while the expanded learning opportunity program funds are allocated to local educational agencies.

However, participation in ASES or 21st CCLC is contingent upon eligibility and available funding – according to the California Department of Education, 4,231 schools participate in ASES, 399 schools participate in 21st Century Elementary/Middle program, and 322 schools participate in 21st CCLC ASSETs. 374 sites are dual-funded, and receive both ASES and 21st CCLC funding.

Governor's Budget Proposal.

The proposed budget includes an additional \$3.4 billion ongoing Proposition 98 General Fund for the Expanded Learning Opportunities Program, increasing per pupil funding for the program to \$2,500 for local educational agencies with an unduplicated pupil percentage equal to or greater than 75 percent, and an estimated \$2,027 for those that are below 75 percent. Additionally, it would extend the grace period for which local educational agencies would be required to implement the program from 2022-23 to 2023-24. The proposal also defines prorated penalties for local educational agencies that fail to offer or provide access to expanded learning opportunity programs by based on the number of students not offered or provided access, or failure to maintain the required number of days or hours.

The Budget also proposes \$937 million one-time Proposition 98 General Fund to support Expanded Learning Opportunities Program infrastructure, with a focus on integrating arts and music programming into the enrichment options for students.

Finally, the Budget continues one-time reimbursement rate increases (at a cost of \$148.7 million ongoing Proposition 98 General Fund) from the 2021 Budget Act for the After School Education and Safety and 21st Century Community Learning Centers programs.

Suggested Ouestions.

- DOF: How did the Administration determine that the threshold for local educational agencies to offer expanded learning opportunity programs to all of its pupils be expanded to a 75 percent unduplicated pupil percentage, and not another percentage?
- DOF/LAO/CDE: Do we know how many school districts do not currently have any ASES or 21st Century CLC programs? What kind of resources or support are provided for those districts who do not have ASES/21st Century CLC in place?
- DOF/CDE: Could you please describe the alignment between the three programs?

• Gilroy Unified: What types of systemic improvements to the expanded learning framework would you recommend to help you and other school districts be successful?

Staff Recommendation. Hold open.

Issue 2: Special Education Funding Proposals

Panel.

- Liz Mai, Department of Finance
- Amy Li, Legislative Analyst's Office
- Heather Calomese, California Department of Education

Background.

Children with developmental delays or physical impairments may need intervention or supports of some form and are eligible to receive supportive services through a variety of programs. Once a child enters the public school system, typically at age five, the school district of residence provides both education services and eligible special education supports and services for identified disabilities that would otherwise hinder a child from receiving a "free and appropriate public education." For infants, toddlers, and preschool aged children (generally ages zero to five), families may need to navigate a variety of programs to meet the educational and developmental needs of their children. Once a child enters the public school system, the child is eligible to receive services through age 21.

"Special education" describes the specialized supports and services that schools provide for students with disabilities under the provisions of the federal Individuals with Disabilities Education Act (IDEA). Federal special education laws originally enacted in 1975 and reauthorized as IDEA in 2004, require states to provide early intervention services for infants and toddlers and schools to provide "specially designed instruction, and related services, at no cost to parents, to meet the unique needs of a child with a disability." The law requires the provision of these special supports and services to students with exceptional needs from age 0 to age 22, or until they graduate from high school with a diploma.

Children with disabilities who are younger than age five and are not yet in school settings receive supports and services in different ways. For infants and toddlers (ages zero to three years old), an individualized family service plan is created and services are generally provided by regional centers. These centers are non-profit agencies overseen by the Department of Developmental Services. However, a small percentage of infants and toddlers with special needs are served by school districts. A small number of school districts that had historically served these children were grandfathered into the current system and currently serve approximately 5,000 children. In addition, schools serve a small number of infants and toddlers (approximately 1,000) who have only a hearing, visual, or orthopedic (HVO) impairment. The state's federal IDEA plan required HVO-related services to be provided by the schools if an HVO impairment is the child's only disability. Once a child reaches age three, the responsibility for serving children with disabilities

is transferred to the school district of residence and regional centers are required to work with school districts during this transition.¹ Through regional centers and school districts, the state also operates a child-find system to identify children for evaluation for early intervention and special education eligibility.

To determine a child's eligibility for special education, schools must conduct a formal evaluation process within a prescribed timeline. If it is determined that a child is an eligible student with disabilities, a team including special education staff, school staff, parents, and other appropriate personnel meet to develop an individualized education program (IEP) to define the additional special education supports and services the school will provide. Each student's IEP differs based on his or her unique needs. Specialized academic instruction is the most common service that schools provide. This category includes any kind of specific practice that adapts the content, methodology, or delivery of instruction to help students with disabilities access the general curriculum. Other commonly provided services include speech and language, physical and occupational therapy, behavioral support, and psychological services. Educationally-Related Mental Health Services are specific mental health services provided to students who qualify for special education services, present with social-emotional needs that have not responded to lower levels of intervention, and impact their ability to learn or benefit from their special education program.

Federal law also dictates that students must receive a Free Appropriate Public Education in the Least Restrictive Environment. This means that to the greatest extent possible students with disabilities are to receive their education in the general education environment with peers without disabilities. WestEd, and funded by the California Department of Education, released a report in November 2021 titled *California Special Education Governance and Accountability Study*. The report found that California has among the country's lowest rates for including students with an IEP in general education for at least 80 percent of the school day and had among the highest rates for including these students less than 40 percent of the school day. The lowest levels of inclusion are for Black and Latino students, regardless of disability category.

In 2018-19, 795,047 children, ages 0-22 received special education under the provisions of IDEA in California. This represents approximately 12.5 percent of the total state student population. Specific learning disabilities is the most common disability category for which students are identified, followed by the disability category of speech and language impairments. In recent years, the disability category of autism moved in to the position of third highest category. This is after a decade of increased incidence – now comprising nearly 14 percent of the students with disabilities student population. Different types of disabilities are more prevalent at different ages. For example, speech impairments are most common in earlier grades, while learning disorders are generally identified later in a child's educational career. Schools integrate services and supports into the regular school day for transitional kindergarten through grade 12 students. For children ages 3-5 years old not yet attending school or who are served in an early care setting, preschool, or at home, the school district of residence provides services that may occur at the child's education or care setting, or at a facility designated by the school district. These services are in addition to

¹ Legislative Analyst's Office, Evaluating California's System for Serving Infants and Toddlers with Special Needs, January 4, 2018.

the early education and child care services children may be receiving if they are enrolled in one of the state or federally-funded programs or in some other early education or care setting.

Special Education Local Plan Areas (SELPAs) and Fund Distribution. State and Federal special education funding is distributed regionally through 134 Special Education Local Plan Areas (SELPAs) to school districts and charter schools in the state. Most SELPAs are collaborative consortia of nearby districts and charter schools, although some large districts have formed their own single district SELPAs, while five SELPAs consist of only charter schools.

California relies primarily on a "census—based" funding methodology that allocates special education funds to SELPAs based on the total number of students attending, regardless of students' disability status. This funding model, often referred to as the AB 602 formula, after the implementing legislation (AB 602 [Davis and Poochigian], Chapter 854, Statutes of 1997), implicitly assumes that students with disabilities and associated special education costs are relatively equally distributed among the general student population and across the state. The amount of per–pupil funding each SELPA receives varies based on historical factors. After receiving its allocation, each SELPA develops a local plan for how to allocate funds to the school districts and charter schools in its region based on how it has chosen to organize special education services for students with disabilities. The ADA used to calculate the AB 602 formula is based on enrollment in grades kindergarten through grade 12 (including transitional kindergarten). Although SELPAs are serving 3-5 year olds, they do not receive any additional funding under the AB 602 formula for these children, with the exception of funds provided in 2019-20. Federal funds are available for regional center services and a small amount (about \$100 million) is available for preschool services.

State and federal special education categorical funding totals over \$6 billion annually. California's model for serving special education services reflects that school districts first use their general purpose, LCFF funds to meet the needs of all students, including those with disabilities, and then use a combination of state and federal special education funding and other local general purpose funds to cover the costs of additional services students with disabilities may need. While it is difficult to measure the amount of additional resources school districts provide from other areas of their budget for special education, according to a report by the Legislative Analyst's Office, state and federal funding cover approximately one-third of the additional cost of special education, with school districts covering the remaining costs from other fund sources.² In recent years, the costs of special education have risen due to schools identifying higher numbers of students with disabilities, and similar to general education, due to rising salary and benefit costs for teachers of special education students.

Recent Budget Actions

2019 Budget. The 2019-20 budget included a total increase of \$645 million in ongoing Proposition 98 General Fund for special education. Of this, \$152.6 million was provided to increase base special education funding rates to ensure that all SELPAs receive at least the statewide target rate (approximately \$557 per ADA in 2019-20) under the existing AB 602 funding formula.

² Legislative Analyst's Office, Overview of Special Education Funding Models, December 2021

The remaining \$492.7 million created the Special Education Early Intervention Preschool grant, provided to school districts based on the number of three through five-year olds with exceptional needs. This provided approximately \$9,010 per child. These funds were unrestricted. Therefore school districts could use these for any special education purpose. LEAs, school districts, county offices of education, and charter schools could use these to fund special education services that were previously paid for with their general operations funding (including services provided to 3-5 year olds), freeing up funds for other school district needs.

The 2019-20 budget also included language to specify that the increase in the statewide funding rate and early interventions be allocated in a one-time manner and future allocation methodologies would be contingent upon the passage of legislation in the 2020-21 budget to reform the special education system to improve outcomes for students.

2020 Budget. The 2020-21 budget created a new special education funding formula, commencing with the 2020-21 fiscal year, that provides Special Education Local Plan Areas (SELPAs) with the greater of \$625 per average daily attendance or the per ADA rate the SELPA received in 2019-20, and applies a cost-of-living-adjustment (COLA) in future years to the statewide base rate. A COLA was not provided in the 2020-21 fiscal year. The budget provided an additional \$645 million in ongoing Proposition 98 funds for special education. Of this, \$545 million increased the statewide base rate for special education funding and \$100 million was provided to increase per pupil rates to support students with low incidence disabilities.

2021 Budget. The 2021-22 budget included several investments for special education, including: \$397 million to increase base special education funding rates for all Special Education Local Plan Areas (SELPAs), \$450 million in one-time Proposition 98 funds to SELPAs for purposes of providing learning recovery support pupils, and \$100 million one-time Proposition 98 funds for alternative dispute resolution. The budget also includes language to specify that the ongoing appropriation of funds for Special Education programs, in the 2022-23 fiscal year, is contingent upon notice from the Director of Finance to the Joint Legislative Budget Committee that trailer bill legislation for the Budget Act of 2022 makes statutory changes designed to improve the academic outcomes of individuals with exceptional needs, that may include changes to special education funding formulas, expansions of early intervention and inclusive practices, and other changes as a result of ongoing studies.

Governor's Budget Proposal.

The proposed budget includes \$500 million ongoing Proposition 98 General Fund for the special education funding formula, paired with the following changes to special education:

- Changes to the special education funding formula to calculate special education base funding allocations at the local educational agency level rather than the SELPA level.
- Consolidate two special education extraordinary cost pools into a single cost pool to simplify the current funding formula.

• Allocate Educationally-Related Mental Health Services funding directly to local educational agencies rather than to SELPAs.

- Develop a Special Education Addendum to the Local Control and Accountability Plan that
 will support inclusive planning and linking special education and general education
 planning, so parents of students with disabilities have a defined role in the Local Control
 and Accountability Plan development process.
- Focusing a special education resource lead on Individualized Education Programs (IEPs) best practices, and establishing an expert panel to continue the work of creating a model IEP template.
- Establish an alternate diploma and a workgroup to explore alternative coursework options for students with disabilities to demonstrate completion of state graduation requirements.

Legislative Analyst's Office.

The Legislative Analyst's Office provides the following recommendations on the Administration's proposals on special education:

Recommend Adopting Proposed Base Rate Increase. Given historical statewide increases in special education costs, we think using growth in Proposition 98 funding to provide special education base rate increases is a prudent way to address local cost pressures. This approach would reduce the need for LEAs to rely on local general purpose funding to cover growing costs. Furthermore, the base rate augmentation helps to offset reductions in special education funding that are driven by decreases in overall attendance. (The base rate formula is tied to overall student attendance, which has been declining for several years.)

Formula Modification Provides Additional Funding Buffer for Some SELPAs. The proposed formula modification would benefit SELPAs that include a mix of growing and declining member LEAs. (The proposed change would have no effect on SELPAs where all members are declining or growing, or on single LEA SELPAs.) Under current law—where attendance is calculated at the SELPA level—a member district with growing attendance could have their gains offset by another member district with declining attendance. By contrast, the Governor's proposed approach would provide additional funding to reflect growth within a specific district, even if overall attendance in a SELPA is declining. We think this is a reasonable approach, as it provides additional cushion for SELPAs with some member LEAs experiencing declining enrollment. Depending on how funds are allocated within the SELPA, this cushion could allow growing districts to receive more special education funding without requiring reductions to districts experiencing attendance declines.

Recommend Setting Clear Expectations and Time Lines for Activities Related to Previous Work Groups. The proposed activities to continue work from previous work groups lack specific time lines. For instance, the Governor's proposal does not specify a date by which the alternative coursework and activities for an alternate pathway to a diploma must be finalized or made available to teachers. In the report submitted this past October, the alternate pathway work group suggested that districts be allowed to pilot the new alternate pathways as soon as possible, with statewide implementation by 2023-24. It is unclear how the proposed activities would affect this time line.

Similarly, the administration has no deadline for when stakeholders must convene and refine the statewide IEP template and no expectations for next steps after the template has been refined. Should the Legislature be interested in funding additional activities to implement the recommendations of these work groups, we recommend it specify clear deadlines and reporting requirements to monitor the outcomes of these activities. To ensure these activities result in statewide policy changes, the Legislature may also want to consider setting explicit deadlines for the state to adopt these items. For example, by setting a date by which the State Board of Education must adopt alternate pathways to a diploma.

of Mental Health Proposal on Regional Programs Consider the **Effects Partnerships.** Before adopting the Governor's proposal, the Legislature may want to better understand how the mental health proposal might impact regionally coordinated programs and partnerships. Although many SELPAs allocate mental health funding directly to their member LEAs, some SELPAs—especially those with smaller member LEAs—retain this funding and operate regional mental health programs on behalf of their members. In some cases, the member LEAs would not receive sufficient funding from the program under the Governor's proposal to hire mental health staff and, hence, likely would still need to combine funds across the SELPA to ensure access to mental health services when required by a student's IEP. Allocating funding directly to LEAs could also affect partnerships with county mental health programs. The state has provided \$235 million one-time and \$10 million ongoing funding for school-county mental health partnerships since 2019-20. Under such a partnership, a SELPA could direct mental health funds to its county mental health department, which then provides widespread student services in schools throughout the county. Allocating funds directly to LEAs could pose challenges for maintaining the existing levels of funding for regional mental health services, or could make managing these programs more administratively burdensome (by requiring counties to develop agreements with each LEA). The Legislature may want to further explore the potential benefits of this proposal and determine whether these benefits outweigh the impact on regional programs or partnerships.

Impact of Consolidating Extraordinary Cost Pools Unclear. We are uncertain whether the proposal to consolidate the two existing extraordinary costs pools would have any practical impact. Our understanding is that the administration intends to fund mental health services requests from small SELPAs first, and then make any remaining funding available for high-cost nonpublic school placements. In practice, this is consistent with how the extraordinary cost pools currently operate, because the mental health services funding is rarely exhausted.

No Concerns With Developing Special Education Addendum or Establishing an IEP Best Practices Resource Lead. A special education addendum to the LCAP could increase transparency regarding how LEAs spend special education funding and facilitate more local input on actions to support special education students. Designating a resource lead for IEP best practices within the system of support could assist with the implementation a statewide IEP template. The Legislature may want to require the new resource lead be involved in the development of the IEP template, to ensure that statewide technical assistance on IEPs is consistent with the final statewide IEP template.

Suggested Ouestions.

• DOF: Under the Administration's proposal, will be there be notable differences in the role that SELPAs play compared to their role today?

• DOF/CDE: For students in special education whose families have elected to keep them home during the pandemic or had to quarantine due to COVID-19 exposure or infection, what types of supports are available to help address the learning loss? Will any of the additional funding proposed be targeted towards these types of interventions?

Staff Recommendation. Hold open.

Issue 3: Funding for County Offices of Education and Excess Property Tax

Panel

- Edgar Cabral, Legislative Analyst's Office
- Aaron Heredia, Department of Finance

Background

Historical Use of Excess Tax for County Offices of Education (COEs). Proposition 13 of 1978 capped property taxes and provided the Legislature with full discretion on how the property taxes and excess amounts are spent. The allocation of property taxes was determined in AB 8 (Chapter 282, Statutes of 1979).

Prior to the last recession, COE excess property tax revenue was restricted and used by the state the following fiscal year in the calculation of Proposition 98 minimum guarantee and to offset the cost of apportionments. While these funds remained in county accounts, which allowed them to earn interest on the balance, the funding has always been used by the state to pay for some program or apportionment.

In 2011-12 (AB 114, Statutes of 2011), a one-time change was made that redirected excess property taxes from restricted accounts to help offset the state General Fund cost of trial courts within each county. This change was made permanent effective January 2013.

Currently, excess tax has grown to over \$115 million for 11 COEs (as of 2020-21, most recently available data), and the Department of Finance estimates that this number will grow to \$128 million in 2022-23, all of which go towards offsetting the state General Fund cost of trial courts within each county.

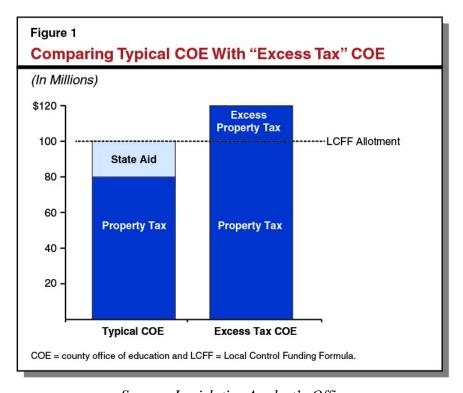
COE Funding. Under the Local Control Funding Formula (LCFF), COE funding was calculated differently than it been in the past. The COE LCFF allocates funding for COEs as follows:

• A COE operations grant based on the number of school districts within the county and the average daily attendance within the county attributable to school districts and charter schools; and

 A COE alternative education grant for instructional services based on the number of students directly served by the COE (students in juvenile court schools, on probation, probation referred, or expelled).

In order to transition to the new LCFF allocation, COEs were provided a hold harmless for their 2012-13 level of funding (including all categorical funds for programs they operated at the time). COEs were no longer required to provide the same services that they had provided in 2012-13, and those COEs whose property taxes do not meet their LCFF targets are provided with state funding.

Some COEs do not receive state LCFF funding because they collect enough property tax revenue in a given year to cover their entire LCFF allotment. In virtually all of these cases, the COEs collect *more* in property tax revenue than their LCFF allotment, otherwise known as a COE's "excess property tax." The figure below illustrates this concept for two COEs with the same annual LCFF allotment of \$100 million. The first COE receives a combination of property tax revenue and state aid to meet its LCFF allotment. In contrast, the second COE receives \$20 million in property tax revenue in excess of what it needs to meet its LCFF allotment. Because the amount of property tax revenue collected can change from year to year, a COE's excess property tax status also can change from year to year.



Source: Legislative Analyst's Office

As of 2020-21, 25 COEs are funded at their LCFF target and 33 COEs are funded at their 2012-13 hold harmless amount. Of the 11 COEs with excess tax in 2018-19, 8 are funded at a hold harmless amount.

In recent years, COEs have received additional funding outside of their LCFF allocation for additional workload associated with assisting school districts identified for technical assistance and interventions.

Staff Recommendation. This item is informational only.