

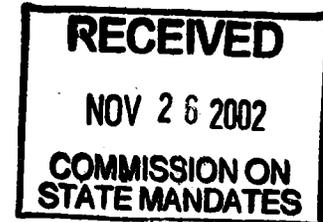


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November 26, 2002

Paula Higashi, Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814



RE: Child Abuse and Neglect Reporting (01-TC-21)

Dear Ms. Higashi:

Before commenting briefly on the test claim submitted by the San Bernardino Community College District ("District") regarding Child Abuse and Neglect Reporting (01-TC-21), the Department of Finance ("Department") by this filing objects to the form and content of the test claim and supporting declarations, and requests that the Commission reject the test claim for failure to comply with Commission regulations. In the alternative, the Department requests that the Commission return the test claim to the District with instructions to resubmit a package that complies with the regulations governing the form and content of test claims. The Department specifically reserves the right to submit additional written comments and argument in response to a more specific test claim, and/or in response to the Commission's draft analysis.

Procedural Objections

Title 2, California Code of Regulations (CCR), section 1183(e) requires a test claim to identify the *specific sections* of a chaptered bill or executive order alleged to contain a mandate. The District's test claim contains 53 chaptered bills affecting at least 19 lengthy sections of the Penal Code. Instead of identifying the specific sections of these bills and statutes that allegedly contain a mandate, the District describes in abundant and unnecessary detail virtually every statutory change made by each of these session laws, whether or not those changes have any bearing on the District's test claim.

For example, the District states, "Chapter 1117, Statutes of 1980, Section 4 amended Penal Code Section 273a to specify possible state prison terms for a violation of Section 273a." (Test Claim, p. 16.) As a second example, the District states, "Chapter 905, Statutes of 1982, Section 1 amended Penal Code Section 11165 to add subdivision (l) to define 'commercial film and photographic print processor.'" (Test Claim, pp. 25-26.) Neither of these statutory changes would appear to have any relevance to a test claim that purports to identify costs to the District

associated with child abuse and neglect reporting. The test claim is replete with such irrelevant references. The Department requests that the Commission reject the claim for failure to comply with the specificity requirement in 2 CCR section 1183(e). In the alternative, the Department asks the Commission to strike all statements in the test claim that do not identify individual statutory sections alleged to contain a mandate affecting the District, or direct the District to do so.

Title 2 CCR section 1183(e)(3)(A) requires a claimant to identify the activities required under prior law, and section 1183(e)(3)(B) requires the claimant to identify the new program or higher level of service required under the applicable statute or executive order. Section 1183(e)(3)(c) requires the claimant to indicate whether there are costs to the claimant associated with the new program or higher level of service. Read together, these provisions appear to require the claimant to explain, for each statute alleged to contain a mandate, what duties were imposed under prior law, and how each statute imposes a new program or higher level of service *on the claimant*. Title 2 CCR section 1183(e)(5) appears to require the claimant to state that the alleged mandate contained in each statute identified results in costs to the claimant, or is estimated to result in costs to the claimant, in excess of \$200. The District's claim does none of these things.

Substantive Objections

The District's claim states, "The new duties mandated by the state upon school districts, county offices of education, and community college districts require state reimbursement" (Test Claim, p. 122.) However, the District fails to point to any provision of law or regulation that defines a community college district as a mandated reporter within the meaning of Penal Code section 11165.7. While several versions of this section mention teachers and various school district employees, none of the enactments of this section cited by the claimant include employees of community college districts in the definition of mandated reporter. While community colleges are part of the public school system, community college districts are legal entities separate and distinct from school districts. (Education Code §§ 66700, 68012.) Since community college employees are not mandated reporters, the reports they make pursuant to the child abuse reporting laws, while desirable from a social policy standpoint, are not state-mandated within the meaning of Government Code section 17514. On this basis, the District's test claim should be denied.

As a final matter, the Department moves to strike the declaration of Michael Carr, Director of Student Services at the San Jose Unified School District. The statements of Mr. Carr concerning the costs allegedly incurred by the San Jose Unified School District in implementing the statutory child abuse reporting scheme do not authenticate the factual assertions made by the claimant, as required by 2 CCR section 1183(e)(4). The declaration is therefore irrelevant to the mandate claim submitted by the San Bernardino Community College District.

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As previously stated, the Department specifically reserves the right to submit additional comments in the event a corrected and/or more specific test claim is required, or in response to the Commission's draft analysis of the test claim, pursuant to 2 CCR section 1183.07.

Sincerely,



MEG HALLORAN
Deputy Attorney General

For BILL LOCKYER
Attorney General

cc: Susan S. Geanacou, Senior Staff Attorney, Department of Finance
Don Rascon, Principal Analyst, Department of Finance

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Child Abuse and Neglect Reporting;** No.: 01-TC-21
San Bernardino Community College District, Claimant
Penal Code Sections 273a, 11161.5, 11161.6, 11161.7,
11164, 11165, 11165.1, 11165.2, 11165.3, 11165.5, 11165.7,
11165.9, 11165.14, 11166, 11166.5, 11168, 11174.3
Statutes 2001, Chapter 754 et al. (AB 1697)

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550.

On November 26, 2002, I served the attached **Preliminary Comments on Test Claim 01-TC-02, Child Abuse and Neglect Reporting** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 26, 2002, at Sacramento, California.

SCOTT A. TAYLOR

Declarant



Signature

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