



March 25, 2024

The Honorable Gavin Newsom,  
Governor  
1021 O Street, Suite 9000  
Sacramento, CA 95814

The Honorable Tony Thurmond,  
State Superintendent of Public Instruction  
California Department of Education  
1430 N Street  
Sacramento, CA 95814-5901

The Honorable Mike McGuire,  
Senate President pro Tempore  
1021 O Street, Suite 8518  
Sacramento, CA 95814

The Honorable Robert Rivas,  
Speaker of the Assembly  
State Capitol  
P.O. Box 942849  
Sacramento, CA 95814

Dear Governor, State Superintendent, Senate President and Assembly Speaker,

Proposition 28 was passed in November 2022 by California voters to ensure that every student has the opportunity to participate in arts and music. The initiative will address the sad fact that, before the passage of the law, barely 1 in 5 public schools in California had a full-time arts or music teacher. Prop 28 provides funding for every school to increase spending on arts education. 6,924,618 people voted in favor of this initiative, about 65% of the electorate, providing the largest margin of victory for an education measure in state history. In an unprecedented step, no argument was submitted to voters in opposition to Prop 28. It's clear that Californians overwhelmingly want more arts and music in public schools.

It has come to our attention, however, that some school districts in California are willfully violating the law by using the new funds provided by Prop 28 to replace existing spending for arts education at schools. The practical effect of this will be to significantly reduce the additional,

annual investment of approximately \$1 billion for arts education approved by voters. Instead of hiring about 15,000 additional teachers and aides, the funds would instead be used to pay for existing programs. This means millions of children will miss out on the arts education voters promised them.

The current school year is the first full year of Prop 28. If schools do not properly implement the law now, a pattern of violation will be established, and the consequences will be long-lasting and severe.

A diverse coalition of teachers, school staff, artists and entrepreneurs, business and labor leaders, community arts organizations, along with the parents of children in California public schools came together to create Prop 28 and help get it passed. We're counting on you to do what is right and ensure the law is properly implemented.

### What the Law Says

The requirement that all Proposition 28 funds be used to supplement funding for arts programs is stated directly in the text of the initiative. New Education Code section 8820(a) provides:

- (a) The Arts and Music in Schools – Funding Guarantee and Accountability Act is hereby established for the purpose of providing a minimum source of annual funding K-12 public schools, including charter schools, to **supplement** arts education programs for pupils attending those schools.

Section 8820(g) provides:

(g) As a condition of receipt of funds pursuant to this chapter, a local educational agency shall annually:

- (1) Certify that all funds are used to provide arts education....
- (2) Certify that such funds received will be used to **supplement** funding for arts education programs and that funds received in the prior fiscal year were, in fact used to **supplement** arts education programs.

The term “supplement” as used in these sections is defined to mean: “that the funds appropriated by this chapter shall be used by local educational agencies to **increase funding** of arts education programs **and not to supplant existing funding** for those programs.” (Educ. Code § 8821(e))

The statutory purpose is also stated directly in the text of Proposition 28:

SECTION 1. Findings and Declarations:

- (d) The cause of the steady decline in arts and music education is directly linked to inadequate and unstable funding of such programs. ...

(e) The solution to this problem is clear. We need to provide California public schools with a dedicated annual source of **additional funding** for arts and music education....by:

(1) **Increasing and stabilizing funding** for arts and music education...

(2) Holding public officials accountable for using such funds for arts and music education by:

(C) Ensuring that **every public school will receive increased funding** for arts and music education.

(f) This measure will provide **funds to increase by more than 50 percent the number of arts and music educators in classrooms.**

The ballot materials approved by voters also indicate the clear intent of Proposition 28 and are completely consistent with the interpretation of the statute as drafted.

A. The ballot title and summary

The ballot title and summary for Proposition 28, included in the ballot pamphlet stated, in part:

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

- Provides **additional funding** for arts and music education in all K–12 public schools (including charter schools) by annually allocating from state General Fund an amount equal to 1% of required state and local funding for public schools.

B. The Legislative Analyst’s Analysis.

The Analysis by the Legislative Analyst, included in the ballot pamphlet stated, in part:

**Requires Funding Be Used Primarily to Hire New Arts Staff.** Proposition 28 requires funding be used for arts education programs **and requires schools to certify that these funds were spent in addition to existing funding for arts education programs.**

C. The Ballot Argument in Favor of Proposition 28

Lastly, the ballot argument in favor of Proposition 28 was also consistent with the other ballot materials presented to voters. A part of that argument stated:

**ADDITIONAL FUNDING FOR ARTS AND MUSIC EDUCATION WITHOUT RAISING TAXES**

Prop. 28, the Arts and Music in Public Schools measure, dedicates nearly \$1 billion a year *in additional funding* for arts and music education in Pre-K—12 public schools—without raising taxes. Under Prop. 28:

- ***Every public school in every school district will receive increased funding for arts and music education—so every student benefits.***

Prop. 28 ***protects existing education funding***—and does not raise Taxes.

### The Flawed Arguments Made by Violators

Some school districts are violating the law by using the new funds to pay for existing programs and supplies. The use of Proposition 28 funds must increase the number of arts teachers and provide for new or enhanced arts programs at every school site. Failure to identify the same is *prima facie* evidence that a school district or a school site is not complying with Proposition 28.

These school districts claim that because the prior sources of funding for arts teachers, school staff and supplies are one-time, are expiring, or have been zeroed out by the district, they can use Prop 28 funds to replace those funds. That is not correct. ***Nowhere does Prop 28 say that the source of funds for existing arts programs (federal, state, local or private) creates any exception to the clear and plain language of the initiative.***

At least one school district claims that it is not supplanting funds for arts education because the total amount being spent by the district has increased. Again, this is not a correct understanding of the law. ***The law clearly states that every public school will receive increased funds for arts and music education.*** Prop 28 allocates a certain amount of funding to each and every school to make this possible.

While school districts (LEA's) are responsible for the proper implementation by schools in their district (LEA), the amount for each school is determined by the law. The full amount of funding should have been made available to each school now that the state has provided each district (LEA) with the 2023-24 Prop 28 funds.

The California Supreme Court has described the rules for interpreting statutes consistently for decades. The general principal was stated in *People v. Valencia* (2017) 3 Cal.5th 347 as follows:

We have long recognized that the language used in a statute or constitutional provision should be given its ordinary meaning, and “[i]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters).” (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) To that end, we generally must “accord[] significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose,” and have warned that “[a] construction making some words surplusage

is to be avoided.” (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.)

(*Id.* at 357.) As indicated above, the language of Proposition 28 requires no interpretation and the clear violation of its provisions must not be allowed to stand.

### The Remedy

We urge you to direct school districts to submit to CDE, in the next 30 days, the following information in order to ensure proper implementation of Prop 28.

1. A certification stating that Prop 28 funds have not been used to supplant any existing spending for arts education at any school.

The baseline, existing spending amount for this certification should be SY 2022-23, the year before Prop 28 came into effect. In simple terms, if a school spent \$100,000 on arts education in SY 2022-23 they would need to recommit \$100,000 before using any Prop 28 funds.

2. A listing of additional arts and music teachers employed by each school district in SY 2023-24, and how that compares to SY 2022-23.

Again, in simple terms, if a school district is spending Prop 28 funds and has not increased the number of arts teachers it employs then by definition it is using the funds to supplant prior spending.

If any school district is found to have violated the law by improperly using Prop 28 funds, they should be required to return the amount to the state within 30 days. The returned funds can be provided to other school districts which are in compliance with the law.

Prop 28 is the largest investment in arts and music in U.S. history and establishes California as a national leader. But only if it's properly implemented. If school districts are allowed to violate the law without consequence and substitute the new funds for something they were already spending money on, their actions will make a mockery of voters' clear wishes.

On behalf of the 6 million children in California public schools, we ask your help and request your immediate attention to this issue.

Thank you,



Max Arias, *President SEIU 99*



Ismael Armendariz, *President Oakland Education Association*



Austin Beutner, *Author Prop 28*



Cecily Myart-Cruz, *President UTLA*



Jeff Freitas, *President CFT*



Lourdes M. Garcia, *Secretary-Treasurer TEAMSTERS LOCAL 572*



David Goldberg, *President CTA*