

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Section 51224.5
Statutes 2000, Chapter 1024;

Filed on May 25, 2001;

By Sweetwater Union High School District,
Claimant.

No. 00-TC-14

Algebra Instruction

STATEMENT OF DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500 ET
SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on July 29, 2004)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

PAULA HIGASHI, Executive Director

Date

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STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on July 29, 2004. Lawrence Hendee and Ruth Ann Duncan appeared on behalf of the claimant, Sweetwater Union High School District. Michael Wilkening appeared on behalf of the Department of Finance (DOF).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to deny this test claim by a vote of 5-0.

BACKGROUND

Test claim statute: In 2000, the Legislature enacted Education Code section 51224.5¹ to include algebra as part of mathematics study for grades 7 through 12, as follows:

(a) The adopted course of study for grades 7 to 12, inclusive, shall include algebra as part of the mathematics area of study pursuant to subdivision (f) of Section 51220.²

(b) Commencing with the 2003-04 school year and each year thereafter, at least one course, or a combination of the two courses in mathematics required to be completed pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3³ by pupils while in grades 9 to 12, inclusive, prior to receiving a diploma of graduation from

¹ All statutory references are to the Education Code unless otherwise indicated.

² Section 51220, subdivision (f), requires the course of study for grades 7 to 12 inclusive to include, "Mathematics, including instruction designed to develop mathematical understandings, operational skills, and insight into problem-solving procedures."

³ Section 51225.3 requires a pupil, to receive a high school diploma, to complete specified coursework, including two year-long courses in mathematics.

high school, shall meet or exceed the rigor of the content standards for Algebra I, as adopted by the State Board of Education pursuant to Section 60605.

(c) If at any time, in any of grades 7 to 12, inclusive, or in any combination of those grades, a pupil completes coursework that meets or exceeds the academic content standards for Algebra I pursuant to subdivision (b) in less than two courses, subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3 shall be deemed to have been satisfied and the pupil shall not be required to take additional coursework in mathematics.⁴

SEC. 3. It is the intent of the Legislature that any modification to coursework required by this act shall result in neither additional classes nor in additional costs, but that any modification to coursework shall be incorporated into the requirements of paragraph (2) of subdivision (a) of Section 51225.3 of the Education Code.⁵

Claimant also pled section 51225.3, but did not plead a statute or chapter number. Section 51225.3 has been amended several times since its enactment. Since the Commission cannot determine which version of section 51225.3 the claimant pled, the Commission makes no finding on section 51225.3.

Math standards: In 1997, the State Board of Education (SBE) adopted standards for mathematics in California schools that call for algebra instruction beginning in grade 7 and continuing with Algebra I, Algebra II and Linear Algebra in grades 8 through 12. The standards were not mandatory, and many districts did not adjust course offerings to meet the recommended standards. The legislative history of the test claim statute also reveals an estimate that 30-40 percent of pupils did not take algebra.⁶

⁴ Subdivision (c) was amended by Statutes 2000, chapter 734 (§ 32) as follows:

If at any time, in any of grades 7 to 12, inclusive, or in any combination of those grades, a pupil completes coursework that meets or exceeds the academic content standards for Algebra. ~~I pursuant to subdivision (b) in less than two~~ *Those courses shall apply towards satisfying the requirements of subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3 shall be deemed to have been satisfied and the pupil shall not be required to take additional coursework in mathematics.*

Subdivision (c) was amended again by Statutes 2003, chapter 552 (§ 25) as follows:

*A pupil **who** completes coursework * * * in grade 7 or 8 for algebra is not exempt from the mathematics requirements for grades 9 to 12, inclusive, as specified in subdivision (b) of this section or in subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3.*

These amendments are not before the Commission, which makes no finding on them.

⁵ Section 51223, subdivision (a)(2) requires a pupil, to receive a high school diploma, to complete, "Other coursework as the governing board of the district may by rule specify."

⁶ Senate Rules Committee, Office of Senate Floor Analyses, 3d reading analysis of Senate Bill No. 1354 (1999-2000 Reg. Sess.) as amended April 26, 2000, page 3.

Related claims: The high school exit examination⁷ (Stats. 1999x, ch. 1, Ed. Code, §§ 60850-60856) requires knowledge of first-year algebra content as defined by standards adopted by the SBE. The test claim statute was enacted, in part, to protect the high school exit exam from court challenges because pupils must have the opportunity to learn the subject matter tested.⁸

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant requests reimbursement for the following:

- (1) developing, revising and modifying board policy and regulations regarding the implementation of activities designed to ensure that prior to graduation from high school, each student has completed at least one math course in algebra, or that the combination of the two required mathematics courses meet or exceed the rigor of content standards for Algebra I adopted by the State Board of Education;
- (2) reviewing each graduating student's records to ensure that the new algebra requirement has been accomplished;
- (3) assessing every student's math skill level to determine each student's ability to enter and complete an algebra course;
- (4) developing remedial mathematics courses designed to bring identified students to a skill level that allows them to enter and complete an algebra course;
- (5) providing remedial mathematics courses designed to bring identified students to a skill level that allows them to enter and complete an algebra course;
- (6) providing remedial mathematics course tutoring programs after school, and/or during summer school and intercessions for students demonstrating difficulty in algebra;
- (7) training staff members on the elements of the law and methods to implement the activities required by the law;
- (8) providing algebra readiness courses during summer school and/or intercessions;
- (9) acquisition of or development of mathematical instructional materials designed to bring identified students to a skill level that allows them to enter and complete an algebra course

⁷ The Commission found that the High School Exit Examination test claim, 00-TC-06, is a reimbursable state mandated program during the March 25, 2004 Commission hearing.

⁸ Senate Rules Committee, Office of Senate Floor Analyses, 3d reading analysis of Senate Bill No. 1354 (1999-2000 Reg. Sess.) as amended April 26, 2000, page 2. One of the legislative findings in the test claim statute (Stats. 2000, ch. 1024, § 1, subd. (d)) states:

If pupils are expected to be successful on the high school exit examination, they must be given a reasonable opportunity to learn the subjects upon which they will be tested, especially because a pupil's graduation from high school is contingent upon passing the examination. This standard has been affirmed in federal case law as a threshold requirement for a high stakes examination like the high school exit examination.

(10) negotiation of cost for the purchase of materials required to implement the activities required by law.

Claimant disagreed with the draft staff analysis, claiming staff “ignored claimant’s position that the claim is centered on the requirement that ALL students are the object of the Algebra graduation requirement.” According to claimant, the 2000 Education Code allowed students to decide whether or not they wanted to take algebra, but the test claim statute removed that element of student choice by requiring algebra. Claimant points out that the prior standard was “two courses in mathematics” and argues that the test claim legislation redefined this standard by establishing algebra as the measurement for completing a mathematics course, thereby imposing a higher level of service.

Claimant emphasizes that the 1997 SBE mathematics standards were not mandatory, and suggests that this is because all students do not possess the same mathematical skills, desires, or goals – the same reasons that 30-40 percent of students did not take algebra before the test claim statute was enacted.

Claimant argues that staff’s conclusion that the test claim legislation does not require remedial instruction is contradicted by the Senate Rules Committee analysis of Sen. Bill No. 1354 that the test claim legislation “was enacted, in part, to protect the High School Exit Exam from court challenges because pupils must have the opportunity to learn the subject matter tested.”

Claimant states this finding recognizes that all students have not learned the subject matter, but ignores the fact that all students do not possess the same mathematical skills, desires, and/or goals. Claimant also contends that the test claim statute imposes a higher level of service for remediation in order to determine students’ mathematical needs, to raise skill levels, and to allow all students to enter and have the opportunity to complete an algebra-level course.

Claimant’s other comments are in the analysis below.

State Agency’s Position

In its comments on the test claim, DOF states that the test claim statute should not result in greater costs for school districts, as follows:

[The test claim statute] expresses legislative priority in the type of mathematics courses offered, but does not require school districts to provide more mathematics courses than they currently offer. There is nothing that would prevent school districts from offering mandated Algebra-level coursework in lieu of non-mandated mathematics courses, thereby avoiding additional costs by redirecting the savings that result from terminating a non-mandated class. It is our position that it is appropriate for the Legislature to specify that expenditures being incurred by a school district on an optional program be redirected to one which the Legislature deems to be of higher priority without incurring an obligation under Section 6 of Article XIII B of the California Constitution.

DOF calls the test claim statute “a means for the Legislature to express its priorities and, in this case, the Legislature has deemed Algebra, or Algebra-level courses, to be of higher priority than other mathematics courses that are not specifically mandated.” DOF argues that the test claim statute does not require districts to offer new mathematics courses beyond existing ones. Thus, to the extent that a district “continues to offer classes that are not mandated, that district would voluntarily assume costs associated with offering the new classes and those activities would not be reimbursable.

No other state agencies commented on the test claim.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution⁹ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁰ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹¹ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.¹² In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.¹³

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹⁴ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared

⁹ Article XIII B, section 6 provides:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

¹⁰ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

¹¹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹² *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that

[A]ctivities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.

The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or “draconian” consequences. (*Id.* at p. 754.)

¹³ *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁴ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

with the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁵ Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁶

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁷ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁸

This test claim presents the following issues:

- Is section 51224.5 subject to article XIII B, section 6 of the California Constitution?
- Does section 51224.5 impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6?

Issue 1: Is section 51224.5 subject to article XIII B, section 6 of the California Constitution?

A. Does section 51224.5 require an activity?

In order to be subject to article XIII B, section 6 of the California Constitution, the test claim legislation must require school districts to perform an activity.¹⁹

Remedial instruction: The test claim statute does not mandate or mention remedial instruction.

Claimant pled the activities of developing remedial math courses to bring identified pupils to a skill level for completion of algebra, and providing remedial math course tutoring programs after school, and/or during summer school and intercessions for students demonstrating difficulty in algebra. Claimant argues that all students do not possess equal mathematics skills, and in order to raise those skills, a higher level of service must be provided.

DOF did not comment on remedial instruction. Rather, DOF argued that claimant could substitute algebra for other non-mandated mathematics courses.

The Commission finds that the test claim statute does not mandate remedial instruction, so this activity is not subject to article XIII B, section 6. Remedial instruction is not mentioned in or required by the test claim statute. If the Legislature had intended that activity to be part of the algebra instruction program, that intent would be stated in either the test claim statute or

¹⁵ *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d 830, 835.

¹⁶ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹⁷ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁸ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma v. Commission on State Mandates, supra*, 84 Cal.App.4th at page 1280.

¹⁹ *Long Beach Unified School Dist. v. State of California, supra*, 225 Cal.App.3d 155, 174.

legislative history.²⁰ In this test claim statute, however, the Legislature states the opposite intent: “modification to coursework ...shall result in neither additional classes nor in additional costs, but that any modification to coursework shall be incorporated into the requirements of paragraph (2) of subdivision (a) of Section 51225.3 of the Education Code.”²¹

As the California Supreme Court recently stated:

... activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.²²

This test claim legislation does not require remedial instruction, nor is there a threat of penalty for not providing it. Rather, remedial instruction would be undertaken at the option or discretion of the school district.

In commenting on the draft staff analysis, claimant calls this position regarding threat of penalty a “cop-out” and comments as follows.

Further, it is a signal that (1) legislatively enacted laws are not enforceable unless they have a penalty clause, and/or (2) the legislature is merely a high level advisory group. ... However, the greatest penalty of all, is the suffering child who, because they did not possess the same mathematical skills, desires and /or goals as other children, did not get his or her graduation certificate.

The Commission disagrees. Regarding enforceability, the “threat of penalty” analysis is the court’s method of determining whether activities are truly discretionary. The Supreme Court used this analysis in the *Department of Finance* case cited above. As to the role of the Legislature, it is that body that determines whether an activity is mandatory or discretionary. And regarding pupils’ ability to graduate, graduation prerequisites are determined by the Legislature. The Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”²³

Therefore, the Commission finds that the test claim statute does not mandate remedial instruction, and therefore it is not subject to article XIII B, section 6.

Other activities: Claimant pled other activities, namely, developing or revising board policy and regulations, reviewing each graduating student’s records, assessing student’s math skill level, training staff members on the law and methods to implement it, acquiring math instruction

²⁰ There is a reference to remedial instruction, for example, in Education Code section 37252.2, subdivisions (e) and (f), which the Commission found to be reimbursable in the parameters and guidelines for test claim 98-TC-19, *Pupil Promotion and Retention*.

²¹ Statutes 2000, chapter 1024, section 3.

²² *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742.

²³ *City of San Jose v. State of California*, *supra*, 45 Cal.App.4th 1802, 1817; *County of Sonoma v. Commission on State Mandates*, *supra*, 84 Cal.App.4th at page 1280.

materials to bring students to a skill level to complete algebra, and negotiation of cost for the purchase of materials required to implement the activities.

These activities are not mentioned in the test claim statute. The test claim statute does not require them, nor is there any threat of penalty for not providing them.

Thus, for the same reasons discussed under remedial instruction above, the Commission finds that the test claim statute does not mandate these other activities, and therefore they are not subject to article XIII B, section 6.

The remainder of this analysis addresses the test claim statute's algebra instruction requirement within the existing framework of two mathematics courses to graduate from high school.²⁴

B. Does section 51224.5 qualify as a program under article XIII B, section 6?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.²⁵ Only one of these findings is necessary to trigger article XIII B, section 6.²⁶

The test claim statute concerns mathematics instruction, a subset of education. "Public education is a peculiarly governmental function" administered by school districts as part of their mission to educate pupils.²⁷ Moreover, the test claim legislation imposes unique requirements on school districts that do not apply generally to all residents and entities of the state. Therefore, the Commission finds the test claim statute constitutes a "program" within the meaning of article XIII B, section 6.

²⁴ Education Code section 51225.3, subdivision (a)(1)(B).

²⁵ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

²⁶ *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

²⁷ *Long Beach Unified School District v. State of California, supra*, 225 Cal.App.3d 155, 172.

Issue 2: Does section 51224.5 impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution?

To determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.²⁸

Algebra instruction (Ed. Code, § 51224.5): Section 51224.5 states that “the adopted course of study for grades 7 to 12 inclusive, shall include algebra as part of the mathematics area of study” pursuant to Education Code section 51220, subdivision (f), which requires mathematics instruction.

Subdivision (b) of the test claim statute states that, starting with the 2003-04 school year,

... at least one course, or a combination of the two courses in mathematics required to be completed pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3 by pupils while in grades 9 to 12, inclusive, prior to receiving a diploma of graduation from high school, shall meet or exceed the rigor of the content standards for Algebra I, as adopted by the State Board of Education.

Subdivision (c) states that pupils in grades 7-12 need not take a second math course if the pupil “completes coursework that meets or exceeds the academic content standards for Algebra I ... in less than two courses.” (This was amended by Stats. 2001, ch. 734 to indicate that the second course will go toward meeting the two-math course requirement of section 51225.3 (a)(1)(B).)

Preexisting law requires pupils to take mathematics courses as part of the adopted course of study for grades 7-12 (Ed. Code, § 51220, subd.(f)). Preexisting law also specifies course requirements for pupils to receive a high school diploma, including “two courses in mathematics.” (Ed. Code, § 51225.3, subd. (a)(1)(B).) Since the 1977 Education Code, preexisting law has required school districts to “prescribe separate courses of study, including ... a course of study designed to prepare prospective pupils for admission to state colleges and universities ...” (Ed. Code, § 51224) to include algebra.²⁹

DOF commented that the test claim statute is merely legislative expression of a priority to offer algebra instruction, which could be substituted for non-mandated math courses.

Claimant did not plead or otherwise discuss the algebra instruction requirement part of the test claim statute. Rather, the claim focuses on remedial instruction, assessment, and administrative tasks.

The Commission finds that algebra instruction is not a new program or higher level of service.

In a prior test claim, *Domestic Violence Training and Incident Reporting* (96-362-01), the Commission determined that requiring law enforcement officers to take a two-hour domestic

²⁸ *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d 830, 835.

²⁹ Admission requirements for the University of California and the California State University include three years of mathematics, including algebra and geometry. Senate Rules Committee, Office of Senate Floor Analyses, 3d reading analysis of Senate Bill No. 1354 (1999-2000 Reg. Sess.) as amended April 26, 2000, page 2.

violence course as part of an existing requirement to receive 24 hours of training every two years did not constitute a reimbursable state-mandated program. The California Court of Appeal upheld the Commission's decision in *County of Los Angeles v. Commission on State Mandates*,³⁰ in which the court stated:

[L]ocal law enforcement agencies may choose from a menu of course offerings to fulfill the 24-hour requirement. ... Adding domestic violence training obviously may displace other courses from the menu, or require the adding of courses. ... However, ... the state has ... directed local law enforcement agencies to reallocate their training resources ... by mandating the inclusion of domestic violence training. ... [T]he state is requiring certain courses to be placed within an already existing framework of training. [This] loss of "flexibility" does not rise to the level of a state mandated reimbursable program because the loss of flexibility is incidental to the greater goal of providing domestic violence training.³¹

Like the statute at issue in *County of Los Angeles*, this test claim statute places algebra instruction within the existing statutory framework of math instruction. The preexisting requirement for school districts to provide mathematics and for pupils to take two math courses to earn a diploma did not increase or change as a result of the test claim statute. Accordingly, the Commission finds that algebra instruction is not a new program or higher level of service.

The Commission's finding is supported by the legislative intent language in the test claim statute:

It is the intent of the Legislature that any modification to coursework required by this act shall result in neither additional classes nor in additional costs, but that any modification to coursework shall be incorporated into the requirements of paragraph (2) of subdivision (a) of Section 51225.3 of the Education Code.³²

This is similar to the legislative intent statement "not to increase annual training costs of local government" in the statute at issue in the *County of Los Angeles* case, which statement the court used to support its position.³³

CONCLUSION

The Commission finds that Education Code section 51224.5, as added by Statutes 2000, chapter 1024, does not constitute a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514. Therefore, the Commission denies the test claim.

³⁰ *County of Los Angeles v. Commission State Mandates* (2003) 110 Cal. App. 4th 1176, 1194.

³¹ *Ibid.*

³² Statutes 2000, chapter 1024, section 3. Section 51223, subdivision (a)(2) requires a pupil, to receive a high school diploma, to complete, "Other coursework as the governing board of the district may by rule specify."

³³ *County of Los Angeles v. Commission State Mandates, supra*, 110 Cal. App. 4th 1176, 1194.