

ITEM 13
TEST CLAIM
FINAL STAFF ANALYSIS

Education Code Sections 44650-44654, 52050-52055.51, 52056-52057, 52058
Statutes 1999-2000x1, Chapter 3; Statutes 1999, Chapter 52; Statutes 2000, Chapters 71, 190 and
695; Statutes 2001, Chapters 159, 745, 749, and 887

California Code of Regulations, Title 5, Sections 1031-1039
Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 4 (Jan. 26, 2001); Register 01, No. 5
(Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001);
Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002)

Academic Performance Index
(01-TC-22)

San Juan Unified School District, Claimant

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SixTen and Associates Mandate Reimbursement Services

Exhibit A

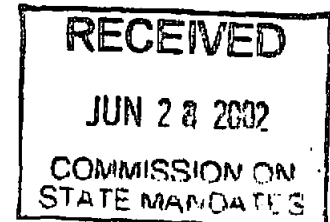
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June 27, 2002

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814



10:20am

Re: TEST CLAIM OF SAN JUAN UNIFIED SCHOOL DISTRICT

Chapter 887, Statutes of 2001
Education Code Sections 44650 et al.
Title 5, California Code of Regulations, Sections 1031 through 1039
Academic Performance Index

Dear Ms. Higashi:

Enclosed are the original and seven copies of the San Juan Unified School District test claim for the above referenced mandate.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

Diana D. Halpenny, General Counsel
San Juan Unified School District
3738 Walnut Avenue, P.O. Box 477
Carmichael, California 95069-0477

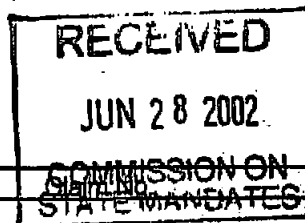
Sincerely,

Keith B. Petersen

C: Dr. Carol Berg, Consultant, Education Mandated Cost Network
Diana D. Halpenny, General Counsel, San Juan Unified School District

of California
MISSION ON STATE MANDATES
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CSM 2 (1/91)

For Official Use Only



TEST CLAIM FORM

Local Agency or School District Submitting Claim

SAN JUAN UNIFIED SCHOOL DISTRICT

Contact Person

Telephone Number

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SixTen and Associates

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Representative Organization to be Notified

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This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable. **Academic Performance Index**

Chapter 887, Statutes of 2001
Chapter 748, Statutes of 2001
Chapter 745, Statutes of 2001
Chapter 158, Statutes of 2001
Chapter 695, Statutes of 2000
Chapter 190, Statutes of 2000
Chapter 71, Statutes of 2000
Chapter 52, Statutes of 1999
Chapter 3, Statutes of 1998/00

Education Code Section 44650
Education Code Section 44652
Education Code Section 44654
Education Code Section 52051
Education Code Section 52052
Education Code Section 52052.3
Education Code Section 52053
Education Code Section 52054
Education Code Section 52054.5
Education Code Section 52055.5
Education Code Section 52056
Education Code Section 52057

Education Code Section 44651
Education Code Section 44653
Education Code Section 52050
Education Code Section 52051.5
Education Code Section 52052.2
Education Code Section 52052.5
Education Code Section 52053.5
Education Code Section 52054.3
Education Code Section 52055
Education Code Section 52055.1
Education Code Section 52056.5
Education Code Section 52058

Title 5, California Code of Regulations
Sections 1031 through 1039

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

Diana Halpenny, Chief Counsel
San Juan Unified School District

(916) 971-7109
Fax: (916) 971-7704

Signature of Authorized Representative

Date

x *Diana D. Halpenny*

June 24, 2002

1 Claim Prepared By:
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10 BEFORE THE
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12 COMMISSION ON STATE MANDATES
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14 STATE OF CALIFORNIA
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20 San Juan Unified School District)
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No. CSM. 01-TC-22
Chapter 887, Statutes of 2001
Chapter 749, Statutes of 2001
Chapter 745, Statutes of 2001
Chapter 159, Statutes of 2001
Chapter 695, Statutes of 2000
Chapter 190, Statutes of 2000
Chapter 71, Statutes of 2000
Chapter 52, Statutes of 1999
Chapter 3, Statutes of 99-00 (1X)

Education Code Sections 44650,
44651, 44652, 44653 and 44654
and
Education Code Sections 52050,
52051, 52051.5, 52052, 52052.2,
52052.3, 52052.5, 52053, 52053.5,
52054, 52054.3, 52054.5, 52055,
52055.5, 52055.51, 52056,
52056.5, 52057, 52058

Title 5, Code of Regulations
Sections 1031 through 1039

Academic Performance Index

1 PART I. AUTHORITY FOR THE CLAIM

2 The Commission on State Mandates has the authority pursuant to
3 Government Code section 17551(a) to "... hear and decide upon a claim by a
4 local agency or school district that the local agency or school district is entitled to
5 be reimbursed by the state for costs mandated by the state as required by Section
6 6 of Article XIII B of the California Constitution." San Juan Unified School District
7 is a "school district" as defined in Government Code section 17519.¹

8 PART II. LEGISLATIVE HISTORY OF THE CLAIM

9 This test claim alleges mandated costs reimbursable by the state for school
10 districts to perform administrative, accounting, payroll and other administrative
11 activities related to the Public School Performance Accountability Program,
12 including the calculation and administration of the state Academic Performance
13 Index, the duties required by the Immediate Intervention/Underperforming School
14 Program and the accounting and payroll activities occasioned by the Governor's
15 High Achieving Schools Program, including the one-time Academic Performance
16 Index Schoolsite Employees Performance Bonus and unrelated unfunded
17 employee benefit costs. The test claim also alleges reimbursable costs incurred in
18 conjunction with the Certificated Staff Performance Incentive Act, including
19 receiving and disbursement of awards.

20 /

¹ Government Code Section 17519, as added by Chapter 1459/84:

"School district" means any school district, community college district, or county superintendent of schools."

1 SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

2 Prior to 1975, there was no requirement that the State Superintendent of
3 Public Instruction develop an Academic Performance Index (API), there was no
4 Immediate Intervention/Underperforming School Program and there was no
5 Governor's High Achieving Schools Program. There was no statutory requirement
6 that school districts collect or report the information required for the State
7 Superintendent to develop the API. Districts were not required to administer
8 grants or financial awards originating from any API-related disbursement program.
9 Districts were also not required to provide matching funds or incur administrative
10 costs and salary-driven benefit costs, such as the employer's share of Medicare,
11 unemployment insurance or workers' compensation expenses.

12 SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

13 Chapter 3, Statutes of 1999-2000, (1st Ex.Sess.), Section 1, effective June
14 25, 1999, established the Public School Performance Accountability Program
15 (Education Code Sections 52050 et seq.).

16 Section 52050² requires the Chapter to be known as the Public Schools
17 Accountability Act of 1999.

18 Section 52051³ established the program and identified its three component
19 parts: (a) The state Academic Performance Index, to be known as the API

² Education Code Section 52050, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999:

"This chapter shall be known and may be cited as the Public Schools Accountability Act of 1999."

1 (Education Code Section 52052), (b) the Immediate Intervention/Underperforming
2 School Program (Education Code Sections 52053 through 52055.51), and (c) the
3 Governor's High Achieving Schools Program (Education Code Sections 52056
4 through 52058).

5 Section 52051.5⁴ defined "schools" to include charter schools.

6 Section 52052⁵ required the Superintendent of Public Instruction to develop
7 an Academic Performance Index to be used to measure the performance of

³ Education Code Section 52051, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999

"The Public School Performance Accountability Program is hereby established and shall consist of the following three component parts:

(a) The state Academic Performance Index, to be known as the API.

(b) The Immediate Intervention/Underperforming Schools Program.

(c) The Governor's High Achieving/Improving Schools Program."

⁴ Education Code Section 52051.5, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999

"For purposes of this chapter, all references to schools shall include charter schools."

⁵ Education Code Section 52052, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999

"(a) By July 1, 1999, the Superintendent of Public Instruction, with approval of the State Board of Education, shall develop an Academic Performance Index to be used to measure performance of schools, especially the academic performance of pupils, and demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools. A numerically significant ethnic or socioeconomically disadvantaged subgroup is a subgroup that constitutes at least 15 percent of a school's total pupil population and consists of at least 30 pupils. The index shall consist of a variety of indicators currently reported to the State Department of Education including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools. The pupil data collected for the API that comes from the achievement test administered

pursuant to Sections 60640 and 60644 and the high school exit examination, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils enrolled in a school district for one year or more may be included in the test results reported in the API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index. Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data is currently reported to the state and the accuracy of the data. If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test pursuant to Section 60604.

(2) The nationally normed test as augmented pursuant to paragraph (1) of subdivision (f) of Section 60644.

(3) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, expected annual percentage growth targets for all schools based on their API baseline score as measured in July 1999. Schools are expected to meet these growth targets through effective allocation of available resources. The minimum percentage growth target shall be 5 percent annually. However, the State Board of Education may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement.

(d) Upon adoption of state performance standards by the State Board of Education, the Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When fully developed, schools may either meet the state target or meet their growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057.

(e) Beginning in June 2000, the API shall be used for both of the following:

(1) Measure the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053.

(2) Rank all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f) Only comprehensive high schools, middle schools, and elementary schools that have a population of 100 or more pupils may be included in the API rating:

1 schools based upon specific factors. Based on the API, the Superintendent of
2 Public Instruction was required to develop, and the State Board of Education was
3 required to adopt, expected annual percentage growth targets. Subdivision (d)
4 allowed schools that meet growth targets to be eligible for the Governor's High
5 Achieving Schools Program. Subdivision (e) required, beginning in June 2000, the
6 API to be used both to measure the progress of schools selected for participation
7 in the Immediate Intervention/Underperforming School Program and to rank all
8 public schools for the purpose of the High Achieving/Improving Schools Program.
9 Subdivision (f) limited the API to include only comprehensive high schools, middle
10 schools and elementary schools with a population of 100 or more pupils. By July
11 1, 2000, the Superintendent of Public Instruction was required to develop an
12 alternative accountability system for schools with fewer than 100 pupils, and for
13 schools under the jurisdiction of a county board of education or a county
14 superintendent of schools, community day schools and independent study
15 schools.

16 Section 52052.5⁶ required the Superintendent of Public Instruction to
17 establish an advisory committee to advise the Superintendent of Public Instruction

(g) By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 pupils, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools."

⁶ Education Code Section 52052.5, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999

1 and the State Board of Education relative to the Immediate Intervention/Under-
2 performing School Program, the Academic Performance Index and the High
3 Achieving/Improving Schools Program.

4 Chapter 3, Statutes of 1990-2000, (1st Ex. Sess), Section 1, (effective June
5 25, 1999) added the Immediate Intervention/Underperforming School Program
6 (Education Code Sections 52053 through 52055.51).

7 Section 52053⁷ established the program and required the Superintendent of
8 Public Instruction, with the approval of the State Board of Education, to invite

"The Superintendent of Public Instruction shall establish a broadly representative and diverse advisory committee to advise the Superintendent of Public Instruction and the State Board of Education on all appropriate matters relative to the creation of the Academic Performance Index and the implementation of the Immediate Intervention/Underperforming Schools Program and the High Achieving/Improving Schools Program. Members of the advisory committee shall serve without compensation for terms not to exceed two years. The State Department of Education shall provide staff to the advisory panel."

⁷ Education Code Section 52053, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999:

"(a) The Immediate Intervention/Underperforming Schools Program is hereby established. By August 15, 1999, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall invite schools that scored below the 50th percentile on the achievement tests administered pursuant to Section 60640 both in the spring of 1998 and in the spring of 1999 to participate in the Immediate Intervention/Underperforming Schools Program. A school invited to participate may take any action not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates to improve pupil performance.

(b) The total number of schools participating in the program shall be 430. Unless subdivision (d) applies, schools that apply will be selected based on the order in which they apply within ranks of deciles, not to exceed 86 per decile, within the following grade level categories:

- (1) No more than 301 elementary schools.
- (2) No more than 78 middle schools.
- (3) No more than 52 high schools.

(c) The 86 schools selected within each decile range pursuant to subdivision (b) shall proportionately represent elementary, middle, and high

1 underperforming schools to participate in the Immediate Intervention/Under-
2 performing School Program. Subdivision (d) provides that if fewer than the allotted
3 number of schools do not apply for the program, the Superintendent of Public
4 Instruction, with the approval of the State Board of Education, shall randomly
5 select other underperforming schools to participate in the Immediate
6 Intervention/Underperforming School Program.

7 Section 52053.5^b requires the Superintendent of Public Instruction to
8 develop, and the State Board of Education to approve, minimum qualifications for

schools and shall provide statewide proportionate geographic representation of urban and rural schools.

(d) If fewer than the number of schools in any grade level category apply, schools that scored below the 50th percentile in those grade level categories that did not apply for the program shall randomly be selected by the Superintendent of Public Instruction, with the approval of the State Board of Education, to participate based on their proportional representation in the state until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(e) If more than the requisite number of schools apply for any grade level category, the Superintendent of Public Instruction shall select an array of schools that reflect a broad range of academic performance of schools that scored below the 50th percentile, until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(f) A school selected to participate on or before September 1, 1999, shall be awarded a planning grant from funds appropriated pursuant to paragraph (1) of subdivision (a) of Section 2 of the act adding this section in the amount of fifty thousand dollars (\$50,000). A school selected to receive federal funds pursuant to paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall be awarded an implementation grant in an amount of at least fifty thousand dollars (\$50,000) pursuant to Public Law 105-78.

(g) Schools receiving funding under paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall comply with Public Law 105-78.

(h) Schools selected for participation in the program shall be notified by the Superintendent of Public Instruction no later than September 1 of each year."

^b Education Code Section 52053.5, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999:

"(a) The Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, the minimum qualifications for external

1 external evaluators, to establish a list of external evaluators that meet minimum
2 qualifications and to develop standards and criteria to be applied by external
3 evaluators when carrying out their duties.

4 Section 52054⁹ requires the governing board of a school district having
5 jurisdiction of a school selected for participation in the program to contract with an

evaluators that shall include, but may not be limited to, recent successful professional, managerial or governing board experience in improving school achievement, and the ability to assist the school to systematically align curriculum, instruction, and assessment. The external evaluators shall also have demonstrated experience in working with diverse populations. With the approval of the State Board of Education, the Superintendent of Public Instruction shall develop and disseminate an application process by which to establish a list of external evaluators that meet the minimum qualifications. The list of approved external evaluators may include private sector experts, institutions of higher education, county offices of education, and educational consortia.

(b) The Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, the standards and criteria to be applied by external evaluators in carrying out their duties. The standards and criteria shall include, but are not limited to, the following areas:

- (1) Governing board policies.
- (2) Curriculum management.
- (3) Fiscal management.
- (4) Parental and community involvement.
- (5) Personnel management.
- (6) Facilities management."

⁹ Education Code Section 52054, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999:

"(a) By October 1 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program shall contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team, consisting of a majority of nonschoolsite personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(b) By November 15 of the year that the school is selected to participate, the selected external evaluator shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below average performance.

(2) Hold a public meeting at the school, in cooperation with the principal, to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit, at the public meeting, the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section.

(4) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(c) By December 15 of the school year that the school is selected to participate, the selected external evaluator shall complete a review of the school that identifies weaknesses that contribute to the school's below average performance and make recommendations for improvement.

(d) By March 15 of the year that follows the year the school is selected to participate, the external evaluator and the school site and community team selected pursuant to subdivision (a) shall develop an action plan to improve the academic achievement of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a scope that requires reimbursement by the Commission on State Mandates for its implementation.

(e) At a minimum, the action plan shall do all of the following:

(1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 33126.

(2) Identify the current barriers at the school and district toward improvements in pupil achievement.

(3) Identify schoolwide and districtwide strategies to remove these barriers.

(4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.

(5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information regarding the achievement of English language learners, economically disadvantaged pupils, and other groups of pupils, by race, ethnicity, and gender.

(6) Set short-term academic objectives pursuant to Section 52052 for a two-year period that will allow the school to make adequate progress toward the growth targets established for each participating school for pupil achievement as measured by all of the following to the extent that the data is available for the school:

(A) The achievement test administered pursuant to Section 60640.

(B) Graduation rates for grades 7 to 12, inclusive.

(C) Attendance rates for pupils and school personnel for elementary, middle, and secondary schools.

(D) Any other indicators approved by the State Board of Education.

(f) The school action plan shall focus on improving pupil academic performance, improving the involvement of parents and guardians, improving the effective and efficient allocation of resources and management of the school, and identifying and developing solutions that take into account the underlying causes for low performance by pupils.

(g) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(h) Upon its completion, the action plan shall be submitted to the governing board of the school districts for its approval. After the plan is approved, but no later than April 15 of the year that follows the year the school is selected to participate, the plan shall be submitted to the Superintendent of Public Instruction with a request for funding in the form prescribed by the Superintendent of Public Instruction.

(i) Not later than May 15 of the year next following the year in which a school is selected for participation, the State Board of Education shall review and approve or disapprove the school's request for funding, based on the recommendation of the Superintendent of Public Instruction. In conjunction with its approval of a request for funding to implement a school's action plan, the State Board of Education may waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 64000 if the waiver does not result in a decrease

1 external evaluator from the list and to appoint a broad-based schoolsite and
2 community team, consisting of a majority of nonschoolsite personnel. Subdivision
3 (b) requires the selected external evaluator, by November 15 of the year that the
4 school is selected, to solicit input from parent and legal guardians of the pupils of
5 the school and, at a minimum, to (1) inform all parents and guardians, in writing,
6 that the school has been selected to participate due to its below average
7 performance, (2) hold a public meeting to which all parents and guardians are
8 invited in writing, (3) solicit at the meeting the opinions of the parents and
9 guardians as to what actions should be taken to improve performance, and (4)
10 notify all parents and guardians of their opportunity to provide written
11 recommendations of actions which should be taken. Subdivision (c) requires the
12 selected external evaluator to complete a review of the school which identifies
13 weaknesses and make recommendations for improvement by December 15 of the
14 school year the school is selected to participate. Subdivision (d) requires the
15 external evaluator and the schoolsite and community team to develop an action
16 plan to improve the academic achievement of pupils at the school by March 15 of
17 the year that follows the year of selection and shall include an expenditure plan
18 which may require both expenditure of funds provided and other funds otherwise
19 available to the school. Subdivision (h) requires that the action plan be submitted
20 to the governing board of the school district for approval and, after approval but
21 not later than April 15 of the year that follows the year of selection, the plan shall

in the instructional time otherwise required by law or regulation or an increase in
state costs and is determined to be consistent with subdivision (a) of Section
46300.

1 be submitted to the Superintendent of Public Instruction with a request for funding.
2 Subdivision (l) requires the State Board of Education to review and approve or
3 disapprove the school's request for funding no later than May 15 of the year
4 following the year of selection.

5 Section 52054.5¹⁰ provides that a school whose application is approved on
6 or before June 15 of the year following the year of selection shall receive a grant
7 for implementing the program. Schools that apply after June 15 may receive a
8 grant if funds are appropriated for that purpose. As a condition of receiving these
9 grants, the school or school district shall provide matching funds.

10 Section 52055¹¹ requires the governing board of a school that fails to meet
11 its annual short-term growth target within 12 months following receipt of funding to

¹⁰ Education Code Section 52054.5, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999:

"A school whose application is approved on or before June 15 of the year following the year in which a school is selected for funding shall receive a grant for implementing the program, in each fiscal year that it participates in the program, in an amount up to two hundred dollars (\$200) per pupil enrolled in the school, with a minimum allocation of fifty thousand dollars (\$50,000) per schoolsite. A school that applies after June 15 may receive a grant for implementing the program if funds are appropriated for this purpose in the Budget Act. As a condition of receiving this funding, a participating school or the school district having jurisdiction over that school shall match the amount of state funding from any new or existing sources of funding. To help meet this matching requirement, a participating school and the governing board of the school district having jurisdiction over that school shall receive maximum flexibility in the expenditure of any new or existing categorical funds not otherwise prohibited by state or federal law and shall redirect for the purposes of their academic improvement plan new or existing categorical or general purpose funds."

¹¹ Education Code Section 52055, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999:

"The governing board of a school that fails to meet its annual short-term growth target within 12 months following receipt of funding pursuant to Section 52054.5

1 hold a public hearing to ensure that members of the school community are aware
2 of the lack of progress. The governing board shall, upon consultation with the
3 external evaluator and the schoolsite and community team, choose from a range
4 of interventions, including reassignment of school personnel, negotiation of site-
5 specific amendments to collective bargaining agreements, or other changes
6 deemed appropriate in order to continue implementation of the action plan and to
7 make progress toward meeting the school's growth targets.

8 Section 52055.5¹² provides that, following 24 months after receipt of
9 funding, a school that meets or exceeds its growth target each year shall receive a

shall hold a public hearing at a regularly scheduled meeting to ensure that
members of the school community are aware of the lack of progress. The
governing board of the school district shall, upon consultation with the external
evaluator and the schoolsite and community team selected pursuant to Section
52054, choose from a range of interventions for the school, including
reassignment of school personnel to the extent authorized by law, negotiation of
site-specific amendments to collective bargaining agreements, or other changes
deemed appropriate, in order to continue implementing the action plan approved
pursuant to Section 51054, and to make progress toward meeting the school's
growth targets."

^{57 R2, 60,}
^{78 R2}
¹
¹² Education Code Section 52055.5, added by Chapter 3, 1st Executive Session,
Statutes of 1999-2000, Section 1, effective June 25, 1999.

"(a) Following 24 months after receipt of funding pursuant to Section
52054.5, a school that meets or exceeds its growth target each year shall receive
a monetary or nonmonetary award, under the Governor's Performance Award
Program, as set forth in Section 52057. Funds received from this program shall be
used at the school's discretion.

(b) Following 24 months after receipt of funding pursuant to Section
52054.5, a school that has not met its performance goals, but demonstrates
significant growth, as determined by the State Board of Education, shall continue
to participate in the program for an additional year and to receive funding in the
amount specified in Section 52054.5.

(c) A school that does not meet its performance goals within 24 months
after receipt of funding pursuant to Section 52054.5 and has failed to show
significant growth, as determined by the State Board of Education, shall be
deemed a low-performing school. Notwithstanding any other provision of law, the

Superintendent of Public Instruction shall assume all the legal rights, duties, and powers of the governing board with respect to that school. The Superintendent of Public Instruction, in consultation with the State Board of Education and the governing board of the school district, shall reassign the principal of that school subject to the findings in subdivision (e). In addition to reassigning the principal, the Superintendent of Public Instruction, in consultation with the State Board of Education, shall, notwithstanding any other provision of law, do at least one of the following:

(1) Revise attendance options for pupils to allow them to attend any public school in which space is available. If additional attendance options are made available, nothing in this option shall be construed to require either the sending or receiving school district to incur additional transportation costs.

(2) Allow parents to apply directly to the State Board of Education for the establishment of a charter school and allow parents to establish the charter school at the existing school site.

(3) Under the supervision of the Superintendent of Public Instruction, assign the management of the school to a college, university, county office of education, or other appropriate educational institution. However, the Superintendent of Public Instruction may not assume the management of the school.

(4) Reassign other certificated employees of the school.

(5) Renegotiate a new collective bargaining agreement at the expiration of the existing collective bargaining agreement.

(6) Reorganize the school.

(7) Close the school.

(d) In addition to the actions listed in subdivision (c), the Superintendent of Public Instruction, in consultation with the State Board of Education, may take any other action considered necessary or desirable against the school district or the school district governing board, including appointment of a new superintendent or suspension of the authority of the governing board with respect to the school or schools identified pursuant to subdivision (c).

(e) Before the Superintendent of Public Instruction may take any action against a principal pursuant to subdivision (c), the Superintendent of Public Instruction or a designee of the superintendent shall hold a public hearing on the matter in the school district and make both of the following findings:

(1) A finding that the principal had the authority to take specific enumerated actions that would have helped the school meet its performance goals.

(2) A finding that the principal failed to take specific enumerated actions pursuant to paragraph (1).

(f) An action taken pursuant to subdivision (c), (d), or (e) shall not increase local costs or require reimbursement by the Commission on State Mandates.

(g) An action taken pursuant to subdivision (c), (d), or (e) shall be accompanied by specific findings by the Superintendent of Public Instruction and

1 monetary or nonmonetary award under the Governor's Performance Award
2 Program, as set forth in Section 52057. Subdivision (b) provides that, following 24
3 months after receipt of funding, a school that has not met its performance goals,
4 but demonstrates significant growth, shall continue to participate in the program
5 and receive funding for an additional year. Subdivision (c) provides that a school
6 that does not meet its performance goals within 24 months after funding and has
7 failed to show significant growth, shall be deemed a low-performing school. Upon
8 that determination, the Superintendent of Public Instruction shall assume all the
9 legal rights, duties and powers of the governing board with respect to that school.
10 The Superintendent of Public Instruction, in consultation with the State Board of
11 Education, shall reassign the principal of that school and shall do at least one of
12 the following: (1) revise attendance options, (2) allow parents to apply for the
13 establishment of a charter school, (3) reassign management of the school, (4)
14 reassign other certificated employees, (5) renegotiate a new collective bargaining
15 agreement, (6) reorganize the school or (7) close the school.

16 Chapter 3, Statutes of 1999-2000, (1st Ex. Sess.), Section 1, (effective June
17 25, 1999), added the "the High Achieving/Improving Schools Program" (Education
18 Code Sections 52056 through 52058).

19 Education Code Section 52056¹³ establishes the High Achieving/Improving
20 Schools Program and requires the Superintendent of Public Instruction to rank all

the State Board of Education that the action is directly related to the identified causes for continued failure by a school to meet its performance goals."

¹³ Education Code Section 52056, as added by Chapter 3, Statutes of 1999-2000 (1st Ex. Sess.), Section 1:

1 public schools based on their API and establish the school's target annual growth
2 rates, their actual growth rates and growth rate comparisons. Subdivision (b)
3 requires, commencing in July 2000, and every July thereafter, all schools to report
4 their ranking in their annual school accountability report card pursuant to Sections
5 33126 and 35256. Subdivision (c) requires, commencing in July 2000, and every
6 July thereafter, the governing board of each school district to discuss the results of
7 the annual ranking at a regularly scheduled meeting.

8 Education Code Section 52056.5¹⁴ provides that schools that do not meet
9 their growth targets, as established by the Superintendent of Public Instruction,
10 may be subject to the Immediate Intervention/Underperforming Schools program.

"(a) The High Achieving/Improving Schools Program is hereby established. Commencing in June 2000, and every June thereafter, the Superintendent of Public Instruction, with approval of the State Board of Education, shall rank all public schools based on the Academic Performance Index established pursuant to Section 52052. The schools shall be ranked in decile categories by grade level of instruction provided and shall include three categories: elementary, middle, and high school. Commencing in June 2001, the rankings shall indicate the target annual growth rates of schools, the actual growth rates attained by the schools, and how growth rates compare schools that have similar characteristics. For purposes of this section, similar characteristics include, but are not limited to, the following characteristics, insofar as data is available from the State Department of Education's data: pupil mobility, pupil ethnicity, pupil socioeconomic status, percentage of teachers who are fully credentialed, percentage of teachers who hold emergency credentials, percentage of pupils who are English language learners, average class size per grade level, and whether the schools operate multitrack year-round educational programs. The Superintendent of Public Instruction shall annually publish these rankings on the Internet.

(b) Commencing in July 2000, and every July thereafter, all schools shall report their ranking, including a description of the components of the ranking, in their annual school accountability report card pursuant to Sections 33126 and 35256.

(c) Commencing in July 2000, and every July thereafter, the governing board of each school district shall discuss the results of the annual ranking at a regularly scheduled meeting."

¹⁴ Education Code Section 52056.5, as added by Chapter 3, Statutes of 1999-

1 Education Code Section 52057¹⁵ requires the State Board of Education to
2 establish the Governor's Performance Award Program to provide both monetary

2000 (1st Ex. Sess.), Section 1:

"Commencing with the 2000-01 fiscal year, a school that fails to meet annual state growth targets established pursuant to Section 52052 may, as determined by the Superintendent of Public Instruction with the approval of the State Board of Education, be subject to the Immediate Intervention/Underperforming Schools Program pursuant to subdivisions (e) and (f) of Section 52053, and Sections 52053.5, 52054, 52054.5, 52055, and 52055.5."

¹⁵ Education Code Section 52057, as added by Chapter 3, Statutes of 1999-2000 (1st Ex. Sess.), Section 1:

"(a) The State Board of Education shall establish a Governor's Performance Award Program to provide monetary and nonmonetary awards to schools that meet or exceed API performance growth targets established pursuant to Section 52052, and demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.

(b) All schools, including schools participating in the Immediate Intervention/Underperforming Schools Program are eligible to participate in the Governor's Performance Award Program. The manner and form in which the monetary and nonmonetary awards are given shall be established by the Superintendent of Public Instruction and approved by the State Board of Education. The monetary awards shall be made available on either a per pupil or per school basis, not to exceed one hundred fifty dollars (\$150) per pupil enrolled and subject to funds appropriated in the annual Budget Act. A school that continues to show improvement in successive years is eligible to receive annual bonuses.

(c) In addition to or in substitution of monetary awards, the Superintendent of Public Instruction may establish, upon approval by the State Board of Education, nonmonetary awards that may include, but are not limited to, classification as a distinguished school, listing on a published public school honor roll, and public commendations by the Governor and the Legislature.

(d) A school that is eligible to participate in the Governor's Performance Award Program may request the State Board of Education to waive, all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 64000, and the board may grant the request if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46300.

(e) A school that demonstrates significant growth shall be granted

1 and non-monetary awards to schools that meet or exceed their API performance
2 target growth. Monetary awards shall be made available either on a per pupil or
3 per school basis.

4 Education Code Section 52058¹⁶, requires, by January 31, 2002, each
5 school district with schools participating in the Immediate Intervention/

maximum flexibility in its expenditure of any new or existing categorical funds not otherwise prohibited under state or federal law to enable the school to continue improvement in pupil performance."

¹⁶Education Code Section 52058, as added by Chapter 3, Statutes of 1999-2000 (1st Ex. Sess.), Section 1:

"(a) By January 31, 2002, each school district with schools participating in the Immediate Intervention/Underperforming Schools Program established pursuant to Section 52053 shall submit to the Superintendent of Public Instruction an evaluation of the impact, costs, and benefits of the program as it relates to the school district and the schools under its jurisdiction that are participating in the program and whether or not the schools met their growth targets, with an analysis of the reasons why the schools have or have not met those growth targets. Costs to develop and submit the evaluation shall be funded with resources provided pursuant to Article 3 (commencing with Section 52053).

(b) By January 15, 2000, the Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, the guidelines for a request for proposal for an independent evaluator as described in this subdivision. By September 1, 2000, the Superintendent of Public Instruction shall contract with an independent evaluator to prepare a comprehensive evaluation of the implementation, impact, costs, and benefits of the Immediate Intervention/Underperforming Schools Program and the High Achieving/Improving Schools Program. The preliminary results of the evaluation shall be disseminated to the Legislature, the Governor, and interested parties no later than March 31, 2002, with a final report no later than June 30, 2002. The final report shall include recommendations for necessary or desirable modifications to the programs established pursuant to this chapter.

(c) The evaluations shall consider all of the following:

(1) Pupil performance data, including, but not limited to, results of assessments used to determine whether or not schools have made significant progress towards meeting their growth targets.

(2) Program implementation data, including, but not limited to, a review of startup activities, community support, parental participation, staff development activities associated with implementation of the program,

1 Underperforming School Program to submit to the Superintendent of Public
2 Instruction an evaluation of the impact, costs, and benefits of the program and a
3 report as to whether or not the schools met their growth targets, with an analysis of
4 the reasons why the schools have or have not met those growth targets.

5 Chapter 52, Statutes of 1999 added "The Certificated Staff Performance
6 Incentive Act" (CSPIA) to the Education Code (Sections 44650 through 44654),
7 effective July 1, 1999).

8 Section 44650¹⁷ establishes the act for the purpose of awarding one-time
9 performance awards to teachers and other certificated staff in underachieving

percentage of fully credentialed teachers, percentage of teachers who hold emergency credentials, percentage of teachers assigned outside their subject area of competence, the accreditation status of the school if appropriate, average class size per grade level, and the number of pupils in a multitrack year-round educational program:

(3) (A) Pupil performance data, and its impact on the API, for each of the following subgroups:

(i) English language learners.

(ii) Pupils with exceptional needs.

(iii) Pupils that qualify for free or reduced price meals and are enrolled in schools that receive funds under Chapter 1 of the federal Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (P.L. 100-290).

(B) Information concerning individual pupils may not be disclosed in the process of preparing pupil performance data pursuant to this subdivision.

(d) The Superintendent of Public Instruction shall recommend and the State Board of Education shall approve a schedule for biennial evaluations of the programs established pursuant to this chapter, subsequent to the evaluation required by this section. The biennial evaluations shall be submitted, with appropriate recommendations, by June 30 of every odd-numbered year, commencing with the year 2003.

¹⁷ Education Code Section 44650, as added by Chapter 52, Statutes of 1999, Section 1 (effective July 1, 1999):

1 schools, where the academic performance of pupils significantly improves beyond
2 minimum percentage growth targets. Subsection (b) requires the State Board of
3 Education to establish criteria for determining the eligibility of schools to receive
4 awards and determine the amount to be allocated to a school based upon the
5 number of teachers and other certificated staff eligible to receive an award.

6 Section 44651¹⁸ allows school districts and charter schools (but not county
7 offices of education) to apply for funding and sets forth eligibility requirements.

"(a) The Certificated Staff Performance Incentive Act is hereby established for the purpose of awarding one-time performance awards to teachers and other certificated staff in underachieving schools, where the academic performance of pupils significantly improves beyond the minimum percentage growth target established pursuant to Section 52052.

(b) The State Board of Education shall establish criteria for determining the eligibility of schools to receive the awards and shall determine the amount to be allocated to a school, based on the number of teachers and other certificated staff eligible to receive an award. The maximum award allocated to a school per full-time equivalent certificated staff shall not exceed twenty-five thousand dollars (\$25,000). The total amount of the awards allocated under this article shall not exceed the total amount appropriated for the purposes of this article.

(c) This article shall be implemented subject to the appropriation of funds for the purpose of this article in the annual Budget Act."

¹⁸ Education Code Section 44651, as added by Chapter 52, Statutes of 1999, Section 1 (effective July 1, 1999):

"(a) Any school district or charter school that maintains classes in kindergarten or any of grades 1 to 12, inclusive, may apply for funding under this article if it meets the conditions of subdivision (b). County boards of education, county superintendents of schools, and state agencies shall not be eligible to participate.

(b) To be eligible for funding under this article, a school shall meet all of the following conditions:

(1) The school's aggregate score for student performance on the state Academic Performance Index established pursuant to Section 52052 was below the 50th percentile relative to other public schools in the state in the prior year.

(2) The school has met the criteria established by the board pursuant to subdivision (b) of Section 44650."

1 Section 44652¹⁸ requires the Superintendent of Public Instruction (SPI) to
2 allocate funds to school districts and charter schools when they have certified to
3 the SPI that they satisfy the eligibility requirements of Section 44651(b). It also
4 requires the Superintendent of Public Instruction to notify the teachers' exclusive
5 representatives when those funds are available.

6 Section 44653²⁰, requires that the governing board of a school district ,
7 when receiving an award as part of the Certificated Staff Performance Incentive
8 Act, to negotiate with the exclusive representative of the bargaining unit
9 representing the certificated teachers to determine how the funds are to be

¹⁸ Education Code Section 44652, as added by Chapter 52, Statutes of 1999,
Section 1 (effective July 1, 1999):

"The Superintendent of Public Instruction shall allocate funds to school districts and charter schools that have certified to the superintendent that they satisfy the conditions of subdivision (b) of Section 44651, based on the amount determined pursuant to subdivision (b) of Section 44650. At the time of the allocation the Superintendent of Public Instruction shall notify the exclusive representatives of the teachers and other certificated staff in each district of the availability of these funds."

²⁰ Education Code Section 44653, as added by Chapter 52, Statutes of 1999,
Section 1 (effective July 1, 1999):

" Upon receiving an allocation from the Superintendent of Public Instruction for the purpose of awarding awards, the governing board of the school district shall negotiate individual teacher and other certificated staff salary award amounts with the exclusive representative of the bargaining unit of the teachers and other certificated staff. In the event that the governing board and the exclusive representative of teachers and other certificated staff do not reach an agreement regarding the amount of the award or if the teachers and other certificated staff are not represented by an exclusive bargaining representative, all teachers and other certificated staff at the school shall receive a salary award amount that is equal to a percentage of their base salary that is determined by dividing the total amount awarded to a school by the sum of the annual base salaries for teachers and other certificated staff of the school."

1 distributed. In the event they do not reach an agreement, or if the teachers and
2 other certificated staff are not represented by an exclusive bargaining
3 representative, all teachers and other certificated staff at the school shall receive
4 an apportioned salary award.

5 Section 44654²¹ requires that any distributions to staff not be classified as
6 compensation for purposes of calculating retirement benefits or any other benefit
7 that relies on a compensation based calculation.

8 Chapter 71, Statutes of 2000, Section 18, effective July 5, 2000, added
9 Education Code Section 52052.3²² to provide that the test scores of first year high

²¹ Education Code 44654, as added by Chapter 52, Statutes of 1999, effective July 5, 2000:

"(a) Funds awarded pursuant to this article shall not become part of a district's revenue limit, and shall be identified as a separate item of expenditure on any financial reports filed by school districts with the state pursuant to any state law or regulation.

(b) Salary award amounts received by teachers and other certificated staff pursuant to this article shall not be considered compensation for the purposes of calculating retirement benefits or contributions, or for any other benefit that an employee is eligible to receive where the benefit or contribution amount is calculated based on compensation.

(c) It is the intent of the Legislature that funds appropriated for the purposes of this article shall be fully expended based on the criteria established in subdivision (b) of Section 44650. However, if unexpended funds are available, they shall continue to be available for allocation for the intended purpose of the appropriation in subsequent years."

²² Education Code Section 52052.3, added by Chapter 71, Statutes of 2000, Section 18 (effective July 5, 2000):

"Test scores of pupils who are in the first year of enrollment in a high school, but who, in the prior year, were enrolled in an elementary school district that normally matriculates to the high school district, shall be included in the Academic Performance Index, as provided in Section 52052."

1 school students who were enrolled in an elementary school district that normally
2 matriculates to that high school district, shall be included in the Academic
3 Performance Index.

4 Chapter 71, Statutes of 2000, Section 40²³ (effective July 5, 2000) created
5 the one-time Academic Performance Index Schoolsite Employees Performance

²³ Section 40, Chapter 71, Statutes of 2000, effective July 5, 2000:

"(a) (1) The sum of three hundred fifty million dollars (\$350,000,000) is hereby appropriated from the General Fund, for transfer by the Controller to Section A of the State School Fund, for allocation on a one-time basis by the Superintendent of Public Instruction to school districts, county offices of education, and charter schools for the Academic Performance Index Schoolsite Employees Performance Bonus.

(2) As a condition of receiving funds pursuant to this section, school districts, county offices of education, and charter schools shall, upon request by the Superintendent of Public Instruction and by November 1, 2000, certify the number of full-time equivalent employees employed as of the second principal apportionment of the 1999-2000 school year at each schoolsite under their jurisdiction that are eligible for awards in accordance with subdivision (a) of Section 52057, the Governor's Performance Award Program.

(3) Upon receipt of the certifications the Superintendent of Public Instruction shall calculate a statewide amount per full-time equivalent employee, the sum of which shall not exceed three hundred fifty million dollars (\$350,000,000). The Superintendent of Public Instruction shall then apportion an equal amount per full-time equivalent employee to the appropriate school district, county office of education, or charter school for allocation to the schoolsites that have met or exceeded their Academic Performance Index growth target.

(4) As a condition of receiving funds pursuant to this section, a schoolsite shall expend 50 percent of the funds to provide one-time bonuses to its employees, to be divided equally among all schoolsite employees on a full-time equivalent basis. The other 50 percent may be used at the discretion of the schoolsite for any one-time purposes.

(b) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues

1 Bonus program. School districts, county offices of education and charter schools
2 are required, upon request by the Superintendent of Public Instruction to certify the
3 number of its full-time equivalent employees for the period requested, upon which
4 the Superintendent shall calculate, using the funds appropriated, a statewide
5 amount per full-time equivalent employee. Upon receipt of the funds, a schoolsite
6 shall expend 50 percent of the amount received as one-time bonuses divided
7 equally among all schoolsite employees with the other 50 percent to be used at
8 the discretion of the schoolsite.

9 The California State Board of Education filed regulations pertaining to
10 award programs linked to the API at Article 1.7 of Title 5, California Code of
11 Regulations, enacted and operative December 28, 2000.

12 Section 1031²⁴ declared the purpose of the regulations to be the
13 implementation of programs established by three statutes relating to the API: (1)

appropriated to school districts," as defined in subdivision (c) of
Section 41202 of the Education Code for the 1999-2000 fiscal year and
included within the "total allocations to school districts and
community college districts from General Fund proceeds of taxes
appropriated pursuant to Article XIII B" as defined in subdivision (e)
of Section 41202 of the Education Code, for the 1999-2000 fiscal
year."

²⁴ Title 5, California Code of Regulations, Section 1031, filed December 28, 2000,
operative December 28, 2000.

"(a) The Academic Performance Index (API) measures the performance of
California public schools, especially the academic performance of pupils, and
demonstrates comparable improvement in academic achievement by all
numerically significant ethnic and socioeconomically disadvantaged subgroups
within schools pursuant to Education Code section 52052 and the Framework for
The Academic Performance Index, July 1999 and The 1999 Base Year Academic
Performance Index, December 15, 1999, which are incorporated herein.

(b) The purpose of these regulations is to implement the programs
established by three statutes relating to the API:

1 the Governor's Performance Award Program of the Public Schools Accountability
2 Act of 1999 (Education Code Sections 52050 et seq.), (2) the Certificated Staff
3 Performance Incentive Act (Education Code Sections 44650 et seq.), and (3) the
4 Academic Performance Index Schoolsite Employees Performance Bonus (Section
5 40, Chapter 71 of the Statutes of 2000).

6 Section 1032²⁵ set forth definitions and defined the API as the measure of
7 accountability for all schools, except those that fall under an alternative system.

(1) The Governor's Performance Award Program of the Public Schools Accountability Act of 1999 (Education Code sections 52050 et seq.);

(2) The Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.)."

(3) The Academic Performance Index Schoolsite Employees Performance Bonus (Section 40, Chapter 71 of the Statutes of 2000).

²⁵ Title 5, California Code of Regulations, section 1032, filed December 28, 2000, operative December 28, 2000:

"(a) For purposes of this Article, "schools" shall be defined as all schools, including charter schools, that receive a ranking on the API including schools participating in the Immediate Intervention/Underperforming Schools Program. These schools are eligible to participate in all three award programs identified in Section 1031.

(b) The API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system. An alternative accountability system will be developed for schools with fewer than 100 valid test scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools and alternative schools, including continuation high schools and independent study schools.

Once the alternative accountability system required by Education Code section 52052(g) is adopted by the State Board of Education, alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API. If the school elects to be part of the API accountability system, the school shall remain in the system for at least three subsequent years.

(c) For the purposes of these award programs, growth API means the second of two consecutive years for which the API is calculated. If a school does not receive an API pursuant to subdivisions (d)(1) or (d)(2), the school is ineligible for participation in any of the award programs for the current and subsequent year.

If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.

(d) A school's API shall be considered invalid under any of the following circumstances:

(1) The local educational agency has certified that there were adult testing irregularities at the school.

(2) The local educational agency has certified that the API is not representative of the pupil population at the school.

(3) The local educational agency has certified that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.

(4) Information is made available to or obtained by the California Department of Education (department) that indicates that the integrity of the API may have been compromised. If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized.

(e) In the event that, subsequent to the calculation of an API for a school, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the circumstances set out in subdivision (d) occurred, the department may invalidate the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(f) All schools that reach their growth targets or have an API of 800 and growth of at least 1 point, have comparable improvement as defined in subdivision (g), and meet the minimum participation rate in subdivision (h), shall be recognized through the Governor's Performance Award Program and the Academic Performance Index Schoolsite Employees Performance Bonus program.

(g) Comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) shall be defined as either 1) 80 percent of the school-wide API improvement goal for schools with APIs less than 800, simplified to the nearest whole number (i.e., 1.51 equals 2); or 2) the actual distance to 800. Numerically significant subgroups with APIs below 800 at schools with API scores of 800 or above shall also show a one-point gain. Numerically significant subgroups at 800 or above shall maintain a score at or above 800.

(h) For elementary and middle schools, the minimum participation rate for all three awards programs shall be 95 percent; for high schools, it shall be 90 percent for the 2000 API growth, with the intention of increasing this rate to 95 percent in the future.

(1) If the test publisher includes the pupil's answer forms or test booklets for the nationally-normed test pursuant to Education Code section 60642 for grades 2-11 in the number of used test forms, the pupil shall be counted as a test-taker.

1 Subdivision (d) set forth conditions under which a school's API shall be considered
2 invalid and required school districts, county offices and charter schools to certify to
3 the California Department of Education if there were adult testing irregularities at
4 the school, if their API is not representative of the pupil population, if the school
5 has experienced a significant demographic change in pupil population between the
6 base year and the growth year or if the integrity of the API has been otherwise
7 compromised.

8 Section 1033²⁶ sets forth the eligibility requirements for the Governor's
9 Performance Award Program, Subdivision (b) requires recipients of the Academic

(2) No pupil shall be counted more than once as a test-taker.

(3) The participation rate shall be calculated as follows:

(A) Divide the total number of test-takers in grades 2 through 11 at the school site by

(B) The total enrollment in grades 2-11 minus the number of pupils exempted from taking the test either by their Individualized Education Program (IEP) pursuant to Education Code section 60640(e) or parental waivers pursuant to Education Code section 60615.

(4) For purposes of subdivision (3)(B) above, enrollment shall be determined by the enrollment information collected by the department as part of the Standardized Testing and Reporting Program (STAR), pursuant to Education Code sections 60640 et seq.

(5) In the case of pupil testing irregularities, the scores of affected pupils shall be eliminated from the calculations of the school's growth API, although the pupils are counted as tested and shall contribute to the school's participation rate.

(6) There shall be no rounding in determining this minimum participation rate (i.e., 94.9 percent does not equal 95 percent)."

²⁶ Title 5, California Code of Regulations, section 1033, filed December 28, 2000, operative December 28, 2000:

"(a) Schools that meet the eligibility requirements for the Governor's Performance Award Program (GPA) shall receive the per pupil award amount for each of their eligible pupils determined as follows:

1 Performance Index Schoolsite Employees Performance Bonus awards to divide
2 the award equally among school site individual employees on a full-time equivalent
3 basis and the school site.

4 Section 1034²⁷ set forth the eligibility requirements under the Certificated
5 Staff Performance Incentive Act. Subdivision (d) requires each local educational

(1) The school funding rate is the total number of test-takers divided by the total enrollment on the first day of testing for grades 2-11 minus the IEP exemptions.

(2) There shall be no rounding in determining the school funding rate (i.e., 94.9% does not equal 95%).

(3) The kindergarten, first grade and 12th grade enrollment as established for that school year by the California Basic Education Data System (CBEDS) shall be added to the number of test-takers, less the number of pupils with testing irregularities plus the number of IEP exemptions, then multiplied by the school funding rate. This result, simplified to the nearest whole number (i.e., 1.51 equals 2) shall determine the number of eligible pupils upon which the GPA awards are based.

(4) The amount allocated per pupil shall be determined on a pro-rata basis from the total amount of funding available in the annual State Budget.

(b) The Academic Performance Index Schoolsite Employees Performance Bonus awards shall be divided equally among school site individual employees on a full-time equivalent (FTE) basis and to the school site, using the same eligibility criteria as the GPA."

²⁷ Title 5, California Code of Regulations, section 1034, added December 28, 2000, operative December 28, 2000. (Repealed January 8, 2002).

"To be eligible to receive awards under the Certified Staff Performance Incentive Act, school sites must have attained a statewide decile rank of 1-5 in the base year of the current growth API and must meet all of the relevant statutory requirements and each of the following requirements:

(a) Each school site must have improved by a minimum of two times its annual growth target on its API between the base year and the current growth year.

(b) All numerically significant ethnic or socioeconomically disadvantaged subgroups at a school must have improved by a minimum of two times their annual growth targets, simplified to the nearest whole number (i.e., 1.51 equals 2). However, all numerically significant ethnic or socioeconomically disadvantaged subgroups with an API of 800 or above must maintain a subgroup API of 800 or above.

1 agency to complete an application on behalf of its eligible schools which shall
2 include (1) the number of eligible schools, (2) certification that the data used in the
3 API calculations is accurate, and (3) a list of certificated staff in positions on an
4 FTE basis at each of the eligible schools.

5 Section 1035²⁸ sets forth the rules, procedures and priorities for the
6 distribution of the Certificated Staff Performance Incentive Act.

(c) In addition to subdivisions (a) and (b) above, each school site shall have the required participation rate for the 2000 growth API as calculated by the department. For the 2000 growth API, each school must show improvement between the 1998 and 1999 testing on the nationally normed test pursuant to Education Code section 60642.

(d) The local educational agency must complete an application on behalf of their eligible schools, which shall include:

- (1) The number of eligible schools.
- (2) Certification that the data used in the API calculations from the schools is accurate, and
- (3) A list of certificated staff in certificated positions on an FTE basis at each of the eligible schools."

²⁸ Title 5, California Code of Regulations, Section 1035, filed December 28, 2000, operative December 28, 2000:

"Distribution of Certificated Staff Performance Incentive Act awards pursuant to the 2000 growth API shall be as follows, with at least one thousand (1,000) \$25,000 awards, three thousand seven hundred fifty (3,750) \$10,000 awards and up to seven thousand five hundred (7,500) \$5,000 awards being distributed in the process. The total amount of funding for this Act provided in the annual State Budget shall be distributed proportionally across each of elementary, middle, and high schools statewide by the number of certificated staff as reported in the most current CBEDS report.

(a) Schools will be declared eligible or ineligible according to the rank of schools pursuant to Education Code section 52052. An "eligible list" will be determined for each type of school (elementary, middle, and high) for the awards distribution.

(b) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE to be distributed to the certificated school site staff in certificated positions at that school. The number of FTE counted shall be subtracted from the awards pool of 1,000 FTE positions.

(c) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(d) This process shall continue until all 1,000 \$25,000/FTE awards have been allocated to the eligible school sites. If, before all 1,000 awards have been allocated, an eligible school site has more eligible FTE than remain in the 1,000 FTE awards pool, all of that school site's FTE shall receive \$25,000 awards. If more than one school site has an identical score in this circumstance, all eligible FTE at each of the school site(s) shall receive \$25,000 awards.

(e) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target that did not receive \$25,000 rewards, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE counted shall be subtracted from the awards pool of 3,750 \$10,000 awards.

(f) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE counted shall be subtracted from the awards pool remainder.

(g) This process shall continue in consecutive order until all 3,750 \$10,000/FTE awards have been allocated to the school sites. If, before all 3,750 awards have been allocated, an eligible school site has more eligible FTE than remain in the 3,750 FTE pool, all of that school site's FTE shall receive \$10,000 awards. If more than one school site has an identical score in this circumstance, all eligible FTE at the school site(s) shall receive \$10,000 awards.

(i) The sum of the awards distributed under subdivisions (b) through (g) shall be subtracted from \$100 million, and the remainder shall be divided by \$5,000 to determine the maximum number of \$5,000 awards to be distributed. The \$5,000 awards shall be distributed in the same manner as the \$25,000 and the \$10,000 awards, with the exception that the distribution process will end when the pool of available \$5,000 awards is not sufficient to fully fund the eligible FTE of the next school or schools in line for the awards."

1 Section 1036²⁹ requires the Academic Performance Index Schoolsite
2 Employees Performance Bonus to be allocated to individuals and the schoolsite
3 and provides the definitions of persons who shall receive the awards.

4 Section 1037³⁰ requires that the Academic Performance Index Schoolsite
5 Employees Performance Bonus awards and the Certificated Staff Performance
6 Incentive Act awards shall not be considered compensation for the purpose of
7 calculating retirement benefits or contributions, or for any other benefit or
8 contribution amount calculated based on compensation.

²⁹ Title 5, California Code of Regulations, Section 1036, filed December 28, 2000,
operative December 28, 2000:

"(a) The Academic Performance Index Schoolsite Employees Performance Bonus shall be allocated to individuals and the school site. Funds will be distributed to the school site for those individuals who worked at the school site for the school year for which the growth API was calculated. These bonuses shall be distributed on an FTE basis to all employees assigned to the school site. Staff who were employed at a school site part-time or for less than the full school year shall have their awards pro-rated on an FTE basis, as determined by the local educational agency contract.

(b) For the purpose of the Certificated Staff Performance Incentive Act awards, "certificated staff" include those certificated staff employed at the school site in certificated positions for the school year and certificated staff that were employed at the school site part-time or for less than the full school year for which the growth API was calculated. Except as otherwise provided through bargaining unit negotiations pursuant to Education Code section 44653, certificated staff employed at a school site part-time or for less than the full school year shall have their award allocations pro-rated on an FTE basis."

³⁰ Title 5, California Code of Regulations, Section 1037, filed December 28, 2000,
operative December 28, 2000:

"Academic Performance Index Schoolsite Employee Performance Bonus awards and Certificated Staff Performance Incentive Act awards shall not be considered compensation for the purposes of calculating retirement benefits or contributions, or for any other benefit that an employee is eligible to receive where the benefit or contribution amount is calculated based on compensation."

1 Section 1038³¹ requires the use of funds at the school site for the
2 Governor's Performance Award Program and the school site portion of the
3 Academic Performance Index Schoolsite Employees Performance Bonus awards
4 to be decided by the existing school site governance team/school site council and
5 then ratified by the governing board of each local educational agency.

6 Chapter 190, Statutes of 2000, Section 1 amended Education Code Section
7 52054³² to make changes in performance dates and to add a new subdivision (g)

³¹ Title 5, California Code of Regulations, Section 1038, filed December 28, 2000, operative December 28, 2000:

"Use of funds at the school site for the Governor's Performance Award Program and the school site portion of the Academic Performance Index Schoolsite Employees Performance Bonus awards shall be decided by the existing school site governance team/school site council representing major stakeholders and then ratified by the governing board of each local educational agency."

³² Education Code Section 52054, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999, as amended by Chapter 190, Statutes of 2000, Section 1:

"(a) By ~~October 4~~ November 15 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program shall contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team, consisting of a majority of nonschoolsite personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(b) By ~~November 15~~ December 15 of the year that the school is selected to participate, the selected external evaluator shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below-average performance.

(2) Hold a public meeting at the school, in cooperation with the

principal, to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit, at the public meeting, the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section.

(4) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(c) By ~~December~~ January 15 of the year that the school is selected to participate, the selected external evaluator shall complete a review of the school that identifies weaknesses that contribute to the school's below average performance and makes recommendations for improvement.

(d) By ~~March~~ April 15 of the year that follows the year the school is selected to participate, the external evaluator and the schoolsite and community team selected pursuant to subdivision (a) shall develop an action plan to improve the academic achievement of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a scope that requires reimbursement by the Commission on State Mandates for its implementation.

(e) At a minimum, the action plan shall do all of the following:

(1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 33126.

(2) Identify the current barriers at the school and district toward improvements in pupil achievement.

(3) Identify schoolwide and districtwide strategies to remove these barriers.

(4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.

(5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information regarding

the achievement of English learners, economically disadvantaged pupils, and other groups of pupils; by race, ethnicity, and gender.

(6) Set short-term academic objectives pursuant to Section 52052 for a two-year period that will allow the school to make adequate progress toward the growth targets established for each participating school for pupil achievement as measured by all of the following to the extent that the data is available for the school:

(A) The achievement test administered pursuant to Section 60640.

(B) Graduation rates for grades 7 to 12, inclusive.

(C) Attendance rates for pupils and school personnel for elementary, middle, and secondary schools.

(D) Any other indicators approved by the State Board of Education.

(f) The school action plan shall focus on improving pupil academic performance, improving the involvement of parents and guardians, improving the effective and efficient allocation of resources and management of the school, and identifying and developing solutions that take into account the underlying causes for low performance by pupils.

(g) The school action plan may propose to increase the number of instructional days offered at the school site and also may propose to increase up to a full 12 months the amount of time for which certificated employees are contracted, if all of the following conditions are met:

(1) Provisions of the plan proposed pursuant to this subdivision shall not violate current applicable collective bargaining agreements.

(2) An agreement is reached with the exclusive representative concerning staffing specifically to accommodate the extended school year or 12-month contract.

(gh) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(h) Upon its completion, the action plan shall be submitted to the governing board of the school districts for its approval. After the plan is approved, but no later than ~~April~~ May 15 of the year that follows the year the school is selected to participate, the plan shall be submitted to the Superintendent of Public Instruction with a request for funding in the form prescribed by the Superintendent of Public Instruction.

(i) Not later than ~~May~~ June 15 of the year next following the year in which a school is selected for participation, the State Board of Education shall review and approve or disapprove the school's request for funding, based on the recommendation of the Superintendent of Public Instruction. In conjunction with its approval of a request for funding to implement a school's action plan, the State Board of Education may waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (l) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 64000 if the waiver does not result in a decrease

1 which allows the school action plan to propose an increase in the number of
2 instructional days offered at the schoolsite and to increase the amount of time for
3 which certificated employees are contracted to 12 months. New subdivision (h)
4 requires the team, in the development of the action plan, to consult with the
5 exclusive representatives of employee organizations, where they exist.

6 Chapter 695, Statutes of 2000 amended Education Code Sections 52052-
7 52058. Chapter 695/00, Section 1 amended Section 52052³³ to make technical
8 changes.

in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46300."

³³ Education Code Section 52052 as amended by Chapter 695, Statutes of 2000, Section 1:

"(a) (1) By July 1, 1999, the Superintendent of Public Instruction, with approval of the State Board of Education, shall develop an Academic Performance Index (API), to measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.

(2) For purposes of this section, a numerically significant ethnic or socioeconomically disadvantaged subgroup is a subgroup that constitutes at least 15 percent of a school's total pupil population and consists of at least 30 pupils. An ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school.

(3) The API shall consist of a variety of indicators currently reported to the State Department of Education including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic

status, gender and ethnic group. Only the test scores of pupils who were enrolled in a school district in the prior fiscal year may be included in the test results reported in the API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data is currently reported to the state and the accuracy of the data.

(C) If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test developed pursuant to Section 60604.

(2) The nationally normed test as augmented pursuant to paragraph (1) of subdivision (f) of Section 60644.

(3) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, expected annual percentage growth targets for all schools based on their API baseline score as measured in July 1999. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the State Board of Education pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have as their growth target, maintenance of their API score above the statewide API performance target. However, the State Board of Education may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically-significant ethnic and socioeconomically disadvantaged subgroups, as defined in subdivision (a) of Section 52052, are making comparable improvement.

(d) Upon adoption of state performance standards by the State Board of Education, the Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When fully developed,

1 Chapter 695/00, Section 2 amended Education Code Section 52053³⁴ to
2 add subdivisions (h), (i), (j), (k) and (l) and to renumber former subdivisions (h) as

schools may either meet the state target or meet their growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057:

(e) Beginning in June 2000, the API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f) Only comprehensive high schools, middle schools, and elementary schools that have a population of 100 or more pupils may be included in the API ranking.

(g) By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 pupils, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

³⁴ Education Code Section 52053, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999, as amended by Chapter 695, Statutes of 2000, Section 2:

"(a) The Immediate Intervention/Underperforming Schools Program is hereby established. By August 15, 1999, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall invite schools that scored below the 50th percentile on the achievement tests administered pursuant to Section 60640 both in the spring of 1998 and in the spring of 1999 to participate in the Immediate Intervention/Underperforming Schools Program. A school invited to participate may take any action not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates to improve pupil performance.

(b) The total number of schools participating in the program in 1999 shall be 430. Unless subdivision (d) applies, schools that apply will be selected based on the order in which they apply within ranks of deciles, not to exceed 86 per decile, within the following grade level categories:

(1) No more than 301 elementary schools.

(2) No more than 78 middle schools.

(3) No more than 52 high schools.

(c) The 86 schools selected within each decile range pursuant to subdivision (b) shall proportionately represent elementary, middle, and high schools and shall provide statewide proportionate geographic representation of urban and rural schools.

(d) If fewer than the number of schools in any grade level category apply, schools that scored below the 50th percentile in those grade level categories that did not apply for the program shall randomly be selected by the Superintendent of Public Instruction, with the approval of the State Board of Education, to participate based on their proportional representation in the state until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(e) If more than the requisite number of schools apply for any grade level category, the Superintendent of Public Instruction shall select an array of schools that reflect a broad range of academic performance of schools that scored below the 50th percentile, until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(f) A school selected to participate on or before September 1, 1999, shall be awarded a planning grant from funds appropriated pursuant to paragraph (1) of subdivision (a) of Section 2 of the act adding this section in the amount of fifty thousand dollars (\$50,000). A school selected to receive federal funds pursuant to paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall be awarded an implementation grant in an amount of at least fifty thousand dollars (\$50,000) pursuant to Public Law 105-78.

(g) Schools receiving funding under paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall comply with Public Law 105-78.

(h) By September 15, 2000, and each year thereafter, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall identify schools that failed to meet their Academic Performance Index (API) growth targets and that have an API below the 50th percentile relative to all other public elementary, middle or high schools. The Superintendent of Public Instruction shall invite these schools to participate in the Immediate Intervention/Underperforming Schools Programs. A school invited to participate may take any action to improve pupil performance not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates.

(i) The total number of schools selected for participation in the program shall be no more than the number that can be funded through the total appropriation for the planning grants referenced in subdivision (l) below.

(j) If fewer schools apply for participation than can be funded, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall randomly select the balance of schools from schools eligible to participate that did not apply. Insofar as possible, the schools randomly selected should reflect a representative proportion of elementary, middle and high schools, as well as a broad range of academic achievement.

(k) If more schools apply for participation than can be funded, the schools shall be selected on the order in which they apply. Insofar as possible, the schools randomly selected should reflect a representative proportion of elementary, middle and high schools, as well as a broad range of academic achievement.

(l) A school selected to participate on or before October 15, 2000, and each year thereafter, shall be awarded a planning grant from funds appropriated pursuant to this act of fifty thousand dollars (\$50,000).

1 subdivision (m). Subdivision (h) requires, by September 15, 2000 and each year
2 thereafter, the Superintendent of Public Instruction, with the approval of the State
3 Board of Education, to identify schools that failed to meet their API growth targets
4 and have an API below the 50th percentile relative to other schools. The
5 Superintendent of Public Instruction shall invite those schools to participate in the
6 Immediate Intervention/Underperforming School Program. Subdivision (l) limits
7 the number of schools selected based upon the amount of funding available.
8 Subdivision (j) provides that if fewer schools apply than can be funded, the
9 Superintendent of Public Instruction, with the approval of the State Board of
10 Education, to randomly select the balance of the schools from those schools that
11 did not apply. Subdivision (k) provides that if more schools apply for participation
12 than can be funded, they shall be selected in the order in which they apply.
13 Subdivision (i) provides that a school selected to participate on or before October
14 15, 2000, and each year thereafter, shall be awarded a planning grant of \$50,000.

15 Chapter 695/00, Section 2.5, amended Education Code Section 52052.3 to
16 make a technical change.

17 Chapter 695/00, Section 3, amended Education Code Section 52054³⁵ to
18 make technical changes, required the external evaluator to complete his review to

(hm) Schools selected for participation in the program shall be notified by the Superintendent of Public Instruction no later than ~~September 4~~ October 15 of each year."

³⁵ Education Code Section 52054, as amended by Chapter 695, Statutes of 2000:
"(a) By ~~October 4~~ November 15 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program shall contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team, consisting of a majority of non-schoolsite

personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(b) The selected external evaluator shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below average performance.

(2) Hold a public meeting at the school, in cooperation with the principal, to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit, at the public meeting, the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section.

(4) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(c) By February 15 of the school year that in which the school is selected to participate, the selected external evaluator, in collaboration with the broad-based schoolsite and community team selected pursuant to subdivision (a), shall complete a review of the school that identifies weaknesses that contribute to the school's below average performance and, make recommendations for improvement. ~~By March 15 of the year that follows the year the school is selected to participate, the external evaluator and the schoolsite and community team selected pursuant to subdivision (a) shall, and begin to develop an action plan to improve the academic achievement performance of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a scope that requires reimbursement by the Commission on State Mandates for its implementation.~~

(d) At a minimum, the action plan shall do all of the following:

(1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 33126.

(2) Identify the current barriers at the school and district toward improvements in pupil achievement.

(3) Identify schoolwide and districtwide strategies to remove these barriers.

(4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.

(5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information regarding the achievement of English language learners, economically disadvantaged pupils and other groups of with exceptional needs, pupils who qualify for free and reduced price meals, and all pupils, by race, ethnicity, and gender.

(6) Set short-term academic objectives pursuant to Section 52052 for a two-year period that will allow the school to make adequate progress toward the growth targets established for each participating school for pupil achievement as measured by all of the following to the extent that the data is available for the school:

(A) The achievement test administered pursuant to Section 60640.

(B) Graduation rates for grades 7 to 12, inclusive.

(C) Attendance rates for pupils and school personnel for elementary, middle, and secondary schools.

(D) Any other indicators approved by the State Board of Education.

(fe) The school action plan shall focus on improving pupil academic performance, improving the involvement of parents and guardians, improving the effective and efficient allocation of resources and management of the school, and identifying and developing solutions that take into account the underlying causes for low performance by pupils.

(f) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(g) The school action plan may propose to increase the number of instructional days offered at the schoolsite and also may propose to increase up to a full 12 months the amount of time for which certificated employees are contracted, if all of the following conditions are met:

(1) Provisions of the plan proposed pursuant to this subdivision shall not violate current applicable collective bargaining agreements;

(2) An agreement is reached with the exclusive representative concerning staffing specifically to accommodate the extended school year or 12-month contract;

(h) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

1 identify weaknesses in collaboration with the broad-based schoolsite and
2 community team and no longer required the external evaluator to develop an
3 action plan with the team.

4 Chapter 695/00, Section 4, amended Education Code Section 52054.5³⁶ to
5 make funding subject to the appropriation of funds for this purpose in the Budget
6 Act.

(i) Upon its completion, the action plan shall be submitted to the governing board of the school districts for its approval. After the plan is approved, but no later than May 15 of the year that follows the year the school is selected to participate, the plan shall be submitted to the Superintendent of Public Instruction with a request for funding in the form prescribed by the Superintendent of Public Instruction, who shall review the school action plan and recommend approval or disapproval of the school's request for funding to the State Board of Education.

(j) Not later than July 15 of the year next following the year in which a school is selected for participation, the State Board of Education shall review and approve or disapprove the school's request for funding, based on the recommendation of the Superintendent of Public Instruction. Within thirty days of the State Board of Education's review, the State Superintendent of Public Instruction shall notify the effected school districts of the state of the board's action regarding the request for funding. In conjunction with its approval of a request for funding to implement a school's action plan, the State Board of Education may, at the request of the governing board of the school district or the county board of education for a school under its jurisdiction, waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 64000 if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46300.

³⁶ Education Code Section 52054.5, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999, as amended by Chapter 695, Statutes of 2000, Section 4.

"A school whose application is approved on or before June 15 of the year following the year in which a school is selected for funding. Subject to the appropriation of funds for this purpose in the Budget Act, a school whose application is approved shall receive a grant for implementing the program, in each subsequent fiscal year that it participates in the program, in an amount up to two hundred dollars (\$200)

1 Chapter 695/00, Section 5, amended Education Code Section 52055³⁷ to
2 make technical corrections.

3 Chapter 695/00, Section 6, amended Education Code Section 52055.5³⁸ to
4 make technical corrections and to amend subdivision (b) to provide that a school is
5 no longer eligible to received funding thirty-six months after receipt of funds.

per pupil enrolled in the school, with a minimum allocation of fifty thousand dollars (\$50,000) per schoolsite. A school that applies after June 15 may receive a grant for implementing the program if funds are appropriated for this purpose in the Budget Act. As a condition of receiving this funding, a participating school or the school district having jurisdiction over that school shall match the amount of state funding from any new or existing sources of funding. To help meet this matching requirement, a participating school and the governing board of the school district having jurisdiction over that school shall receive maximum flexibility in the expenditure of any new or existing categorical funds not otherwise prohibited by state or federal law and shall redirect for the purposes of their academic improvement plan new or existing categorical or general purpose funds."

³⁷ Education Code Section 52055, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999, as amended by Chapter 695, Statutes of 2000, Section 5:

"The governing board of a school that fails to meet its annual short-term growth target within 12 months following receipt of funding pursuant to Section 52054.5 shall hold a public hearing at a regularly scheduled meeting to ensure that members of the school community are aware of the lack of progress. The governing board of the school district shall, upon consultation with the external evaluator and the schoolsite and community team selected pursuant to Section 52054, choose from a range of interventions for the school, including reassignment of school personnel to the extent authorized by law, negotiation of site-specific amendments to collective bargaining agreements, or other changes deemed appropriate, in order to continue implementing the action plan approved pursuant to Section 51054, and to make progress toward meeting the school's growth targets target."

³⁸ Education Code Section 52055.5, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999, as amended by Chapter 695, Statutes of 2000, Section 6:

"(a) ~~Following 24~~ Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that ~~meets~~ has met or exceeded its growth target each year shall receive a monetary or nonmonetary award, under the Governor's

Performance Award Program, as set forth in Section 52057. Funds received from this program shall pursuant to that section may be used at the school's discretion.

(b) Following 24 Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that has not met its performance goals growth targets each year, but demonstrates significant growth, as determined by the State Board of Education, shall continue to participate in the program for an additional year and to receive funding in the amount specified in Section 52054.5. Thirty-six months after receipt of funds pursuant to Section 52054.5, a school is no longer eligible to receive funding pursuant to that section.

(c) A school that does not meet its performance goals growth targets within 24 months after receipt of funding pursuant to Section 52054.5 the periods described in either subdivision (a) or (b), as applicable, and has failed to show significant growth, as determined by the State Board of Education, shall be deemed a low-performing school. Notwithstanding any other provision of law, the Superintendent of Public Instruction shall assume all the legal rights, duties, and powers of the governing board with respect to that school. The Superintendent of Public Instruction, in consultation with the State Board of Education and the governing board of the school district, shall reassign the principal of that school subject to the findings in subdivision (e). In addition to reassigning the principal, the Superintendent of Public Instruction, in consultation with the State Board of Education, shall, notwithstanding any other provision of law, do at least one of the following:

(1) Revise attendance options for pupils to allow them to attend any public school in which space is available. If additional attendance options are made available, nothing in this option shall be construed to require either the sending or receiving school district to incur additional transportation costs.

(2) Allow parents to apply directly to the State Board of Education for the establishment of a charter school and allow parents to establish the charter school at the existing school site.

(3) Under the supervision of the Superintendent of Public Instruction, assign the management of the school to a college, university, county office of education, or other appropriate educational institution. However, the Superintendent of Public Instruction may not assume the management of the school.

(4) Reassign other certificated employees of the school.

(5) Renegotiate a new collective bargaining agreement at the expiration of the existing collective bargaining agreement.

(6) Reorganize the school.

(7) Close the school.

(d) In addition to the actions listed in subdivision (c), the Superintendent of Public Instruction, in consultation with the State Board of Education, may take any other action considered necessary or desirable against the school district or the school district governing board, including appointment of a new superintendent or

1 The Title 5 California Code of Regulations cited above were amended on
2 January 30, 2001 and operative that date. Section 1032³⁹ was amended to add

suspension of the authority of the governing board with respect to the school or schools identified pursuant to subdivision (c).

(e) Before the Superintendent of Public Instruction may take any action against a principal pursuant to subdivision (c), the Superintendent of Public Instruction or a designee of the superintendent shall hold a public hearing on the matter in the school district and make both of the following findings:

(1) A finding that the principal had the authority to take specific enumerated actions that would have helped the school meet its performance goals.

(2) A finding that the principal failed to take specific enumerated actions pursuant to paragraph (1).

(f) An action taken pursuant to subdivision (c), (d), or (e) shall not increase local costs or require reimbursement by the Commission on State Mandates.

(g) An action taken pursuant to subdivision (c), (d), or (e) shall be accompanied by specific findings by the Superintendent of Public Instruction and the State Board of Education that the action is directly related to the identified causes for continued failure by a school to meet its performance goals."

³⁹ Title 5, California Code of Regulations, section 1032, filed December 28, 2000, operative December 28, 2000, as amended January 30, 2001, operative January 30, 2001:

"(a) For purposes of this Article, "schools" shall be defined as all schools, including charter schools, that receive a ranking on the API including schools participating in the Immediate Intervention/Underperforming Schools Program. These schools are eligible to participate in all three award programs identified in Section 1031.

(b) The API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system. An alternative accountability system will be developed for schools with fewer than 100 valid test scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools and alternative schools, including continuation high schools and independent study schools.

Once the alternative accountability system required by Education Code section 52052(g) is adopted by the State Board of Education, alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API. If the school elects to be part of the API accountability system, the school shall remain in the system for at least three subsequent years.

(c) For the purposes of these award programs, growth API means the second of two consecutive years for which the API is calculated. If a school does not receive an API pursuant to subdivisions (d)(1) or (d)(2), the school is ineligible

for participation in any of the award programs for the current and subsequent year. If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.

(d) A school's API shall be considered invalid under any of the following circumstances:

(1) The local educational agency has certified that there were adult testing irregularities at the school.

(2) The local educational agency has certified that the API is not representative of the pupil population at the school.

(3) The local educational agency has certified that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.

(4) The school's proportion of parental waivers compared to its Standardized Testing and Reporting Program (STAR) enrollment, pursuant to Education Code section 60640 et seq., is equal to or greater than 15 percent. There shall be no rounding in determining this minimum parental waiver proportion (i.e., 14.99 percent is not 15 percent).

(4)(5) Information is made available to or obtained by the California Department of Education (department) that indicates that the integrity of the API may have been compromised. If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized.

(e) In the event that, subsequent to the calculation of an API for a school, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the circumstances set out in subdivision (d) occurred, the department may invalidate the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(f) All schools that reach their growth targets or have an API of 800 and a growth of at least 1 point, have comparable improvement as defined in subdivision (g), and meet the minimum participation rate in subdivision (h), shall be recognized through the Governor's Performance Award Program and the Academic Performance Index Schoolsite Employees Performance Bonus program.

(g) Comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) shall be defined as either 1) 80 percent of the school-wide API improvement goal for schools with APIs less than 800, simplified to the nearest whole number (i.e., 1.51 equals 2); or 2) the actual distance to 800. Numerically significant subgroups with APIs below 800 at schools with API scores of 800 or above shall also show a one-point gain. Numerically significant subgroups at 800 or above shall maintain a score at or above 800.

(h) For elementary and middle schools, the minimum participation rate for all three awards programs shall be 95 percent; for high schools, it shall be 90.

1 Subparagraph (4) to subdivision (d) add the notification of parental waivers
2 compared to STAR enrollment as an additional invalidating factor.

3 Section 1033⁴⁰, subdivision (b) was amended to require school districts,
4 county offices of education and charter schools, as a condition of participation in

percent for the 2000 API growth, with the intention of increasing this rate to 95 percent in the future.

(1) If the test publisher includes the pupil's answer forms or test booklets for the nationally-normed test pursuant to Education Code section 60642 for grades 2 -11 in the number of used test forms, the pupil shall be counted as a test-taker.

(2) No pupil shall be counted more than once as a test-taker.

(3) The participation rate shall be calculated as follows:

(A) Divide the total number of test-takers in grades 2 through 11 at the school site by

(B) The total enrollment in grades 2-11 minus the number of pupils exempted from taking the test either by their Individualized Education Program (IEP) pursuant to Education Code section 60640(e) or parental waivers pursuant to Education Code section 60615.

(4) For purposes of subdivision (3)(B) above, enrollment shall be determined by the enrollment information collected by the department as part of the Standardized Testing and Reporting Program (STAR), pursuant to Education Code sections 60640 et seq.

(5) In the case of pupil testing irregularities, the scores of affected pupils shall be eliminated from the calculations of the school's growth API, although the pupils are counted as tested and shall contribute to the school's participation rate.

(6) There shall be no rounding in determining this minimum participation rate (i.e., 94.9 percent does not equal 95 percent)."

⁴⁰ Title 5, California Code of Regulations, section 1033, filed December 28, 2000, operative December 28, 2000, as amended January 30, 2001:

"(a) Schools that meet the eligibility requirements for the Governor's Performance Award Program (GPA) shall receive the per pupil award amount for each of their eligible pupils determined as follows:

(1) The school funding rate is the total number of test-takers divided by the total enrollment on the first day of testing for grades 2-11 minus the IEP exemptions

(2) There shall be no rounding in determining the school funding rate (i.e., 94.9% does not equal 95%).

(3) The kindergarten, first grade and 12th grade enrollment as established for that school year by the California Basic Education Data System (CBEDS) shall be added to the number of test-takers the total enrollment on the first day of testing for grades 2-11, less the number of pupils with testing irregularities plus the number of IEP exemptions, then multiplied by the school funding rate. This result, simplified to the nearest whole number (i.e., 1.51 equals 2) shall determine the number of eligible pupils upon which the GPA awards are based

(4) The amount allocated per pupil shall be determined on a pro-rata basis from the total amount of funding available in the annual State Budget.

(b) To participate in the Academic Performance Index Schoolsite Employees Performance Bonus awards shall be divided equally among school site individual employees on a full-time equivalent (FTE) basis and to the school site, using the same eligibility criteria as the GPA school districts, county offices of education and charter schools shall certify the number of full-time equivalent (FTE) employees employed as of the second principal apportionment of the 1999-2000 school year at each school site under their jurisdiction that are eligible for awards in accordance with Education Code section 52057(a).

(1) The "number of full-time equivalent employees (FTE) employed as of the second principal apportionment" shall be defined as the number of funded FTE positions at the school site as of June 23, 2000.

(2) "Employees at each school site" shall be defined as positions filled by individuals employed by the school district, county office of education, or charter school at least 50 percent of the school year in which the award was earned, and who spent at least 50 percent of his/her total annual work hours at school sites, and who spent at least 20 percent of his/her total annual work hours at the eligible school site.

(3) "Full time equivalent (FTE) position" shall be defined as a position filled by a person that is required to work a minimum of a six hour work day. School districts, county offices of education, and charter schools may choose to use a longer work day in accordance with their local collective bargaining agreements. One person cannot generate more than one FTE position. Part-time positions shall generate a partial FTE on a proportional basis.

(4) The certification shall indicate the number of certificated and classified FTE positions at each school site. The number of certificated employees reported by the school districts, county offices of education, and charter schools shall also be used for purposes of making awards under the Certificated Staff Performance Incentive Act.

(A) "Classified employee" shall be defined as an employee not requiring certification and who meets the school site employee criteria specified in subdivision (b)(2).

(B) "Certificated employee" shall be defined as an employee in

1 the Academic Performance Index Schoolsite Employees Performance Bonus
2 program, to certify the number of full-time equivalent (FTE) employees employed
3 as of the second principal apportionment of the 1999-2000 school year at each
4 school site under their jurisdiction that are eligible for awards.

5 Section 1035⁴¹ was amended to make technical changes in the process for
6 distributing awards.

a position requiring certification and who holds a document issued by the California Commission on Teacher Credentialing authorizing service in the public schools of California.

(C) "Document" shall be defined as a credential, emergency permit, or waiver issued by the California Commission on Teacher Credentialing.

(5) For purposes of this subdivision, the deadline for submitting the certification of FTE to the department shall be November 1, 2000 or as soon thereafter as the eligible schools are identified and no later than February 1, 2001. If certification is not received by the department by February 1, 2001, those schools will not receive either the Certificated Staff Performance Incentive Act award or the Academic Performance Index Schoolsite Employees Performance Bonus award."

⁴¹ Title 5, California Code of Regulations, Section 1035, filed December 28, 2000, operative December 28, 2000, as amended January 30, 2001:

"Distribution of Certificated Staff Performance Incentive Act awards pursuant to the 2000 growth API shall be as follows, with at least one thousand (1,000) \$25,000 awards, three thousand seven hundred fifty (3,750) \$10,000 awards and up to seven thousand five hundred (7,500) \$5,000 awards being distributed in the process. The total amount of funding for this Act provided in the annual State Budget shall be distributed proportionally across each of elementary, middle, and high schools statewide by the number of certificated staff as reported in the most current CBEDS report.

(a) Schools will be declared eligible or ineligible according to the rank of schools pursuant to Education Code section 52052. An "eligible list" will be determined for each type of school (elementary, middle, and high) for the awards distribution.

(b) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE to be distributed to the certificated school site staff in certificated positions at that

school. The number of FTE counted shall be subtracted from the awards pool of 1,000 FTE positions.

(c) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(d) This process shall continue until all 1,000 \$25,000/FTE awards have been allocated to the eligible school sites. If, before all 1,000 awards have been allocated, an eligible school site has more eligible FTE than remain in the 1,000 FTE awards pool, all of that school site's FTE shall receive \$25,000 awards. If more than one school site has an identical score in this circumstance, all-eligible FTE at each of the school site(s) the school with the greatest improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642 shall receive \$25,000 awards.

(e) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target that did not receive \$25,000 awards, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE counted shall be subtracted from the awards pool of 3,750 \$10,000 awards.

(f) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE counted shall be subtracted from the awards pool remainder.

(g) This process shall continue in consecutive order until all 3,750 \$10,000/FTE awards have been allocated to the school sites. If, before all 3,750 awards have been allocated, an eligible school site has more eligible FTE than remain in the 3,750 FTE pool, all of that school site's FTE shall receive \$10,000 awards. If more than one school site has an identical score in this circumstance, all-eligible FTE at the school site(s) the school with the greatest improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642 shall receive \$10,000 awards.

(h) The sum of the awards distributed under subdivisions (b) through (g) shall be subtracted from \$100 million, and the remainder shall be divided by \$5,000 to determine the maximum number of \$5,000 awards to be distributed. The \$5,000 awards shall be distributed in the same manner as the \$25,000 and the \$10,000 awards, with the exception that the distribution process will end when the pool of available \$5,000 awards is not sufficient to fully fund the eligible FTE of the next school or schools in line for the awards."

1 Section 1038⁴² was added (after renumbering former section 1038 as new
2 section 1039) to require that Governor's Performance Awards, Academic
3 Performance Index Schoolsite Employees Performance Bonus awards and
4 Certificated Staff Performance Incentive Act awards shall not be subject to school
5 district, county, or school indirect charges or other administrative charges.

6 Section 1039⁴³ was added as former section 1038 was renumbered
7 Section 1039.

8 The Title 5 California Code of Regulations cited above were amended again
9 on June 11, 2001 and operative that date. Section 1031⁴⁴ was amended to insert
10 "Article 1.7" for "these regulations".

⁴² Title 5, California Code of Regulations, Section 1038, filed January 30, 2001,
operative January 30, 2001 (former section 1038 renumbered as new section
1039):

"Governor's Performance Awards, Academic Performance Index Schoolsite
Employees Performance Bonus awards, and Certificated Staff Performance
Incentive Act awards shall not be subject to school district, county, or school
indirect charges or other administrative charges."

⁴³ Title 5, California Code of Regulations, Section 1039, originally filed December
28, 2000 as Section 1038, renumbered and filed January 30, 2001, operative
January 30, 2001:

"Use of funds at the school site for the Governor's Performance Award Program
and the school site portion of the Academic Performance Index Schoolsite
Employees Performance Bonus awards shall be decided by the existing school
site governance team/school site council representing major stakeholders and
then ratified by the governing board of each local educational agency."

⁴⁴ Title 5, California Code of Regulations, Section 1031, filed December 28, 2000,
operative December 28, 2000, as amended June 11, 2001:

"(a) The Academic Performance Index (API) measures the performance of
California public schools, especially the academic performance of pupils, and
demonstrates comparable improvement in academic achievement by all
numerically significant ethnic and socioeconomically disadvantaged subgroups

1 Section 1032⁴⁵ was amended to add subparagraph (5) to subdivision (d) to
2 add a catch-all circumstance which would invalidate an API.

within schools pursuant to Education Code section 52052 and the Framework for The Academic Performance Index, July 1999 and The 1999 Base Year Academic Performance Index, December 15, 1999, which are incorporated herein.

(b) The purpose of these regulations Article 1.7 is to implement the programs established by three statutes relating to the API:

(1) The Governor's Performance Award Program of the Public Schools Accountability Act of 1999 (Education Code sections 52050 et seq.).

(2) The Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.).

(3) The Academic Performance Index Schoolsite Employees Performance Bonus (Section 40, Chapter 71 of the Statutes of 2000)."

⁴⁵ Title 5, California Code of Regulations, section 1032, filed December 28, 2000, operative December 28, 2000, as amended June 11, 2001:

"(a) For purposes of this Article, "schools" shall be defined as all schools, including charter schools, that receive a ranking on the API including schools participating in the Immediate Intervention/Underperforming Schools Program. These schools are eligible to participate in all three award programs identified in Section 1031.

(b) The API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system. The Superintendent of Public Instruction will develop an alternative accountability system for schools with fewer than 100 valid test scores, schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools and alternative schools, including continuation high schools and independent study schools.

Once the alternative accountability system required by Education Code section 52052(g) is adopted by the State Board of Education, alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API. If the school elects to be part of the API accountability system, the school shall remain in the system for at least three subsequent years.

(c) For the purposes of these award programs, growth API means the API in the second year of two consecutive years for which the API is calculated. If a school does not receive an API pursuant to subdivisions (d)(1), (d)(2) or (d)(4), the school is ineligible for participation in any of the award programs for the current and subsequent year. If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.

(d) A school's API shall be considered invalid under any of the following circumstances:

(1) The local educational agency notifies the California Department of Education (department) that there were adult testing irregularities at the school.

(2) The local educational agency notifies the department that the API is not representative of the pupil population at the school.

(3) The local educational agency notifies the department that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.

(4) The school's proportion of parental waivers compared to its Standardized Testing and Reporting Program (STAR) enrollment, pursuant to Education Code section 60640 et seq., is equal to or greater than 15 percent for the 2000 STAR. For the 2001 STAR, the school's proportion of parental waivers compared to its STAR enrollment is equal to or greater than 10 percent. There shall be no rounding in determining this minimum parental waiver proportion (i.e., 14.99 percent is not 15 percent).

(5) Information is made available to or obtained by the department that indicates that the integrity of the API may have been compromised. If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized.

(6) The minimum participation in each content area tested pursuant to Education Code section 60642 for grades 2-11 is less than 85 percent of the school participation rate as defined by Section 1032(h)(3) multiplied by the total number of test takers. There shall be no rounding in determining the minimum participation in each content area tested.

(e) In the event that, subsequent to the calculation of an API for a school, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the circumstances set out in subdivision (d) occurred, the department may invalidate the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(f) All schools that reach their growth targets or have an API of 800 or more and growth of at least 1 point, have comparable improvement as defined in subdivision (g), and meet the minimum participation rate in subdivision (h), shall be recognized through the Governor's Performance Award Program and the Academic Performance Index Schoolsite Employees Performance Bonus program.

(g) Comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) shall be defined as either: 1) 80 percent of the school-wide API improvement goal for schools with APIs less than 800, simplified to the nearest whole number (i.e., 1.51 equals 2); or 2) the actual distance to 800. Numerically significant subgroups with APIs below 800 at schools with API scores of 800 or

1 Section 1033⁴⁶ was amended to add subparagraph (6) to subdivision (b) to
2 establish a deadline for submitting certification of FTE's starting with the STAR
3 2001 testing.

above shall also show a one-point gain. Numerically significant subgroups at 800 or above shall maintain a score at or above 800.

(h) For elementary and middle schools, the minimum participation rate for all three awards programs shall be 95 percent; for high schools, it shall be 90 percent, with the intention of increasing this rate to 95 percent in the future.

(1) If the test publisher includes the pupil's answer forms or test booklets for the nationally-normed test pursuant to Education Code section 60642 for grades 2-11 at the school, in the number of used test forms, the pupil shall be counted as a test-taker.

(2) No pupil shall be counted more than once as a test-taker.

(3) The participation rate shall be calculated as follows:

(A) Divide the total number of test-takers in grades 2-11 at the school site by

(B) The total enrollment in grades 2-11 minus the number of pupils exempted from taking the test either by their Individualized Education Program (IEP) pursuant to Education Code section 60640(e) or parental waivers pursuant to Education Code section 60615.

(4) For purposes of subdivision (3)(B) above, enrollment shall be determined by the enrollment information collected by the department as part of the Standardized Testing and Reporting Program (STAR), pursuant to Education Code sections 60640 et seq.

(5) In the case of pupil testing irregularities, the scores of affected pupils shall be eliminated from the calculations of the school's growth API, although the pupils are counted as tested and shall contribute to the school's participation rate.

(6) There shall be no rounding in determining this minimum participation rate (i.e., 94.9 percent does not equal 95 percent)."

⁴⁶ Title 5, California Code of Regulations, section 1033, filed December 28, 2000, operative December 28, 2000, as amended June 11, 2001:

"(a) Schools that meet the eligibility requirements for the Governor's Performance Award Program (GPA) shall receive the per pupil award amount for each of their eligible pupils determined as follows:

(1) The school funding rate is the total number of test-takers divided by the total enrollment on the first day of testing for grades 2-11 minus the IEP exemptions

(2) There shall be no rounding in determining the school funding rate (i.e., 94.9% does not equal 95%).

(3) The kindergarten, first grade and 12th grade enrollment as established for that school year by the California Basic Education Data System (CBEDS) shall be added to the total enrollment on the first day of testing for grades 2-11, less the number of pupils with testing irregularities, then multiplied by the school funding rate. This result, simplified to the nearest whole number (i.e., 1.51 equals 2) shall determine the number of eligible pupils upon which the GPA awards are based.

(4) The amount allocated per pupil shall be determined on a pro-rata basis from the total amount of funding available in the annual State Budget.

(b) To participate in the Academic Performance Index Schoolsite

Employees Performance Bonus awards, school districts, county offices of education and charter schools shall certify the number of full-time equivalent (FTE) employees employed as of the second principal apportionment of the 1999-2000 school year at each school site under their jurisdiction that are eligible for awards in accordance with Education Code section 52057(a).

(1) The "number of full-time equivalent employees (FTE) employed as of the second principal apportionment" shall be defined as the number of funded FTE positions at the school site as of June 23, 2000.

(2) "Employees at each school site" shall be defined as positions filled by individuals employed by the school district, county office of education, or charter school at least 50 percent of the school year in which the award was earned, and who spent at least 50 percent of his/her total annual work hours at school sites, and who spent at least 20 percent of his/her total annual work hours at the eligible school site.

(5) "Full-time equivalent (FTE) position" shall be defined as a position filled by a person that is required to work a minimum of a six-hour work day. School districts, county offices of education, and charter schools may choose to use a longer work day in accordance with their local collective bargaining agreements. One person cannot generate more than one FTE position. Part-time positions shall generate a partial FTE on a proportional basis.

(6) The certification shall indicate the number of certificated and classified FTE positions at each school site. The number of certificated employees reported by the school districts, county offices of education, and charter schools shall also be used for purposes of making awards under the Certificated Staff Performance Incentive Act.

(D) "Classified employee" shall be defined as an employee not requiring certification and who meets the school site employee criteria specified in subdivision (b)(2).

(E) "Certificated employee" shall be defined as an employee in a position requiring certification and who holds a document issued by the California Commission on Teacher Credentialing authorizing service in the public schools of California.

(F) "Document" shall be defined as a credential, emergency

1 Section 1034⁴⁷ was amended to make a technical correction.

permit, or waiver issued by the California Commission on Teacher Credentialing.

(5) For purposes of this subdivision, the deadline for submitting the certification of FTE to the department shall be November 1, 2000 or as soon thereafter as the eligible schools are identified and no later than February 1, 2001. If certification is not received by the department by February 1, 2001, those schools will not receive either the Certificated Staff Performance Incentive Act award or the Academic Performance Index Schoolsite Employees Performance Bonus award.

(6) Starting with STAR 2001 testing, the deadline for submitting the certification of FTE's to the department shall be within 90 days of the department's posting on the website of the certified list of schools eligible to receive the Governor's Performance Award. If the schools' certification is not received by the department by the deadline, the schools will not receive the Certificated Staff Performance Incentive Act award.

⁴⁷ Title 5, California Code of Regulations, section 1034, added December 28, 2000, operative December 28, 2000, as amended June 11, 2001 (Repealed January 8, 2002):

"To be eligible to receive awards under the Certified Staff Performance Incentive Act, school sites must have attained a statewide decile rank of 1-5 in the base year of the current growth API and must meet all of the relevant statutory requirements and each of the following requirements:

(a) Each school site must have improved by a minimum of two times its annual growth target on its API between the base year and the current growth year.

(b) All numerically significant ethnic or socioeconomically disadvantaged subgroups at a school must have improved by a minimum of two times their annual growth targets, simplified to the nearest whole number (i.e., 1.51 equals 2). However, all numerically significant ethnic or socioeconomically disadvantaged subgroups with an API of 800 or above must maintain a subgroup API of 800 or above.

(c) In addition to subdivisions (a) and (b) above, each school site shall have the required participation rate for the 2000 growth API as calculated by the department. For the 2000 growth API, each school must show improvement between the 1998 and 1999 testing on the nationally normed test pursuant to Education Code section 60642.

(d) The local educational agency must complete an application on behalf of their eligible schools, which shall include:

(1) The number of eligible schools;

(2) Certification that the data used in the API calculations from the schools is accurate; and

1 Section 1035⁴⁸ was amended to make technical corrections.

(3) A list of certificated ~~staff in certificated~~ positions on an FTE basis at each of the eligible schools."

⁴⁸ Title 5, California Code of Regulations, Section 1035, filed December 28, 2000, operative December 28, 2000, as amended June 11, 2001:

"Distribution of Certificated Staff Performance Incentive Act awards pursuant to the 2000 growth API shall be as follows, with at least one thousand (1,000) \$25,000 awards, three thousand seven hundred fifty (3,750) \$10,000 awards and up to seven thousand five hundred (7,500) \$5,000 awards being distributed in the process. The total amount of funding for this Act provided in the annual State Budget shall be distributed proportionally across each of elementary, middle, and high schools statewide by the number of certificated staff as reported in the most current CBEDS report.

(a) Schools will be declared eligible or ineligible according to the rank of schools pursuant to Education Code section 52052. An "eligible list" will be determined for each type of school (elementary, middle, and high) for the awards distribution.

(b) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the certificated school site staff in certificated positions at that school. The number of FTE positions counted shall be subtracted from the awards pool of 1,000 FTE positions.

(c) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(d) This process shall continue until all 1,000 \$25,000/FTE awards have been allocated to the eligible school sites. If, before all 1,000 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 1,000 FTE awards pool, all of that school site's FTE positions shall receive \$25,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement between the 1998 and 1999 testing on the nationally normed test pursuant to Education Code section 60642 shall receive \$25,000 awards.

(e) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target that did not receive \$25,000 rewards, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool of 3,750 \$10,000 awards.

1

Section 1036⁴⁹ was amended to make a technical correction.

(f) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(g) This process shall continue in consecutive order until all 3,750 \$10,000/FTE awards have been allocated to the school sites. If, before all 3,750 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 3,750 FTE pool, all of that school site's FTE positions shall receive \$10,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement between the 1998 and 1999 testing on the nationally normed test pursuant to Education Code section 60642 shall receive \$10,000 awards.

(h) The sum of the awards distributed under subdivisions (b) through (g) shall be subtracted from \$100 million, and the remainder shall be divided by \$5,000 to determine the maximum number of \$5,000 awards to be distributed. The \$5,000 awards shall be distributed in the same manner as the \$25,000 and the \$10,000 awards, with the exception that the distribution process will end when the pool of available \$5,000 awards is not sufficient to fully fund the eligible FTE positions of the next school or schools in line for the awards."

⁴⁹ Title 5, California Code of Regulations, Section 1036, filed December 28, 2000, operative December 28, 2000, as amended June 11, 2001 (repealed January 8, 2002):

"(a) The Academic Performance Index Schoolsite Employees Performance Bonus shall be allocated to individuals and the school site. Funds shall be distributed to the school site for those individuals who worked at the school site for the school year for which the growth API was calculated. These bonuses shall be distributed on an FTE basis to employees assigned to the school site. Staff who were employed at a school site part-time or for less than the full school year shall have their awards pro-rated on an a per FTE basis, as determined by the local educational agency contract.

(b) For the purpose of the Certificated Staff Performance Incentive Act awards, "certificated staff" include those certificated staff employed at the school site in certificated positions for the school year and certificated staff that were employed at the school site part-time or for less than the full school year for which the growth API was calculated. Except as otherwise provided through bargaining unit negotiations pursuant to Education Code section 44653, certificated staff employed at a school site part-time or for less than the full school year shall have their award allocations pro-rated on an FTE basis."

1 Section 1032⁵⁰ was amended again on August 2, 2001 to make technical
2 corrections and to add subdivision (j) which allows a school that had its 2000 API

⁵⁰ Title 5, California Code of Regulations, section 1032, filed December 28, 2000, operative December 28, 2000, as amended August 2, 2001:

"(a) For purposes of this Article, "schools" shall be defined as all schools, including charter schools, that receive a ranking on the API including schools participating in the Immediate Intervention/Underperforming Schools Program. These schools are eligible to participate in all three award programs identified in Section 1031.

(b) The API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system. The Superintendent of Public Instruction will develop an alternative accountability system for schools with fewer than 100 valid test scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

Once the alternative accountability system required by Education Code section 52052(g) is adopted by the State Board of Education, alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API. If the school elects to be part of the API accountability system, the school shall remain in the system for at least three subsequent years.

(c) For the purposes of these award programs, growth API means the API in the second year of two consecutive years for which the API is calculated. If a school does not receive an API pursuant to subdivisions (d)(1), (d)(2) or (d)(4), the school is ineligible for participation in any of the award programs for the current and subsequent year. If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.

(d) A school's API shall be considered invalid under any of the following circumstances:

(1) The local educational agency notifies the California Department of Education (department) that there were adult testing irregularities at the school.

(2) The local educational agency notifies the department that the API is not representative of the pupil population at the school.

(3) The local educational agency notifies the department that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.

(4) The school's proportion of parental waivers compared to its Standardized Testing and Reporting Program (STAR) enrollment, pursuant

to Education Code section 60640 et seq., is equal to or greater than 15 percent for the 2000 STAR. For the 2001 STAR, and each subsequent STAR the school's proportion of parental waivers compared to its STAR enrollment is equal to or greater than 10 percent, except when the school's proportion of parental waivers compared to its STAR enrollment is equal to or greater than 10 percent but less than 20 percent. In this case, the department will conduct standard statistical tests to determine whether the pupils tested at the school represent the school's pupils by grade level. If the standard statistical tests demonstrate that the pupils tested represent the school's pupils, then the school's API shall be considered valid. If the standard statistical tests demonstrate that the pupils tested do not represent the school's pupils, then the school's API shall be considered invalid. There shall be no rounding in determining this minimum parental waiver proportion (i.e., 14.99 percent is not 15 percent).

(5) Information is made available to or obtained by the department that indicates that the integrity of the API may have been compromised. If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized.

(6) The minimum participation in each content area tested pursuant to Education Code section 60642 for grades 2-11 is less than 85 percent of the school participation rate as defined by Section 1032(h)(3) multiplied by the total number of test-takers. In any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the school's proportion of the number of test-takers in that content area compared with the total number of test-takers is less than 85 percent. There shall be no rounding in determining the proportion of test-takers in each content area tested (i.e., 84.99 percent is not 85 percent).

(e) In the event that, subsequent to the calculation of an API for a school, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the circumstances set out in subdivision (d) occurred, the department may invalidate the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(f) All schools that reach their growth targets or have an API of 800 or more and growth of at least 1 point, have comparable improvement as defined in subdivision (g), and meet the minimum participation rate in subdivision (h), shall be recognized through the Governor's Performance Award Program and the Academic Performance Index Schoolsite Employees Performance Bonus program.

(g) Comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) shall be defined as either: 1) 80 percent of the school-wide API improvement goal for schools with APIs less than 800, simplified to the nearest whole number (i.e., 1.51 equals 2); or 2) the actual distance to 800. Numerically

- 1 invalidated solely because of excessive parental waivers to be eligible for the
- 2 Governor's Performance Awards but not for the Certificated Staff Performance
- 3 Incentive Act.

significant subgroups with APIs below 800 at schools with API scores of 800 or above shall also show a one-point gain. Numerically significant subgroups at 800 or above shall maintain a score at or above 800.

(h) For elementary and middle schools, the minimum participation rate for all three awards programs shall be 95 percent; for high schools, it shall be 90 percent, with the intention of increasing this rate to 95 percent in the future.

(1) If the test publisher determines includes the pupil's answer forms or test booklets for the nationally normed test pursuant to Education Code section 60642 for grades 2 -11, that a pupil did attempt to take any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API at the school, in the number of used test forms, the pupil shall be counted as a test-taker.

(2) No pupil shall be counted more than once as a test-taker.

(3) The participation rate shall be calculated as follows:

(A) Divide the total number of test-takers in grades 2-11 at the school site by

(B) The total enrollment in grades 2-11 minus the number of pupils exempted from taking the test either by their Individualized Education Program (IEP) pursuant to Education Code section 60640(e) or parental waivers pursuant to Education Code section 60615;

(4) For purposes of subdivision (3)(B) above, enrollment shall be determined by the enrollment information collected by the department as part of the Standardized Testing and Reporting Program (STAR), pursuant to Education Code sections 60640 et seq.

(5) In the case of pupil testing irregularities, the scores of affected pupils shall be eliminated from the calculations of the school's growth API, although the pupils are counted as tested and shall contribute to the school's participation rate.

(6) There shall be no rounding in determining this minimum participation rate (i.e., 94.9 percent does not equal 95 percent).

(i) (Reserved)

(j) A school that had its 2000 API invalidated solely because of excessive parental waivers (subdivision (d)(4)) will be eligible for the Governor's Performance Awards based on the 2001 growth API if the school and all of its numerically significant subgroups achieve twice the growth targets associated with the school's 1999 base API and the school has met all other 2001 eligibility criteria. While being eligible for the Governor's Performance Awards, such a

1 Section 1032⁵¹ was amended again on November 15, 2001 to add
2 subdivision (l) which requires the Department of Education to publish on its web

school would not be eligible for awards under the Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.)."

⁵¹ Title 5, California Code of Regulations, section 1032, filed December 28, 2000, operative December 28, 2000, as amended November 15, 2001:

"(a) For purposes of this Article, "schools" shall be defined as all schools, including charter schools, that receive a ranking on the API including schools participating in the Immediate Intervention/Underperforming Schools Program. These schools are eligible to participate in all three award programs identified in Section 1031.

(b) The API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system. The Superintendent of Public Instruction will develop an alternative accountability system for schools with fewer than 100 valid test scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools and alternative schools, including continuation high schools and independent study schools.

Once the alternative accountability system required by Education Code section 52052(g) is adopted by the State Board of Education, alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API. If the school elects to be part of the API accountability system, the school shall remain in the system for at least three subsequent years.

(c) For the purposes of these award programs, growth API means the API in the second year of two consecutive years for which the API is calculated. If a school does not receive an API pursuant to subdivisions (d)(1), (d)(2) or (d)(4), the school is ineligible for participation in any of the award programs for the current and subsequent year. If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.

(d) A school's API shall be considered invalid under any of the following circumstances:

(1) The local educational agency notifies the California Department of Education (department) that there were adult testing irregularities at the school.

(2) The local educational agency notifies the department that the API is not representative of the pupil population at the school.

(3) The local educational agency notifies the department that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.

(4) The school's proportion of parental waivers compared to its Standardized Testing and Reporting Program (STAR) enrollment, pursuant to Education Code section 60640 et seq., is equal to or greater than 15 percent for the 2000 STAR. For the 2001 STAR, and each subsequent STAR the school's proportion of parental waivers compared to its STAR enrollment is equal to or greater than 10 percent, except when the school's proportion of parental waivers compared to its STAR enrollment is equal to or greater than 10 percent but less than 20 percent. In this case, the department will conduct standard statistical tests to determine whether the pupils tested at the school represent the school's pupils by grade level. If the standard statistical tests demonstrate that the pupils tested represent the school's pupils, then the school's API shall be considered valid. If the standard statistical tests demonstrate that the pupils tested do not represent the school's pupils, then the school's API shall be considered invalid. There shall be no rounding in determining this minimum parental waiver proportion (i.e., 9.99 percent is not 10 percent).

(5) Information is made available to or obtained by the department that indicates that the integrity of the API may have been compromised. If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized.

(6) In any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the school's proportion of the number of test-takers in that content area compared with the total number of test-takers is less than 85 percent. There shall be no rounding in determining the proportion of test-takers in each content area (i.e., 84.99 percent is not 85 percent).

(e) In the event that, subsequent to the calculation of an API for a school, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the circumstances set out in subdivision (d) occurred, the department may invalidate the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(f) All schools that reach their growth targets or have an API of 800 or more and growth of at least 1 point, have comparable improvement as defined in subdivision (g), and meet the minimum participation rate in subdivision (h), shall be recognized through the Governor's Performance Award Program and the Academic Performance Index Schoolsite Employees Performance Bonus program.

(g) Comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) shall be defined as either: 1) 80 percent of the school-wide API improvement goal for schools with APIs less than 800, simplified to the nearest whole number (i.e., 1.51 equals 2); or 2) the actual distance to 800. Numerically significant subgroups with APIs below 800 at schools with API scores of 800 or

above shall also show a one-point gain. Numerically significant subgroups at 800 or above shall maintain a score at or above 800.

(h) For elementary and middle schools, the minimum participation rate for all three awards programs shall be 95 percent; for high schools, it shall be 90 percent, with the intention of increasing this rate to 95 percent in the future.

(1) If the test publisher determines, for grades 2-11, that a pupil did attempt to take any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the pupil shall be counted as a test-taker.

(2) No pupil shall be counted more than once as a test-taker.

(3) The participation rate shall be calculated as follows:

(A) Divide the total number of test-takers in grades 2-11 at the school site by

(B) The total enrollment in grades 2-11 minus the number of pupils exempted from taking the test either by their Individualized Education Program (IEP) pursuant to Education Code section 60640(e) or parental waivers pursuant to Education Code section 60615.

(4) For purposes of subdivision (3)(B) above, enrollment shall be determined by the enrollment information collected by the department as part of the Standardized Testing and Reporting Program (STAR), pursuant to Education Code sections 60640 et seq.

(5) In the case of pupil testing irregularities, the scores of affected pupils shall be eliminated from the calculations of the school's growth API, although the pupils are counted as tested and shall contribute to the school's participation rate.

(6) There shall be no rounding in determining this minimum participation rate (i.e., 94.9 percent does not equal 95 percent).

(i) The department will publish on its web site a report of STAR testing and demographic data used in the calculation and reporting of the API. Prior to publishing the report on its web site, the department will announce the report in writing and/or by electronic communication to each local educational agency that appears in the API report. The local educational agency must notify the department and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data. The local education agency's notification must be received by the department and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on the department's web site. The local educational agency must submit all data corrections to the test publisher in writing or e-mail. The test publisher shall specify a deadline for submittal of the data corrections that is no less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data.

(j) A school that had its 2000 API invalidated solely because of excessive parental waivers (subdivision (d)(4)) will be eligible for the Governor's Performance Awards based on the 2001 growth API if the school and all of its

1 site a report of STAR testing and demographic data used in the calculation and
2 reporting of the API. Prior to publishing the report on its web site, the department
3 will announce the report in writing and/or by electronic communication to each
4 local educational agency that appears in the report. Upon receipt, school districts,
5 county offices of education and charter schools, for the first time, are required to
6 notify the department and the test publisher within 30 days by way of e-mail or in
7 writing whether there are errors in the STAR testing or demographic data.

8 The Title 5 California Code of Regulations cited above were amended again
9 on January 8, 2002 and operative that date. Section 1031⁵² was amended to

numerically significant subgroups achieve twice the growth targets associated with
the school's 1999 base API and the school has met all other 2001 eligibility
criteria. While being eligible for the Governor's Performance Awards, such a
school would not be eligible for awards under the Certificated Staff Performance
Incentive Act (Education Code sections 44650 et seq.)."

⁵² Title 5, California Code of Regulations, Section 1031, filed December 28, 2000,
operative December 28, 2000, as amended January 8, 2002 and operative
January 8, 2002:

"(a) The Academic Performance Index (API) measures the performance of
California public schools, especially the academic performance of pupils, and
demonstrates comparable improvement in academic achievement by all
numerically significant ethnic and socioeconomically disadvantaged subgroups
within schools pursuant to Education Code section 52052 and the Framework for
The Academic Performance Index, July 1999 and The 1999 Base Year Academic
Performance Index, December 15, 1999, which are incorporated herein.

(b) The purpose of Article 1.7 is to implement the programs established by
three two statutes relating to the API:

(1) The Governor's Performance Award Program of the Public
Schools Accountability Act of 1999 (Education Code sections 52050 et seq.).

(2) The Certificated Staff Performance Incentive Act (Education
Code sections 44650 et seq.)

(3) The Academic Performance Index Schoolsite Employees
Performance Bonus (Section 40, Chapter 71 of the Statutes of 2000)."

1 delete subparagraph (3) of subdivision (b) to remove reference to the one-time
2 Academic Performance Index Schoolsite Employees Performance Bonus.

3 Section 1032⁵³ was amended to make technical changes in the conditions
4 requiring invalidation of a school's API in 2001 and subsequent years and setting
5 forth programs for which a school may still be eligible after invalidation.

⁵³ Title 5, California Code of Regulations, Section 1032, filed December 28, 2000,
operative December 28, 2000, as amended January 8, 2002:

"(a) For purposes of this Article, "schools" shall be defined as all schools, including charter schools, that receive a ranking on the API including schools participating in the Immediate Intervention/Underperforming Schools Program. These schools are eligible to participate in the award programs identified in Section 1031.

(b) For the purposes of these award programs, the API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system, once such a system is adopted by the State Board of Education as required by Education Code section 52052(g). The Superintendent of Public Instruction will develop an alternative accountability system for schools with fewer than 100 valid test scores, schools that fall under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

~~Once the alternative accountability system required by Education Code section 52052(g) is adopted by the State Board of Education, a~~ Alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API. ~~If the school elects to be part of the API accountability system, the school shall remain in the system for at least the three subsequent years.~~

(c) For the purposes of these award programs, growth API means the API in the second year of two consecutive years for which the API is calculated. ~~If a school does not receive an API pursuant to subdivisions (d)(1), (d)(2) or (d)(4), the school is ineligible for participation in any of the award programs for the current and subsequent year. If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.~~

(d) In 2001 and subsequent years, a A school's API shall be considered invalid under any of the following circumstances:

(1) The local educational agency notifies the California Department of Education (department) that there were adult testing irregularities at the school affecting 5% or more of the pupils tested.

(2) The local educational agency notifies the department that the API is not representative of the pupil population at the school.

(3) The local educational agency notifies the department that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.

(4) The school's proportion of parental waivers compared to its Standardized Testing and Reporting Program (STAR) enrollment, pursuant to Education Code section 60640 et seq., is equal to or greater than 15 percent for the 2000 STAR. For the 2001 STAR and each subsequent STAR, the school's proportion of parental waivers compared to its STAR enrollment is equal to or greater than 10 percent, except when the school's proportion of parental waivers compared to its STAR enrollment is equal to or greater than 10 percent but less than 20 percent. In this case, the department will conduct standard statistical tests to determine whether the pupils tested at the school represent the school's pupils by grade level. If the standard statistical tests demonstrate that the pupils tested represent the school's pupils, then the school's API shall be considered valid. If the standard statistical tests demonstrate that the pupils tested do not represent the school's pupils, then the school's API shall be considered invalid. There shall be no rounding in determining this minimum parental waiver proportion (i.e., 9.99 percent is not 10 percent).

(5) Information is made available to or obtained by the department that indicates that the integrity of the API may have been compromised. If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized. In any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the school's proportion of the number of test-takers in that content area compared with the total number of test-takers is less than 85 percent. There shall be no rounding in determining the proportion of test-takers in each content area (i.e., 84.99 percent is not 85 percent).

(6) In any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the school's proportion of the number of test-takers in that content area compared with the total number of test-takers is less than 85 percent. There shall be no rounding in determining the proportion of test-takers in each content area (i.e., 84.99 percent is not 85 percent). If, at any time, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the preceding circumstances occurred. If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized.

(f) In the event that, subsequent to the calculation of an API for a school, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the

circumstances set out in subdivision (d) occurred, the department may invalidate or withhold the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(e) If a school's API is considered invalid pursuant to subdivisions (d)(1), (d)(2), (d)(4), or (d)(5), the school is ineligible for participation in any of the award programs for the current and subsequent year. If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.

(g) If fewer than 5% of the pupils tested are affected by adult testing irregularities, the school will receive a valid API, however, the school is not eligible for participation in any of the award programs for the current year.

(f)(g) All schools that reach their growth targets or have an API of 800 or more and growth of at least 1 point score increase of at least 5% of the difference between the school's prior year score and 800 or an API score increase of five points, whichever is greater, and have comparable improvement as defined in subdivision (g)(h), and meet the minimum participation rate in subdivision (h)(i), shall be recognized through the Governor's Performance Award Program and the Academic Performance Index Schoolsite Employees Performance Bonus program.

(g)(h) Comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) shall be defined as either 1) 80 percent of the school-wide API improvement goal for schools with APIs less than 800, simplified to the nearest whole number (i.e., 1.51 equals 2); or 2) the actual distance to 800. Numerically significant subgroups with APIs below 800 at schools with API scores of 800 or above shall also show a one-point gain. Numerically significant subgroups at 800 or above shall maintain a score at or above 800, an API score increase of at least 80% of the school's API growth target as established pursuant to Education Code section 52052 except when the sum of a subgroup's growth target and the subgroup's API is greater or equal to 800. In these cases, comparable improvement shall be defined as the distance from the subgroup's API to 800. In no case shall comparable improvement be less than 4 points.

(h)(i) For elementary and middle schools, the minimum participation rate for the awards programs shall be 95 percent; for high schools, it shall be 90 percent, with the intention of increasing this rate to 95 percent in the future.

(1) If the test publisher determines, for grades 2 to 11, that a pupil did attempt to take any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the pupil shall be counted as a test-taker.

(2) No pupil shall be counted more than once as a test-taker.

(3) The participation rate shall be calculated as follows:

(A) Divide the total number of test-takers in grades 2-11 at the school site by

(B) The total enrollment in grades 2-11 minus the number of pupils exempted from taking the test either by their Individualized Education Program (IEP) pursuant to Education Code section 60640(e) or parental waivers pursuant to Education Code section 60615.

(4) For purposes of subdivision (3)(B) above, enrollment shall be determined by the enrollment information collected by the department as part of the Standardized Testing and Reporting Program (STAR), pursuant to Education Code sections 60640 et seq.

(5) In the case of pupil testing irregularities, the scores of affected pupils shall be eliminated from the calculations of the school's growth API, although the pupils are counted as tested and shall contribute to the school's participation rate.

(6) There shall be no rounding in determining this minimum participation rate (i.e., 94.9 percent does not equal 95 percent).

(f)(i) The department will publish on its web site a report of STAR testing and demographic data used in the calculation and reporting of the API. Prior to publishing the report on its web site, the department will announce the report in writing and/or by electronic communication to each local educational agency that appears in the API report. The local educational agency must notify the department and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data. The local education agency's notification must be received by the department and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on the department's web-site. The local educational agency must submit all data corrections to the test publisher in writing or e-mail. The test publisher shall specify a deadline for submittal of the data corrections that is no less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data.

(j) A school that had its 2000 API invalidated solely because of excessive parental waivers (subdivision (d)(4)) will be eligible for the Governor's Performance Awards based on the 2001 growth API if the school and all of its numerically significant subgroups achieve twice the growth targets associated with the school's 1999 base API and the school has met all other 2001 eligibility criteria. While being eligible for the Governor's Performance Awards, such a school would not be eligible for awards under the Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.).

(k) The criteria for awards eligibility based on the 2001 growth API for a school that had its 2000 API invalidated solely because of excessive parental waivers pursuant to subdivision (d)(4) or for a school whose school district obtained a State Board of Education waiver of Section 1032(c) on their behalf will be (1) twice the school's 1999 growth target or 10 points, whichever is greater, and (2) comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a), and the school has met all other 2001 eligibility criteria. Comparable

1 Section 1033⁵⁴ was amended to clarify school eligibility requirements for the
2 Governor's Performance Award Program and to delete subdivision (b) which was
3 added to section 1034.

improvement shall be defined as twice the 1999 subgroup target for each subgroup, except when the sum of a subgroup's 1999 growth target and the subgroup's 1999 API is greater than or equal to 800. In these cases, comparable improvement shall be defined as two times the distance from the subgroup's 1999 API to 800. In no case shall comparable improvement be less than 8 points. While being eligible for the Governor's Performance Awards, such a school would not be eligible for awards under the Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.)."

⁵⁴ Title 5, California Code of Regulations, section 1033, filed December 28, 2000, operative December 28, 2000, as amended on January 8, 2002:

"(a) Schools that meet the eligibility requirements in 2000-01 for the Governor's Performance Award Program (GPA) shall receive the a per pupil award amount for each of their eligible pupils determined as follows. Eligible pupils are those who received a score on any subject matter area test (Total Reading, Total Math, Language, Spelling, Science, or Social Science) of the nationally normed test pursuant to Education Code section 60642 and a score on any standards-based achievement test pursuant to Education Code section 60642.5. A score on the nationally normed test pursuant to Education Code section 60642 can be a percentile, the number correct, a scale score, or a normal curve equivalent. A score on the standards-based achievement test pursuant to Education Code section 60642.5 is defined as the performance level.

(1) The school funding rate is the total number of test takers divided by the total enrollment on the first day of testing for grades 2-11 minus the IEP exemptions

(2) There shall be no rounding in determining the school funding rate (i.e., 94.9% does not equal 95%).

(3) The kindergarten, first grade and 12th grade enrollment as established for that school year by the California Basic Education Data System (CBEDS) shall be added to the total enrollment on the first day of testing for grades 2-11, less the number of pupils with testing irregularities, then multiplied by the school funding rate. This result, simplified to the nearest whole number (i.e., 1.51 equals 2) shall determine the number of eligible pupils upon which the GPA awards are based.

(4)(b) The amount allocated per pupil for this award shall be determined on a prorata basis from the total amount of funding available in the annual State Budget."

~~(b) To participate in the Academic Performance Index Schoolsite Employees Performance Bonus awards, school districts, county offices of education and charter schools shall certify the number of full-time equivalent (FTE) employees employed as of the second principal apportionment of the 1999-2000 school year at each school site under their jurisdiction that are eligible for awards in accordance with Education Code section 52057(a).~~

~~(1) The "number of full-time equivalent employees (FTE) employed as of the second principal apportionment" shall be defined as the number of funded FTE positions at the school site as of June 23, 2000.~~

~~(2) "Employees at each school site" shall be defined as positions filled by individuals employed by the school district, county office of education, or charter school at least 50 percent of the school year in which the award was earned, and who spent at least 50 percent of his/her total annual work hours at school sites, and who spent at least 20 percent of his/her total annual work hours at the eligible school site.~~

~~(7) "Full-time equivalent (FTE) position" shall be defined as a position filled by a person that is required to work a minimum of a six-hour work day. School districts, county offices of education, and charter schools may choose to use a longer work day in accordance with their local collective bargaining agreements. One person cannot generate more than one FTE position. Part-time positions shall generate a partial FTE on a proportional basis.~~

~~(8) The certification shall indicate the number of certificated and classified FTE positions at each school site. The number of certificated employees reported by the school districts, county offices of education, and charter schools shall also be used for purposes of making awards under the Certificated Staff Performance Incentive Act.~~

~~(c) "Classified employee" shall be defined as an employee not requiring certification and who meets the school site employee criteria specified in subdivision (b)(2).~~

~~(h) "Certificated employee" shall be defined as an employee in a position requiring certification and who holds a document issued by the California Commission on Teacher Credentialing authorizing service in the public schools of California.~~

~~(i) "Document" shall be defined as a credential, emergency permit, or waiver issued by the California Commission on Teacher Credentialing.~~

~~(5) For purposes of this subdivision, the deadline for submitting the certification of FTE to the department shall be November 1, 2000 or as soon thereafter as the eligible schools are identified and no later than February 1, 2001. If certification is not received by the department by February 1, 2001, those schools will not receive either the Certificated Staff Performance Incentive Act award or the Academic Performance Index Schoolsite Employees Performance Bonus award.~~

1 Section 1034⁵⁵, subdivision (a), was amended by renumbering its
2 subdivisions and to change the application requirements to require (A) certification

~~(c) Starting with STAR 2001 testing, the deadline for submitting the certification of FTE's to the department shall be within 90 days of the department's posting on the website of the certified list of schools eligible to receive the Governor's Performance Award. If the schools' certification is not received by the department by the deadline, the schools will not receive the Certificated Staff Performance Incentive Act award.~~

⁵⁵ Title 5, California Code of Regulations, section 1034, filed December 28, 2000, effective December 28, 2000, as amended January 8, 2002 to amend and renumber subdivision (a) and to add subdivision (b) (formerly subdivision (b) of section 1033, as amended):

"(a) To be eligible to receive awards under the Certified Staff Performance Incentive Act, school sites must have attained a statewide decile rank of 1-5 in the base year of the current growth API and must meet all of the relevant statutory requirements and each of the following requirements:

(a)(1) Each school site must have improved by a minimum of two times its annual growth target on its API between the base year and the current growth year.

(b)(2) All numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) at a school must have improved by a minimum of two times their annual growth targets, except when the sum of a subgroup's growth target and the subgroup's API is greater than or equal to 800. In these cases, comparable improvement shall be defined as two times the distance from the subgroup's API to 800. In no case shall comparable improvement be less than 8 points.

(c)(3) Each school site shall have the required participation rate for the current growth API, pursuant to Section 1032(i), as calculated by the California Department of Education. Each school must have been eligible for API awards in the year preceding the current API growth year.

(d)(4) The local educational agency must complete an application on behalf of its eligible schools, which shall include:

(1) The number of eligible schools;

(2)(A) Certification that the data used in the API calculations from the schools is accurate, and

(3) A list of certificated positions on an FTE basis at each of the eligible schools;

(B) The number of certificated positions on an FTE basis at each of the eligible schools pursuant to subdivision (b) below.

(b) To participate in the Academic Performance Index Schoolsite Employees Performance Bonus Certificated Staff Performance Incentive Act (CSPIA) awards, school districts, county offices of education, and charter schools shall certify, as appropriate, the number of full-time equivalent (FTE) certificated employees employed by the school district or charter school, whether still resident in the school district or not, as of the second principal apportionment of for the 1999-2000 school year in which the award was earned at each school site under their jurisdiction that are is eligible for awards in accordance with Education Code section 52057(a) 44651.

(1) The "number of full-time equivalent (FTE) certificated employees (FTE) employed by the school district or charter school, whether still resident in the school district or not, as of the second principal apportionment" shall be defined as the number of funded certificated FTE positions at the school site as of June 23, 2000 the date established annually by the department pursuant to Education Code sections 41335 and 41601 for the submission by school districts of the attendance documents necessary for the department to prepare the second principal apportionment.

(2) "Employees at each the school site" shall be defined as positions filled by individuals employed by the school district, county office of education, or charter school at least 50 percent of the school year in which the award was earned, and who spent at least 50 percent of his/her total annual work hours at school sites, and who spent at least 20 percent of his/her total annual work hours at the eligible school site working with pupils in any of grades K-12. County office of education and state employees are not eligible to participate.

(3) "Full-time equivalent (FTE) positions" may include "full-time" and "part-time" positions. A "full-time" certificated position shall be defined as a position filled by a person that is required to work a minimum of a six hour work day. School districts, county offices of education, and charter schools may choose to use a longer work day Workdays longer than six hours, if in accordance with their local collective bargaining agreements, should be used as the basis for "full-time" and "part-time" FTE calculation. One person cannot generate more than one FTE position. Part-time positions shall generate a partial FTE on a proportional basis.

(4) The certification shall indicate the number of certified and classified FTE positions at each school site. The number of certificated employees reported by the school districts, county offices of education, and charter schools shall also be used for purposes of making awards under the Certificated Staff Performance Incentive Act.

(A) "Classified employee" shall be defined as an employee not requiring certification and who meets the school site employee criteria specified in subdivision (b)(2).

1 that the data used in the API calculations from the schools is accurate and (B) to
2 report the number of certificated positions on an FTE basis at each of the eligible
3 schools. Subdivision (b) was added to include former subdivision (b) of section
4 1033 which was also amended to delete references to the Academic Performance
5 Index Schoolsite Employees Performance Bonus awards and to replace those
6 references with the Certificated Staff Performance Incentive Act awards. The
7 amendment also excluded county offices of education from that award program.
8 Section 1035⁵⁶ was amended to make technical corrections in the
9 procedures and priorities in the distribution of the Certificated Staff Performance
10 Incentive Act awards.

(B)(4) "Certificated employee" shall be defined as an employee in a position requiring certification and who holds a document issued by the California Commission on Teacher Credentialing authorizing service in the public schools of California.

(C)(5) "Document" shall be defined as a credential, emergency permit, or waiver issued by the California Commission on Teacher Credentialing.

(5) For purposes of this subdivision, the deadline for submitting the certification of FTEs to the department shall be November 1, 2000 or as soon thereafter as the eligible schools are identified and no later than February 1, 2001. If certification is not received by the department by February 1, 2001, these schools will not receive either the Certificated Staff Performance Incentive Act award or the Academic Performance Index Schoolsite Employees Performance Bonus award.

(c) Starting with STAR 2001 testing in 2001-02, the deadline for submitting the application, including the certification of FTEs to the department shall be within 90 the close of business on the 45th calendar day of after the department's posting on the its website of the certified list of schools eligible to receive the governor's Performance Award Certificated Staff Performance Incentive Act award. If the a school's certification application is not received by the department by the deadline, the school will not receive the Certificated Staff Performance Incentive Act award."

⁵⁶ Title 5, California Code of Regulations, Section 1035, filed December 28, 2000, operative December 28, 2000, as amended January 8, 2002:

"Distribution of Certificated Staff Performance Incentive Act awards pursuant to the 2000 growth API shall be as follows, with at least one thousand (1,000) \$25,000 awards, three thousand seven hundred fifty (3,750) \$10,000 awards and up to seven thousand five hundred (7,500) \$5,000 awards being distributed in the process. The total amount of funding for this Act provided in the annual State Budget shall be distributed proportionally across each of elementary, middle, and high schools statewide by the number of certificated staff as reported in the most current CBEDS report.

(a) Schools will be declared eligible or ineligible according to the rank of schools pursuant to Education Code section 52052. An "eligible list" will be determined for each type of school (elementary, middle, and high) for the awards distribution.

(b) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the certificated school site staff in certificated positions at that school. The number of FTE positions counted shall be subtracted from the awards pool of 1,000 FTE positions.

(c) Beginning with the school on each of the three "eligible lists" with the next-greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(d) This process shall continue until all 1,000 \$25,000/FTE awards have been allocated to the eligible school sites. If, before all 1,000 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 1,000 FTE awards pool, all of that school site's FTE positions shall receive \$25,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement between the 1998 and 1999 testing on the nationally normed test pursuant to Education Code section 60642 over its API growth target in the prior year shall receive \$25,000 awards.

(e) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target that did not receive \$25,000 rewards, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool of 3,750 \$10,000 awards.

(f) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

Test Claim of San Juan Unified School District
887/01 Academic Performance Index

1 Former section 1036 was repealed and replaced with a new section 1036⁵⁷
2 which set a deadline, starting in 2000-2001, for the submission to the Department
3 of Education of a waiver of any of sections 1031 through 1039.

4 Sections 1037⁵⁸, 1038⁵⁹ and 1039⁶⁰ were amended to delete references to
5 the one-time Academic Performance Index Schoolsite Employees Performance
6 Bonus award program.

(g) This process shall continue in consecutive order until all 3,750 \$10,000/FTE awards have been allocated to the school sites. If, before all 3,750 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 3,750 FTE pool, all of that school site's FTE positions shall receive \$10,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement between the 1998 and 1999 testing on the nationally normed test pursuant to Education Code section 60642 over its API growth target in the prior year shall receive \$10,000 awards.

(h) The sum of the awards distributed under subdivisions (b) through (g) shall be subtracted from \$100 million, and the remainder shall be divided by \$5,000 to determine the maximum number of \$5,000 awards to be distributed. The \$5,000 awards shall be distributed in the same manner as the \$25,000 and the \$10,000 awards, with the exception that the distribution process will end when the pool of available \$5,000 awards is not sufficient to fully fund the eligible FTE positions of the next school or schools in line for the awards."

⁵⁷ Title 5, California Code of Regulations, Section 1036, as added January 8, 2002, after repeal of former Section 1036, filed December 28, 2000, operative December 28, 2000:

"Starting in 2000-01, the deadline for submitting to the department a waiver of any of Sections 1031 through 1039 shall be no later than the close of business on the 60th calendar day after the department's posting on its website of the certified list of schools eligible to receive the Governor's Performance Award."

⁵⁸ Title 5, California Code of Regulations, Section 1037, filed December 28, 2000, operative December 28, 2000, as amended January 8, 2002:

"Academic Performance Index Schoolsite Employee Performance Bonus awards and Certificated Staff Performance Incentive Act awards shall not be considered compensation for the purposes of calculating retirement benefits or contributions,

- 1 Chapter 159, Statutes of 2001, Section 73, restated Education Code
2 Section 52054, without change.
3 Chapter 745, Statutes of 2001, Section 24, amended Education Code
4 Section 52052⁶¹ to delete the requirement that the Superintendent of Public

or for any other benefit that an employee is eligible to receive where the benefit or contribution amount is calculated based on compensation."

⁵⁹ Title 5, California Code of Regulations, Section 1038, filed January 30, 2001, operative January 30, 2001, as amended January 8, 2002:

"Governor's Performance Awards, Academic Performance Index Schoolsite Employees Performance Bonus awards, and Certificated Staff Performance Incentive Act awards shall not be subject to school district, county, or school indirect charges or other administrative charges."

⁶⁰ Title 5, California Code of Regulations, Section 1039, originally filed December 28, 2000 as Section 1038, renumbered and filed January 30, 2001, operative January 30, 2001, as amended January 8, 2002:

"Use of funds at the school site for the Governor's Performance Award Program and the school site portion of the Academic Performance Index Schoolsite Employees Performance Bonus awards shall be decided by the existing school site governance team/school site council representing major stakeholders and then ratified by the governing board of each local educational agency."

⁶¹ Education Code Section 52052, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999, as amended by Chapter 745, Statutes of 2001, Section 24:

"(a) (1) By July 1, 1999, the Superintendent of Public Instruction, with approval of the State Board of Education, shall develop an Academic Performance Index (API), to measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.

(2) For purposes of this section, a numerically significant ethnic or socioeconomically disadvantaged subgroup is a subgroup that constitutes at least 15 percent of a school's total pupil population and consists of at least 30 pupils. An ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school.

(3) The API shall consist of a variety of indicators currently reported to the State Department of Education including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils who were enrolled in a school district in the prior fiscal year may be included in the test results reported in the API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data is currently reported to the state and the accuracy of the data.

~~(C) If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.~~

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test developed pursuant to Section 60604.

(2) The nationally normed test as augmented pursuant to paragraph (1) of subdivision (f) of Section 60644.

(3) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, expected annual percentage growth targets for all schools based on their API baseline score as measured in July 1999. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the State Board of Education pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the State Board of Education may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To

1 Instruction report to the Governor and the Legislature by September 1, 1999 if he
2 or she determines that accurate data is not available for the determination of the
3 API.

4 Chapter 749, Statutes of 2001, Sections 3 and 4 added Education Code
5 Sections 52054.3 and 52055.51. Section 52054.3⁶² allows for a school selected

meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically significant ethnic and socioeconomically disadvantaged subgroups, as defined in subdivision (a) of Section 52052, are making comparable improvement.

(d) Upon adoption of state performance standards by the State Board of Education, the Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When fully developed, schools may either meet the state target or meet their growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057.

(e) Beginning in June 2000, the API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(h) Only comprehensive high schools, middle schools, and elementary schools that have a population of 100 or more pupils may be included in the API rating.

(i) By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 pupils, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools."

⁶² Education Code Section 52054.3, added by Chapter 749, Statutes of 2001, Section 3, effective October 12, 2001:

"A school selected on or after September 2001 may elect to use an existing plan instead of the action plan required pursuant to Section 52054 if that plan meets the requirements specified pursuant to subdivisions (c), (d), (e), (f), (g), (h), and (i) of Section 52054. If an existing plan needs modification, the external evaluator or

1 after September 2001 to use an existing plan instead of the action plan required
2 pursuant to Section 52054 provided it meets certain requirements. Section
3 52055.51⁶³ allows the Superintendent of Public Instruction, with the approval of the

entity with which the school district contracts pursuant to Section 52054 shall provide technical assistance in making those modifications."

⁶³ Education Code Section 52055.51, added by Chapter 749, Statutes of 2001, Section 4, effective October 12, 2001:

"(a) Instead of the actions specified in subdivision (c) of Section 52055.5, as that section read on January 1, 2001, and notwithstanding any other provision of law, the Superintendent of Public Instruction, with the approval of the State Board of Education, may require the district to enter into a contract with a school assistance and intervention team.

(b) Team members should possess a high degree of knowledge and skills in the areas of school leadership, curriculum, and instruction aligned to state academic content and performance standards, classroom management and discipline, academic assessment, parent-school relations, and evaluation and research-based reform strategies and have proven successful expertise specific to the challenges inherent in low-performing schools.

(c) The team shall provide intensive support and expertise to implement the school reform initiatives in the plan. Decisions about interventions shall be data driven. A school assistance and intervention team shall work with school staff, site planning teams, administrators, and district staff to improve pupil literacy and achievement by assessing the degree of implementation of the current action plan, refining and revising the action plan, and making recommendations to maximize the use of fiscal resources and personnel in achieving the goals of the plan. The district shall provide support and assistance to enhance the work of the team at the targeted schoolsites.

(d) Not later than 60 days after the school's API becomes public, the team must have completed an initial report. The report shall include recommendations for corrective actions chosen from a range of interventions, including the reallocation of district fiscal resources to ensure that appropriate resources are targeted to those specific interventions identified in the recommendations of the team for the targeted schools and other changes deemed appropriate to make progress toward meeting the schools growth target. Not later than 90 days after the API is made public, the governing board of the school district shall adopt the team's recommendations at a regularly scheduled meeting of the governing board. The governing board may not place the adoption on the consent calendar. The report shall be submitted to the Superintendent of Public Instruction and State Board of Education.

(e) No less than three times during the year, the school district and schoolsite shall present the team with data regarding progress toward the goals

1 State Board of Education, to require a district to enter into a contract with a school
2 assistance and intervention team. Subdivision (e) requires that, no less than three
3 times during the year, the school district and schoolsite shall present the team with
4 data regarding progress toward the goals established by the team's initial
5 assessment.

6 Chapter 887, Statutes of 2001, Section 1, amended Education Code

7 Section 52052⁶⁴ to make technical corrections and other changes. Subdivision (b)

established by the team's initial assessment. The data shall be presented to the governing board of the school district at a regularly scheduled meeting. The team shall, to the extent possible, utilize existing site data. The data shall also be provided to the Superintendent of Public Instruction and State Board of Education. Every effort shall be made to report this data in a manner that minimizes the length and complexity of the reporting requirement in order to maximize the focus on improving pupil literacy and achievement.

(f) An action taken pursuant to this paragraph shall not increase local costs or require reimbursement by the Commission on State Mandates."

⁶⁴ Education Code Section 52052, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999, as amended by Chapter 887, Statutes of 2001, Section 1:

"(a) (1) By July 1, 1999, the Superintendent of Public Instruction, with approval of the State Board of Education, shall develop an Academic Performance Index (API), to measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.

(2) For purposes of this section, a numerically significant ethnic or socioeconomically disadvantaged subgroup is a subgroup that constitutes at least 15 percent of a school's total pupil population and consists of at least 30 pupils. An ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school. For schools whose API scores are based on test scores of no fewer than 11 and no more than 99 pupils, numerically significant subgroups shall be defined by the Superintendent of Public Instruction, with approval by the State Board of Education.

(3) The API shall consist of a variety of indicators currently reported to the State Department of Education including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for

pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils who were enrolled in a school district in the prior fiscal year may be included in the test results reported in the API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data are currently reported to the state and the accuracy of the data.

(C) If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test developed pursuant to Section 60604.

(2) The nationally normed test as ~~augmented pursuant to paragraph (1) of subdivision (f) of Section 60644~~ designated pursuant to Section 60642.

(3) The standards-based achievement tests provided for in Section 60642.5.

(34) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, expected annual percentage growth targets for all schools based on their API baseline score as measured in July 1999 from the previous year. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the State Board of Education pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the State Board of Education may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for

improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically significant ethnic and socioeconomically disadvantaged subgroups, as defined in subdivision (a) of Section 52052, are making comparable improvement.

(d) Upon adoption of state performance standards by the State Board of Education, the Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When the API is fully developed, schools may either meet the state target or meet their growth targets must, at a minimum, meet their annual API growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057. The State Board of Education may establish additional criteria that schools must meet to be eligible for the Governor's Performance Awards Program.

(e) Beginning in June 2000, the API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f) ~~Only comprehensive high schools, middle schools, and elementary schools that have a population of 100 or more pupils may be included in the API rating.~~

(1) A comprehensive high school, middle school, or elementary school with 11 to 99 valid test scores of pupils who were enrolled in a school within the same school district in the prior fiscal year shall receive an API score with an asterisk that indicates less statistical certainty than API scores based on 100 or more test scores.

(2) A school under the jurisdiction of a county board of education or a county superintendent of schools, a community day school, or an alternative school, including continuation high schools and opportunity schools, may receive an API score if the school has 11 or more valid test scores and the school chooses to receive an API score for at least three years.

(3) A school that participates in the Immediate Intervention/Underperforming Schools Program described in Section 52053 shall receive an API score for the duration of its participation in that program, unless the Superintendent of Public Instruction determines that an API score would be an invalid measure of the school's performance for one or more of the following reasons:

(A) Irregularities in testing procedures occurred.

(B) The data used to calculate the school's API score are not representative of the pupil population at the school.

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1 was amended to add the standards-based achievement tests provided by Section
2 60642.5 to other tests which are to be incorporated into the API.

3 Chapter 887/01, Section 2, added Education Code Section 52052.2⁶⁵ to
4 provide that a school that receives an API score with an asterisk shall be eligible
5 for both the Governor's Performance Award Program and for participation in the
6 Immediate Intervention/Underperforming School Program.

7 Chapter 887/01, Section 3, amended Education Code Section 52053⁶⁶ to
8 make technical changes.

(C) Significant demographic changes in the school's pupil population render year-to-year comparisons of pupil performance invalid.

(D) The Department of Education discovers or receives information indicating that the integrity of the school's API score has been compromised.

(g) Only schools with 100 or more test scores contributing to the API may be included in the API rankings.

(gh) By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 pupils test scores and for schools contributing to the schools' API scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools serving high-risk pupils, including continuation high schools and independent study opportunity schools."

⁶⁵ Education Code Section 52052.2, added by Chapter 887, Statutes of 2001, Section 2:

"A school that receives an API score with an asterisk shall be eligible for the Governor's Performance Awards Program, as set forth in Section 52057, and for participation in the Immediate Intervention/Underperforming Schools Program, as set forth in Section 52053."

⁶⁶ Education Code Section 52053, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999, as amended by Chapter 887, Statutes of 2001, Section 3:

"(a) The Immediate Intervention/Underperforming Schools Program is hereby established. By August 15, 1999, the Superintendent of Public Instruction,

with the approval of the State Board of Education, shall invite schools that scored below the 50th percentile on the achievement tests administered pursuant to Section 60640 both in the spring of 1998 and in the spring of 1999 to participate in the Immediate Intervention/Underperforming Schools Program. A school invited to participate may take any action not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates to improve pupil performance.

(b) The total number of schools participating in the program in 1999 shall be 430. Unless subdivision (d) applies, schools that apply will be selected based on the order in which they apply within ranks of deciles, not to exceed 86 per decile, within the following grade level categories:

- (1) No more than 301 elementary schools.
- (2) No more than 78 middle schools.
- (3) No more than 52 high schools.

(c) The 86 schools selected within each decile range pursuant to subdivision (b) shall proportionately represent elementary, middle, and high schools and shall provide statewide proportionate geographic representation of urban and rural schools.

(d) If fewer than the number of schools in any grade level category apply, schools that scored below the 50th percentile in those grade level categories that did not apply for the program shall randomly be selected by the Superintendent of Public Instruction, with the approval of the State Board of Education, to participate based on their proportional representation in the state until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(e) If more than the requisite number of schools apply for any grade level category, the Superintendent of Public Instruction shall select an array of schools that reflect a broad range of academic performance of schools that scored below the 50th percentile, until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(f) A school selected to participate on or before September 1, 1999, shall be awarded a planning grant from funds appropriated pursuant to paragraph (1) of subdivision (a) of Section 2 of the act adding this section in the amount of fifty thousand dollars (\$50,000). A school selected to receive federal funds pursuant to paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall be awarded an implementation grant in an amount of at least fifty thousand dollars (\$50,000) pursuant to Public Law 105-78.

(g) Schools receiving funding under paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall comply with Public Law 105-78.

(h) By September 15, 2000, and each year thereafter, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall identify schools that failed to meet their Academic Performance Index (API) growth targets and that have an API score below the 50th percentile in the previous school year relative to all other public elementary, middle or high schools. The Superintendent of Public Instruction shall invite these schools to participate in the Immediate Intervention/Underperforming Schools Programs. A school invited to participate

1 Chapter 887/01, Section 4, amended Education Code Section 52054⁶⁷ to
2 delete subdivision (a)(2) to remove the option of contracting with an entity with

may take any action to improve pupil performance not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates.

(i) The total number of schools selected for participation in the program shall be no more than the number that can be funded through the total appropriation for the planning grants referenced in subdivision (l) below.

(j) If fewer schools apply for participation than can be funded, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall randomly select the balance of schools from schools eligible to participate that did not apply. Insofar as possible, the schools randomly selected should reflect a representative proportion of elementary, middle and high schools, as well as a broad range of academic achievement.

(k) If more schools apply for participation than can be funded, the schools shall be selected on the order in which they apply. Insofar as possible, the schools randomly selected should reflect a representative proportion of elementary, middle and high schools, as well as a broad range of academic achievement.

(l) A school selected to participate on or before October 15, 2000, and each year thereafter, shall be awarded a planning grant from funds appropriated pursuant to this act of fifty thousand dollars (\$50,000).

(m) Schools selected for participation in the program shall be notified by the Superintendent of Public Instruction no later than October 15 of each year."

⁶⁷ Education Code Section 52054, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999, as amended by Chapter 749, Statutes of 2001, Section 4:

"(a) Commencing in the 2001-02 fiscal year, by November 15 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program shall may do either of the following:

(1) Contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team, consisting of a majority of nonschoolsite personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(2) Contract with any entity that has proven successful expertise specific to the challenges inherent in low-performing schools. These entities may include, but are not limited to:

(A) Institutions of higher education.

~~(B) County offices of education.~~

~~(C) School district personnel.~~

(b) The selected external evaluator or entity shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator or entity shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below average performance.

(2) Hold a public meeting at the school, in cooperation with the principal, to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit, at the public meeting, the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator or entity and the community team in the development or modification of the action plan pursuant to this section or Section 52054.3

~~(4) Provide technical assistance to the schoolsite.~~

(5) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator or entity and the community team in the development or modification of the action plan pursuant to this section or Section 52054.3. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(c) By February 15 of the school year in which the school is selected to participate, the selected external evaluator or entity, in collaboration with the broad-based schoolsite and community team selected pursuant to subdivision (a), shall complete a review of the school that identifies weaknesses that contribute to the school's below average performance, make recommendations for improvement, and begin to develop an action plan to improve the academic performance of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a scope that requires reimbursement by the Commission on State Mandates for its implementation.

(d) At a minimum, the action plan shall do all of the following:

(1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 33126.

~~(2) Identify the current barriers at the school and district toward improvements in pupil achievement.~~

~~(3) Identify schoolwide and districtwide strategies to remove these barriers.~~

(4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.

(5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information regarding the achievement of English language learners, pupils with exceptional needs, pupils who qualify for free and reduced price meals, and all pupils by race, ethnicity, and gender in numerically significant subgroups.

~~(6) Set short-term academic objectives pursuant to Section 52052 for a two-year period that will allow the school to make adequate progress toward the growth targets established for each participating school for pupil achievement as measured by all of the following to the extent that the data is available for the school:~~

~~(A) The achievement test administered pursuant to Section 60640.~~

~~(B) Graduation rates for grades 7 to 12, inclusive.~~

~~(C) Attendance rates for pupils and school personnel for elementary, middle, and secondary schools.~~

~~(D) Any other indicators approved by the State Board of Education.~~

(e) The school action plan shall focus on improving pupil academic performance, improving the involvement of parents and guardians, improving the effective and efficient allocation of resources and management of the school, and identifying and developing solutions that take into account the underlying causes for low performance by pupils.

(f) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(g) The school action plan may propose to increase the number of instructional days offered at the schoolsite and also may propose to increase up to a full 12 months the amount of time for which certificated employees are contracted, if all of the following conditions are met:

(1) Provisions of the plan proposed pursuant to this subdivision shall not violate current applicable collective bargaining agreements.

(2) An agreement is reached with the exclusive representative concerning staffing specifically to accommodate the extended school year or 12-month contract.

(h) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(i) Upon its completion, the action plan shall be submitted to the governing board of the school districts for its approval. After the plan is approved,

1 proven successful expertise and to require the governing board to contract with an
2 external evaluator. It also amended subdivision (i) to require that the approved
3 plan be submitted to the Superintendent of Public Instruction.

4 Chapter 887/01, Section 5, amended Education Code Section 52055.5⁶⁸ to
5 delete subdivision (a) and the Governor's Performance Award Program and added

but no later than May 15 of the year that follows the year the school is selected to participate, the plan shall be submitted to the Superintendent of Public Instruction with a request for funding in the form prescribed by the Superintendent of Public Instruction, who shall review the school action plan and recommend approval or disapproval of the school's request for funding to the State Board of Education. The approval may be conducted during a regularly scheduled public meeting.

(i) ~~Not later than July 15 of the year next following the year in which a School is selected for participation, the State Board of Education shall review and approve or disapprove the school's request for funding, based on the recommendation of the Superintendent of Public Instruction. Within thirty days of the State Board of Education's review, the Superintendent of Public Instruction shall notify the affected school districts of the state of the board's action regarding the request for funding. In conjunction with its approval of a request for funding to implement a school's action plan, the State Board of Education may, at the request of the governing board of the school district or the county board of education for a school under the jurisdiction, waive all or any part of any provision of this code or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 64000 if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46300."~~

⁶⁸ Education Code Section 52055.5, added by Chapter 3, 1st Executive Session, Statutes of 1999-2000, Section 1, effective June 25, 1999, as amended by Chapter 887, Statutes of 2001, Section 5:

"(a) Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that has met or exceeded its growth target each year shall receive a monetary or nonmonetary award under the Governor's Performance Award Program, as set forth in Section 52057. Funds received pursuant to that section may be used at the school's discretion:

(b) "(a) Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that has not met its growth targets each year, but demonstrates significant growth, as determined by the State Board of Education, shall continue to participate in the program for an additional year and to receive funding in the

amount specified in Section 52054.5. Thirty-six months after receipt of funds pursuant to Section 52054.5, a school is no longer eligible to receive funding pursuant to that section.

~~(e)~~ (b) Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that has not met its growth targets within the periods described in either subdivision (a) or (b), as applicable, each year and has failed to show significant growth, as determined by the State Board of Education, shall be deemed a low-performing school. Notwithstanding any other provision of law, the Superintendent of Public Instruction shall assume all the legal rights, duties, and powers of the governing board with respect to that school. The Superintendent of Public Instruction, in consultation with the State Board of Education and the governing board of the school district, shall reassign the principal of that school subject to the findings in subdivision (d). In addition to reassigning the principal, the Superintendent of Public Instruction, in consultation with the State Board of Education, shall, notwithstanding any other provision of law, do at least one of the following:

(1) Revise attendance options for pupils to allow them to attend any public school in which space is available. If additional attendance options are made available, nothing in this option shall be construed to require either the sending or receiving school district to incur additional transportation costs.

(2) Allow parents to apply directly to the State Board of Education for the establishment of a charter school and allow parents to establish the charter school at the existing school site.

(3) Under the supervision of the Superintendent of Public Instruction, assign the management of the school to a college, university, county office of education, or other appropriate educational institution. However, the Superintendent of Public Instruction may not assume the management of the school.

(4) Reassign other certificated employees of the school.

(5) Renegotiate a new collective bargaining agreement at the expiration of the existing collective bargaining agreement.

(6) Reorganize the school.

(7) Close the school.

(c) In addition to the actions listed in subdivision (b), the Superintendent of Public Instruction, in consultation with the State Board of Education, may take any other action considered necessary or desirable against the school district or the school district governing board, including appointment of a new superintendent or suspension of the authority of the governing board with respect to the school or schools identified pursuant to subdivision (b).

(d) Before the Superintendent of Public Instruction may take any action against a principal pursuant to subdivision (b), the Superintendent of Public Instruction or a designee of the superintendent shall hold a public hearing on the matter in the school district and make both of the following findings:

1 subdivision (e) which allows a school that has not met its growth targets within 36
2 months of receiving funding, but which has shown significant growth, to continue
3 to be monitored by the Superintendent of Public Instruction until it meets its annual
4 growth target. Other technical changes were made to accommodate the deletion
5 of subdivision (a) and the addition of subdivision (e).

6 PART III. STATEMENT OF THE CLAIM

7 SECTION 1. COSTS MANDATED BY THE STATE

8 The Statutes, Education Code sections, and California Code of Regulations
9 sections referenced in this test claim result in school districts incurring costs
10 mandated by the state, as defined in Government Code section 17514⁶⁹, by

(1) A finding that the principal had the authority to take specific enumerated actions that would have helped the school meet its performance goals.

(2) A finding that the principal failed to take specific enumerated actions pursuant to paragraph (1).

(e) A school that has not met its growth targets within 36 months of receiving funding pursuant to Section 52054.5, but has shown significant growth, as determined by the State Board of Education, shall continue to be monitored by the Superintendent of Public Instruction until it meets its annual growth target or the statewide performance target. If in any year between the third year of implementation funding and the first year the school meets its growth target, the school fails to make significant growth, as determined by the State Board of Education, that school shall be deemed a low-performing school and subject to the provisions of paragraphs (1) to (7), inclusive, of subdivision (b).

(f) An action taken pursuant to subdivision (b), (c), or (d) shall not increase local costs or require reimbursement by the Commission on State Mandates.

(g) An action taken pursuant to subdivision (b), (c), or (d) shall be accompanied by specific findings by the Superintendent of Public Instruction and the State Board of Education that the action is directly related to the identified causes for continued failure by a school to meet its performance goals."

⁶⁹ Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute

1 creating new state-mandated duties related to the uniquely governmental function
2 of providing public education to students and these statutes apply to school
3 districts and do not apply generally to all residents and entities in the state.⁷⁰

4 The new duties mandated by the state upon school districts, county offices
5 of education and charter schools, require state reimbursement of the direct and
6 indirect costs of labor, materials and supplies, data processing services and
7 software, contracted services and consultants, equipment and capital assets, staff
8 and student training and travel to implement the following activities:

- 9 A) Establish, periodically update and maintain data gathering
10 proceedings to collect and report data as may be required by the
11 Superintendent of Public Instruction for computation of the API,
12 pursuant to Education Code section 52052. This includes, but is not
13 limited to:

enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

⁷⁰ Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 275 Cal.Rptr. 449, 225 Cal.App.3d 155.

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d at p. 537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

- 1 (1) Notifying the Department of Education when circumstances may
2 exist which would invalidate a school's API, pursuant to Title 5,
3 California Code of Regulations, Section 1032, subdivision (d).
- 4 (2) Upon receipt of a report of STAR testing and demographic data
5 from the Department of Education, to notify the department and
6 the test publisher within 30 days by way of e-mail or in writing
7 whether there are errors in the STAR testing or demographic
8 data, pursuant to Title 5, California Code of Regulations section
9 1032, subdivision (j).
- 10 (3) Submit all data corrections to the test publisher in writing or e-
11 mail on or before a deadline specified by the test publisher,
12 pursuant to Title 5, California Code of Regulations, Section 1032,
13 subdivision (j).
- 14 (4) To the extent current rates are not available to the State
15 Department of Education, to respond to any requests from the
16 department for attendance rates for pupils and certificated school
17 personnel for elementary schools, middle schools and secondary
18 schools, pursuant to Education Code Section 52052(a).
- 19 (5) To the extent current rates are not available to the State
20 Department of Education, to respond to any requests from the
21 department for graduation rates for pupils in secondary schools,
22 pursuant to Education Code Section 52052(a).

1 (6) To provide the Superintendent of Public Instruction, when
2 required, with data pertaining to high school graduation and
3 attendance rates, pursuant to Education Code Section 52052(a).

4 B) For those schools who are required, pursuant to Education Code
5 Sections 52053(j) and/or 52056.5, to participate in the Immediate
6 Intervention/Underperforming School Program and to the extent
7 funding is unavailable or insufficient:

8 (1) To contract with an external evaluator and appoint a broad-based
9 schoolsite and community team, consisting of a majority of
10 nonschoolsite personnel, pursuant to Education Code Section
11 52054, subdivision (a).

12 (2) To assist the external evaluator and schoolsite and community
13 team, as requested or required, in the preparation of an action
14 plan, pursuant to Education Code Section 52054, subdivisions (b)
15 through (l).

16 (3) To contribute matching funds to any implementation grant
17 provided, pursuant to Education Code Section 52054.5.

18 (4) For those which fail to meet their annual short-term growth
19 targets within 12 months following receipt of funding, to hold a
20 public hearing and to consult with the external evaluator and the
21 schoolsite and community team in choosing interventions in order
22 to continue to implement the action plan pursuant to Education
23 Code section 52055.

1 (5) For those which may be deemed a low-performing school
2 pursuant to Subdivision (c) of Education Code section 52055.5
3 (as it read on January 1, 2001), when required by the
4 Superintendent of Public Instruction, to enter into a contract with
5 a school assistance and intervention team, pursuant to Education
6 Code, section 52055.51.

7 (6) For those which are required to enter into a contract with a
8 school assistance and intervention team, to provide support and
9 assistance to enhance the work of the team at the targeted
10 schoolsites, pursuant to Education Code Section 52055.51,
11 subdivision (c).

12 (7) For those which are required to enter into a contract with a school
13 assistance and intervention team, to adopt the team's
14 recommendations at a regularly scheduled meeting of the
15 governing board and to submit the recommendations to the
16 Superintendent of Public Instruction and the State Board of
17 Education, pursuant to Education Code Section 52055.51,
18 subdivision (d).

19 (8) For those which have entered into a contract with a school
20 assistance and intervention team, no less than three times during
21 the year, to present the team with data regarding progress toward
22 the goals established by the team, and to present the data to the
23 governing board, the Superintendent of Public Instruction, and

1 the State Board of Education, pursuant to Education Code
2 Section 52055.51, subdivision (e).

3 (9) By November 30 subsequent to the first full year of action
4 plan implementation, and each November 30 thereafter, to submit
5 an evaluation to the Superintendent of Public Instruction of the
6 impact, costs, benefits of the program, and a report as to whether
7 the schools have, or have not, met their growth targets, pursuant
8 to Education Code Section 52058, subdivision (a).

9 C) For school districts and charter schools (and not county offices of
10 education) to establish, periodically update and maintain employee
11 payroll records to receive, administer and distribute award monies to
12 staff, as part of the one-time Certificated Staff Performance Incentive
13 Act, pursuant to Education Code Section 44653.

14 D) Prior to January 8, 2002, for each school district and charter school
15 (and not county offices of education) to complete an application on
16 behalf of its eligible schools to participate in the Certificated Staff
17 Performance Incentive Act which shall include (1) the number of
18 eligible schools, (2) certification that the data used in the API
19 calculations is accurate, and (3) a list of certificated staff positions on
20 an FTE basis at each of the eligible schools. After January 8, 2002
21 the application shall certify (A) that the data used in the API
22 calculations from the schools is accurate and (B) to report the
23 number of certificated positions on an FTE basis at each of the

1 eligible schools, pursuant to Education Code Section 44651 and Title
2 5, California Code of Regulations, Section 1034.

3 E) When an award is received as part of Certificated Staff Performance
4 Incentive Act, for school districts and charter schools to negotiate
5 with the exclusive representative of the bargaining unit of the
6 teachers and other certificated staff to determine how the funds are
7 to be distributed, pursuant to Education Code Section 44653.

8 F) In the event the governing board and the exclusive representative of
9 teachers and other certificated staff do not reach an agreement
10 regarding the distribution of an award under the Certificated Staff
11 Performance Incentive Act or, if the teachers and other certificated
12 staff are not represented by an exclusive bargaining representative,
13 for school districts and charter schools to calculate and distribute the
14 award amounts as a percentage of base salaries that is determined
15 by dividing the total amount of the award by the sum of the annual
16 base salaries for teachers and other certificated staff of the school,
17 pursuant to Education Code Section 44653.

18 G) When requested by the Superintendent of Public Instruction, to
19 certify the number of full-time equivalent employees for the period
20 requested in the creation of the one-time Academic Performance
21 Index Schoolsite Employees Performance Bonus, pursuant to
22 Chapter 71, Statutes of 2000, Section 40.

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- 1 H) For school districts, charter schools and county offices of education
2 to establish, periodically update and maintain employee payroll
3 records to receive, administer and distribute award moneys to staff
4 as part of the Academic Performance Index Schoolsite Employees
5 Performance Bonus, pursuant to Chapter 71, Statutes of 2000,
6 Section 40.
- 7 I) Upon receipt of an award from the Governor's Performance Award
8 Program and the school site portion of the Academic Performance
9 Index Schoolsite Employees Performance Bonus award, to consult
10 with the existing school site governance team/school site council to
11 decide the use of such awards and have the distribution plan ratified
12 by the governing board, pursuant to Chapter 71, Statutes of 2000,
13 Section 40 and Title 5, California Code of Regulations, Section 1039.
- 14 J) The administrative costs to calculate individual salary awards, to
15 determine and locate recipients, and to deliver or mail those
16 individual salary awards, pursuant to Education Code Section 44654
17 and Title 5, California Code of Regulations, Section 1038.
- 18 K) Salary-driven benefit costs, but not limited to, including the
19 employer's share of Medicare, unemployment insurance and
20 worker's compensation incurred as a result of individual salary
21 awards made pursuant to the Governor's High Achieving Schools
22 Program, the Certificated Staff Performance Incentive Act or the
23 Academic Performance Index Schoolsite Employees Performance

Bonus program, pursuant to Education Code Section 44654 and Title
2 5, California Code of Regulations, Section 1038.

3 SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

4 None of the Government Code Section 17556⁷¹ statutory exceptions to a
5 finding of costs mandated by the state apply to this test claim. Note, that to the
6 extent school districts may have previously performed functions similar to those

⁷¹ Government Code section 17556 as last amended by Chapter 589/89:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

1 mandated by the referenced code sections, such efforts did not establish a
2 preexisting duty that would relieve the state of its constitutional requirement to
3 later reimburse school districts when these activities became mandated.⁷²

4 SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

5 Chapter 3, Statutes of 1999-2000, Section 2⁷³, appropriated \$193,200,000
6 according to the following schedule:

⁷² Government Code section 17565:
"If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

⁷³ Chapter 3, Statutes of 1999, Section 2:

"(a) The sum of one hundred ninety-three million two hundred thousand dollars (\$193,200,000) is hereby appropriated according to the following schedule:

(1) Sixty-three million seven hundred four thousand dollars (\$63,704,000) from the General Fund to the Superintendent of Public Instruction for allocation to school districts for purposes of providing funding for planning and grants for implementing the Immediate Intervention/Underperforming Schools Program as set forth in Article 3 (commencing with Section 52053) of Chapter 6.1 of Part 28 of the Education Code.

(2) Thirty-two million four hundred forty-six thousand dollars (\$32,446,000) from the Federal Trust Fund to the Superintendent of Public Instruction for allocation to school districts for purposes of providing funding for planning and grants for implementing the Immediate Intervention/Underperforming Schools Program as set forth in Article 3 (commencing with Section 52053) of Chapter 6.1 of Part 28 of the Education Code.

(3) Ninety-six million one hundred fifty thousand dollars (\$96,150,000) from the General Fund to the Superintendent of Public Instruction for allocation to school districts that meet or exceed performance growth targets established by the board pursuant to the High Achieving/Improving Schools Program as set forth in Article 4 (commencing with Section 52056) of Chapter 6.1 of Part 28 of the Education Code. Funds appropriated pursuant to this paragraph that have not been allocated by June 30, 2000, shall be available for allocation and expenditure for purposes of this paragraph in the 2001-02 fiscal year.

(4) Nine hundred thousand dollars (\$900,000) from the General Fund to the Superintendent of Public Instruction to provide support services related to

Test-Claim of San Juan Unified School District
887/01 Academic Performance Index

1 (1) Sixty-three million seven hundred four thousand dollars
2 (\$63,704,000) was appropriated from the General Fund for the
3 purpose of providing funding for planning and grants for
4 implementing the Immediate Intervention/Underperforming School
5 Program (commencing with Education Code Section 52053, et seq.)

6 (2) Thirty-two million four hundred forty-six thousand dollars
7 (\$32,446,000) from the Federal Trust Fund for the purpose of
8 providing funding for planning and grants for implementing the
9 Immediate Intervention/Underperforming School Program
10 (commencing with Education Code Section 52053, et seq.)

11 (3) Ninety-six million one hundred fifty thousand dollars (\$96,150,000)
12 from the General Fund for allocation to school districts that meet or
13 exceed performance growth targets pursuant to the High
14 Achieving/Improving Schools Program (commencing with Education
15 Code Section 52056). Funds appropriated pursuant to this paragraph
16 that have not been allocated by June 30, 2000, shall be available for
17 allocation and expenditure for purposes of this paragraph in the
18 2001-02 fiscal year.

programs established by the Public Schools Accountability Act of 1999 pursuant to Chapter 6.1 (commencing with Section 52050) of Part 28 of the Education Code.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraphs (1) and (3) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1999-2000 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes

1 (3) Nine hundred thousand dollars (\$900,000) from the General Fund to
2 provide support services related to programs established by the
3 Public Schools Accountability Act of 1999 (commencing with
4 Education Section 52050).

5 Chapter 71, Statutes of 2000, Section 40⁷⁴, appropriated Three hundred
6 Fifty million dollars (\$350,000,000) from the General Fund for allocation on a one-
7 time basis to school districts, county offices of education, and charter schools for
8 the Academic Performance Index Schoolsite Employees Performance Bonus.

9 To the extent these funds are actually budgeted and distributed for the
10 purpose of reimbursing the administrative or matching costs to implement the
11 mandate, the funds will reduce the costs claimed.

12 PART IV. ADDITIONAL CLAIM REQUIREMENTS

13 The following elements of this claim are provided pursuant to Section 1183,
14 Title 2, California Code of Regulations:

15 Exhibit 1: The Declaration of R. Chris Westphall, Jr., Ed.D.

16 Exhibit 2: Copies of Code Sections Cited

17 Education Code Section 44650

18 Education Code Section 44651

19 Education Code Section 44652

20 Education Code Section 44653

21 Education Code Section 44654

"appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1999-2000 fiscal year.

⁷⁴ See: Footnote 23, supra

- 1 Education Code Section 52050
- 2 Education Code Section 52051
- 3 Education Code Section 52051.5
- 4 Education Code Section 52052
- 5 Education Code Section 52052.2
- 6 Education Code Section 52052.3
- 7 Education Code Section 52052.5
- 8 Education Code Section 52053
- 9 Education Code Section 52053.5
- 10 Education Code Section 52054
- 11 Education Code Section 52054.5
- 12 Education Code Section 52055
- 13 Education Code Section 52055.5
- 14 Education Code Section 52055.51
- 15 Education Code Section 52056
- 16 Education Code Section 52056.5
- 17 Education Code Section 52057
- 18 Education Code Section 52058
- 19 Exhibit 3: Copies of Statutes Cited
- 20 Chapter 887, Statutes of 2001
- 21 Chapter 749, Statutes of 2001
- 22 Chapter 745, Statutes of 2001
- 23 Chapter 159, Statutes of 2001

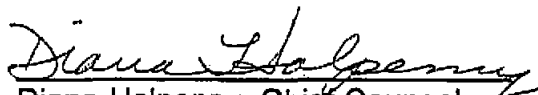
Test Claim of San Juan Unified School District
887/01 Academic Performance Index

- 1 Chapter 695, Statutes of 2000
- 2 Chapter 190, Statutes of 2000
- 3 Chapter 71, Statutes of 2000
- 4 Chapter 52, Statutes of 1999
- 5 Chapter 3, Statutes of 1999-2000 (1x)
- 6 Exhibit 4: Copies of Title 5, California Code of Regulations Cited
- 7 Section 1031
- 8 Section 1032
- 9 Section 1033
- 10 Section 1034
- 11 Section 1035
- 12 Section 1036
- 13 Section 1037
- 14 Section 1038
- 15 Section 1039
- 16 /
- 17 /
- 18
- 19

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

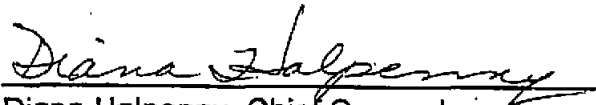
Executed on June 24, 2002 at Carmichael, California, by:


Diana Halpenny, Chief Counsel
San Juan Unified School District

Voice (916) 971-7109
Fax: (915) 971-7704
/
/

PART VI. APPOINTMENT OF REPRESENTATIVE

The San Juan Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.


Diana Halpenny, Chief Counsel
San Juan Unified School District
/
/
/

June 24, 2002
Date

EXHIBIT 1
DECLARATION OF DIANA HALPENNY

DECLARATION OF DIANA HALPENNY, GENERAL COUNSEL

San Juan Unified School District

Test Claim of San Juan Unified School District
Chapter 887, Statutes of 2001

Education Code Section 44650	Title 5, California Code of Regulations
Education Code Section 44651	Section 1031
Education Code Section 44652	Section 1032
Education Code Section 44653	Section 1033
Education Code Section 44654	Section 1034
Education Code Section 52050	Section 1035
Education Code Section 52051	Section 1036
Education Code Section 52051.5	Section 1037
Education Code Section 52052	Section 1038
Education Code Section 52052.5	Section 1039
Education Code Section 52052.3	
Education Code Section 52052.5	
Education Code Section 52053	
Education Code Section 52053.5	
Education Code Section 52054	
Education Code Section 52054.3	
Education Code Section 52054.5	
Education Code Section 52055	
Education Code Section 52055.5	
Education Code Section 52055.51	
Education Code Section 52056	
Education Code Section 52056.5	
Education Code Section 52057	
Education Code Section 52058	

Chapter 71, Statutes of 2000, Section 40

Academic Performance Index

I, Diana Halpenny, General Counsel, San Juan Unified School District, make the following declaration and statement:

The District is required to implement the Public Schools Accountability Act of 1999 pursuant to the Education Code Sections, the uncodified statute and the Title 5 Regulations enumerated above.

Those sections, uncodified statute and regulations require the San Juan Unified School District to:

- A) Pursuant to Education Code Section 52052, establish, periodically update and maintain data gathering procedures to collect and report data as may be required by the Superintendent of Public Instruction for computation of the API. This includes, but is not limited to:
- (1) Pursuant to Title 5, California Code of Regulations, Section 1032, subdivision (d), notifying the Department of Education when circumstances may exist which would invalidate a school's API.
 - (2) Pursuant to Title 5, California Code of Regulations, Section 1032, subdivision (j), upon receipt of a report of STAR testing and demographic data from the Department of Education, to notify the department and the test publisher within 30 days by way of e-mail or in writing whether there are errors in the STAR testing or demographic data.
 - (3) Pursuant to Title 5, California Code of Regulations, Section 1032, subdivision (j), submit all data corrections to the test publisher in writing or e-mail on or before a deadline specified by the publisher.
 - (4) Pursuant to Education Code Section 52052, subdivision (a), to respond to any requests from the department for attendance rates for pupils and certificated school personnel for elementary schools, middle schools and secondary schools.

(5) Pursuant to Education Code Section 52052, subdivision (a), to respond to any requests from the department for graduation rates for pupils in secondary schools.

(6) Pursuant to Education Code Section 52052, subdivision (a), to provide the Superintendent of Public Instruction, when required, with data pertaining to high school graduation and attendance rates.

B) For those schools which are required, pursuant to Education Code Section 52053, subdivision (j) and/or 52056.5, to participate in the Immediate Intervention/Underperforming School Program and to the extent funding is unavailable or insufficient:

(1) Pursuant to Education Code Section 52054, subdivision (a), to contract with an external evaluator and appoint a broad-based schoolsite and community team, consisting of a majority of nonschoolsite personnel.

(2) Pursuant to Education Code Section 52054, subdivisions (b) through (i), to assist the external evaluator and schoolsite and community team, as requested or required, in the preparation of an action plan.

(3) Pursuant to Education Code Section 52054.5, to contribute matching funds to any implementation grant provided.

(4) Pursuant to Education Code Section 52055, for those schools which fail to meet their annual short-term growth targets within 12 months following receipt of funding, to hold a public hearing and to consult with

Declaration of Diana Halpenny, General Counsel
San Juan Unified School District

the external evaluator and the schoolsite and community team in choosing interventions in order to continue to implement the action plan.

(5) Pursuant to Education Code Section 52055.51, for those schools which may be deemed a low-performing school pursuant to subdivision (c) of Education Code Section 52055.5 (as it read on January 1, 2001), when required by the Superintendent of Public Instruction, to enter into a contract with a school assistance and intervention team.

(6) Pursuant to Education Code Section 52055.51, subdivision (c), for those schools which are required to enter into a contract with a school assistance and intervention team, to provide support and assistance to enhance the work of the team at the targeted schoolsites.

(7) Pursuant to Education Code Section 52055.51, subdivision (d), for those schools which are required to enter into a contract with a school assistance and intervention team, to adopt the team's recommendations at a regularly scheduled meeting of the governing board and to submit the recommendations to the Superintendent of Public Instruction and the State Board of Education.

(8) Pursuant to Education Code Section 52055.51, subdivision (e), for those schools which have entered into a contract with a school assistance and intervention team, no less than three times during the year, to present the team with data regarding progress toward the goals established by the

team, and to present the data to the governing board, the Superintendent of Public Instruction, and the State Board of Education.

(9) Pursuant to Education Code Section 52058, subdivision (a), by November 30 subsequent to the first full year of action plan implementation, and each November 30 thereafter, to submit an evaluation to the Superintendent of Public Instruction of the impact, costs, benefits and a report as to whether the schools have, or have not, met their growth targets for the program.

C) Pursuant to Education Code Section 44653, for school districts (and not county offices of education) to establish, periodically update and maintain employee payroll records to receive, administer and distribute award moneys to staff, as part of the one-time Certificated Staff Performance Incentive Act.

D) Pursuant to Education Code Section 44651 and Title 5, California Code of Regulations, Section 1034, prior to January 8, 2002, for each school district (and not county offices of education) to complete an application on behalf of its eligible schools to participate in the Certificated Staff Performance Incentive Act which shall include (a) the number of eligible schools, (2) certification that the data used in the API calculations is accurate, and (3) a list of certificated staff positions on an FTE basis at each of the eligible schools. After January 8, 2002, the application shall

certify (a) that the data used in the API calculations from the schools is accurate and (b) to report the number of certificated positions on an FTE basis at each of the eligible schools.

- E) Pursuant to Education Code Section 44653, when an award is received as part of the Certificated Staff Performance Incentive Act, for school districts to negotiate with the exclusive representative of the bargaining unit of the teachers and other certificated staff to determine how the funds are to be distributed.
- F) Pursuant to Education Code Section 44653, in the event the governing board and the exclusive representative of teachers and other certificated staff do not reach an agreement regarding the distribution of an award under the Certificated Staff Performance Incentive Act or, if the teachers and other certificated staff are not represented by an exclusive bargaining representative, for school districts to calculate and distribute the award amounts as a percentage of base salaries that is determined by dividing the total amount of the award by the sum of the annual base salaries for teachers and other certificated staff of the school.
- G) Pursuant to Chapter 71, Statutes of 2000, Section 40, when requested by the Superintendent of Public Instruction, to certify the number of full-time equivalent employees for the period requested in the creation of the one-time Academic Performance Index Schoolsite Employees Performance

Bonus.

- H) Pursuant to Chapter 71, Statutes of 2000, Section 40, for school districts and county offices of education to establish, periodically update and maintain employee records to receive, administer and distribute award moneys to staff as part of the Academic Performance Index Schoolsite Employees Performance Bonus.
- I) Pursuant to Chapter 71, Statutes of 2000, Section 40 and Title 5, California Code of Regulations, Section 1039, upon receipt of an award from the Governor's Performance Award Program and the school site portion of the Academic Performance Index Schoolsite Employees Performance Bonus award, to consult with the existing school site governance team/school site council to decide the use of such awards and have the distribution plan ratified by the governing board.
- J) Pursuant to Education Code Section 44654 and Title 5, California Code of Regulations, Section 1038, the administrative costs to calculate individual salary awards, to determine and locate recipients, and to deliver the individual salary awards.
- K) Pursuant to Education Code Section 44654 and Title 5, California Code of Regulations, Section 1038, the cost of compensation-driven benefits, including but not limited to, the employer's share of Medicare, unemployment insurance and worker's compensation incurred as a result

Declaration of Diana Halpenny, General Counsel
San Juan Unified School District

of individual salary awards made pursuant to the Governor's High Achieving Schools Program, the Certificated Staff Performance Incentive Act or the Academic Performance Index Schoolsite Employees Performance Bonus program.

It is estimated that San Juan Unified School District incurred in excess of \$200 annually in staffing and other costs from July 1, 2000 through June, 2002 to implement these new duties mandated by the state for which the district has not been reimbursed by any federal, state or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and, where so stated, I declare that I believe them to be true.

EXECUTED this 24th day of June, 2002, at Carmichael, California.

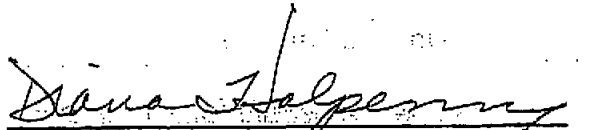

Diana Halpenny, General Counsel
San Juan Unified School District

EXHIBIT 2
COPIES OF CODE SECTIONS CITED

CERTIFICATED STAFF PERFORMANCE AWARDS FOR IMPROVED STUDENT ACHIEVEMENT IN UNDERACHIEVING SCHOOLS

Section	Section
44650. Certificated staff performance incentive act; establishment.	44652. Allocation of funds.
44651. Eligibility for funding.	44653. Individual salary award amounts.
	44654. Classification of funds and awards; unexpended funds.

Article 10.6 was added by Stats.1999, c. 52 (A.B.1114), § 1, eff. July 1, 1999.

§ 44650. Certificated staff performance incentive act; establishment.

(a) The Certificated Staff Performance Incentive Act is hereby established for the purpose of awarding one-time performance awards to teachers and other certificated staff in underachieving schools, where the academic performance of pupils significantly improves beyond the minimum percentage growth target established pursuant to Section 52052.

(b) The State Board of Education shall establish criteria for determining the eligibility of schools to receive the awards and shall determine the amount to be allocated to a school, based on the number of teachers and other certificated staff eligible to receive an award. The maximum award allocated to a school per full-time equivalent certificated staff shall not exceed twenty-five thousand dollars (\$25,000). The total amount of the awards allocated under this article shall not exceed the total amount appropriated for the purposes of this article.

(c) This article shall be implemented subject to the appropriation of funds for the purpose of this article in the annual Budget Act.

(Added by Stats.1999, c. 52 (A.B.1114), § 1, eff. July 1, 1999.)

Code of Regulations References

Award programs linked to the Academic Performance Index (API).	Exemption from indirect costs; see 5 Cal. Code of Regs. § 1088
Award funding criteria for Certificated Staff Performance Incentive Act, see 5 Cal. Code of Regs. § 1085.	General eligibility criteria for awards programs related to API growth, see 5 Cal. Code of Regs. § 1082.

§ 44651. Eligibility for funding

(a) Any school district or charter school that maintains classes in kindergarten or any of grades 1 to 12, inclusive, may apply for funding under this article if it meets the conditions of subdivision (b). County boards of education, county superintendents of schools, and state agencies shall not be eligible to participate.

(b) To be eligible for funding under this article, a school shall meet all of the following conditions:

(1) The school's aggregate score for student performance on the state Academic Performance Index established pursuant to Section 52052 was below the 50th percentile relative to other public schools in the state in the prior year.

(2) The school has met the criteria established by the board pursuant to subdivision (b) of Section 44650.

(Added by Stats.1999, c. 52 (A.B.1114), § 1, eff. July 1, 1999.)

Additions or changes indicated by underline; deletions by asterisks. * * *

Code of Regulations References

<p>Award programs linked to the Academic Performance Index (API). Award funding criteria for Certificated Staff Performance Incentive Act, see 5 Cal. Code of Regs. § 1085.</p>	<p>Exemption from indirect costs, see 5 Cal. Code of Regs. § 1088. General eligibility criteria for awards programs related to API growth, see 5 Cal. Code of Regs. § 1082.</p>
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14652. Allocation of funds

The Superintendent of Public Instruction shall allocate funds to school districts and charter schools that have certified to the superintendent that they satisfy the conditions of subdivision (b) of Section 51, based on the amount determined pursuant to subdivision (b) of Section 44650. At the time of the allocation the Superintendent of Public Instruction shall notify the exclusive representatives of the teachers and other certificated staff in each district of the availability of these funds.

Added by Stats.1999, c. 52 (A.B.1114), § 1, eff. July 1, 1999.

Code of Regulations References

<p>Award programs linked to the Academic Performance Index (API). Award funding criteria for Certificated Staff Performance Incentive Act, see 5 Cal. Code of Regs. § 1085.</p>	<p>Exemption from indirect costs, see 5 Cal. Code of Regs. § 1088. General eligibility criteria for awards programs related to API growth, see 5 Cal. Code of Regs. § 1082.</p>
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14653. Individual salary award amounts

Upon receiving an allocation from the Superintendent of Public Instruction for the purpose of awarding awards, the governing board of the school district shall negotiate individual teacher and other certificated staff salary award amounts with the exclusive representative of the bargaining unit of the teachers and other certificated staff. In the event that the governing board and the exclusive representative of teachers and other certificated staff do not reach an agreement regarding the amount of the award or if teachers and other certificated staff are not represented by an exclusive bargaining representative, all teachers and other certificated staff at the school shall receive a salary award amount that is equal to a percentage of their base salary that is determined by dividing the total amount awarded to a school by the sum of the annual base salaries for teachers and other certificated staff of the school.

Added by Stats.1999, c. 52 (A.B.1114), § 1, eff. July 1, 1999.

14654. Classification of funds and awards; unexpended funds

a) Funds awarded pursuant to this article shall not become part of a district's revenue limit, and shall be identified as a separate item of expenditure on any financial reports filed by school districts with the state pursuant to any state law or regulation.

b) Salary award amounts received by teachers and other certificated staff pursuant to this article shall be considered compensation for the purposes of calculating retirement benefits or contributions, or any other benefit that an employee is eligible to receive where the benefit or contribution amount is calculated based on compensation.

c) It is the intent of the Legislature that funds appropriated for the purposes of this article shall be expended based on the criteria established in subdivision (b) of Section 44650. However, if unexpended funds are available, they shall continue to be available for allocation for the intended purpose in the appropriation in subsequent years.

Added by Stats.1999, c. 52 (A.B.1114), § 1, eff. July 1, 1999.

Code of Regulations References

<p>Award programs linked to the Academic Performance Index (API). Award funding criteria for Certificated Staff Performance Incentive Act, see 5 Cal. Code of Regs. § 1085.</p>	<p>Exemption from indirect costs, see 5 Cal. Code of Regs. § 1088. General eligibility criteria for awards programs related to API growth, see 5 Cal. Code of Regs. § 1082.</p>
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Additions or changes indicated by underline; deletions by asterisks * * *

Chapter 6.1

PUBLIC SCHOOLS ACCOUNTABILITY ACT OF 1999

Article	Section
1.	Legislative Findings and Intent 52050
2.	Public School Performance Accountability Program 52051
3.	Immediate Intervention/Underperforming Schools Program 52053
3.5.	High Priority Schools Grant Program for Low Performing Schools 52055.800
4.	High Achieving/Improving Schools Program 52056

Chapter 6.1 was added by Stats.1999-2000, 1st Ex.Sess., c. 3 (S.B.1), § 1, eff. June 25, 1999.

Former Chapter 6.1, Improvement of Focus Schools, added by Stats.1992, c. 1335 (A.B.171), consisting of §§ 52050 to 52058.7, relating to improvement of focus schools, became inoperative July 1, 1998, and was repealed Jan. 1, 1999, by Stats.1999, c. 1335 (S.B.171), § 1.

Operative Effect

Operative effect of Stats.1992, c. 1335 (S.B.171), see Gov.C. § 17580 and Stats.1992, c. 1335 (S.B.171), §§ 5, 6.

Law Review and Journal Commentaries

Educational opportunity and accountability in an era of standards-based school reform. William S. Koski, 12:2 Stanford L. & Policy Rev. 801 (2001).

Article 1

LEGISLATIVE FINDINGS AND INTENT

Section	
52050.	Short title.
52050.5.	Legislative findings and declaration.

Article 1 was added by Stats.1999-2000, 1st Ex.Sess., c. 3 (S.B.1), § 1, eff. June 25, 1999.

Law Review and Journal Commentaries

The public school performance and accountability program: Making the grade. Mary Neigam, 81 McGeorge L.Rev. 386 (2000).

Additions or changes indicated by underline; deletions by asterisks *

§ 52050. Short title

This chapter shall be known and may be cited as the Public Schools Accountability Act of 1999.
(Added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999.)

Historical and Statutory Notes

1992 Legislation

Sections 2 and 4 to 6 of Stats.1992, c. 1835, (S.B.171), provide:

"Sec. 2. It is the intent of the Legislature that all new funds allocated as a result of this act supplement, rather than supplant, existing school funds."

"Sec. 4. The State Department of Education shall review the program to improve focus schools, as established under Section 1, and shall report its findings to the Legislature no later than January 1, 1994, and January 1, 1998. These reports shall include, but need not be limited to, the number of schools identified as focus schools; the number and nature of appeals filed and granted; the success rate of identified schools meeting the criteria or improving sufficiently to have been taken out of the program by the Superintendent of Public Instruction; and funding needs to provide the level of services to identified schools that is necessary to assist them in meeting the criteria. The Legislative Analyst shall review the final report issued by the State Department of Education to evaluate the conclusions set forth in that report, and shall submit comments on the report to the education policy

and fiscal committees no later than three months after receiving the report.

"Sec. 5. The Legislature intends that implementation of the program established pursuant to Chapter 5.1 (commencing with Section 52050) of Part 28 of the Education Code shall be subject to funding being restored for the California Assessment Program.

"Sec. 6. Notwithstanding Section 17610 of the Government Code if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund."

Former § 52050, added by Stats.1992, c. 1835 (S.B.171), § 1, relating to legislative findings and intent regarding the improvement of focus schools, became inoperative on July 1, 1999, and was repealed on Jan. 1, 1999, by Stats.1999, c. 1835 (S.B.171), § 1.

§ 52050.5. Legislative findings and declaration

The Legislature finds and declares all of the following:

(a) The purpose of the California public school system is to provide for the academic development of each pupil and prepare each pupil, to the extent of his or her ability, to become a lifelong learner, equipped to live and succeed within the economic and societal complexities of the 21st century.

(b) It is in the interest of the people and the future of this state to ensure that each child in California receives a high quality education consistent with all statewide content and performance standards, as adopted by the State Board of Education, and with a meaningful assessment system and reporting program requirements.

(c) Recent assessments indicate that many pupils in California are not now, generally, progressing at a satisfactory rate to achieve a high quality education.

(d) To remedy this, the state is in need of an immediate and comprehensive accountability system to hold each of the state's public schools accountable for the academic progress and achievement of its pupils within the resources available to schools.

(e) Any promising and effective accountability system must be based upon a constructive and collaborative process that seeks to include stakeholders in the accountability process.

(f) Any promising and effective accountability system requires the active involvement of parents and guardians, pupils, educators, community leaders, school boards, and school site teams.

(g) The statewide school accountability system must encourage the active participation of parents and guardians, pupils, educators, and the local community in improving pupil achievement.

(h) The statewide accountability system must be easily accessible and understandable to parents and others.

(i) The statewide accountability system must include rewards that recognize high achieving schools as well as interventions and, ultimately, sanctions for schools that are continuously low performing.

(j) It is also the intent of the Legislature that the comprehensive and effective school accountability system primarily focus on increasing academic achievement.

(k) To achieve better pupil performance, it is the intent of the Legislature that any school accountability system do all of the following:

(1) Encourage teacher preparation that allows teachers to develop the ability to inspire pupils to become lifelong learners.

Additions or changes indicated by underline; deletions by asterisks * * *

(2) Encourage teacher preparation and consistent ongoing professional development that serves to develop competency in content and pedagogy and that allows teachers to effectively involve themselves in promoting school accountability.

(3) Encourage the involvement of the community and its stakeholders in the accountability system.

(4) Encourage local community involvement in providing support for education and identifying causes of pupil failure and designing programs for remediation.

(5) Approach accountability with an attitude of collaboration, encouragement, and correction.

(6) Utilize the state infrastructure to support schools, school districts, and county offices of education in their efforts to improve pupil achievement and progress.

(7) Encourage each local community to support and sustain high-quality educational programs and to build the capacity of educators and schools to succeed in educating every pupil.

(8) Encourage active involvement of parents and guardians in the development and implementation of school accountability systems.

(Added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999.)

Article 2

PUBLIC SCHOOL PERFORMANCE ACCOUNTABILITY PROGRAM

<p>Section 52051. Program establishment; components. 52051.5. Inclusion of charter schools. 52052. Academic Performance Index; tests incorporated into index; annual percentage growth targets; statewide performance target; use of index; alternative accountability for small schools.</p>	<p>Section 52052.2. Eligibility for Governor's Performance Awards Program and for participation in the Immediate Intervention/Underperforming Schools Program. 52052.3. Test scores included in index. 52052.5. Advisory committee.</p>
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Article 2 was added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999.

Law Review and Journal Commentaries

The public school performance and accountability program: Making the grade. Mary Nebgen, 81 McGeorge L.Rev. 886 (2000).

§ 52051. Program establishment; components

The Public School Performance Accountability Program is hereby established and shall consist of the following three component parts:

- (a) The state Academic Performance Index, to be known as the API.
- (b) The Immediate Intervention/Underperforming Schools Program.
- (c) The Governor's High Achieving/Improving Schools Program.

(Added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999.)

Historical and Statutory Notes

1992 Legislation
Operative effect of certain bills requiring reimbursement, see Gov. C. § 17580 and Historical and Statutory Notes under § 52050.

Former § 52051, added by Stats.1992, c. 1885 (S.B.171), § 1; relating to a program to improve public schools, became inoperative on July 1, 1998, and was repealed on Jan. 1, 1999, by Stats.1992, c. 1885 (S.B.171), § 1.

§ 52051.5. Inclusion of charter schools

For purposes of this chapter, all references to schools shall include charter schools.

(Added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999.)

Additions or changes indicated by underline; deletions by asterisks

§ 52052. Academic Performance Index; tests incorporated into index; annual percentage growth targets; statewide performance target; use of index; alternative accountability for small schools

(a)(1) By July 1, 1999, the Superintendent of Public Instruction, with approval of the State Board of Education, shall develop an Academic Performance Index (API), to measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools. (3)

(2) For purposes of this section, a numerically significant ethnic or socioeconomically disadvantaged subgroup is a subgroup that constitutes at least 15 percent of a school's total pupil population and consists of at least 30 pupils. An ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school. For schools whose API scores are based on test scores of no fewer than 11 and no more than 99 pupils, numerically significant subgroups shall be defined by the Superintendent of Public Instruction, with approval by the State Board of Education.

(3) The API shall consist of a variety of indicators currently reported to the State Department of Education including, but not limited to, the results of the achievement test administered pursuant to Section 60840, attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60840 and 60844 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils who were enrolled in a school district in the prior fiscal year may be included in the test results reported in the API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 80 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data are currently reported to the state and the accuracy of the data.

(C) If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

- (1) The assessment of the applied academic skills matrix test developed pursuant to Section 60804.
- (2) The nationally normed test designated pursuant to * * * Section 60642.
- (3) The standards-based achievement tests provided for in Section 60842.5.
- (4) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, expected annual percentage growth targets for all schools based on their API baseline score * * * from the previous year. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the State Board of Education pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the State Board of Education may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically significant ethnic and socioeconomically disadvantaged subgroups, as defined in subdivision (a) of Section 52052, are making comparable improvement.

(d) Upon adoption of state performance standards by the State Board of Education, the Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When the API is fully developed, schools * * * must, at a minimum, meet their annual API growth targets to be eligible for the Governor's

Additions or changes indicated by underline; deletions by asterisks * * *

Performance Award Program as set forth in Section 52057. The State Board of Education may establish additional criteria that schools must meet to be eligible for the Governor's Performance Awards Program.

(e) Beginning in June 2000, the API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52058.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f)(1) A comprehensive high school, middle school, or elementary school with 11 to 99 valid test scores of pupils who were enrolled in a school within the same school district in the prior fiscal year shall receive an API score with an asterisk that indicates less statistical certainty than API scores based on 100 or more test scores.

(2) A school under the jurisdiction of a county board of education or a county superintendent of schools, a community day school, or an alternative school, including continuation high schools and opportunity schools, may receive an API score if the school has 11 more or more valid test scores and the school chooses to receive an API score for at least three years.

(3) A school that participates in the Immediate Intervention/Underperforming Schools Program described in Section 52058 shall receive an API score for the duration of its participation in that program, unless the Superintendent of Public Instruction determines that an API score would be an invalid measure of the school's performance for one or more of the following reasons:

(A) Irregularities in testing procedures occurred.

(B) The data used to calculate the school's API score are not representative of the pupil population at the school.

(C) Significant demographic changes in the school's pupil population render year-to-year comparisons of pupil performance invalid.

(D) The Department of Education discovers or receives information indicating that the integrity of the school's API score has been compromised.

(g) Only * * * schools * * * with 100 or more * * * test scores contributing to the API may be included in the API rankings.

(h) By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 * * * test scores contributing to the schools' API scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools serving high-risk pupils, including continuation high schools and * * * opportunity schools.

(Added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999. Amended by Stats.2000, c. 695 (S.B.1552), § 1; Stats.2001, c. 745 (S.B.1191), § 24, eff. Oct. 12, 2001; Stats.2001, c. 887 (A.B.1295), § 1.)

Historical and Statutory Notes

1992 Legislation

Former § 52052, added by Stats.1994, c. 887 (S.B.740), § 2, derived from former § 52052, added by Stats.1992, c. 1835 (S.B.171), § 1, relating to identification of focus schools, became inoperative on July 1, 1998, and was repealed on Jan. 1, 1999, by Stats.1992, c. 1835 (S.B.171), § 1.

repealed by Stats.1994, c. 887 (S.B.740), § 1. See, now, this section.

2000 Legislation

Section affected by two or more acts at the same session of the legislature, see Government Code § 9908.

1994 Legislation

Former § 52052, added by Stats.1992, c. 1835 (S.B.171), § 1, relating to the identification of focus schools, was

Code of Regulations References

Award programs linked to the Academic Performance Index (API).

Award funding criteria for Certificated Staff Performance Incentive Act, see 5 Cal. Code of Regs. § 1035.

Exemption from indirect costs, see 5 Cal. Code of Regs. § 1038.

General eligibility criteria for awards programs related to API growth, see 5 Cal. Code of Regs. § 1032.

Additions or changes indicated by underline; deletions by asterisks * * *

§ 52052.2. Eligibility for Governor's Performance Awards Program and for participation in the Immediate Intervention/Underperforming Schools Program

A school that receives an API score with an asterisk shall be eligible for the Governor's Performance Awards Program, as set forth in Section 52057 and for participation in the Immediate Intervention/Underperforming Schools Program, as set forth in Section 52058.

(Added by Stats.2001, c. 887 (A.B.1295), § 2.)

§ 52052.3. Test scores included in index

Test scores of pupils who are in the first year of enrollment in a high school district, but who, in the prior year, were enrolled in an elementary school district that normally matriculates to the high school district, shall be included in the Academic Performance Index, as provided in Section 52052.

(Added by Stats.2000, c. 71 (S.B.1667), § 18, eff. July 5, 2000. Amended by Stats.2000, c. 695 (S.B.1552), § 2.5.)

Historical and Statutory Notes

2000 Legislation

Section 84 of Stats.2000, c. 71 (S.B.1667), provides:

"Notwithstanding Section 42238.1 of the Education Code or any other provision of law, the cost-of-living adjustment for Items 6110-104-0001, 6110-105-0001, 6110-158-0001, 6110-159-0001, 6110-161-0001, 6110-185-0001, 6110-186-0001, 6110-190-0001, 6110-196-0001, 6110-234-0001, and 6110-235-0001 of Section 2.00, and those items identified in subdivision (b) of Section 12.40 of the Budget Act of 2000 and the amount

appropriated for the purposes of Section 42248.7 of the Education Code for the 2000-01 fiscal year shall be 8.17 percent. All funds appropriated in the items identified in this section are in lieu of the amounts that would otherwise be appropriated pursuant to any other provision of law."

The 2000 amendment of this section by c. 695 explicitly amended the 2000 addition of this section by c. 71.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

§ 52052.5. Advisory committee

The Superintendent of Public Instruction shall establish a broadly representative and diverse advisory committee to advise the Superintendent of Public Instruction and the State Board of Education on all appropriate matters relative to the creation of the Academic Performance Index and the implementation of the Immediate Intervention/Underperforming Schools Program and the High Achieving/Improving Schools Program. Members of the advisory committee shall serve without compensation for terms not to exceed two years. The State Department of Education shall provide staff to the advisory panel.

(Added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999.)

Article 8

IMMEDIATE INTERVENTION/UNDERPERFORMING SCHOOLS PROGRAM

<p>Section 52053. Establishment of program; selection of schools.</p> <p>52053.5. Minimum qualifications for external evaluators; standards and criteria to be applied by external evaluators.</p> <p>52053.7. Repealed.</p> <p>52054. Contracts with external evaluators; duties of evaluator; review and recommendations; action plan; funding.</p> <p>52054.3. Election to use existing plan; conditions; modifications to existing plan.</p> <p>52054.5. Grants for implementing the program.</p>	<p>Section 52055. Failure to meet annual short-term growth target; corrective interventions.</p> <p>52055.5. Meeting or exceeding growth targets; schools not meeting growth targets but demonstrating significant growth; schools not meeting growth targets and failing to show significant growth.</p> <p>52055.5.1. Schools not meeting growth targets and failing to show significant growth; exception to actions specified in § 52055.</p>
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Article 8 was added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999.

Additions or changes indicated by underline; deletions by asterisks * * *

Law Review and Journal Commentaries

The public school performance and accountability program. Making the grade. Mary Nebgen; 81. McGeorge L.Rev. 886 (2000).

§ 52053. Establishment of program; selection of schools.

(a) The Immediate Intervention/Underperforming Schools Program is hereby established. By August 15, 1999, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall invite schools that scored below the 50th percentile on the achievement tests administered pursuant to Section 60840 both in the spring of 1998 and in the spring of 1999 to participate in the Immediate Intervention/Underperforming Schools Program. A school invited to participate may take any action not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates to improve pupil performance.

(b) The total number of schools participating in the program in 1999 shall be 480. Unless subdivision (d) applies, schools that apply will be selected based on the order in which they apply within ranks of deciles, not to exceed 86 per decile, within the following grade level categories:

(1) No more than 801 elementary schools.

(2) No more than 78 middle schools.

(3) No more than 52 high schools.

(c) The 86 schools selected within each decile range pursuant to subdivision (b) shall proportionately represent elementary, middle, and high schools and shall provide statewide proportionate geographic representation of urban and rural schools.

(d) If fewer than the number of schools in any grade level category apply, schools that scored below the 50th percentile in those grade level categories that did not apply for the program shall randomly be selected by the Superintendent of Public Instruction, with the approval of the State Board of Education, to participate based on their proportional representation in the state until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(e) If more than the requisite number of schools apply for any grade level category, the Superintendent of Public Instruction shall select an array of schools that reflect a broad range of academic performance of schools that scored below the 50th percentile, until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(f) A school selected to participate on or before September 1, 1999, shall be awarded a planning grant from funds appropriated pursuant to paragraph (1) of subdivision (a) of Section 2 of the act adding this section in the amount of fifty thousand dollars (\$50,000). A school selected to receive federal funds pursuant to paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall be awarded an implementation grant in an amount of at least fifty thousand dollars (\$50,000) pursuant to Public Law 105-78.

(g) Schools receiving funding under paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall comply with Public Law 105-78.

(h) By September 15, 2000, and each year thereafter, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall identify schools that failed to meet their Academic Performance Index (API) growth targets and that have an API score below the 50th percentile in the previous school year relative to all other public elementary, middle or high schools. The Superintendent of Public Instruction shall invite these schools to participate in the Immediate Intervention/Underperforming Schools Programs. A school invited to participate may take any action to improve pupil performance not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates.

(i) The total number of schools selected for participation in the program shall be no more than the number that can be funded through the total appropriation for the planning grants referenced in subdivision (f) below.

(j) If fewer schools apply for participation than can be funded, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall randomly select the balance of schools from schools eligible to participate that did not apply. Insofar as possible, the schools randomly selected should reflect a representative proportion of elementary, middle and high schools, as well as a broad range of academic achievement.

Additions or changes indicated by underline; deletions by asterisks * * *

(k) If more schools apply for participation than can be funded, the schools shall be selected on the order in which they apply. Insofar as possible, the schools * * * selected should reflect a representative proportion of elementary, middle and high schools, as well as a broad range of academic achievement.

(l) A school selected to participate on or before October 15, 2000, and each year thereafter, shall be awarded a planning grant from funds appropriated pursuant to this act of fifty thousand dollars (\$50,000).

(m) Schools selected for participation in the program shall be notified by the Superintendent of Public Instruction no later than October 15 of each year.

(Added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999. Amended by Stats.2000, c. 695 (S.B.1552), § 2; Stats.2001, c. 887 (A.B.1295), § 2.)

Historical and Statutory Notes

1992 Legislation

Section 8 of Stats.1992, c. 1885 (S.B.171), provides:

"It is the intent of the Legislature that funding be provided in future Budget Acts for the purposes of Sections 52053, 52054.5, 52056.5, and 52059 of, and paragraphs (1) to (3), inclusive, of subdivision (a), paragraphs (1) and (3) of subdivision (b), and subdivisions (e) and (f) of Section 52058 of the Education Code. Grants shall be provided to school districts for their expenses incurred pursuant to paragraph (2) of subdivision (a) of Section 52058. The Superintendent of Public Instruction and the State Department of Education shall only be required to implement the provisions enumerated in this section in fiscal years in which sufficient funds have been appropriated for those purposes."

Former § 52053, added by Stats.1992, c. 1885 (S.B.171), § 1, amended by Stats.1994, c. 987 (S.B.740), § 3, relating to identification of focus schools, frequency of evaluation

of schools, etc., became inoperative on July 1, 1998, and was repealed on Jan. 1, 1999, by Stats.1992, c. 1885 (S.B.171), § 1.

1994 Legislation

Section 7 of Stats.1994, c. 987 (S.B.740), provides:

"It is the intent of the Legislature that funding be provided in future Budget Acts for the purposes of Sections 52053, 52054.5, 52056.5, subdivisions (a), (b), (e), and (f) of Section 52058, and Section 52059 of the Education Code. Grants shall be provided to school districts for the expenses incurred by the school districts pursuant to paragraph (2) of subdivision (a) of Section 52058 of the Education Code. The Superintendent of Public Instruction and the State Department of Education shall only be required to implement the provisions enumerated in this section in fiscal years in which sufficient funds have been appropriated for those purposes."

§ 52053.5. Minimum qualifications for external evaluators; standards and criteria to be applied by external evaluators

(a) The Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, the minimum qualifications for external evaluators that shall include, but may not be limited to, recent successful professional, managerial or governing board experience in improving school achievement, and the ability to assist the school to systematically align curriculum, instruction, and assessment. The external evaluators shall also have demonstrated experience in working with diverse populations. With the approval of the State Board of Education, the Superintendent of Public Instruction shall develop and disseminate an application process by which to establish a list of external evaluators that meet the minimum qualifications. The list of approved external evaluators may include private sector experts, institutions of higher education, county offices of education, and educational consortia.

(b) The Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, the standards and criteria to be applied by external evaluators in carrying out their duties. The standards and criteria shall include, but are not limited to, the following areas:

- (1) Governing board policies.
- (2) Curriculum management.
- (3) Fiscal management.
- (4) Parental and community involvement.
- (5) Personnel management.
- (6) Facilities management.

(Added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999.)

Historical and Statutory Notes

1992 Legislation

Former § 52053.5, added by Stats.1992, c. 1885 (S.B.171), § 1, relating to notice to parents that a school has

been identified as a focus school, became inoperative on July 1, 1998, and was repealed on Jan. 1, 1999, by Stats.1992, c. 1885 (S.B.171), § 1.

Additions or changes indicated by underline; deletions by asterisks * * *

§ 52053.7
Repealed

EDUCATION CODE

§ 52053.7. Repealed by Stats.1992, c. 1835 (S.B.171), § 1, operative Jan. 1, 1999

Historical and Statutory Notes

The repealed section, added by Stats.1994, c. 937 (S.B. 740), § 4, relating to findings and declarations regarding focus schools, became inoperative July 1, 1998.

§ 52054. Contracts with external evaluators; duties of evaluator; review and recommendations; action plan; funding

(a) By November 15 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program shall contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team, consisting of a majority of nonschoolsite personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(b) The selected external evaluator shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below average performance.

(2) Hold a public meeting at the school, in cooperation with the principal, to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit, at the public meeting, the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section.

(4) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(c) By February 15 of the school year in which the school is selected to participate, the selected external evaluator, in collaboration with the broad-based schoolsite and community team selected pursuant to subdivision (a), shall complete a review of the school that identifies weaknesses that contribute to the school's below average performance, make recommendations for improvement, and begin to develop an action plan to improve the academic performance of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a scope that requires reimbursement by the Commission on State Mandates for its implementation.

(d) At a minimum, the action plan shall do all of the following:

(1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 38126.

(2) Identify the current barriers at the school and district toward improvements in pupil achievement.

(3) Identify schoolwide and districtwide strategies to remove these barriers.

(4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.

(5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information regarding the achievement of English language learners, pupils with exceptional needs, pupils who qualify for free and reduced price meals, and pupils * * * in numerically significant subgroups.

Additions or changes indicated by underline; deletions by asterisks * * *

(6) Set short-term academic objectives pursuant to Section 52052 for a two-year period that will allow the school to make adequate progress toward the growth targets established for each participating school for pupil achievement as measured by all of the following to the extent that the data is available for the school:

- (A) The achievement test administered pursuant to Section 80640.
- (B) Graduation rates for grades 7 to 12, inclusive.
- (C) Attendance rates for pupils and school personnel for elementary, middle, and secondary schools.
- (D) Any other indicators approved by the State Board of Education.

(e) The school action plan shall focus on improving pupil academic performance, improving the involvement of parents and guardians, improving the effective and efficient allocation of resources and management of the school, and identifying and developing solutions that take into account the underlying causes for low performance by pupils.

(f) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(g) The school action plan may propose to increase the number of instructional days offered at the schoolsite and also may propose to increase up to a full 12 months the amount of time for which certificated employees are contracted, if all of the following conditions are met:

(1) Provisions of the plan proposed pursuant to this subdivision shall not violate current applicable collective bargaining agreements.

(2) An agreement is reached with the exclusive representative concerning staffing specifically to accommodate the extended school year or 12-month contract.

(h) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(i) Upon its completion, the action plan shall be submitted to the governing board of the school districts for its approval. After the plan is approved, but no later than May 15 of the year that follows the year the school is selected to participate, the plan shall be submitted to the Superintendent of Public Instruction with a request for funding in the form prescribed by the Superintendent of Public Instruction, who shall review the school action plan and recommend approval or disapproval of the school's request for funding to the State Board of Education.

(j) Not later than July 15 of the year next following the year in which a school is selected for participation, the State Board of Education shall review and approve or disapprove the school's request for funding, based on the recommendation of the Superintendent of Public Instruction. Within 80 days of the State Board of Education's review, the Superintendent of Public Instruction shall notify the effected school districts of the state of the board's action regarding the request for funding. In conjunction with its approval of a request for funding to implement a school's action plan, the State Board of Education may, at the request of the governing board of the school district or the county board of education for a school under its jurisdiction, waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 64761 and Section 64800 if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46300.

(Added by Stats.1999-2000, 1st Ex.Sess., c. 3 (S.B.1), § 1, eff. June 25, 1999. Amended by Stats.2000, c. 190 (A.B.2182), § 1; Stats.2000, c. 695 (S.B.1552), § 8; Stats.2001, c. 159 (S.B.662), § 73; Stats.2001, c. 749 (A.B.961), § 2, eff. Oct. 12, 2001; Stats.2001, c. 887 (A.B.1285), § 4.)

Historical and Statutory Notes

1992 Legislation

Former § 52054, added by Stats.1992, c. 1895 (S.B.171), § 1, relating to instructional improvement teams, became inoperative on July 1, 1993, and was repealed on Jan. 1, 1999, by Stats.1992, c. 1895 (S.B.171), § 1.

2001 Legislation

Subordination of legislation by Stats.2001, c. 159 (S.B. 682), to other 2001 legislation, see Historical and Statutory Notes under Business and Professions Code § 87.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Appropriations, legislative intent and urgency effective provisions relating to Stats.2001, c. 749 (A.B.961), see Historical and Statutory Notes under Education Code § 51101.

Governor's reduction message regarding Stats.2001, c. 749 (A.B.961), see Historical and Statutory Notes under Education Code § 51101.

For letter of intent relating to A.B. 961 (Stats.2001, c. 749) and A.B. 486 (Stats.2001, c. 787) concerning the relationship of the High Priority Schools Grant Program for Low Performing Schools (HPSGP) to existing law, see Historical and Statutory Notes under Education Code § 51101.

Additions or changes indicated by underline; deletions by asterisks * * *

§ 52054.3. Election to use existing plan; conditions; modifications to existing plan

A school selected on or after September 2001 may elect to use an existing plan instead of the action plan required pursuant to Section 52054 if that plan meets the requirements specified pursuant to subdivisions (c), (d), (e), (f), (g), (h), and (i) of Section 52054. If an existing plan needs modification, the external evaluator or entity with which the school district contracts pursuant to Section 52054 shall provide technical assistance in making those modifications.

(Added by Stats.2001, c. 749 (A.B.961), § 8, eff. Oct. 12, 2001.)

Historical and Statutory Notes

2001 Legislation

Appropriations, legislative intent and urgency effective provisions relating to Stats.2001, c. 749 (A.B.961), see Historical and Statutory Notes under Education Code § 51101.

For letter of intent relating to A.B. 961 (Stats.2001, c. 749) and A.B. 466 (Stats.2001, c. 787) concerning the

relationship of the High Priority Schools Grant Program for Low Performing Schools (EPSGP) to existing law, see Historical and Statutory Notes under Education Code § 51101.

Governor's reduction message regarding Stats.2001, c. 749 (A.B.961), see Historical and Statutory Notes under Education Code § 51101.

§ 52054.5. Grants for implementing the program

*** Subject to the appropriation of funds for this purpose in the Budget Act, a school whose application is approved shall receive a grant for implementing the program, in each subsequent fiscal year that it participates in the program, in an amount up to two hundred dollars (\$200) per pupil enrolled in the school, with a minimum allocation of fifty thousand dollars (\$50,000) per school site. *** As a condition of receiving this funding, a participating school or the school district having jurisdiction over that school shall match the amount of state funding from any new or existing sources of funding. To help meet this matching requirement, a participating school and the governing board of the school district having jurisdiction over that school shall receive maximum flexibility in the expenditure of any new or existing categorical funds not otherwise prohibited by state or federal law and shall redirect for the purposes of their academic improvement plan new or existing categorical or general purpose funds. (Added by Stats.1999-2000, 1st Ex.Sess., c. 5 (S.B.1), § 1, eff. June 25, 1999. Amended by Stats.2000, c. 695 (S.B.1552), § 4.)

Historical and Statutory Notes

1992 Legislation

Former § 52054.5, added by Stats.1992, c. 1885 (S.B. 171), § 1, relating to school assistance cadre, became

inoperative on July 1, 1988, and was repealed on Jan. 1, 1999, by Stats.1992, c. 1885 (S.B.171), § 1.

§ 52055. Failure to meet annual short-term growth target; corrective interventions

The governing board of a school that fails to meet its annual short-term growth target within 12 months following receipt of funding pursuant to Section 52054.5 shall hold a public hearing at a regularly scheduled meeting to ensure that members of the school community are aware of the lack of progress. The governing board of the school district shall, upon consultation with the external evaluator and the school site and community team selected pursuant to Section 52054, choose from a range of interventions for the school, including reassignment of school personnel to the extent authorized by law, negotiation of site-specific amendments to collective bargaining agreements or other changes deemed appropriate, in order to continue implementing the action plan approved pursuant to Section 52054, and to make progress toward meeting the school's growth target.

(Added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999. Amended by Stats.2000, c. 695 (S.B.1552), § 5.)

Historical and Statutory Notes

1992 Legislation

Former § 52055, added by Stats.1992, c. 1885 (S.B.171), § 1, relating to school action plans, became inoperative on

July 1, 1988, and was repealed on Jan. 1, 1999, by Stats.1992, c. 1885 (S.B.171), § 1.

§ 52055.5. Meeting or exceeding growth targets; schools not meeting growth targets but demonstrating significant growth; schools not meeting growth targets and failing to show significant growth

*** (a) Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that has not met its growth targets each year, but demonstrates significant growth, as determined by the State

Additions or changes indicated by underline; deletions by asterisks ***

Board of Education, shall continue to participate in the program for an additional year and to receive funding in the amount specified in Section 52054.5. Thirty-six months after receipt of funds pursuant to Section 52054.5, a school is no longer eligible to receive funding pursuant to that section.

* * * (b) Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that has not met its growth targets * * * each year and has failed to show significant growth, as determined by the State Board of Education, shall be deemed a low-performing school. Notwithstanding any other provision of law, the Superintendent of Public Instruction shall assume all the legal rights, duties, and powers of the governing board with respect to that school. The Superintendent of Public Instruction, in consultation with the State Board of Education and the governing board of the school district, shall reassign the principal of that school subject to the findings in subdivision (d). In addition to reassigning the principal, the Superintendent of Public Instruction, in consultation with the State Board of Education, shall, notwithstanding any other provision of law, do at least one of the following:

(1) Revise attendance options for pupils to allow them to attend any public school in which space is available. If additional attendance options are made available, nothing in this option shall be construed to require either the sending or receiving school district to incur additional transportation costs.

(2) Allow parents to apply directly to the State Board of Education for the establishment of a charter school and allow parents to establish the charter school at the existing school site.

(3) Under the supervision of the Superintendent of Public Instruction, assign the management of the school to a college, university, county office of education, or other appropriate educational institution. However, the Superintendent of Public Instruction may not assume the management of the school.

(4) Reassign other certificated employees of the school.

(5) Renegotiate a new collective bargaining agreement at the expiration of the existing collective bargaining agreement.

(6) Reorganize the school.

(7) Close the school.

(c) In addition to the actions listed in subdivision (b), the Superintendent of Public Instruction, in consultation with the State Board of Education, may take any other action considered necessary or desirable against the school district or the school district governing board, including appointment of a new superintendent or suspension of the authority of the governing board with respect to the school or schools identified pursuant to subdivision (b).

(d) Before the Superintendent of Public Instruction may take any action against a principal pursuant to subdivision (b), the Superintendent of Public Instruction or a designee of the superintendent shall hold a public hearing on the matter in the school district and make both of the following findings:

(1) A finding that the principal had the authority to take specific enumerated actions that would have helped the school meet its performance goals.

(2) A finding that the principal failed to take specific enumerated actions pursuant to paragraph (1).

(e) A school that has not met its growth targets within 36 months of receiving funding pursuant to Section 52054.5, but has shown significant growth as determined by the State Board of Education, shall continue to be monitored by the Superintendent of Public Instruction until it meets its annual growth target or the statewide performance target. If, in any year between the third year of implementation funding and the first year the school meets its growth target, the school fails to make significant growth as determined by the State Board of Education, that school shall be deemed a low-performing school and subject to the provisions of paragraphs (1) to (7), inclusive, of subdivision (b).

(f) An action taken pursuant to subdivision (b), (c), or (d) * * * shall not increase local costs or require reimbursement by the Commission on State Mandates.

(g) An action taken pursuant to subdivision (b), (c), or (d) * * * shall be accompanied by specific findings by the Superintendent of Public Instruction and the State Board of Education that the action is directly related to the identified causes for continued failure by a school to meet its performance goals.

(Added by Stats.1999-2000, 1st Ex.Sess., c. 3 (S.B.1), § 1, eff. June 25, 1999; Amended by Stats.2000, c. 695 (S.B.1552), § 6; Stats.2001, c. 887 (A.B.1295), § 5.)

§ 52055.51. Schools not meeting growth targets and failing to show significant growth; exception to actions specified in § 52055.

(a) Instead of the actions specified in subdivision (c) of Section 52055.5, as that section read on January 1, 2001, and notwithstanding any other provision of law, the Superintendent of Public Instruction, with the approval of the State Board of Education, may require the district to enter into a contract with a school assistance and intervention team.

Additions or changes indicated by underline; deletions by asterisks * * *

(b) Team members should possess a high degree of knowledge and skills in the areas of school leadership, curriculum, and instruction aligned to state academic content and performance standards, classroom management and discipline, academic assessment, parent-school relations, and evaluation and research-based reform strategies and have proven successful expertise specific to the challenges inherent in low-performing schools.

(c) The team shall provide intensive support and expertise to implement the school reform initiatives in the plan. Decisions about interventions shall be data driven. A school assistance and intervention team shall work with school staff, site planning teams, administrators, and district staff to improve pupil literacy and achievement by assessing the degree of implementation of the current action plan, refining and revising the action plan, and making recommendations to maximize the use of fiscal resources and personnel in achieving the goals of the plan. The district shall provide support and assistance to enhance the work of the team at the targeted school sites.

(d) Not later than 60 days after the school's API becomes public, the team must have completed an initial report. The report shall include recommendations for corrective actions chosen from a range of interventions, including the reallocation of district fiscal resources to ensure that appropriate resources are targeted to those specific interventions identified in the recommendations of the team for the targeted schools and other changes deemed appropriate to make progress toward meeting the schools growth target. Not later than 90 days after the API is made public, the governing board of the school district shall adopt the team's recommendations at a regularly scheduled meeting of the governing board. The governing board may not place the adoption on the consent calendar. The report shall be submitted to the Superintendent of Public Instruction and State Board of Education.

(e) No less than three times during the year, the school district and school site shall present the team with data regarding progress toward the goals established by the team's initial assessment. The data shall be presented to the governing board of the school district at a regularly scheduled meeting. The team shall, to the extent possible, utilize existing site data. The data shall also be provided to the Superintendent of Public Instruction and State Board of Education. Every effort shall be made to report this data in a manner that minimizes the length and complexity of the reporting requirement in order to maximize the focus on improving pupil literacy and achievement.

(f) An action taken pursuant to this paragraph shall not increase local costs or require reimbursement by the Commission on State Mandates.

(Added by Stats 2001, c. 749 (A.B. 961), § 4, eff. Oct. 12, 2001.)

Historical and Statutory Notes

2001 Legislation
 Appropriations, legislative intent and urgency effective provisions relating to Stats 2001, c. 749 (A.B. 961), see Historical and Statutory Notes under Education Code § 51101.

For letter of intent relating to A.B. 961 (Stats 2001, c. 749) and A.B. 466 (Stats 2001, c. 787) concerning the

relationship of the High Priority Schools Grant Program for Low Performing Schools (HPSGP) to existing law, see Historical and Statutory Notes under Education Code § 51101.

Governor's redaction message regarding Stats 2001, c. 749 (A.B. 961), see Historical and Statutory Notes under Education Code § 51101.

Article 4

HIGH ACHIEVING/IMPROVING SCHOOLS PROGRAM

<p>Section 52056. High Achieving/Improving Schools Program; establishment; annual ranking of schools; report; discussion of results.</p> <p>52056.5. Failure to meet growth targets; intervention.</p> <p>52056.6. Repealed.</p>	<p>Section 52057. Governor's Performance Awards Program; eligibility; awards; waiver of certain provisions; expenditure of funds.</p> <p>52058. Evaluation report by schools; evaluation of programs; schedule for biennial evaluations.</p> <p>52059 to 52059.7. Repealed.</p>
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Article 4 was added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999.

Law Review and Journal Commentaries

The public school performance and accountability program: Making the grade. Mary Nabgan, 31 McGeorge L.Rev. 828 (2000).

§ 52056. High Achieving/Improving Schools Program; establishment; annual ranking of schools; report; discussion of results

(a) The High Achieving/Improving Schools Program is hereby established. Commencing in June 2000, and every June thereafter, the Superintendent of Public Instruction, with approval of the State Board of Education, shall rank all public schools based on the Academic Performance Index established pursuant to Section 52052. The schools shall be ranked by the value of the API in decile categories by grade level of instruction provided and shall include three categories: elementary, middle, and high school. The schools shall also be ranked by the value of the API when compared to schools with similar characteristics. Commencing in June 2001, the Superintendent of Public Instruction shall also report the target annual growth rates of schools, and the actual growth rates attained by the schools. For purposes of this section, similar characteristics include, but are not limited to, the following characteristics: insofar as data is available from the State Department of Education's data: pupil mobility, pupil ethnicity, pupil socioeconomic status, percentage of teachers who are fully credentialed, percentage of teachers who hold emergency credentials, percentage of pupils who are English language learners, average class size per grade level, and whether the schools operate multitrack year-round educational programs. The Superintendent of Public Instruction shall annually publish these rankings on the Internet.

(b) All schools shall report their ranking, including a description of the components of the API, in their annual school accountability report card pursuant to Sections 83126 and 85256.

(c) Following the annual publication of the API and school rankings by the Superintendent of Public Instruction, the governing board of each school district shall discuss the results of the annual ranking at the next regularly scheduled meeting.

(Added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999. Amended by Stats.2000, c. 895 (S.B.1552), § 7.)

Additions or changes indicated by underline; deletions by asterisks

Historical and Statutory Notes

1992 Legislation
Former § 52056, added by Stats.1992, c. 1835 (S.B.171), § 1, relating to a needs assessment and school plan, became inoperative on July 1, 1998, and was repealed on Jan. 1, 1999, by Stats.1992, c. 1835 (S.B.171), § 1.

§ 52056.5. Failure to meet growth targets; intervention

Commencing with the 2000-01 fiscal year, a school that fails to meet annual state growth targets established pursuant to Section 52052 may, as determined by the Superintendent of Public Instruction with the approval of the State Board of Education, be subject to the Immediate Intervention/Underperforming Schools Program pursuant to subdivisions (e) and (f) of Section 52053, and Sections 52053.5, 52054, 52054.5, 52055, and 52055.5.

(Added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999.)

Historical and Statutory Notes

1992 Legislation
Former § 52056.5, added by Stats.1992, c. 1835 (S.B.171), § 1, relating to contracts for assistance with the improvement program, became inoperative on July 1, 1998, and was repealed on Jan. 1, 1999, by Stats.1992, c. 1835 (S.B.171), § 1.

§ 52056.6. Repealed by Stats.1992, c. 1835 (S.B.171), § 1, operative Jan. 1, 1999

Historical and Statutory Notes

The repealed section, added by Stats.1992, c. 1835 (S.B.171), § 1, amended by Stats.1994, c. 937 (S.B.740), § 5, relating to program improvement schools identified as focus schools, became inoperative July 1, 1998.

§ 52057. Governor's Performance Awards Program; eligibility; awards; waiver of certain provisions; expenditure of funds

(a) The State Board of Education shall establish a Governor's Performance Award Program to provide monetary and nonmonetary awards to schools that meet or exceed API performance growth targets established pursuant to Section 52052, and demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools. Monetary awards shall be awarded only to schools whose API scores meet or exceed their API growth target as established pursuant to Section 52052 or increase by five points, whichever is greater, and in which all numerically significant subgroups scores meet or exceed 80 percent of the school's API growth target as established pursuant to Section 52052 or increase by four points, whichever is greater. For purposes of this section, an ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school.

(b) All schools, including schools participating in the Immediate Intervention/Underperforming Schools Program, are eligible to participate in the Governor's Performance Award Program. The manner and form in which the monetary and nonmonetary awards are given shall be established by the Superintendent of Public Instruction and approved by the State Board of Education. The monetary awards shall be made available on either a per pupil or per school basis, not to exceed one hundred fifty dollars (\$150) per pupil * * * who received a score on the assessments described in subdivision (b) of Section 80840 and subject to funds appropriated in the annual Budget Act. A school that continues to show improvement in successive years is eligible to receive annual bonuses.

(c) In addition to or in substitution of monetary awards, the Superintendent of Public Instruction may establish, upon approval by the State Board of Education, nonmonetary awards that may include, but are not limited to, classification as a distinguished school, listing on a published public school honor roll, and public commendations by the Governor and the Legislature.

(d) A governing board of a school district or a county board of education with one or more schools under its jurisdiction that are eligible to receive an award from the Governor's Performance Award Program may request on behalf of those schools that the State Board of Education waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 84000. The board may grant the request if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 48800. The waiver shall be granted for no more than three consecutive fiscal years. A governing board of a school district or a county board of education may request a renewal for schools under their jurisdiction that still meet the eligibility criteria.

Additions or changes indicated by underline; deletions by asterisks * * *

(e) The waiver granted pursuant to subdivision (d) of Section 52057 may also provide the governing board of a school district or a county board of education with maximum flexibility, on the part of eligible schools within the districts, in the expenditure of any new or existing categorical funds not otherwise prohibited under state or federal law to enable the school to continue improvement in pupil performance. (Added by Stats.1999-2000, 1st Ex.Sess., c. 8 (S.B.1), § 1, eff. June 25, 1999. Amended by Stats.2000, c. 695 (S.B.1552), § 8; Stats.2001, c. 891 (S.B.785), § 21, eff. Oct. 14, 2001.)

Historical and Statutory Notes

1992 Legislation

Former § 52057, added by Stats.1992, c. 1835 (S.B.171), § 1, relating to completion of phase 1 of the improvement program, became inoperative on July 1, 1995, and was repealed on Jan. 1, 1999, by Stats.1992, c. 1835 (S.B.171), § 1.

2001 Legislation

Governor's reduction message regarding Stats.2001, c. 891 (S.B.785), see Historical and Statutory Notes under Education Code § 10554.

2000 Legislation

An amendment of this section by § 8.5 of Stats.2000, c. 695 (S.B.1552), failed to become operative under the provisions of § 12 of that Act.

Code of Regulations References

Award programs linked to the academic performance index (API).

Award funding criteria for Certificated Staff Performance Incentive Act, see 5 Cal. Code of Regs. § 1935.

Award funding criteria for governor's performance award program and Academic Performance Index

schoolsite employees performance bonus, see 5 Cal. Code of Regs. § 1088

General eligibility criteria for awards programs related to API growth, see 5 Cal. Code of Regs. § 1082.

§ 52058. Evaluation report by schools; evaluation of programs; schedule for biennial evaluations

(a) Each school district with schools participating in the Immediate Intervention/Underperforming Schools Program established pursuant to Section 52058 and the High Priority Schools Grant Program for Low Performing Schools established pursuant to Section 52055.800 shall submit to the Superintendent of Public Instruction an evaluation of the impact, costs, and benefits of the program as it relates to the school district and the schools under its jurisdiction that are participating in the program and whether or not the schools met their growth targets, with an analysis of the reasons why the schools have or have not met those growth targets. Costs to develop and submit the evaluation shall be funded with resources provided pursuant to Article 3 (commencing with Section 52058). The evaluation shall be submitted by November 30, subsequent to the first full year of action plan implementation by participating schools, and on November 30, of each year thereafter.

(b) By January 15, 2000, the Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, the guidelines for a request for proposal for an independent evaluator as described in this subdivision. By September 1, 2000, the Superintendent of Public Instruction shall contract with an independent evaluator to prepare a comprehensive evaluation of the implementation, impact, costs, and benefits of the Immediate Intervention/Underperforming Schools Program, the High Priority Schools Grant Program for Low Performing Schools, and the High Achieving/Improving Schools Program. The preliminary results of the evaluation shall be disseminated to the Legislature, the Governor, and interested parties no later than March 31, 2002, with a final report no later than June 30, 2002. The final report shall include recommendations for necessary or desirable modifications to the programs established pursuant to this chapter.

(c) The evaluations shall consider all of the following:

(1) Pupil performance data, including, but not limited to, results of assessments used to determine whether or not schools have made significant progress towards meeting their growth targets.

(2) Program implementation data, including, but not limited to, a review of startup activities, community support, parental participation, staff development activities associated with implementation of the program, percentage of fully credentialed teachers, percentage of teachers who hold emergency credentials, percentage of teachers assigned outside their subject area of competence, the accreditation status of the school if appropriate, average class size per grade level, and the number of pupils in a multitrack year-round educational program.

(3)(A) Pupil performance data, and its impact on the API, for each of the following subgroups:

(i) English language learners.

Additions or changes indicated by underline; deletions by ~~asterisks~~ * * *

OR

EXHIBIT 3
COPIES OF STATUTES CITED

**SCHOOLS AND SCHOOL DISTRICTS—GOVERNOR'S
PERFORMANCE AWARD PROGRAM**

CHAPTER 887

A.B. No. 1295

AN ACT to amend Sections 52052, 52053, 52054, and 52055 of, and to add Section 52052.2 to, the Education Code, relating to school performance.

Filed with Secretary of State October 14, 2001

LEGISLATIVE COUNSEL'S DIGEST

AB 1295, Thomason, School performance: Academic Performance Index.

Existing law requires the Superintendent of Public Instruction (SPI) to develop an Academic Performance Index (API) to measure the performance of schools. The superintendent is required to develop growth targets for all schools and statewide API performance targets based on the API. Existing law provides that when the API is fully developed, schools that either meet the state target or meet their growth target to be eligible for the Governor's Performance Award Program, a program of monetary and nonmonetary awards to schools.

This bill would delete the provision by which schools that meet the state target are eligible for the Governor's Performance Award Program, and would require a school, including a school participating in the Immediate Intervention/Underperforming Schools Program, to

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* Additions or changes indicated by underlines, deletions by asterisks, etc. *

meet, at a minimum, its annual API growth target to be eligible for that program. The bill would authorize the State Board of Education to establish additional criteria that schools must meet to be eligible for the program.

Existing law defines "numerically significant subgroup," for purposes of measuring academic performance on the API.

This bill would authorize the SPI to define "numerically significant subgroup" for schools whose API score is based on test scores of no fewer than 11 and no more than 99 pupils.

Existing law provides that only comprehensive high schools, middle schools, and elementary schools with 100 or more pupils may be included in the API ranking.

This bill would provide that only schools with 100 or more test scores contributing to the API may be included in the API ranking and would provide for API scores for specified types and sizes of schools, as described.

Existing law establishes the Immediate Intervention/Underperforming Schools Program (II/USP), to which underperforming schools may apply for participation. Existing law requires schools participating in the II/USP to develop action plans to improve the academic performance of pupils enrolled in the school, and, among other things, requires the action plan to examine and consider disaggregated data providing information regarding the achievement of all pupils by race, ethnicity, and gender.

This bill would instead require the action plan to examine and consider disaggregated data providing information regarding the achievement of pupils in numerically significant subgroups.

Existing law provides that 24 months after receipt of funding under the II/USP, a school that has met or exceeded its growth target each year is required to receive an award under the Governor's Performance Award Program.

This bill would delete this provision. The bill would also require the Superintendent of Public Instruction to continue to monitor a school that has not met its growth targets within 36 months of receiving funding under the II/USP until the school meets its annual growth target or the statewide performance target. If, in any year between the third year of implementation funding under the II/USP and the first year the school meets its growth target and a school fails to make significant progress, as determined by the State Board of Education, the bill would require that school to be deemed a low-performing school. The bill would also provide that monetary awards would only be awarded to schools that meet or exceed API performance or growth targets or increase by 5 points, whichever is greater.

The people of the State of California do enact as follows:

SECTION 1. Section 52052 of the Education Code is amended to read:

52052. (a)(1) By July 1, 1999, the Superintendent of Public Instruction, with approval of the State Board of Education, shall develop an Academic Performance Index (API), to measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.

(2) For purposes of this section, a numerically significant ethnic or socioeconomically disadvantaged subgroup is a subgroup that constitutes at least 15 percent of a school's total pupil population and consists of at least 30 pupils. An ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school. For schools whose API scores are based on test scores of no fewer than 11 and no more than 99 pupils, numerically significant subgroups shall be defined by the Superintendent of Public Instruction, with approval by the State Board of Education.

(3) The API shall consist of a variety of indicators currently reported to the State Department of Education including, but not limited to, the results of the achievement test administered pursuant to Section 50540, attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

Additions or changes indicated by underline, deletions by asterisks.

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(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils who were enrolled in a school district in the prior fiscal year may be included in the test results reported in the API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data are currently reported to the state and the accuracy of the data.

(C) If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test developed pursuant to Section 60604.

(2) The nationally normed test designated pursuant to * * * Section 60642.

(3) The standards-based achievement tests provided for in Section 60642.5.

(4) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, expected annual percentage growth targets for all schools based on their API baseline score * * * from the previous year. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the State Board of Education pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the State Board of Education may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically significant ethnic and socioeconomically disadvantaged subgroups, as defined in subdivision (a) of Section 52052, are making comparable improvement.

(d) Upon adoption of state performance standards by the State Board of Education, the Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When the API is fully developed, schools * * * must, at a minimum, meet their annual API growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057. The State Board of Education may establish additional criteria that schools must meet to be eligible for the Governor's Performance Awards Program.

(e) Beginning in June 2000, the API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52058.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f)(1) A comprehensive high school, middle school, or elementary school with 11 to 99 valid test scores of pupils who were enrolled in a school within the same school district in the prior fiscal year shall receive an API score with an asterisk that indicates less statistical certainty than API scores based on 100 or more test scores.

(2) A school under the jurisdiction of a county board of education or a county superintendent of schools, a community day school, or an alternative school, including continuation high schools and opportunity schools, may receive an API score if the school has 11 more or more valid test scores and the school chooses to receive an API score for at least three years.

(3) A school that participates in the Immediate Intervention/Underperforming Schools Program described in Section 52053 shall receive an API score for the duration of its participation in that program, unless the Superintendent of Public Instruction determines that an API score would be an invalid measure of the school's performance for one or more of the following reasons:

(A) Irregularities in testing procedures occurred.

(B) The data used to calculate the school's API score are not representative of the pupil population at the school.

(C) Significant demographic changes in the school's pupil population render year-to-year comparisons of pupil performance invalid.

(D) The Department of Education discovers or receives information indicating that the integrity of the school's API score has been compromised.

(g) Only * * * schools * * * with 100 or more * * * test scores contributing to the API may be included in the API rankings.

(h) By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 * * * test scores contributing to the schools' API scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools serving high-risk pupils, including continuation high schools and * * * opportunity schools.

SEC. 2. Section 52052.2 is added to the Education Code, to read:

52052.2. A school that receives an API score with an asterisk shall be eligible for the Governor's Performance Awards Program, as set forth in Section 52057 and for participation in the Immediate Intervention/Underperforming Schools Program, as set forth in Section 52053.

SEC. 3. Section 52053 of the Education Code is amended to read:

52053. (a) The Immediate Intervention/Underperforming Schools Program is hereby established. By August 15, 1999, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall invite schools that scored below the 50th percentile on the achievement tests administered pursuant to Section 60640 both in the spring of 1998 and in the spring of 1999 to participate in the Immediate Intervention/Underperforming Schools Program. A school invited to participate may take any action not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates to improve pupil performance.

(b) The total number of schools participating in the program in 1999 shall be 480. Unless subdivision (d) applies, schools that apply will be selected based on the order in which they apply within ranks of deciles, not to exceed 86 per decile, within the following grade level categories:

(1) No more than 801 elementary schools.

(2) No more than 78 middle schools.

(3) No more than 52 high schools.

(c) The 86 schools selected within each decile range pursuant to subdivision (b) shall proportionately represent elementary, middle, and high schools and shall provide statewide proportionate geographic representation of urban and rural schools.

(d) If fewer than the number of schools in any grade level category apply, schools that scored below the 50th percentile in those grade level categories that did not apply for the program shall randomly be selected by the Superintendent of Public Instruction, with the approval of the State Board of Education, to participate based on their proportional representation in the state until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(e) If more than the requisite number of schools apply for any grade level category, the Superintendent of Public Instruction shall select an array of schools that reflect a broad range of academic performance of schools that scored below the 50th percentile, until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(f) A school selected to participate on or before September 1, 1999, shall be awarded a planning grant from funds appropriated pursuant to paragraph (1) of subdivision (a) of Section 2 of the act adding this section in the amount of fifty thousand dollars (\$50,000). A school selected to receive federal funds pursuant to paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall be awarded an implementation grant in an amount of at least fifty thousand dollars (\$50,000) pursuant to Public Law 105-78.

(g) Schools receiving funding under paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall comply with Public Law 105-78.

(h) By September 15, 2000, and each year thereafter, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall identify schools that failed to meet their Academic Performance Index (API) growth targets and that have an API score below the 50th percentile in the previous school year relative to all other public elementary, middle or high schools. The Superintendent of Public Instruction shall invite these schools to participate in the Immediate Intervention/Underperforming Schools Programs. A school invited to participate may take any action to improve pupil performance not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates.

(i) The total number of schools selected for participation in the program shall be no more than the number that can be funded through the total appropriation for the planning grants referenced in subdivision (l) below.

(j) If fewer schools apply for participation than can be funded, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall randomly select the balance of schools from schools eligible to participate that did not apply. Insofar as possible, the schools randomly selected should reflect a representative proportion of elementary, middle and high schools, as well as a broad range of academic achievement.

(k) If more schools apply for participation than can be funded, the schools shall be selected on the order in which they apply. Insofar as possible, the schools selected should reflect a representative proportion of elementary, middle and high schools, as well as a broad range of academic achievement.

(l) A school selected to participate on or before October 15, 2000, and each year thereafter, shall be awarded a planning grant from funds appropriated pursuant to this act of fifty thousand dollars (\$50,000).

(m) Schools selected for participation in the program shall be notified by the Superintendent of Public Instruction no later than October 15 of each year.

SEC. 4. Section 52054 of the Education Code is amended to read:

52054. (a) By November 15 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program shall contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team, consisting of a majority of nonschoolsite personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(b) The selected external evaluator shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below average performance.

(2) Hold a public meeting at the school, in cooperation with the principal, to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit, at the public meeting, the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section.

(4) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(e) By February 15 of the school year in which the school is selected to participate, the selected external evaluator, in collaboration with the broad-based school site and community team selected pursuant to subdivision (a), shall complete a review of the school that identifies weaknesses that contribute to the school's below average performance, make recommendations for improvement, and begin to develop an action plan to improve the academic performance of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a scope that requires reimbursement by the Commission on State Mandates for its implementation.

(d) At a minimum, the action plan shall do all of the following:

(1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 33126.

(2) Identify the current barriers at the school and district toward improvements in pupil achievement.

(3) Identify schoolwide and districtwide strategies to remove these barriers.

(4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.

(5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information regarding the achievement of English language learners, pupils with exceptional needs, pupils who qualify for free and reduced price meals, and pupils * * * in numerically significant subgroups.

(6) Set short-term academic objectives pursuant to Section 52052 for a two-year period that will allow the school to make adequate progress toward the growth targets established for each participating school for pupil achievement as measured by all of the following to the extent that the data is available for the school:

(A) The achievement test administered pursuant to Section 60640.

(B) Graduation rates for grades 7 to 12, inclusive.

(C) Attendance rates for pupils and school personnel for elementary, middle, and secondary schools.

(D) Any other indicators approved by the State Board of Education.

(e) The school action plan shall focus on improving pupil academic performance, improving the involvement of parents and guardians, improving the effective and efficient allocation of resources and management of the school, and identifying and developing solutions that take into account the underlying causes for low performance by pupils.

(f) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(g) The school action plan may propose to increase the number of instructional days offered at the schoolsite and also may propose to increase up to a full 12 months the amount of time for which certificated employees are contracted, if all of the following conditions are met:

(1) Provisions of the plan proposed pursuant to this subdivision shall not violate current applicable collective bargaining agreements.

(2) An agreement is reached with the exclusive representative concerning staffing specifically to accommodate the extended school year or 12-month contract.

(h) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(i) Upon its completion, the action plan shall be submitted to the governing board of the school districts for its approval. After the plan is approved, but no later than May 15 of the year that follows the year the school is selected to participate, the plan shall be submitted to the Superintendent of Public Instruction with a request for funding in the form prescribed by the Superintendent of Public Instruction, who shall review the school action plan and recommend approval or disapproval of the school's request for funding to the State Board of Education.

(j) Not later than July 15 of the year next following the year in which a school is selected for participation, the State Board of Education shall review and approve or disapprove the school's request for funding, based on the recommendation of the Superintendent of Public Instruction. Within 30 days of the State Board of Education's review, the Superintendent of Public Instruction shall notify the affected school districts of the state of the board's action regarding the request for funding. In conjunction with its approval of a request for funding to implement a school's action plan, the State Board of Education may, at the request of the governing board of the school district or the county board of education for a school under its jurisdiction, waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 64000 if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 45300.

SEC. 5. Section 52055.5 of the Education Code is amended to read:

52055.5. * * * (a) Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that has not met its growth targets each year, but demonstrates significant growth, as determined by the State Board of Education, shall continue to participate in the program for an additional year and to receive funding in the amount specified in Section 52054.5. Thirty-six months after receipt of funds pursuant to Section 52054.5, a school is no longer eligible to receive funding pursuant to that section.

* * * (b) Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that has not met its growth targets * * * each year and has failed to show significant growth, as determined by the State Board of Education, shall be deemed a low-performing school. Notwithstanding any other provision of law, the Superintendent of Public Instruction shall assume all the legal rights, duties, and powers of the governing board with respect to that school. The Superintendent of Public Instruction, in consultation with the State Board of Education and the governing board of the school district, shall reassign the principal of that school subject to the findings in subdivision (d). In addition to reassigning the principal, the Superintendent of Public Instruction, in consultation with the State Board of Education, shall, notwithstanding any other provision of law, do at least one of the following:

(1) Revise attendance options for pupils to allow them to attend any public school in which space is available. If additional attendance options are made available, nothing in this option shall be construed to require either the sending or receiving school district to incur additional transportation costs.

(2) Allow parents to apply directly to the State Board of Education for the establishment of a charter school and allow parents to establish the charter school at the existing schoolsite.

(3) Under the supervision of the Superintendent of Public Instruction, assign the management of the school to a college, university, county office of education, or other appropriate

educational institution. However, the Superintendent of Public Instruction may not assume the management of the school.

- (4) Reassign other certificated employees of the school.
- (5) Renegotiate a new collective bargaining agreement at the expiration of the existing collective bargaining agreement.
- (6) Reorganize the school.
- (7) Close the school.

(c) In addition to the actions listed in subdivision (b), the Superintendent of Public Instruction, in consultation with the State Board of Education, may take any other action considered necessary or desirable against the school district or the school district governing board, including appointment of a new superintendent or suspension of the authority of the governing board with respect to the school or schools identified pursuant to subdivision (b).

(d) Before the Superintendent of Public Instruction may take any action against a principal pursuant to subdivision (b), the Superintendent of Public Instruction or a designee of the superintendent shall hold a public hearing on the matter in the school district and make both of the following findings:

- (1) A finding that the principal had the authority to take specific enumerated actions that would have helped the school meet its performance goals.
- (2) A finding that the principal failed to take specific enumerated actions pursuant to paragraph (1).

(e) A school that has not met its growth targets within 36 months of receiving funding pursuant to Section 52054.5, but has shown significant growth, as determined by the State Board of Education, shall continue to be monitored by the Superintendent of Public Instruction until it meets its annual growth target or the statewide performance target. If, in any year between the third year of implementation funding and the first year the school meets its growth target, the school fails to make significant growth, as determined by the State Board of Education, that school shall be deemed a low-performing school and subject to the provisions of paragraphs (1) to (7), inclusive, of subdivision (b).

(f) An action taken pursuant to subdivision (b), (c), or (d) * * * shall not increase local costs or require reimbursement by the Commission on State Mandates.

(g) An action taken pursuant to subdivision (b), (c), or (d) * * * shall be accompanied by specific findings by the Superintendent of Public Instruction and the State Board of Education that the action is directly related to the identified causes for continued failure by a school to meet its performance goals.

**SCHOOLS AND SCHOOL DISTRICTS—COMPACTS—
HIGH PRIORITY SCHOOLS GRANT PROGRAM
FOR LOW PERFORMING SCHOOLS**

CHAPTER 749

A.B. No. 961

AN ACT to amend Sections 51101, 52054, and 52058 of, to add Sections 52054.3 and 52055.51 to, and to add Article 3.5 (commencing with Section 52055.800) to Chapter 6.1 of Part 28 of, the Education Code and to amend Item 6110-123-0001 of Section 2.00 of the Budget Act of 2001, relating to schools, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State October 12, 2001.]

Governor's reduction message follows this Chapter

LEGISLATIVE COUNSEL'S DIGEST

AB 961, Steinberg. Low-performing schools.

(1) Existing law requires the governing board of a school district to develop jointly with parents and guardians, and to adopt, a policy that outlines how parents or guardians of pupils, school staff, and pupils may share the responsibility for continuing the intellectual, physical, emotional, and social development and well-being of pupils at each schoolsite.

This bill would, consistent with federal law, require a school that participates in the High Priority Schools Grant Program for Low Performing Schools established by this bill and that maintains kindergarten or any of grades 1 to 5, inclusive, to jointly develop with parents or guardians for all children enrolled at that schoolsite a school-parent compact.

(2) Existing law establishes various programs designed to improve the academic achievement of pupils, including, among others, the Public Schools Accountability Act of 1999 which contains the Immediate Intervention/Underperforming Schools Program (IIUSP) and requires the Superintendent of Public Instruction to develop an Academic Performance Index (API) to measure the performance of schools. Existing law requires a school district that participates in the IIUSP to contract with an external evaluator to assist the school in the development of its school action plan.

This bill would add to the duties of the external evaluator the provision of technical assistance to the participating school and would, as an alternative to contracting with the external evaluator, allow a school district to contract with entities with proven expertise specific to the challenges inherent in low-performing schools. The bill would authorize a school selected on or after September 2001 to participate in the IIUSP to use an existing plan instead of the required action plan, as specified.

The bill would provide an alternative to the existing sanctions to which a school is subject if it does not meet its API growth target and fails to show significant growth.

This bill would establish the High Priority Schools Grant Program for Low Performing Schools within the Public Schools Accountability Act of 1999. The bill would require the Superintendent of Public Instruction to invite schools ranked in the 5 lowest deciles of the API to participate in the IIUSP and the High Priority Schools Grant Program for Low Performing Schools. Priority for participation would be given to schools ranked in the lowest deciles, as specified. Participation in the IIUSP would be required in order to receive funding under the program established by the bill. The bill would require a school to develop and submit an action plan containing specified components. The bill would require a school district to report certain information annually to the Superintendent of Public Instruction regarding a participating school's progress toward achieving specified goals.

The bill would, 24 months after receipt of funding, subject a participating school that has not met its growth targets each year to review by the State Board of Education. After a specified number of months of plan implementation, schools that do not meet their API growth targets and that fail to show significant growth would be subject to the sanctions existing under the IIUSP and the alternative sanctions established by this bill. A school participating in the High Priority Schools Grant Program for Low Performing Schools that meets or exceeds its API growth target would continue to receive funding under this program for a 4th year, as specified.

This bill would appropriate \$3,000,000 from the General Fund to the State Department of Education to provide training, as specified, and for costs associated with the administration and oversight of the High Priority Schools Grant Program for Low Performing Schools and would authorize those funds to be expended to fund up to 18 positions in the department. The bill would reduce by \$3,000,000 the appropriation made in the Budget Act of 2001 for purposes of low-performing schools.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 51101 of the Education Code is amended to read:

51101. (a) Except as provided in subdivision (d), the parents and guardians of pupils enrolled in public schools have the right and should have the opportunity, as mutually supportive and respectful partners in the education of their children within the public schools, to be informed by the school, and to participate in the education of their children, as follows:

(1) Within a reasonable period of time following making the request to observe the classroom or classrooms in which their child is enrolled or for the purpose of selecting the school in which their child will be enrolled in accordance with the requirements of any intradistrict or interdistrict pupil attendance policies or programs.

(2) Within a reasonable time of their request, to meet with their child's teacher or teachers and the principal of the school in which their child is enrolled.

(3) To volunteer their time and resources for the improvement of school facilities and school programs under the supervision of district employees, including, but not limited to, providing assistance in the classroom with the approval, and under the direct supervision, of the teacher. Although volunteer parents may assist with instruction, primary instructional responsibility shall remain with the teacher.

(4) To be notified on a timely basis if their child is absent from school without permission.

(5) To receive the results of their child's performance on standardized tests and statewide tests and information on the performance of the school that their child attends on standardized statewide tests.

(6) To request a particular school for their child, and to receive a response from the school district. This paragraph does not obligate the school district to grant the parent's request.

(7) To have a school environment for their child that is safe and supportive of learning.

(8) To examine the curriculum materials of the class or classes in which their child is enrolled.

(9) To be informed of their child's progress in school and of the appropriate school personnel whom they should contact if problems arise with their child.

(10) To have access to the school records of their child.

(11) To receive information concerning the academic performance standards, proficiencies, or skills their child is expected to accomplish.

(12) To be informed in advance about school rules, attendance policies, dress codes, and procedures for visiting the school.

(13) To receive information about any psychological testing the school does involving their child and to deny permission to give the test.

(14) To participate as a member of a parent advisory committee, schoolsite council, or site-based management leadership team, in accordance with any rules and regulations governing membership in these organizations. In order to facilitate parental participation, schoolsite councils are encouraged to schedule a biannual open forum for the purpose of informing parents about current school issues and activities and answering parents' questions. The meetings should be scheduled on weekends, and prior notice should be provided to parents.

(15) To question anything in their child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school.

(b) In addition to the rights described in subdivision (a), parents and guardians of pupils shall have the opportunity to work together in a mutually supportive and respectful partnership with schools, and to help their children succeed in school. Each governing board of a school district shall develop jointly with parents and guardians, and shall adopt, a policy that outlines how parents or guardians of pupils, school staff, and pupils may share the responsibility for continuing the intellectual, physical, emotional, and social development and well-being of pupils at each schoolsite. The policy shall include, but is not necessarily limited to, the following:

(1) The means by which the school and parents or guardians of pupils may help pupils to achieve academic and other standards of the school.

(2) A description of the school's responsibility to provide a high-quality curriculum and instructional program in a supportive and effective learning environment that enables all pupils to meet the academic expectations of the school.

(3) The manner in which the parents and guardians of pupils may support the learning environment of their children, including, but not limited to, the following:

(A) Monitoring attendance of their children.

(B) Ensuring that homework is completed and turned in on a timely basis.

(C) Participation of the children in extracurricular activities.

(D) Monitoring and regulating the television viewed by their children.

(E) Working with their children at home in learning activities that extend learning in the classroom.

(F) Volunteering in their children's classrooms, or for other activities at the school.

(G) Participating, as appropriate, in decisions relating to the education of their own child or the total school program.

(c) All schools that participate in the High Priority Schools Grant Program for Low Performing Schools established pursuant to Article 315 (commencing with Section 52055.600) of Chapter 6.1 of Part 28 and that maintain kindergarten or any of grades 1 to 5, inclusive, shall jointly develop with parents or guardians for all children enrolled at that schoolsite a school-parent compact pursuant to Section 6819 of Title 20 of the United States Code.

(d) This section may not be construed so as to authorize a school to inform a parent or guardian, as provided in this section, or to permit participation by a parent or guardian in the education of a child, if it conflicts with a valid restraining order, protective order, or order for custody or visitation issued by a court of competent jurisdiction.

SEC. 2. Section 52054 of the Education Code is amended to read:

52054. (a) Commencing in the 2001-02 fiscal year, by November 15 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program: * * * may do either of the following:

(1) Contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team, consisting of a majority of nonschool-site personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(2) Contract with any entity that has proven successful expertise specific to the challenges inherent in low-performing schools. These entities may include, but are not limited to:

(A) Institutions of higher education;

(B) County offices of education;

(C) School district personnel.

(b) The selected external evaluator or entity shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator or entity shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below average performance.

(2) Hold a public meeting at the school, in cooperation with the principal, to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit, at the public meeting, the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator or entity and the community team in the development or modification of the action plan pursuant to this section or Section 52054.3.

(4) Provide technical assistance to the schoolsite.

(5) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator or entity and the community team in the development or modification of the action plan pursuant to this section or Section 52054.3. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(c) By February 15 of the school year in which the school is selected to participate, the selected external evaluator or entity, in collaboration with the broad-based schoolsite and community team selected pursuant to subdivision (a), shall complete a review of the school that identifies weaknesses that contribute to the school's below average performance, make recommendations for improvement, and begin to develop an action plan to improve the academic performance of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a scope that requires reimbursement by the Commission on State Mandates for its implementation.

(d) At a minimum, the action plan shall do all of the following:

(1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 33126.

(2) Identify the current barriers at the school and district toward improvements in pupil achievement.

(3) Identify schoolwide and districtwide strategies to remove these barriers.

(4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.

(5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information regarding the achievement of English language learners, pupils with exceptional needs, pupils who qualify for free and reduced price meals, and all pupils, * * * in numerically significant subgroups.

(6) Set short-term academic objectives pursuant to Section 52052 for a two-year period that will allow the school to make adequate progress toward the growth targets established for

each participating school for pupil achievement as measured by all of the following to the extent that the data is available for the school:

- (A) The achievement test administered pursuant to Section 60640.
- (B) Graduation rates for grades 7 to 12, inclusive.
- (C) Attendance rates for pupils and school personnel for elementary, middle, and secondary schools.
- (D) Any other indicators approved by the State Board of Education.
- (e) The school action plan shall focus on improving pupil academic performance, improving the involvement of parents and guardians, improving the effective and efficient allocation of resources and management of the school, and identifying and developing solutions that take into account the underlying causes for low performance by pupils.
- (f) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.
- (g) The school action plan may propose to increase the number of instructional days offered at the school site and also may propose to increase up to a full 12 months the amount of time for which certificated employees are contracted, if all of the following conditions are met:
 - (1) Provisions of the plan proposed pursuant to this subdivision shall not violate current applicable collective bargaining agreements.
 - (2) An agreement is reached with the exclusive representative concerning staffing specifically to accommodate the extended school year or 12-month contract.
- (h) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.
- (i) Upon its completion, the action plan shall be submitted to the governing board of the school districts for its approval. * * * The approval may be conducted during a regularly scheduled public meeting.

SEC. 3. Section 52054.3 is added to the Education Code, to read:

52054.3. A school selected on or after September 2001 may elect to use an existing plan instead of the action plan required pursuant to Section 52054 if that plan meets the requirements specified pursuant to subdivisions (c), (d), (e), (f), (g), (h), and (i) of Section 52054. If an existing plan needs modification, the external evaluator or entity with which the school district contracts pursuant to Section 52054 shall provide technical assistance in making those modifications.

SEC. 4. Section 52055.51 is added to the Education Code, immediately following Section 52055.5, to read:

52055.51. (a) Instead of the actions specified in subdivision (c) of Section 52055.5, as that section read on January 1, 2001, and notwithstanding any other provision of law, the Superintendent of Public Instruction, with the approval of the State Board of Education, may require the district to enter into a contract with a school assistance and intervention team.

(b) Team members should possess a high degree of knowledge and skills in the areas of school leadership, curriculum, and instruction aligned to state academic content and performance standards, classroom management and discipline, academic assessment, parent-school relations, and evaluation and research-based reform strategies and have proven successful expertise specific to the challenges inherent in low-performing schools.

(c) The team shall provide intensive support and expertise to implement the school reform initiatives in the plan. Decisions about interventions shall be data driven. A school assistance and intervention team shall work with school staff, site planning teams, administrators, and district staff to improve pupil literacy and achievement by assessing the degree of implementation of the current action plan, refining and revising the action plan, and making recommendations to maximize the use of fiscal resources and personnel in achieving the goals of the plan. The district shall provide support and assistance to enhance the work of the team at the targeted school sites.

(d) Not later than 60 days after the school's API becomes public, the team must have completed an initial report. The report shall include recommendations for corrective actions chosen from a range of interventions, including the reallocation of district fiscal resources to ensure that appropriate resources are targeted to those specific interventions identified in the recommendations of the team for the targeted schools and other changes deemed appropriate to make progress toward meeting the schools' growth target. Not later than 90 days after the API is made public, the governing board of the school district shall adopt the team's recommendations at a regularly scheduled meeting of the governing board. The governing board may not place the adoption on the consent calendar. The report shall be submitted to the Superintendent of Public Instruction and State Board of Education.

(e) No less than three times during the year, the school district and schoolsite shall present the team with data regarding progress toward the goals established by the team's initial assessment. The data shall be presented to the governing board of the school district at a regularly scheduled meeting. The team shall, to the extent possible, utilize existing site data. The data shall also be provided to the Superintendent of Public Instruction and State Board of Education. Every effort shall be made to report this data in a manner that minimizes the length and complexity of the reporting requirement in order to maximize the focus on improving pupil literacy and achievement.

(f) An action taken pursuant to this paragraph shall not increase local costs or require reimbursement by the Commission on State Mandates.

SEC. 5. Article 3.5 (commencing with Section 52055.600) is added to Chapter 6.1 of Part 28 of the Education Code, to read:

Article 3.5. High Priority Schools Grant Program for Low Performing Schools

52055.600 (a) The High Priority Schools Grant Program for Low Performing Schools is hereby established. Participation in this program is voluntary.

(b) From funds made available for purposes of this article, the Superintendent of Public Instruction shall allocate two hundred dollars (\$200) per pupil to eligible schools for implementation of a school action plan approved pursuant to this article. In the first year of participation, a schoolsite may receive thirty-three dollars and thirty-three cents (\$33.33) per pupil for each month remaining in the fiscal year ending June 30, 2002, beginning in the month immediately following the date of approval by the governing board of the school district of the action plan required pursuant to this article. If the plan is not approved prior to the end of the fiscal year, the funding shall be similarly prorated in the subsequent year.

(c) It is the intent of the Legislature that federal funding provided pursuant to the Comprehensive School Reform Demonstration Program (P.L. 105-78) supplement, not supplant, funding received pursuant to this article.

(d) Funds received pursuant to this article may not be used to match funds received pursuant to Article 3 (commencing with Section 52053).

(e) The school district shall keep fiscal records available for inspection that affirm allocation to schoolsites in accordance with this section and shall allocate resources in a manner that does not delay their use.

52055.605 (a) The Superintendent of Public Instruction, with the approval of the State Board of Education, shall identify schools ranked in deciles 1 to 5, inclusive, on the Academic Performance Index (API).

(b) The Superintendent of Public Instruction shall invite schools identified pursuant to subdivision (a) to participate in the High Priority Schools Grant Program for Low Performing Schools. Notwithstanding subdivision (h) of Section 52053, in order to be eligible for funding from the High Priority Schools Grant Program for Low Performing Schools, a school shall also participate in the Immediate Intervention/Underperforming Schools Program. A school participating in both programs may elect to submit only one application and one plan for both programs. A school participating in the Immediate Intervention/Underperforming Schools Program before the date of the enactment of the act adding this section is also eligible for participation in the High Priority Schools Grant Program for Low Performing Schools.

(c) First priority for participation in the High Priority Schools Grant Program for Low Performing Schools shall be given to schools ranked on the API in decile 1. Second priority shall be given to schools in decile 2. Third priority shall be given to schools in decile 3. Fourth priority shall be given to schools in decile 4. Fifth priority shall be given to schools in decile 5. Within each decile, priority shall be given to the lowest ranked schools.

(d) Notwithstanding any other provision of law and if funds are available for this purpose, the number of schools within the designated cohorts of the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053 may exceed the maximum numbers specified in that section in order to participate in the program established pursuant to this article.

(e) If a school ranked in decile 1 of the API applies to participate in the federal Comprehensive School Reform Demonstration Program (P.L. 105-78), but there are insufficient funds to allow that school to participate in that program, that school shall be automatically approved to the extent funding is available for participation in the Immediate Intervention/Underperforming Schools Program and shall be deemed to have complied with the requirements of Section 52054.

(2) The State Board of Education may allow continuation high schools to apply for and receive funding pursuant to this article if those continuation high schools report pupil performance that is equivalent to that of high schools ranked in deciles 1 and 2 on the Academic Performance Index and the board determines that the state will be able to adequately determine growth in pupil performance in a valid and reliable manner for the purpose of accountability pursuant to this article. The State Board of Education may establish a limit on the number of continuation high schools that may be funded to reflect their proportion of low performing pupils in grades 9 to 12, inclusive, and may adopt criteria limiting the eligibility for funding, pursuant to this article, of continuation high schools with a high level of per-pupil funding from the continuation high school revenue limit add-on.

52055.610. (a) Fourteen days after the effective date of the act adding this section, the Superintendent of Public Instruction shall establish a procedure that is consistent with this article for the approval of applications and school action plans.

(b) Notwithstanding the existing application process established pursuant to Article 3 (commencing with Section 52053), in developing an action plan to be submitted with the application for funding pursuant to this article, a school may choose from the following options:

(1) A school district on behalf of an eligible school under its jurisdiction may elect to receive fifty thousand dollars (\$50,000) as a planning grant from funds appropriated for purposes of this article. These planning grant funds shall be used for technical assistance in the development of the school action plan. Technical assistance includes assistance provided by school district personnel, county offices of education, universities, a state approved external evaluator, or any other entity that has proven successful expertise specific to the challenges inherent in low-performing schools. If the school action plan is approved, the Superintendent of Public Instruction shall provide funding for its implementation. Planning grant funds, as well as other funds available to school districts pursuant to this article, may be used for on-going technical assistance throughout the implementation of the action plan and continued participation in the program established pursuant to Article 3 (commencing with Section 52053) and the program established pursuant to this article.

(2) A school district on behalf of an eligible school under its jurisdiction, may elect to forego the fifty thousand dollars (\$50,000) planning grant and immediately submit its application and school action plan. If a school chooses this option, the Superintendent of Public Instruction shall take one of the following actions:

(A) Recommend approval of the application by the State Board of Education and action plan and provide funding for implementation of the school action plan.

(B) Request additional clarification and technical changes, after which the school and district shall resubmit the application and school action plan with the clarifications and changes for approval. If the application and school action plan is approved, the Superintendent of Public Instruction shall provide funding for implementation of the school action plan.

(C) Disapprove the plan in which case a school district on behalf of an eligible school under its jurisdiction shall receive a fifty thousand dollars (\$50,000) planning grant that shall be used for technical assistance in the redevelopment of the school action plan according to the department's recommendations. Technical assistance includes assistance provided by school district personnel, county offices of education, universities, a state approved external evaluator, or any other entity that has proven expertise specific to the challenges inherent in low-performing schools.

(c) The following deadlines apply for the 2001-02 fiscal year:

(1) A school district on behalf of an eligible school under its jurisdiction shall submit the application and school action plan to the Superintendent of Public Instruction for review and approval by March 15, 2002.

(2) The Superintendent of Public Instruction shall make a recommendation to the State Board of Education regarding approval or disapproval of applications and school action plans by April 15, 2002. The State Board of Education shall approve or disapprove the application and action plan by April 30, 2002. Upon approval by the State Board of Education, the State Department of Education shall allocate funding to schools for the implementation of the action plan. If the State Board of Education fails to approve or disapprove the application and school action plan by April 30, 2002, the recommendation of the Superintendent of Public Instruction shall be deemed to be adopted and funding for implementation of the action plan shall be allocated.

(3) If the Superintendent of Public Instruction takes the action specified in subparagraph (B) of paragraph (2) or subdivision (5), the school and school district shall resubmit the application and school action plan with the clarifications and changes for approval by May 15, 2002, and the Superintendent of Public Instruction shall make a recommendation to the State Board of Education regarding approval or disapproval by June 15, 2002. The State Board of Education shall approve or disapprove the application and action plan by June 30, 2002. If the action plan is approved, the department shall allocate funding to the school district on behalf of an eligible school under its jurisdiction for implementation of the action plan. If the State Board of Education fails to approve or disapprove the application and school action plan by June 30, 2002, the recommendation of the Superintendent of Public Instruction shall be deemed to be adopted and funding for implementation of the action plan.

(4) A school district may request that the State Board of Education waive the deadlines set forth in this subdivision. The State Board of Education may grant a waiver request made pursuant to this paragraph.

52055.615 (a) If the Superintendent of Public Instruction invites a school to participate in either the High Priority Schools Grant Program for Low Performing Schools or the Immediate Intervention/Underperforming Schools Program, the governing board of the school district shall hold a public hearing at a regularly scheduled meeting to discuss whether or not to apply for participation in these programs and how to address the needs of the school and pupils.

(b) If a school district on behalf of an eligible school under its jurisdiction decides not to accept the invitation to participate in the High Priority Schools Grant Program for Low Performing Schools or the Immediate Intervention/Underperforming Schools Program, the governing board of the school district shall hold a public hearing at a regularly scheduled meeting to discuss the reasons and rationale for not accepting the invitation and explain how the district intends to address the needs of the school and pupils. This section does not apply to school districts with jurisdiction over schools for which the Superintendent of Public Instruction has indicated that funding would not be available. The governing board shall not place the discussion required pursuant to this subdivision on the consent calendar of the hearing.

(c) The governing board shall notify, in writing, the following persons and entities of the public hearings required pursuant to subdivisions (a) and (b):

(1) Representative parent organizations at the schoolsite, including the parent teacher association, parent teacher clubs, and schoolsite councils. The district is encouraged also to notify parents directly through appropriate means. Notifications to parents shall comply with Article 4 (commencing with Section 48985) of Chapter 6 of Part 27.

- (2) All local major media outlets.
- (3) The local mayor.
- (4) All members of the city council.
- (5) All members of the county board of supervisors.
- (6) County superintendents of schools.
- (7) County board of education.

52055.620. (a) As a condition of the receipt of funds, a school action plan shall be based upon the following:

- (1) It shall be research based and data driven.
- (2) It shall include ongoing data gathering for the purposes of this program so that progress can be measured and verified and the plan can be modified based on the data.
- (3) It shall be grounded in the findings from an initial needs assessment.
- (4) It shall evidence a commitment by the school community to implement the plan. The plan shall describe how this commitment will be evidenced.
- (5) It shall make clear that there is a heightening of expectations on the part of all personnel associated with the schoolsite that all children can learn and every school can succeed.
- (6) It shall ensure that an environment that is conducive to teaching and learning is provided at the schoolsite.
- (7) It shall identify additional human, financial, and other resources available to the school to be used in the implementation of the school action plan.

(b)(1) The action plan shall be developed, in partnership with the school district, by the schoolsite council, as defined in Section 52012, or if the school does not have a schoolsite council, by a schoolwide advisory group or school support group that conforms to the requirements of Section 52012 and whose members are self-selected.

(2) Notwithstanding paragraph (1), a school participating in the Immediate Intervention/Underperforming Schools Program prior to the effective date of the act adding this section may continue using its school action team for purposes of developing an action plan pursuant to this article.

(c) In developing a school action plan, the school and school district shall use the technical assistance from school district personnel, county offices of education, universities, a state approved external evaluator, or any other person or entity that has proven successful expertise specific to the challenges inherent in low-performing schools. In addition, the school and district may include an individual to facilitate the activities related to the development of this plan.

(d) The action plan shall include a strategy, jointly developed by the school district and the exclusive bargaining representative of the certificated employees of the district, for addressing the distribution of experienced credentialed teachers throughout the district, including an agreement by the district and the exclusive bargaining representative of the certificated staff on how they are going to achieve a balance in that distribution. This collaboration shall take place outside of collective bargaining and shall strive to develop a strategy that will attract and retain equal ratios of credentialed teachers at each school in the district. This collaboration shall include discussions on ways to maximize current options to recruit credentialed teachers to the district, use of regional recruitment centers, ensuring that newly hired credentialed teachers are assigned in alignment with the goal of even distribution of credentialed teachers, and ensuring that low-performing schools provide a necessary teaching and learning environment to retain a fully credentialed teaching staff.

(e) The action plan may include any existing plan a school may have developed for another program that may include existing strategies that meet the requirements of the essential components of a school action plan specified in Section 52055.625.

52055.625. (a) It is the intent of the Legislature that the lists contained in paragraph (2) of subdivisions (c), (d), (e), and (f) be considered options that may be considered by a school in the development of its school action plan and that a school not adopt all of the listed options

as a condition of funding under the terms of this act. Instead, this listing of options is intended to provide the opportunity for focus and strategic planning as schools plan to address the needs of low performing pupils.

(b) As a condition of the receipt of funds, a school action plan shall include each of the following essential components:

(1) Pupil literacy and achievement.

(2) Quality of staff.

(3) Parental involvement.

(4) Facilities, curriculum, instructional materials, and support services.

(c)(1) The pupil literacy and achievement component shall contain a strategy to focus on increasing pupil literacy and achievement, with necessary attention to the needs of English language learners. At a minimum, this strategy shall include a plan to achieve the following goals:

(A) Each pupil at the school will be provided appropriate instructional materials aligned with the academic content and performance standards adopted by the State Board of Education as required by law.

(B) Each significant subgroup at the school will demonstrate increased achievement based on AFI results by the end of the implementation period.

(C) Each English language learner at the school will demonstrate increased performance based on the English language development test required by Section 60810 and the achievement tests required pursuant to Section 60640.

(2) To achieve the goals in paragraph (1), a school in its action plan may include, among other things, any of the following options:

(A) Selective class size reduction in key curricular areas provided this does not result in a decrease in the proportion of experienced credentialed teachers at the schoolsite.

(B) Increased learning time in key curricular areas identified as needing attention, including mathematics.

(C) Targeted intensive reading instruction utilizing reading capacity-level materials that may include, but are not limited to, the following strategies:

(i) The development of a reading competency program for pupils in grades 5 to 8, inclusive, whose reading scores are at or below the 40th percentile or in the two lowest performance levels, as adopted by the State Board of Education, on the reading portion of the achievement test, authorized by Section 60640. This program may include direct instruction in reading at grade level utilizing the English language arts content standards adopted pursuant to Section 60605. Additionally, this program may offer specialized intervention that utilizes state approved instructional materials adopted pursuant to Section 60200. It is the intent of the Legislature, as a recommendation, that this curriculum consist of at least one class period during the regular schoolday taught by a teacher trained in the English language arts standards pursuant to Section 60605. It is also the intent of the Legislature, as a recommendation, that periodic assessments throughout the year be conducted to monitor the progress of the pupils involved.

(ii) The use of a library media teacher to work cooperatively with every teacher and principal at the schoolsite to develop and implement an independent and free reading program, help teachers determine a pupil's reading level, order books that have been determined to meet the needs of pupils, help choose books at pupils' independent reading levels, and assure that pupils read a variety of genres across all academic content areas. For purposes of this article, "library media teacher" means a classroom teacher who possesses or is in the process of obtaining a library media teacher services credential consistent with Section 44868.

(D) Mentoring programs for pupils.

(E) Community, business, or university partnerships with the school.

(d)(1) The quality of staff component shall contain a strategy to attract, retain, and fairly distribute the highest quality staff at the school, including teachers, administrators, and support staff. At a minimum, this strategy shall include a plan to achieve the following goals:

- (A) An increase in the number of credentialed teachers working at that schoolsite.
- (B) An increase in or targeting of professional development opportunities for teachers related to the goals of the action plan and English language development standards adopted by the State Board of Education aligned with the academic content and performance standards, including, but not limited to, participation in professional development institutes established pursuant to Article 2 (commencing with Section 92220) of Chapter 5 of Part 65.
- (C) By the end of the implementation period, successful completion by the schoolsite administrators of a program designed to maximize leadership skills.

(2) To achieve the goals in paragraph (1) a school may include in its action plan, among others, any of the following options:

- (A) Incentives to attract credentialed teachers and quality administrators to the schoolsite, including, but not limited to, additional compensation strategies similar to those authorized pursuant to Section 44735.
- (B) A school district preintern or intern program within which eligible emergency permit teachers located at the schoolsite would be required to participate, unless those individuals are already participating in another teacher preparation program that leads to the attainment of a valid California teaching credential.
- (C) Common planning time for teachers, administrators, and support staff focused on improving pupil achievement.
- (D) Mentoring for site administrators, peer assistance for credentialed teachers, and support services for new teachers, including, but not limited to, the Beginning Teacher Support and Assessment System.
- (E) Providing assistance and incentives to teachers for completion of professional certification programs and toward attaining BCLAD or CLAD certification.
- (F) Increasing professional development in state academic content and performance standards, including English language development standards.

(e)(1) The parental involvement component shall contain a strategy to change the culture of the school community to recognize parents and guardians as partners in the education of their children and to prepare and educate parents and guardians in the learning and academic progress of their children. At a minimum, this strategy shall include a commitment to develop a school-parent compact as required by Section 51101 and a plan to achieve the goal of maintaining or increasing the number and frequency of personal parent and guardian contacts each year at the schoolsite and school-home communications designed to promote parent and guardian support for meeting state standards and core curriculum requirements.

(2) To achieve the goals in subdivision (a), a school may in its action plan include, among others, any of the following options:

- (A) Parent and guardian homework support classes.
- (B) A program of regular home visits.
- (C) After school and evening opportunities for parents, guardians, and pupils to learn together.
- (D) Training programs to educate parents and guardians about state standards and testing requirements, including the high school exit examination.
- (E) Creation, maintenance, and support of parent centers located on schoolsites to educate parents and guardians regarding pupil expectations and provide support to parents and guardians in their efforts to help their children learn.
- (F) Programs targeted at parents and guardians of special education pupils.
- (G) Efforts to develop a culture at the schoolsite focused on college attendance, including programs to educate parents and guardians regarding college entrance requirements and options.

(H) Providing more bilingual personnel at the school site and at school related functions to communicate more effectively with parents and guardians who speak a language other than English.

(I) Providing an opportunity for parents to monitor online, if the technology is available, and in compliance with applicable state and federal privacy laws, the academic progress and attendance of their children.

(J)(1) The facilities, curriculum, instructional materials, and support services component shall contain a strategy to provide an environment that is conducive to teaching and learning and that includes the development of a high-quality curriculum and instruction aligned with the academic content and performance standards adopted pursuant to Section 60605 and English language development standards adopted pursuant to Section 60811. At a minimum, this strategy shall include the goal of providing adequate logistical support including, but not limited to, curriculum, quality instruction, instructional materials, support services, and supplies for every pupil.

(2) To achieve the goal specified in paragraph (1), a school in its action plan may include, among others, any of the following options:

(A) State and locally developed valid and reliable assessments based on state academic content standards.

(B) Increased learning time in key curricular areas identified as needing attention, including mathematics.

(C) The addition of more pupil support services staff, including, but not limited to, paraprofessionals, counselors, library media teachers, nurses, psychologists, social workers, speech therapists, audiologists, and speech pathologists.

(D) Pupil support centers for additional tutoring or homework assistance.

(E) Use of most current standards-aligned textbooks adopted by the State Board of Education, including materials for English language learners.

(F) For secondary schools, offering advanced placement courses and courses that meet the requirements for admission to the University of California or the California State University.

(g) A school action plan to improve pupil performance that is developed for participation in the program established pursuant to this article shall meet the requirements of subdivisions (d) and (e) of Section 52054 and this article.

52055.630. (a) Before a school action plan is submitted to the Superintendent of Public Instruction, the plan shall be presented at a regularly scheduled public meeting of the governing board of the school district.

(b) In addition to involving the teachers in the development of the action plan, the school district shall certify that it has met and consulted with the exclusive representative of certificated employees on the action plan. The governing board of the school district shall approve the plan and certify that the plan contains all of the essential components required pursuant to subdivision (a) of Section 52055.625.

(c) This program and an action plan for any schools participating in the program shall not be deemed to supersede conflicting language in the collective bargaining contracts of that school's district. All matters within the scope of collective bargaining continue to be subject to it.

52055.640. (a) As a condition of the receipt of funds and to ensure that the school is progressing towards meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent of Public Instruction that includes the following:

(1) The academic improvement of pupils within the participating school as measured by the tests under Section 60640 and the English language development test administered pursuant to Section 60810.

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district.

(3) The availability of instructional materials in core content areas that are aligned with the academic content and performance standards, including textbooks, for each pupil, including English language learners.

(4) The number of parents and guardians presently involved at each participating school-site as compared to the number participating at the beginning of the program.

(5) The number of pupils attending afterschool, tutoring, or homework assistance programs.

(6) For participating secondary schools, the number of pupils who are enrolled in and successfully completing advanced placement courses, by type, and requirements for admission to the University of California or the California State University, including courses in algebra, biology, and United States or world history.

(b) The report on the pupil literacy and achievement component shall be disaggregated by numerically significant subgroups, as defined in Section 52052, and English language learners and have a focus on improved scores in reading and mathematics as measured by the following:

(1) The Academic Performance Index, including the data collected pursuant to tests that are part of the Standardized Testing And Reporting program and the writing sample that is part of that program.

(2) The results of the English language development test or the primary language test pursuant to Section 60640.

(3) Graduation rates, when the methodology for collecting this data has been confirmed to be valid and reliable.

(4) In addition, a school may use locally developed assessments to assist it in determining the pupil progress in academic literacy and achievement.

(c) The report on the quality of staff component shall include, but not limited to, the following information:

(1) The number of teachers at the school-site holding a valid California teaching credential or district or university intern certificate or credential compared to those teachers at the same school-site holding a preintern certificate, emergency permit, or waiver.

(2) The number and ratio of teachers across the district holding a valid California teaching credential or district or university intern certificate or credential compared to those holding a preintern certificate, emergency permit, or waiver.

(3) The number of principals having completed training pursuant to Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25.

(4) The number of principals by credential type or years of experience and length of time at the school-site by years.

(d) The report on the parental involvement component shall include explicit involvement strategies being implemented at the school-site that are directly linked to activities supporting pupil academic achievement and verification that the school-site has developed a school-parent compact as required by Section 51101.

(e) All comparisons made in the reports required pursuant to this section shall be based on baseline data provided by the district and school-site in the action plan that is certified and submitted with the initial application.

(f) To the extent that data is already reported to the Superintendent of Public Instruction, a school district need not include the data in the reports submitted pursuant to this section.

(g) Before submitting the reports required pursuant to this section, the school district shall, at a regularly scheduled public meeting of the governing board, review a participating school's progress towards achieving those goals.

52055.645. (a) For the purpose of evaluating academic growth in core curriculum areas and determining the efficacy of the school action plan, schools are strongly encouraged to assess the academic progress of pupils on an annual basis and to evaluate the results in order to determine whether changes to the school-site plan are needed.

(b) In conducting these annual assessments, a school shall use the English language development test where appropriate and the tests that are part of the Standardized Testing and Reporting Program. In addition, a school may use any curriculum-based achievement test to assess pupil growth.

(c) The results of these annual assessments shall be reported annually to the school district. The State Board of Education may use these results as quantifiable measurements of significant growth when determining whether to grant a waiver for an additional year of funding.

52055.647. As a condition of funding, a school shall certify that the eligible teachers and administrators assigned to a participating school will participate in the programs established pursuant to Assembly Bill 466 of the 2001-02 Regular Session and Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25.

52055.650. (a) Section 52055.5 does not apply to a school participating in the High Priority School Grant Program.

(b) Twenty-four months after receipt of funding for implementation of the action plan pursuant to Sections 52054.5 and 52055.600 or no sooner than July 1, 2004, a school that has not met its growth targets each year shall be subject to review by the State Board of Education. This review shall include an examination of the school's progress relative to the components and reports made pursuant to Section 52055.640. The Superintendent of Public Instruction, with the approval of the State Board of Education, may direct that the governing board of a school take appropriate action and adopt appropriate strategies to provide corrective assistance to the school in order to achieve the components and benchmarks established in the school's action plan.

(c) Thirty-six months after receipt of funding to implement a school action plan or no sooner than July 1, 2005, a school that has met or exceeded its growth target each year shall receive a monetary or nonmonetary award, under the Governor's Performance Award Program, as set forth in Section 52057. Funds received pursuant to that section may be used at the school's discretion.

(d) Thirty-six months after receipt of funding to implement a school action plan or no sooner than July 1, 2005, a school that has not met its growth targets each year, but demonstrates significant growth, as determined by the State Board of Education, shall continue to participate in the program and receive funding as specified in Sections 52054.5 and 52055.600.

(e) Notwithstanding any other provision of law, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall follow the course of action prescribed by paragraph (1) or (2) with respect to a school that does not meet its growth targets within the periods described in either subdivision (c) or (d), as applicable, or no later than July 1, 2005, and has failed to show significant growth, as determined by the State Board of Education.

(1) Require the district to enter into a contract with a school assistance and intervention team.

(A) Team members should possess a high degree of knowledge and skills in the areas of school leadership, curriculum, and instruction aligned to state academic content and performance standards, classroom management and discipline, academic assessment, parent-school relations, and evaluation and research-based reform strategies and have proven successful expertise specific to the challenges inherent in low-performing schools.

(B) The team shall provide intensive support and expertise to implement the school reform initiatives in the plan. Decisions about interventions shall be data driven. A school assistance and intervention team shall work with school staff, site planning teams, administrators, and district staff to improve pupil literacy and achievement by assessing the degree of implementation of the current action plan, refining and revising the action plan, and making recommendations to maximize the use of fiscal resources and personnel in achieving the goals of the plan. The district shall provide support and assistance to enhance the work of the team at the targeted schoolsites.

(C) Not later than 60 days after the school's API becomes public, the team must have completed an initial report. The report shall include recommendations for corrective actions.

chosen from a range of interventions, including the reallocation of district fiscal resources to ensure that appropriate resources are targeted to those specific interventions identified in the recommendations of the team for the targeted schools and other changes deemed appropriate to make progress toward meeting the school's growth target. Not later than 90 days after the API is made public, the governing board of the school district shall adopt the team's recommendations at a regularly scheduled meeting of the governing board. The governing board may not place the adoption on the consent calendar. The report shall be submitted to the Superintendent of Public Instruction and State Board of Education.

(D) No less than three times during the year, the school district and schoolsite shall present the team with data regarding progress toward the goals established by the team's initial assessment. The data shall be presented to the governing board of the school district at a regularly scheduled meeting. The team shall, to the extent possible, utilize existing site data. The data shall also be provided to the Superintendent of Public Instruction and State Board of Education. Every effort shall be made to report this data in a manner that minimizes the length and complexity of the reporting requirement in order to maximize the focus on improving pupil literacy and achievement.

(E) An action taken pursuant to this paragraph shall not increase local costs or require reimbursement by the Commission on State Mandates.

(2) The Superintendent of Public Instruction shall assume all the legal rights, duties, and powers of the governing board with respect to the school. The Superintendent of Public Instruction, in consultation with the State Board of Education and the governing board of the school district, shall reassign the principal of that school subject to the findings in subdivision (1).

(1) In addition to reassigning the principal, the Superintendent of Public Instruction, in consultation with the State Board of Education, shall, notwithstanding any other provision of law, do at least one of the following:

(A) Revise attendance options for pupils to allow them to attend any public school in which space is available. If additional attendance options are made available, nothing in this option shall be construed to require either the sending or receiving school district to incur additional transportation costs.

(B) Allow parents or guardians to apply directly to the State Board of Education for the establishment of a charter school and allow parents or guardians to establish the charter school at the existing schoolsite.

(C) Under the supervision of the Superintendent of Public Instruction, assign the management of the school to a college, university, county office of education, or other appropriate educational institution. However, the Superintendent of Public Instruction may not assume the management of the school.

(D) Reassign other certificated employees of the school.

(E) Renegotiate a new collective bargaining agreement at the expiration of the existing collective bargaining agreement.

(F) Reorganize the school.

(G) Close the school.

(3) In addition to the actions listed in subdivision (e), the Superintendent of Public Instruction, in consultation with the State Board of Education, may take any other action considered necessary or desirable against the school district or the school district governing board, including appointment of a new superintendent or suspension of the authority of the governing board with respect to a school that does not meet its growth targets within the periods described in either subdivision (b) or (c), as applicable, and has failed to show significant growth, as determined by the State Board of Education.

(g) Before the Superintendent of Public Instruction may take any action against a principal pursuant to subdivision (e), the Superintendent of Public Instruction or a designee of the superintendent shall hold a public hearing on the matter in the school district and make both of the following findings:

(1) A finding that the principal had the authority to take specific enumerated actions that would have helped the school meet its performance goals.

(2) A finding that the principal failed to take specific enumerated actions pursuant to paragraph (1).

(h) An action taken pursuant to subdivision (e), (f), or (g) shall not increase local costs or require reimbursement by the Commission on State Mandates.

(i) An action taken pursuant to subdivision (e), (f), or (g) shall be accompanied by specific findings by the Superintendent of Public Instruction and the State Board of Education that the action is directly related to the identified causes for continued failure by a school to meet its performance goals.

52055.655. (a) Notwithstanding subdivision (c) of Section 52055.650, a school participating in the High Priority Schools Grant Program for Low Performing Schools that meets or exceeds its API growth target shall continue to receive funding under this program in the amount specified in Sections 52054.5 and 52055.600 for one additional year of implementation, less the amount received pursuant to Section 52057.

(b) From funds made available to the State Department of Education pursuant to the act adding this section, the State Department of Education shall conduct a study on the issue of sustainability of funding for low-performing schools. The issues to be addressed in this study shall include, but are not limited to, the following:

(1) An objective rather than a comparative view of the necessity of sustaining supplemental funding over time to address the ongoing needs of low-performing pupils, and the impact of policies that only provide funding over a specified period of time.

(2) An analysis of the ability of a school to sustain growth in academic achievement, particularly when the pupil population that continuously attends the school manifests issues of poverty and low socioeconomic status, and other characteristics that are generally out of the direct control of the school.

SEC. 6. Section 52058 of the Education Code is amended to read:

52058. (a) Each school district with schools participating in the Immediate Intervention/Underperforming Schools Program established pursuant to Section 52058 and the High Priority Schools Grant Program for Low Performing Schools established pursuant to Section 52055.600 shall submit to the Superintendent of Public Instruction an evaluation of the impact, costs, and benefits of the program as it relates to the school district and the schools under its jurisdiction that are participating in the program and whether or not the schools met their growth targets with an analysis of the reasons why the schools have or have not met those growth targets. Costs to develop and submit the evaluation shall be funded with resources provided pursuant to Article 8 (commencing with Section 52053). The evaluation shall be submitted by November 30, subsequent to the first full year of action plan implementation by participating schools, and on November 30, of each year thereafter.

(b) By January 15, 2000, the Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, the guidelines for a request for proposal for an independent evaluator as described in this subdivision. By September 1, 2000, the Superintendent of Public Instruction shall contract with an independent evaluator to prepare a comprehensive evaluation of the implementation, impact, costs, and benefits of the Immediate Intervention/Underperforming Schools Program, the High Priority Schools Grant Program for Low Performing Schools, and the High Achieving/Improving Schools Program. The preliminary results of the evaluation shall be disseminated to the Legislature, the Governor, and interested parties no later than March 31, 2002, with a final report no later than June 30, 2002. The final report shall include recommendations for necessary or desirable modifications to the programs established pursuant to this chapter.

(c) The evaluations shall consider all of the following:

(1) Pupil performance data, including, but not limited to, results of assessments used to determine whether or not schools have made significant progress towards meeting their growth targets.

(2) Program implementation data, including, but not limited to, a review of startup activities, community support, parental participation, staff development activities associated with implementation of the program, percentage of fully credentialed teachers, percentage of teachers who hold emergency credentials, percentage of teachers assigned outside their

subject area of competence, the accreditation status of the school if appropriate, average class size per grade level, and the number of pupils in a multitrack year-round educational program.

(3)(A) Pupil performance data, and its impact on the API, for each of the following subgroups:

- (i) English language learners.
- (ii) Pupils with exceptional needs.

(iii) Pupils that qualify for free or reduced price meals and are enrolled in schools that receive funds under Chapter 1 of the federal Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (P.L. 100-290).

(B) Information concerning individual pupils may not be disclosed in the process of preparing pupil performance data pursuant to this subdivision.

(d) The Superintendent of Public Instruction shall recommend and the State Board of Education shall approve a schedule for biennial evaluations of the programs established pursuant to this chapter, subsequent to the evaluation required by this section. The biennial evaluations shall be submitted, with appropriate recommendations, by June 30 of every odd-numbered year, commencing with the year 2003.

SEC. 7. Item 6110-123-0001 of Section 2.00 the Budget Act of 2001 is amended to read:

6110-23-0001-For local assistance, Department of Education (Proposition 98), for implementation of the Public Schools Accountability Act, pursuant to Chapter 6.1 (commencing with Section 52050) of Part 28 of the Education Code 514,970,000

Schedule:

(1) 20:60:080.081-Immediate Intervention/Underperforming Schools Program	160,970,000
(2) 20:60:080.082-High Achieving/Improving Schools Program	167,000,000
(3) 20:60:080.084-Low-Performing Schools	197,000,000

Provisions:

1. Funds appropriated in Schedule (1) are provided solely for the purpose of implementing the Immediate Intervention/Underperforming Schools Program, pursuant to Article 8 of Chapter 6.1 (commencing with Section 52058) of Part 28 of the Education Code. Of this amount, \$21,500,000 is for the purpose of providing planning grants of \$50,000 each to a third cohort of new schools, and the remainder is provided to fully fund implementation grants for the first and second cohorts of schools that received planning grants under the program during the 1999-00 and 2000-01 fiscal years.
2. Funds appropriated in Schedule (2) are provided solely for the purpose of implementing the Governor's High Achieving/Improving Schools Program, pursuant to Article 4 of Chapter 6.1 (commencing with Section 52056) of Part 28 of the Education Code.
3. Funds appropriated in Schedule (3) are provided solely for the purpose of implementing a low-performing school program, pursuant to legislation enacted during the 2001-02 Regular Session.

SEC. 8. (a) Notwithstanding any other provision of law, funds appropriated in Schedule (3) of Item 6110-123-0001 of Section 2.00 of the Budget Act of 2001 shall be available through the 2003-04 fiscal year for implementation of the High Priority Schools Grant Program for Low Performing Schools established pursuant to Article 3.5 (commencing with Section 52055.600) of Chapter 6.1 of Part 28 of the Education Code, including providing planning grants authorized by Article 3.5 (commencing with Section 52055.600) of Chapter 6.1 of Part 28 of the Education Code and implementation grants authorized by Article 3 (commencing with Section 52053) of, and Article 3.5 (commencing with Section 52055.600) of, Chapter 6.1 of Part 28 of the Education Code for those schools participating in each of those programs.

(b) The sum of three million dollars (\$3,000,000) is hereby appropriated from the General Fund to the State Department of Education in augmentation of Item 6110-001-0001 of

Section 2.00 of the Budget Act of 2001 to provide training for individuals who wish to function as external evaluators pursuant to Section 52054 or as members of a school assistance and intervention team pursuant to Section 52055.51 and for costs associated with the administration and oversight of the High Priority Schools Grant Program for Low Performing Schools established pursuant to Article 3.5 (commencing with Section 52055.600) of Chapter 6.1 of Part 28 of the Education Code and the Immediate Intervention/Underperforming Schools Program established pursuant to Article 3 (commencing with Section 52053 of Part 28 of the Education Code and may be expended to fund up to 18 positions in the department.

SEC. 9. It is the intent of the Legislature to appropriate funds for purposes of this article for the 2002-03 fiscal year and for subsequent fiscal years.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

California is experiencing a crisis with respect to the learning development and achievement of millions of pupils in California's public schools, and the program proposed by this act is designed and enacted to enable these pupils to progress and to succeed, and there is no time to waste in meeting the needs of these pupils. Therefore, in order to begin implementation of the High Priority Schools Grant Program for Low Performing Schools during the 2001-02 fiscal year, it is necessary that this act take effect immediately.

GOVERNOR'S REDUCTION MESSAGE

I am signing Assembly Bill 961, however I am reducing the appropriation made in section 8 of this bill by \$2,142,000. This section would appropriate \$3.0 million to the Department of Education for training and administration costs associated with this program. Absent a detailed expenditure plan from the Department of Education justifying this need, I am unable to support an augmentation in excess of that which I believe is necessary to begin implementation of this program.

While I am signing this bill, I am concerned that numerous sections within this bill are unclear and may be interpreted in a way not intended, potentially resulting in significant costs. I am signing this bill with the understanding that the author will introduce urgency legislation to clean up these issues.

GRAY DAVIS, Governor

STATE AGENCIES—REPORTS—REQUIREMENTS

CHAPTER 745

S.B. No. 1191

ACT to amend Sections 4425, 6086.15, 6094.5, 7011.9, and 7017 of, and to repeal Sections 1616.1 and 12029 of, the Business and Professions Code, to amend Section 116.950 of the Code of Civil Procedure, to amend Sections 80.5, 8215, 8858, 8451, 82287, 82239.5, 85179.2, 44252.9, 44259.5, 44279.2, 44784, 49413, 52052, 52656, 54696, 56885, 58623, 60810, 66015, 66755, 67301, 67859.20, 71028, 87104, 89758, 89761, and 99306 of, and to repeal Sections 15750, 17001.5, 44329, 49590.5, 58922, 66293, 69783, 72681, 78217, and 99105 of, the Education Code, to amend Section 7571 of the Family Code, to repeal Sections 256, 8652, and 82955 of the Financial Code, to amend Sections

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Additions or changes indicated by underline; deletions by asterisks * * *

1000.5, 1796, 2079, 2645, 3409, 3951, 4904, 6450, and 6599 of, and to repeal Sections 2099, 6459, and 16583 of, the Fish and Game Code, to amend Sections 13135 and 76905 of, and to repeal Sections 4101.5, 13127.93, and 14104 of, the Food and Agricultural Code, to amend Sections 3111, 7585, 8654.1, 8670.55, 8879.3, 10242.5, 10601, 11007, 14070.2, 14660.1, 15277, 15333.3, 15333.4, 15878, 15813.6, 17562, 19798, 19993.05, 21662, 27270.4, 30401, 51207, 54238.7, 68511.2, 68604, 77009, 77604, 77605, and 77654 of, and to repeal Sections 8855.5, 8855.7, 8855.8, 11815, 11818, 12095.60, 13332.06, 13333.5, 14035.6, 15301.5, 16582, 16649.91, 80606, 65302.6, 67523, 70219, 75050.3, 75560.3, 92204, and 96103 of, the Government Code, to amend Sections 1200 and 3927 of, and to repeal Sections 65.8 and 658.6 of, the Harbors and Navigation Code, to amend Sections 1342.1, 1422, 11759.4, 13400.1, 25200.11, 25200.14.1, 25200.17, 25299.97, 33760, 34312.3, 39153, 44003, 46077, 50408, 50834, 57007, 162145, 104370, 108875, 119308, 120475, 120480, 120805, and 123775 of, and to repeal Sections 13143.10, 25171, 25171.5, 25245.6, 25269.9, 40453, 59805, 62045, 62570, 100146, and 100240 of, the Health and Safety Code, to amend Sections 10089.40 and 12693.93 of, and to repeal Section 10890 of, the Insurance Code, to amend Section 3214 of the Labor Code, to amend Section 1335 of the Military and Veterans Code, to amend Sections 1001.65, 7433, 13602, and 13731 of, and to repeal Sections 1170.6, 9008, 13510.6, and 13892 of, the Penal Code, to repeal Sections 10350 and 12104 of, the Public Contract Code, to amend Sections 5094.2, 5096.244, 5631, 6211, 6230, 6231, 6477, 6916, 14314, 14537, 25403.5, 31108, 31163, 42005, 42371, and 71040 of, and to repeal Sections 674, 5017, 5780.17, 9756, 19524, 22052, and 25310.5 of, the Public Resources Code, to amend Sections 383, 393.5, 495.9, 739.1, 28757.3, 130292, and 132410 of, the Public Utilities Code, to amend Section 7273 of, the Revenue and Taxation Code, to amend Sections 100, 30795.3, 30950.3, and 30961 of, and to repeal Sections 1965 and 30895 of, the Streets and Highways Code, to amend Sections 5007, 9516, 9516.1, 10532, 15037, 15076.5, and 17002 of, and to repeal Sections 10887, 1274.05, 3202, 9614, 9616.5, and 10522 of, the Unemployment Insurance Code, to amend Sections 1810.7, 5023, 14602.1, and 35581 of, and to repeal Section 2936 of, the Vehicle Code, to amend Sections 8610, 11912, 12380, 12375, 12379.5, 12390.4, and 12939 of, and to repeal Sections 232, 10010, 10756, 11156, 12308, 12923.5, 12929.47, 13467, 14014, and 12919 of, the Water Code, to amend Sections 4640.6, 4669.75, 5673, 10609.5, 10740, 10790, 11329, 11450.3, 11461.1, 11487.5, 14017.1, 14085.5, 14103.2, 14104.3, 14132, 14132.90, 14133.5, 14138.5, 14145.1, 14146, 14148.3, 14501, 16500.5, 18206, and 18240 of, and to repeal Sections 366.23, 5586, 10603.3, 14618, 15452, and 18214 of, the Welfare and Institutions Code, to amend Section 1 of Chapter 74 of the Statutes of 1978, to repeal Section 3 of Chapter 1523 of the Statutes of 1985, to amend Section 2 of Chapter 1495 of the Statutes of 1988, to amend Section 1 of Chapter 1350 of the Statutes of 1989, to repeal Section 1 of Chapter 674 of the Statutes of 1990, to amend Section 1 of Chapter 1621 of the Statutes of 1990, to repeal Section 2 of Chapter 1012 of the Statutes of 1993, to repeal Resolution Chapter 100 of the Statutes of 1995, and to amend Section 2 of Chapter 881 of the Statutes of 1997, relating to reports submitted to the Legislature, the Governor, and state entities, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State October 12, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1191, Speier. State and local reporting requirements.

Existing law requires or requests various state and local agencies to prepare and submit reports to the Governor, the Legislature, or other state entities.

This bill would revise or delete certain reporting requirements for state and local agencies, and delete obsolete references.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1616.1 of the Business and Professions Code is repealed.

SEC. 2. Section 4425 of the Business and Professions Code is amended to read:

4425. (a) As a condition of a pharmacy's participation in the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000) of Division 9 of the Welfare and Institutions Code, the pharmacy, upon presentation of a valid prescription for the patient and the patient's Medicare card, shall charge Medicare beneficiaries a price that does not exceed the Medi-Cal reimbursement rate for prescription medicines, and an amount, as set by the State Department of Health Services to cover electronic transmission charges. However, Medicare beneficiaries shall not be allowed to use the Medi-Cal reimbursement rate for over-the-counter medications or compounded prescriptions.

their staff and pupils understand the importance of this training and have an appropriate opportunity to develop these skills.

(b) A school district or school, individually or jointly with another school district or school, may provide a comprehensive program in first aid or cardiopulmonary resuscitation (CPR) training, or both, to pupils and employees. The program shall be developed using the following guidelines:

(1) The school district or school collaborates with existing local resources, including, but not limited to, parent teacher associations, hospitals, school nurses, fire departments, and other local agencies that promote safety, to make first aid or CPR training, or both, available to the pupils and employees of the school district or school.

(2) Each school district that develops a program, or the school district that has jurisdiction over a school that develops a program, compiles a list of resources for first aid or CPR information, to be distributed to all of the schools in the district.

(3) The first aid and CPR training are based on standards that are at least equivalent to the standards currently used by the American Red Cross or the American Heart Association.

SEC. 23. Section 49590.5 of the Education Code is repealed.

SEC. 24. Section 52052 of the Education Code is amended to read:

52052. (a)(1) By July 1, 1999, the Superintendent of Public Instruction, with approval of the State Board of Education, shall develop an Academic Performance Index (API) to measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.

(2) For purposes of this section, a numerically significant ethnic or socioeconomically disadvantaged subgroup is a subgroup that constitutes at least 15 percent of a school's total pupil population and consists of at least 30 pupils. An ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school.

(3) The API shall consist of a variety of indicators currently reported to the State Department of Education including, but not limited to, the results of the achievement test administered pursuant to Section 60640; attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils who were enrolled in a school district in the prior fiscal year may be included in the test results reported in the API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data is currently reported to the state and the accuracy of the data.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test developed pursuant to Section 60604.

(2) The nationally normed test as augmented pursuant to paragraph (1) of subdivision (f) of Section 60644.

(3) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, expected annual percentage growth targets for all schools based on their API baseline score as measured in July 1999. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the State Board of Education pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the State Board of Education may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically significant ethnic and socioeconomically disadvantaged subgroups, as defined in subdivision (a) of Section 52052, are making comparable improvement.

(d) Upon adoption of state performance standards by the State Board of Education, the Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When fully developed, schools may either meet the state target or meet their growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057.

(e) Beginning in June 2000, the API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52058.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(3) Only comprehensive high schools, middle schools, and elementary schools that have a population of 100 or more pupils may be included in the API ranking.

(g) By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 pupils, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

SEC. 25. Section 52656 of the Education Code is amended to read:

52656. (a) Notwithstanding any other provision of law, school districts that received apportionment for extraordinary needs in English as a second language and basic skills from Provision (4) of Schedule (a) of Item 6110-156-001 of the Budget Act of 1991 for the 1991-92 fiscal year shall continue to receive those funds in the school district's adult block entitlement in the 1992-93 fiscal year, and each fiscal year thereafter.

(b) Commencing in the 1993-94 fiscal year, school districts that receive an apportionment from subdivision (a) shall give priority to English immigrants in need of courses pursuant to paragraphs (2), (3), and (4) of subdivision (a) of Section 41976 and Section 52653 of the Education Code.

(c) School districts are not restricted by this chapter from providing classes for immigrants pursuant to paragraph (4) of subdivision (a) of Section 41976 of the Education Code with other funds for adult education that are available to the district.

SEC. 26. Section 54696 of the Education Code is amended to read:

54696. (a) The Superintendent of Public Instruction shall contract for a four-year independent review of the effectiveness of the newly funded California Partnership Academies. Preliminary results shall be reported after the 1994-95 fiscal year and a final evaluation shall be performed after the 1996-97 fiscal year. * * * The independent review shall include, but not be limited to, all of the following:

(c) Of the funds appropriated for the purpose authorized in paragraphs (1) and (2) of subdivision (a), no more than two hundred seventy thousand dollars (\$270,000) may be expended in any fiscal year for costs of administering the programs authorized thereby.

SEC. 276. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that state and local agencies may be relieved of the burden of preparing unessential reports at the earliest possible time, it is necessary that this act take effect immediately.

MAINTENANCE OF CODES

CHAPTER 159

S.B. No. 662

AN ACT to amend Sections 27, 113, 130, 141, 350, 364, 371, 2570.6, 2570.8, 2570.19, 2696, 3059, 3364, 3403, 4059, 4312, 4950.50, 4990.50, 4996.3, 5111, 5535, 5603, 5716, 5780.2, 6756, 7092, 7583.11, 8027, 8473.1, 10167.2, and 21702 of the Business and Professions Code; to amend Sections 1748.10, 1748.11, 1819.21, 2954.1, 2954.5, and 3097.01 and to amend and renumber Section 1834.6 of the Civil Code; to amend Sections 498.020, 545.1, 694, and 699.510 of the Code of Civil Procedure; to amend Sections 9323, 9331, and 2408 of the Commercial Code; to amend Sections 2200, 6510, 17340.3, 25102, 25109, and 25120 of the Corporations Code; to amend Sections 313, 405, 426, 427, 11700, 17071.46, 17210, 17311.6, 17510.5, 22660, 22959, 25933, 33126.1, 37252, 37252.2, 37613, 41329.1, 42239, 44114, 45023.1, 48664, 52054, 52270, 52435, 54749, 56045, 56845, 69432.7, 69434.5, 69437.6, 69439, 69613.1, 87164, and 92901 of; and to amend and renumber Sections 45095.25 and 45095.30 of the Education Code; to amend Sections 1405, 8049, 9118, and 15375 of the Elections Code; to amend Section 17504 of the Family Code; to amend Sections 761.5, 4827, 16024, 16501, and 18586 of the Financial Code; to amend Sections 1505, 2921, and 8276.3 of the Fish and Game Code; to amend Sections 492, 6046, and 75131 of the Food and Agricultural Code; to amend Sections 3543.4, 3562.2, 3583.5, 6254, 6516.5, 6599.2, 7074, 18935, 20023, 20300, 20392, 21096, 21547.7, 30664.1, 31461.3, 31681.55, 31835.02, 38773.6, 55720, 65584, 65585.1, and 76059.1 of the Government Code; to amend Sections 444.21, 1958.11, 11896, 11877.2, 17922, 25353.6.1, 39619.6, 104170, 105112, 111656.5, 111656.13, 114145, 123111, and 124900 of; to amend and renumber Section 104320 of; and to amend and renumber the heading of Article 10.5 (commencing with Section 1399.801) of Chapter 2.2 of Division 2 of the Health and Safety Code; to amend Sections 789.3, 1215.1, 1371, 1372.33, 10123.135, 10173.3, 10192.11, 10231.2, 10236, 10506.5, 11621.2, 11784, 11786, 11787, and 12698 of the Insurance Code; to amend Sections 90.5, 129, 230.1, 4455, and 4609 of the Labor Code; to amend Section 1043 of the Military and Veterans Code; to amend Sections 272, 417.2, 646.94, and 3058.65 of the Penal Code; to amend Sections 1313 and 16062 of the Probate Code; to amend Sections 10129 and 20209.7 of the Public Contract Code; to amend Sections 5090.51, 14581, 36710, and 42923 of the Public Resources Code; to amend Sections 383.5, 2381.2, 7943, 9608, 9610, and 12702.5 of; and to amend and renumber Section 399.15 of the Public Utilities Code; to amend Sections 75.11, 75.21, 97.3, 214, 23622.8, 23646, 44906, and 45153 of the Revenue and Taxation Code; to amend Section 1110 of the Unemployment Insurance Code; to amend Section 4060.37 of the Vehicle Code; to amend Sections 1739.5, 4098.1, 5514, 6102, 10082, 14005.28, 14005.35, 14008.6, 14087.32, and 14105.26 of the Welfare and Institutions Code; and to amend Section 511 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992); Section 1 of Chapter 352 of the Statutes of 2000; Section 1 of Chapter 661 of the Statutes of 2000; Section 2 of Chapter 693 of the Statutes of 2000; Sections 5 and 6 of the Naval Training Center San

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subdivision (d) of Section 48915, other expulsion criteria, or referred through a formal district process.

(8) Pupil outcome data and other data as required under Section 48916.1.

(9) Other programmatic or fiscal matters as determined by the State Department of Education.

(f) The additional funds provided in subdivisions (a), (c), and (d) shall only be allocated to the extent that funds are appropriated for this purpose in the annual Budget Act or other legislation, or both, except for pupils expelled pursuant to subdivision (d) of Section 48915. For pupils expelled pursuant to subdivision (d) of Section 48915, the funds apportioned under subdivision (a) are continuously appropriated from the General Fund to Section A of the State School Fund.

(g) A one-time adjustment shall be made to the amount specified in subdivision (a), for the 1998-99 fiscal year and subsequent fiscal years, by increasing that amount by the statewide average quotient resulting from dividing the average daily attendance specified in subparagraph (B) of paragraph (3) of subdivision (a) of Section 42238.8 by the amount specified in subparagraph (C) of paragraph (3) of subdivision (a) of Section 42238.8.

SEC. 73. Section 52054 of the Education Code is amended to read:

52054. (a) By November 15 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program shall contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team, consisting of a majority of nonschoolsite personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(b) The selected external evaluator shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below average performance.

(2) Hold a public meeting at the school, in cooperation with the principal, to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit, at the public meeting, the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section.

(4) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(c) By February 15 of the school year in which the school is selected to participate, the selected external evaluator, in collaboration with the broad-based schoolsite and community team selected pursuant to subdivision (a), shall complete a review of the school that identifies weaknesses that contribute to the school's below average performance, make recommendations for improvement, and begin to develop an action plan to improve the academic performance of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a

scope that requires reimbursement by the Commission on State Mandates for its implementation.

(d) At a minimum, the action plan shall do all of the following:

(1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 83126.

(2) Identify the current barriers at the school and district toward improvements in pupil achievement.

(3) Identify schoolwide and districtwide strategies to remove these barriers.

(4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.

(5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information regarding the achievement of English language learners, pupils with exceptional needs, pupils who qualify for free and reduced price meals, and all pupils, by race, ethnicity, and gender.

(6) Set short-term academic objectives pursuant to Section 62052 for a two-year period that will allow the school to make adequate progress toward the growth targets established for each participating school for pupil achievement as measured by all of the following to the extent that the data is available for the school:

(A) The achievement test administered pursuant to Section 60640.

(B) Graduation rates for grades 7 to 12, inclusive.

(C) Attendance rates for pupils and school personnel for elementary, middle, and secondary schools.

(D) Any other indicators approved by the State Board of Education.

(e) The school action plan shall focus on improving pupil academic performance, improving the involvement of parents and guardians, improving the effective and efficient allocation of resources and management of the school, and identifying and developing solutions that take into account the underlying causes for low performance by pupils.

(f) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(g) The school action plan may propose to increase the number of instructional days offered at the school site and also may propose to increase up to a full 12 months the amount of time for which certificated employees are contracted, if all of the following conditions are met:

(1) Provisions of the plan proposed pursuant to this subdivision do not violate current applicable collective bargaining agreements.

(2) An agreement is reached with the exclusive representative concerning staffing specifically to accommodate the extended school year or 12-month contract.

(h) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(i) Upon its completion, the action plan shall be submitted to the governing board of the school districts for its approval. After the plan is approved, but no later than May 15 of the year that follows the year the school is selected to participate, the plan shall be submitted to the Superintendent of Public Instruction with a request for funding in the form prescribed by the Superintendent of Public Instruction, who shall review the school action plan and recommend approval or disapproval of the school's request for funding to the State Board of Education.

(j) Not later than July 15 of the year next following the year in which a school is selected for participation, the State Board of Education shall review and approve or disapprove the school's request for funding, based on the recommendation of the Superintendent of Public Instruction. Within thirty days of the State Board of Education's review, the Superintendent of Public Instruction shall notify the affected school districts of the state of the board's action regarding the request for funding. In conjunction with its approval of a request for funding

to implement a school's action plan, the State Board of Education may, at the request of the governing board of the school district or the county board of education for a school under its jurisdiction, waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (1) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 64000 if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46800.

SEC. 74. Section 52270 of the Education Code is amended to read:

52270. The Education Technology Grant Program is hereby established to provide one-time grants to school districts and charter schools for purposes of acquiring computers for instructional purposes at public schools. The Office of the Secretary for Education shall administer the application process for the award of grants.

(a) The first priority for the use of the funds is to ensure that high school pupils in schools offering three or fewer advanced placement courses have access to advanced placement courses online. Grants awarded for the first priority may be expended to purchase or lease computers and related equipment and for wiring or infrastructure necessary to achieve connectivity to online advanced placement courses.

(b) The second priority for the use of the funds is to increase the number of computers available to all other public schools that offer instruction in kindergarten or any of grades 1 to 12, inclusive. Grants awarded for the purposes of the second priority shall be awarded at the school district level and shall be based on a ratio of pupils per computer, as determined by the Office of the Secretary for Education. A school district that receives a grant shall award the funds to its schools that have the highest number of pupils per computer. Each education technology grant awarded based on the second priority shall only be used for the purchase or lease of computers including system configuration, software, and instructional material. The grant amount awarded to each school district or charter school for the second priority shall be determined by the Office of the Secretary for Education.

(c) All funds awarded pursuant to this section shall be used solely to purchase or lease equipment and related materials for instructional purposes and limited to classroom, library, or technology and media centers in order to provide access to online advanced placement courses for pupils and increase the number of computers per pupil. These grant funds are to supplement, not supplant, existing local, state, and federal education technology funds, including Digital High School funds.

(d) To receive a grant pursuant to this section, school districts and charter schools shall have developed an education technology plan or shall develop a plan with the assistance of the California Technology Assistance Project specifically for the use of the funds available pursuant to this section within 90 days after submission of the application for a grant pursuant to this chapter. The plan shall address the use of these and other technology funds to ensure they are used effectively and in a manner consistent with other education technology available at the schoolsite. School districts and charter schools that choose to lease equipment shall include in their technology plan a payment schedule and shall identify the funding source or sources for lease payments over the life of the lease, including, but not limited to, establishing a technology leasing account and amortizing the available state funding over the term of the lease, if appropriate. In addition, the term of the lease shall be no longer than four years unless authorized at local discretion, in which case the lease or purchase shall be funded at local expense. A school district or charter school with an existing certified or approved education technology plan developed pursuant to other provisions of law may utilize the existing plan for the purposes of this program but shall, if necessary, amend that plan to meet the requirements of this subdivision if the school district or charter school chooses to lease the computers.

(e) School districts and charter schools may purchase or lease computers, related equipment and materials, and other goods and services using any statewide or cooperative contracts, schedules, or other agreements, established by the Department of General Services.

**SCHOOLS AND SCHOOL DISTRICTS—ACADEMIC
ACHIEVEMENT—EVALUATION**

CHAPTER 695

S.B. No. 1552

AN ACT to amend Sections 52052, 52052.8, 52053, 52054, 52054.5, 52055, 52055.5, 52056, 52057, and 52058 of the Education Code, and to amend Section 2 of Chapter 3 of the Statutes of 1999 relating to academic achievement, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State September 27, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1552, Alpert. Pupil Achievement: Public Schools Accountability Act of 1999.

(1) Existing law establishes the Public School Performance Accountability Program consisting of an Academic Performance Index, an Immediate Intervention/Underperforming Schools Program, and a High Achieving/Improving Schools Program. The Public School Performance Accountability Program requires the Superintendent of Public Instruction, with approval of the State Board of Education, to develop the Academic Performance Index (API), consisting of a variety of indicators, to be used to measure the performance of schools. A school selected to participate in the Immediate Intervention/Underperforming Schools Program is required to comply with certain requirements, including, but not limited to, completing an action plan to improve the academic achievement of the pupils enrolled at the school. Existing law requires the Superintendent of Public Instruction to annually publish API rankings, and requires the governing board of a school district to discuss the results at a regularly scheduled meeting.

Existing law appropriates \$96,150,000 from the General Fund to the Superintendent of Public Instruction for allocation to school districts that meet or exceed the requirements of the Governor's High Achieving/Improving Schools Program, for allocation and expenditure in the 2001-02 fiscal year.

This bill would make clarifying changes in those provisions pertaining to the indicators used to evaluate the performance of schools in the API. The bill would instead make that appropriation available for allocation and expenditure in the 2000-01 fiscal year, thereby making an appropriation.

The bill would provide that the action plan may propose to increase up to a full 12 months the amount of time for which certificated employees are contracted, if prescribed conditions are met.

(2) The High Achieving/Improving Schools Program requires, by January 31, 2002, each school district with schools participating in the Immediate Intervention/Underperforming Schools Program to submit to the Superintendent of Public Instruction an evaluation of the impact, costs, and benefits of the program.

This bill would instead require that evaluation to be submitted by November 30, subsequent to the first full year of action plan implementation by participating schools and on November 30 of each subsequent year. By imposing new duties on school districts regarding deadlines for submitting this evaluation, the bill would impose a state-mandated local program.

(3) The Immediate Intervention/Underperforming Schools Program requires the Superintendent of Public Instruction, with the approval of the State Board of Education, to invite schools that scored below the 50th percentile on the statewide achievement tests administered in the Spring of 1998 and 1999 to participate in that program. Under existing law, schools selected for participation in the program are required to be notified by the Superintendent of Public Instruction no later than September 1 of each year.

This bill would require, by September 15 of each year, the Superintendent of Public Instruction, with the approval of the State Board of Education, to identify schools that failed to meet their API growth targets and that have an API below the 50th percentile relative to all other public elementary, middle, and high schools and to invite those schools to participate in the program, and would prescribe various matters related to participation, including, awarding a \$50,000 planning grant to each school selected to participate on or before October 15, 2000, of each year.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(5) This bill would incorporate additional changes in Section 52057 of the Education Code, proposed by S.B. 961, to be operative only if S.B. 961 and this bill are both chaptered and become effective on or before January 1, 2001, and this bill is chaptered last.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 52052 of the Education Code is amended to read:

52052. (a)(1) By July 1, 1999, the Superintendent of Public Instruction, with approval of the State Board of Education, shall develop an Academic Performance Index (API) * * * to measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.

(2) For purposes of this section, a numerically significant ethnic or socioeconomically disadvantaged subgroup is a subgroup that constitutes at least 15 percent of a school's total pupil population and consists of at least 30 pupils. An ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school.

(3) The API shall consist of a variety of indicators currently reported to the State Department of Education including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils who were enrolled in a school district * * * in the prior fiscal year may be included in the test results reported in the API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data is currently reported to the state and the accuracy of the data.

(C) If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test developed pursuant to Section 60604.

(2) The nationally normed test as augmented pursuant to paragraph (1) of subdivision (f) of Section 60644.

(3) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, expected annual percentage growth targets for all schools based on * * * their API baseline score as measured in July 1999. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the State Board of Education pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent * * * of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the State Board of Education may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically-significant ethnic and socioeconomically disadvantaged subgroups, as defined in subdivision (a) of Section 52052, are making comparable improvement.

(d) Upon adoption of state performance standards by the State Board of Education, the Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When fully developed, schools may either meet the state target or meet their growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057.

(e) Beginning in June 2000, the API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f) Only comprehensive high schools, middle schools and elementary schools that have a population of 100 or more pupils may be included in the API ranking.

(g) By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 pupils, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

SEC. 2. Section 52053 of the Education Code is amended to read:

52053. (a) The Immediate Intervention/Underperforming Schools Program is hereby established. By August 15, 1999, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall invite schools that scored below the 50th percentile on the achievement tests administered pursuant to Section 60640 both in the spring of 1998 and in the spring of 1999 to participate in the Immediate Intervention/Underperforming Schools Program. A school invited to participate may take any action not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates to improve pupil performance.

(b) The total number of schools participating in the program in 1999 shall be 480. Unless subdivision (d) applies, schools that apply will be selected based on the order in which they apply within ranks of deciles, not to exceed 86 per decile, within the following grade level categories:

(1) No more than 301 elementary schools.

(2) No more than 78 middle schools.

(9) No more than 52 high schools.

(c) The 86 schools selected within each decile range pursuant to subdivision (b) shall proportionately represent elementary, middle, and high schools and shall provide statewide proportionate geographic representation of urban and rural schools.

(d) If fewer than the number of schools in any grade level category apply, schools that scored below the 50th percentile in those grade level categories that did not apply for the program shall randomly be selected by the Superintendent of Public Instruction, with the approval of the State Board of Education, to participate based on their proportional representation in the state until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(e) If more than the requisite number of schools apply for any grade level category, the Superintendent of Public Instruction shall select an array of schools that reflect a broad range of academic performance of schools that scored below the 50th percentile, until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(f) A school selected to participate on or before September 1, 1999, shall be awarded a planning grant from funds appropriated pursuant to paragraph (1) of subdivision (a) of Section 2 of the act adding this section in the amount of fifty thousand dollars (\$50,000). A school selected to receive federal funds pursuant to paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall be awarded an implementation grant in an amount of at least fifty thousand dollars (\$50,000) pursuant to Public Law 105-78.

(g) Schools receiving funding under paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall comply with Public Law 105-78.

(h) By September 15, 2000, and each year thereafter, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall identify schools that failed to meet their Academic Performance Index (API) growth targets and that have an API below the 50th percentile relative to all other public elementary, middle or high schools. The Superintendent of Public Instruction shall invite these schools to participate in the Immediate Intervention/Underperforming Schools Programs. A school invited to participate may take any action to improve pupil performance not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates.

(i) The total number of schools selected for participation in the program shall be no more than the number that can be funded through the total appropriation for the planning grants referenced in subdivision (j) below.

(j) If fewer schools apply for participation than can be funded, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall randomly select the balance of schools from schools eligible to participate that did not apply. Insofar as possible, the schools randomly selected should reflect a representative proportion of elementary, middle and high schools, as well as a broad range of academic achievement.

(k) If more schools apply for participation than can be funded, the schools shall be selected on the order in which they apply. Insofar as possible, the schools randomly selected should reflect a representative proportion of elementary, middle and high schools, as well as a broad range of academic achievement.

(l) A school selected to participate on or before October 15, 2000, and each year thereafter, shall be awarded a planning grant from funds appropriated pursuant to this act of fifty thousand dollars (\$50,000).

(m) Schools selected for participation in the program shall be notified by the Superintendent of Public Instruction no later than * * * October 15 of each year.

SEC. 2.5. Section 52052.3 of the Education Code, as added by Chapter 71 of the Statutes of 2000, is amended to read:

52052.3. Test scores of pupils who are in the first year of enrollment in a high school district, but who, in the prior year, were enrolled in an elementary school district that normally matriculates to the high school district, shall be included in the Academic Performance Index, as provided in Section 52052.

SEC. 3. Section 52054 of the Education Code is amended to read:

52054. (a) By * * * November 15 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program shall contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team consisting of a majority of nonschoolsite personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(b) The selected external evaluator shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below average performance.

(2) Hold a public meeting at the school in cooperation with the principal to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit at the public meeting the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section.

(4) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(c) By February 15 of the school year * * * in which the school is selected to participate, the selected external evaluator, in collaboration with the broad-based schoolsite and community team selected pursuant to subdivision (a), shall complete a review of the school that identifies weaknesses that contribute to the school's below-average performance * * * make recommendations for improvement * * * and begin to develop an action plan to improve the academic performance of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a scope that requires reimbursement by the Commission on State Mandates for its implementation.

(d) At a minimum, the action plan shall do all of the following:

(1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 68126.

(2) Identify the current barriers at the school and district toward improvements in pupil achievement.

(3) Identify schoolwide and districtwide strategies to remove these barriers.

(4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.

(5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information regarding the achievement of English language learners, * * * pupils * * * with exceptional needs, pupils who qualify for free and reduced price meals, and all pupils, by race, ethnicity and gender.

(6) Set short-term academic objectives pursuant to Section 52052 for a two-year period that will allow the school to make adequate progress toward the growth targets established for

each participating school for pupil achievement as measured by all of the following to the extent that the data is available for the school:

- (A) The achievement test administered pursuant to Section 60640.
- (B) Graduation rates for grades 7 to 12, inclusive,
- (C) Attendance rates for pupils and school personnel for elementary, middle, and secondary schools.
- (D) Any other indicators approved by the State Board of Education.

(e) The school action plan shall focus on improving pupil academic performance, improving the involvement of parents and guardians, improving the effective and efficient allocation of resources and management of the school, and identifying and developing solutions that take into account the underlying causes for low performance by pupils.

(f) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(g) The school action plan may propose to increase the number of instructional days offered at the school site and also may propose to increase up to a full 12 months the amount of time for which certificated employees are contracted, if all of the following conditions are met:

(1) Provisions of the plan proposed pursuant to this subdivision shall not violate current applicable collective bargaining agreements.

(2) An agreement is reached with the exclusive representative concerning staffing specifically to accommodate the extended school year or 12-month contract.

(h) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(i) Upon its completion, the action plan shall be submitted to the governing board of the school districts for its approval. After the plan is approved, but no later than May 15 of the year that follows the year the school is selected to participate, the plan shall be submitted to the Superintendent of Public Instruction with a request for funding in the form prescribed by the Superintendent of Public Instruction, who shall review the school action plan and recommend approval or disapproval of the school's request for funding to the State Board of Education.

(j) Not later than July 15 of the year next following the year in which a school is selected for participation, the State Board of Education shall review and approve or disapprove the school's request for funding, based on the recommendation of the Superintendent of Public Instruction. Within thirty days of the State Board of Education's review, the State Superintendent of Public Instruction shall notify the affected school districts of the state of the board's action regarding the request for funding. In conjunction with its approval of a request for funding to implement a school's action plan, the State Board of Education may * * * at the request of the governing board of the school district or the county board of education for a school under its jurisdiction, waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (1) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 64000 if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation, or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46300.

SEC. 4. Section 52054.5 of the Education Code is amended to read:

52054.5. * * * Subject to the appropriation of funds for this purpose in the Budget Act, a school whose application is approved shall receive a grant for implementing the program, in each subsequent fiscal year that it participates in the program, in an amount up to two hundred dollars (\$200) per pupil enrolled in the school, with a minimum allocation of fifty thousand dollars (\$50,000) per school site. * * * As a condition of receiving this funding, a participating school or the school district having jurisdiction over that school shall match the amount of state funding from any new or existing sources of funding. To help meet this matching requirement, a participating school and the governing board of the school district having jurisdiction over that school shall receive maximum flexibility in the expenditure of any new or existing categorical funds not otherwise prohibited by state or federal law and

shall redirect for the purposes of their academic improvement plan new or existing categorical or general purpose funds.

SEC. 5. Section 52055 of the Education Code is amended to read:

52055. The governing board of a school that fails to meet its annual short-term growth target within 12 months following receipt of funding pursuant to Section 52054.5 shall hold a public hearing at a regularly scheduled meeting to ensure that members of the school community are aware of the lack of progress. The governing board of the school district shall, upon consultation with the external evaluator and the schoolsite and community team selected pursuant to Section 52054, choose from a range of interventions for the school, including reassignment of school personnel to the extent authorized by law, negotiation of site-specific amendments to collective bargaining agreements, or other changes deemed appropriate, in order to continue implementing the action plan approved pursuant to Section 52054, and to make progress toward meeting the school's growth target.

SEC. 6. Section 52055.5 of the Education Code is amended to read:

52055.5. (a) * * * Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that * * * has met or exceeded its growth target each year shall receive a monetary or nonmonetary award under the Governor's Performance Award Program, as set forth in Section 52057. Funds received * * * pursuant to that section may be used at the school's discretion.

(b) * * * Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that has not met its * * * growth targets each year, but demonstrates significant growth, as determined by the State Board of Education, shall continue to participate in the program for an additional year and to receive funding in the amount specified in Section 52054.5. Thirty-six months after receipt of funds pursuant to Section 52054.5, a school is no longer eligible to receive funding pursuant to that section.

(c) A school that does not meet its * * * growth targets within * * * the periods described in either subdivision (a) or (b), as applicable, and has failed to show significant growth, as determined by the State Board of Education, shall be deemed a low-performing school. Notwithstanding any other provision of law, the Superintendent of Public Instruction shall assume all the legal rights, duties, and powers of the governing board with respect to that school. The Superintendent of Public Instruction, in consultation with the State Board of Education and the governing board of the school district, shall reassign the principal of that school subject to the findings in subdivision (e). In addition to reassigning the principal, the Superintendent of Public Instruction, in consultation with the State Board of Education, shall, notwithstanding any other provision of law, do at least one of the following:

(1) Revise attendance options for pupils to allow them to attend any public school in which space is available. If additional attendance options are made available, nothing in this option shall be construed to require either the sending or receiving school district to incur additional transportation costs.

(2) Allow parents to apply directly to the State Board of Education for the establishment of a charter school and allow parents to establish the charter school at the existing schoolsite.

(3) Under the supervision of the Superintendent of Public Instruction, assign the management of the school to a college, university, county office of education, or other appropriate educational institution. However, the Superintendent of Public Instruction may not assume the management of the school.

(4) Reassign other certificated employees of the school.

(5) Renegotiate a new collective bargaining agreement at the expiration of the existing collective bargaining agreement.

(6) Reorganize the school.

(7) Close the school.

(d) In addition to the actions listed in subdivision (c), the Superintendent of Public Instruction, in consultation with the State Board of Education, may take any other action considered necessary or desirable against the school district or the school district governing board, including appointment of a new superintendent or suspension of the authority of the governing board with respect to the school or schools identified pursuant to subdivision (c).

(e) Before the Superintendent of Public Instruction may take any action against a principal pursuant to subdivision (c), the Superintendent of Public Instruction or a designee of the superintendent shall hold a public hearing on the matter in the school district and make both of the following findings:

(1) A finding that the principal had the authority to take specific enumerated actions that would have helped the school meet its performance goals.

(2) A finding that the principal failed to take specific enumerated actions pursuant to paragraph (1).

(f) An action taken pursuant to subdivision (c), (d), or (e) shall not increase local costs or require reimbursement by the Commission on State Mandates.

(g) An action taken pursuant to subdivision (c), (d), or (e) shall be accompanied by specific findings by the Superintendent of Public Instruction and the State Board of Education that the action is directly related to the identified causes for continued failure by a school to meet its performance goals.

SEC. 7. Section 52056 of the Education Code is amended to read:

52056. (a) The High Achieving/Improving Schools Program is hereby established. Commencing in June 2000, and every June thereafter, the Superintendent of Public Instruction, with approval of the State Board of Education, shall rank all public schools based on the Academic Performance Index established pursuant to Section 52052. The schools shall be ranked by the value of the API in decile categories by grade level of instruction provided and shall include three categories: elementary, middle, and high school. The schools shall also be ranked by the value of the API when compared to schools with similar characteristics. Commencing in June 2001, the * * * Superintendent of Public Instruction shall also report the target annual growth rates of schools, and the actual growth rates attained by the schools. * * * For purposes of this section, similar characteristics include, but are not limited to, the following characteristics, insofar as data is available from the State Department of Education's data: pupil mobility, pupil ethnicity, pupil socioeconomic status, percentage of teachers who are fully credentialed, percentage of teachers who hold emergency credentials, percentage of pupils who are English language learners, average class size per grade level, and whether the schools operate multitrack year-round educational programs. The Superintendent of Public Instruction shall annually publish these rankings on the Internet.

(b) * * * All schools shall report their ranking, including a description of the components of the API, in their annual school accountability report card pursuant to Sections 38126 and 35256.

(c) * * * Following the annual publication of the API and school rankings by the Superintendent of Public Instruction, the governing board of each school district shall discuss the results of the annual ranking at * * * the next regularly scheduled meeting.

SEC. 8. Section 52057 of the Education Code is amended to read:

52057. (a) The State Board of Education shall establish a Governor's Performance Award Program to provide monetary and nonmonetary awards to schools that meet or exceed API performance growth targets established pursuant to Section 52052, and demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools. For purposes of this section, an ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school.

(b) All schools, including schools participating in the Immediate Intervention/Underperforming Schools Program are eligible to participate in the Governor's Performance Award Program. The manner and form in which the monetary and nonmonetary awards are given shall be established by the Superintendent of Public Instruction and approved by the State Board of Education. The monetary awards shall be made available on either a per pupil or per school basis, not to exceed one hundred fifty dollars (\$150) per pupil enrolled and subject to funds appropriated in the annual Budget Act. A school that continues to show improvement in successive years is eligible to receive annual bonuses.

(c) In addition to or in substitution of monetary awards, the Superintendent of Public Instruction may establish, upon approval by the State Board of Education, nonmonetary awards that may include, but are not limited to, classification as a distinguished school, listing on a published public school honor roll, and public commendations by the Governor and the Legislature.

(d) A governing board of a school district or a county board of education with one or more schools under its jurisdiction that are eligible to receive an award from the Governor's Performance Award Program may request on behalf of those schools that the State Board of Education waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (1) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 54000. The board may grant the request if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46300. The waiver shall be granted for no more than three consecutive fiscal years. A governing board of a school district or a county board of education may request a renewal for schools under their jurisdiction that still meet the eligibility criteria.

(e) The waiver granted pursuant to subdivision (d) of Section 52057 may also provide the governing board of a school district or a county board of education with maximum flexibility, on the part of eligible schools within the districts, in the expenditure of any new or existing categorical funds not otherwise prohibited under state or federal law to enable the school to continue improvement in pupil performance.

SEC 8.5 Section 52057 of the Education Code is amended to read:

52057. (a) The State Board of Education shall establish a Governor's Performance Award Program to provide monetary and nonmonetary awards to schools that meet or exceed API performance growth targets established pursuant to Section 52052, and demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools. For purposes of this section, an ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at school.

(b) All schools, including schools participating in the Immediate Intervention/Underperforming Schools Program are eligible to participate in the Governor's Performance Award Program. The manner and form in which the monetary and nonmonetary awards are given shall be established by the Superintendent of Public Instruction and approved by the State Board of Education. The monetary awards shall be made available on either a per pupil or per school basis, not to exceed one hundred fifty dollars (\$150) per pupil enrolled and subject to funds appropriated in the annual Budget Act. A school that continues to show improvement in successive years is eligible to receive annual bonuses.

(c) In addition to or in substitution of monetary awards, the Superintendent of Public Instruction may establish, upon approval by the State Board of Education, nonmonetary awards that may include, but are not limited to, classification as a distinguished school, listing on a published public school honor roll, and public commendations by the Governor and the Legislature.

(d) A governing board of a school district or a county board of education with one or more schools under its jurisdiction that are eligible to receive an award from the Governor's Performance Award Program may request on behalf of those schools that the State Board of Education waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (1) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 54000, and the board may grant the request if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46300. The waiver shall be granted for no more than three consecutive fiscal years. A governing board of a school district or a county board of education may request a renewal for schools under their jurisdiction that still meet the eligibility criteria.

(e) * * * The waiver granted pursuant to subdivision (d) of Section 52057 may also provide the governing board of a school district or a county board of education with maximum flexibility, on the part of eligible schools within the districts, in the expenditure of any new or existing categorical funds not otherwise prohibited under state or federal law to enable the school to continue improvement in pupil performance.

SEC. 9. Section 52058 of the Education Code is amended to read:

52058. (a) * * * Each school district with schools participating in the Immediate Intervention/Underperforming Schools Program established pursuant to Section 52053 shall submit to the Superintendent of Public Instruction an evaluation of the impact, costs, and benefits of the program as it relates to the school district and the schools under its jurisdiction that are participating in the program and whether or not the schools met their growth targets, with an analysis of the reasons why the schools have or have not met those growth targets. Costs to develop and submit the evaluation shall be funded with resources provided pursuant to Article 8 (commencing with Section 52053). The evaluation shall be submitted by November 30, subsequent to the first full year of action plan implementation by participating schools, and on November 30, of each year thereafter.

(b) By January 15, 2000, the Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, the guidelines for a request for proposal for an independent evaluator as described in this subdivision. By September 1, 2000, the Superintendent of Public Instruction shall contract with an independent evaluator to prepare a comprehensive evaluation of the implementation, impact, costs, and benefits of the Immediate Intervention/Underperforming Schools Program and the High Achieving/Improving Schools Program. The preliminary results of the evaluation shall be disseminated to the Legislature, the Governor, and interested parties no later than March 31, 2002, with a final report no later than June 30, 2002. The final report shall include recommendations for necessary or desirable modifications to the programs established pursuant to this chapter.

(c) The evaluations shall consider all of the following:

(1) Pupil performance data, including, but not limited to, results of assessments used to determine whether or not schools have made significant progress towards meeting their growth targets.

(2) Program implementation data, including, but not limited to, a review of startup activities, community support, parental participation, staff development activities associated with implementation of the program, percentage of fully credentialed teachers, percentage of teachers who hold emergency credentials, percentage of teachers assigned outside their subject area of competence, the accreditation status of the school if appropriate, average class size per grade level, and the number of pupils in a multitrack year-round educational program.

(3)(A) Pupil performance data, and its impact on the API, for each of the following subgroups:

(i) English language learners.

(ii) Pupils with exceptional needs.

(iii) Pupils that qualify for free or reduced price meals and are enrolled in schools that receive funds under Chapter 1 of the federal Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (P.L. 100-290).

(B) Information concerning individual pupils may not be disclosed in the process of preparing pupil performance data pursuant to this subdivision.

(d) The Superintendent of Public Instruction shall recommend and the State Board of Education shall approve a schedule for biennial evaluations of the programs established pursuant to this chapter, subsequent to the evaluation required by this section. The biennial evaluations shall be submitted, with appropriate recommendations, by June 30 of every odd-numbered year, commencing with the year 2003.

SEC. 10. Section 2 of Chapter 3 of the Statutes of 1999, of the First Extraordinary Session, is amended to read:

Sec. 2. (a) The sum of one hundred ninety-three million two hundred thousand dollars (\$193,200,000) is hereby appropriated according to the following schedule:

(1) Sixty-three million seven hundred four thousand dollars (\$63,704,000) from the General Fund to the Superintendent of Public Instruction for allocation to school districts for purposes of providing funding for planning and grants for implementing the Immediate Intervention/Underperforming Schools Program as set forth in Article 3 (commencing with Section 52053) of Chapter 6.1 of Part 28 of the Education Code.

(2) Thirty-two million four hundred forty-six thousand dollars (\$32,446,000) from the Federal Trust Fund to the Superintendent of Public Instruction for allocation to school districts for purposes of providing funding for planning and grants for implementing the Immediate Intervention/Underperforming Schools Program as set forth in Article 3 (commencing with Section 52053) of Chapter 6.1 of Part 28 of the Education Code.

(3) Ninety-six million one hundred fifty thousand dollars (\$96,150,000) from the General Fund to the Superintendent of Public Instruction for allocation to school districts that meet or exceed performance growth targets established by the board pursuant to the High Achieving/Improving Schools Program as set forth in Article 4 (commencing with Section 52056) of Chapter 6.1 of Part 28 of the Education Code. Funds appropriated pursuant to this paragraph that have not been allocated by June 30, 2000, shall be available for allocation and expenditure for purposes of this paragraph in the 2000-01 fiscal year.

(4) Nine hundred thousand dollars (\$900,000) from the General Fund to the Superintendent of Public Instruction to provide support services related to programs established by the Public Schools Accountability Act of 1999 pursuant to Chapter 6.1 (commencing with Section 52050) of Part 28 of the Education Code.

(b) For the purposes of making the computations required by Section 6 of Article XVI of the California Constitution, the appropriation made by paragraphs (1) and (3) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1999-2000 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1999-2000 fiscal year.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 12. Section 8.5 of this bill incorporates amendments to Section 52057 of the Education Code proposed by both this bill and SB 961. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 52057 of the Education Code, and (3) this bill is enacted after SB 961, in which case Section 52057 of the Education Code, as amended by Section 6 of this bill, shall remain operative only until January 1, 2001, at which time Section 8.5 of this bill shall become operative.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the provisions of the Public Schools Accountability Act of 1999, and to provide clarification, it is necessary that this bill take effect immediately.

**SCHOOLS AND SCHOOL DISTRICTS—PUBLIC SCHOOL PERFORMANCE
ACCOUNTABILITY PROGRAM—ACTION PLAN**

CHAPTER 190

A.B. No. 2162

AN ACT to amend Section 52054 of the Education Code, relating to school accountability.

[Filed with Secretary of State July 24, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2162, Mazzoni. School accountability; school action plan.

• Additions or changes indicated by underlining; deletions by ~~asterisks~~ •

1837

Existing law establishes the Public School Performance Accountability Program that consists of an Academic Performance Index (API), an Immediate Intervention/Underperforming Schools Program, and a Governor's High Achieving/Improving Schools Program. A school selected to participate in the Immediate Intervention/Underperforming Schools Program is required to comply with certain requirements by prescribed dates within the year in which the school is selected to participate, including, but not limited to, completing an action plan to improve the academic achievement of the pupils enrolled at the school.

This bill would change the dates by which the requirements are to be met. The bill would provide that the school action plan may propose to increase the number of instructional days and may propose to increase up to a full 12 months the amount of time for which certificated employees are contracted if prescribed conditions are met.

The people of the State of California do enact as follows:

SECTION 1. Section 52054 of the Education Code is amended to read:

52054. (a) By * * * November 15 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program shall contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team, consisting of a majority of nonschoolsite personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(b) By December 15 of the year that the school is selected to participate, the selected external evaluator shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below-average performance.

(2) Hold a public meeting at the school, in cooperation with the principal, to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit, at the public meeting, the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section.

(4) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(c) By January 15 of the year that the school is selected to participate, the selected external evaluator shall complete a review of the school that identifies weaknesses that contribute to the school's below average performance and makes recommendations for improvement.

(d) By April 15 of the year that follows the year the school is selected to participate, the external evaluator and the schoolsite and community team selected pursuant to subdivision (a) shall develop an action plan to improve the academic achievement of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a scope that requires reimbursement by the Commission on State Mandates for its implementation.

- (e) At a minimum, the action plan shall do all of the following:
- (1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 83126.
 - (2) Identify the current barriers at the school and district toward improvements in pupil achievement.
 - (3) Identify schoolwide and districtwide strategies to remove these barriers.
 - (4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.
 - (5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information regarding the achievement of English learners, economically disadvantaged pupils, and other groups of pupils, by race, ethnicity, and gender.
 - (6) Set short-term academic objectives pursuant to Section 52052 for a two-year period that will allow the school to make adequate progress toward the growth targets established for each participating school for pupil achievement as measured by all of the following to the extent that the data is available for the school:
 - (A) The achievement test administered pursuant to Section 60640.
 - (B) Graduation rates for grades 7 to 12, inclusive.
 - (C) Attendance rates for pupils and school personnel for elementary, middle, and secondary schools.
 - (D) Any other indicators approved by the State Board of Education.
 - (f) The school action plan shall focus on improving pupil academic performance, improving the involvement of parents and guardians, improving the effective and efficient allocation of resources and management of the school, and identifying and developing solutions that take into account the underlying causes for low performance by pupils.
 - (g) The school action plan may propose to increase the number of instructional days offered at the school site and also may propose to increase up to a full 12 months the amount of time for which certificated employees are contracted, if all of the following conditions are met:
 - (1) Provisions of the plan proposed pursuant to this subdivision shall not violate current applicable collective bargaining agreements.
 - (2) An agreement is reached with the exclusive representative concerning staffing specifically to accommodate the extended school year or 12-month contract.
 - (h) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.
 - (i) Upon its completion, the action plan shall be submitted to the governing board of the school districts for its approval. After the plan is approved, but no later than May 15 of the year that follows the year the school is selected to participate, the plan shall be submitted to the Superintendent of Public Instruction with a request for funding in the form prescribed by the Superintendent of Public Instruction.
 - (j) Not later than June 15 of the year next following the year in which a school is selected for participation, the State Board of Education shall review and approve or disapprove the school's request for funding, based on the recommendation of the Superintendent of Public Instruction. In conjunction with its approval of a request for funding to implement a school's action plan, the State Board of Education may waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 64000 if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46300.

**SCHOOLS AND SCHOOL DISTRICTS—ENGLISH LANGUAGE AND
INTENSIVE LITERACY PROGRAM—KINDERGARTEN TO
GRADE TWELVE**

CHAPTER 71

S.B. No. 1667

AN ACT to amend Sections 818, 2550, 8278, 10551, 10554, 10555, 82228, 82228.1, 33050, 41203.1, 47652, 48664, 49550.3, 54743, 54744, 54745, 54746, 54747, 54748, 54749, 54749.5, 76300, 87886, and 92820 of, to add Sections 2568, 42238.23, and 52052.3 to, to add and repeal Chapter 5 (commencing with Section 420) of Part 1 of, and to add Chapter 4 (commencing with Section 14550) to Part 9 of, the Education Code, to amend Section 6516.6 of, to add Chapter 3.10 (commencing with Section 15820.80) to Part 10b of Division 3 of Title 2 of, and to add and repeal Section 15820.84 of, the

Additions or changes indicated by underline; deletions by ~~asterisk~~ * * *

1091

SEC. 17. Section 49550.3 of the Education Code is amended to read:

49550.3. (a) * * * Because a hungry child cannot learn, the Legislature intends, as a state nutrition and health policy, that the School Breakfast Program be made available in all schools where it is needed to provide adequate nutrition for children in attendance.

(b) The State Department of Education shall, in cooperation with school districts and county superintendents of schools, provide information and limited financial assistance to encourage program startup and expansion into all qualified schools, as follows:

(1) Provide information to school districts and county superintendents of schools concerning the benefits and availability of the School Breakfast Program.

(2) Each year, provide additional information and financial assistance to schools in the state, selected on the following criteria:

(A) Twenty percent or more of the school enrollment consists of children who have applied and qualify for free and reduced-price meals.

(B) The school has not been awarded federal startup funds to initiate a school breakfast program or a summer food service program.

(C) The department shall award grants of up to fifteen thousand dollars (\$15,000) per schoolsite on a competitive basis to school districts, county superintendents of schools, or entities approved by the State Department of Education, * * * limited to an amount subject to budget appropriations each fiscal year * * *, for nonrecurring expenses incurred in initiating or expanding a school breakfast program under this section or a summer food service program pursuant to Article 10.7 (commencing with Section 49547).

(d) Grants awarded under this section shall be used for nonrecurring costs of initiating or expanding a school breakfast program * * * or a summer food service program, including the acquisition of equipment, training of staff in new capacities, outreach efforts to publicize new or expanded school breakfast programs or summer food service programs, * * * minor alterations to accommodate new equipment, computer point-of-service systems for food service, and the purchase of vehicles for transporting food to schools. Funds may not be used for salaries and benefits of staff, food, computers, except computer point-of-service systems, or capital outlay * * *

(e) In making grant awards under this section in any fiscal year, the department shall give a preference to school districts and county superintendents of schools that do all of the following:

(1) Submit to the department a plan to start or expand school breakfast programs or summer food service programs in the district or the county, including a description of the following:

(A) The manner in which the district or county will provide technical assistance and funding to schoolsites to expand those programs.

(B) Detailed information on the nonrecurring expenses needed to initiate a program.

(C) Public or private resources that have been assembled to carry out expansion of these programs during that year.

(2) Agree to operate the breakfast program or the summer food service program for a period of not less than three years.

(3) Assure that the expenditure of funds from state and local resources for the maintenance of the breakfast program or the summer food service program shall not be diminished as a result of grant awards received under this section.

SEC. 18. Section 52052.3 is added to the Education Code, to read:

52052.3. Test scores of pupils who are in the first year of enrollment in a high school, but who, in the prior year, were enrolled in an elementary school district that normally matriculates to the high school district, shall be included in the Academic Performance Index, as provided in Section 52052.

SEC. 19. Section 54743 of the Education Code is amended to read:

54743. For the purposes of this chapter, the following definitions shall apply:

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(4) One million five hundred thousand dollars (\$1,500,000) for allocation on a one-time basis to Copper Mountain Community College for transition and technology costs.

(5) Nine hundred thousand dollars (\$900,000) for allocation on a one-time basis to the San Francisco City College, Mission Center, for the working drawings phase of the Mission Center capital outlay project which has previously been approved by the state.

(6) Fifty thousand dollars (\$50,000) for allocation on a one-time basis to the San Diego Community College district for the Faces of San Diego Project.

(7) Four million dollars (\$4,000,000) for allocation on a one-time basis to the Los Angeles City College for site acquisition and development of the Atwater Village Satellite Center.

(b) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated to community colleges," as defined in subdivision (c) of Section 41202 of the Education Code for the 1999-2000 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202 of the Education Code, for the 1999-2000 fiscal year.

SEC. 44. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the Budget Act of 2000 with respect to the public schools and higher education, it is necessary that this act take effect immediately.

**SCHOOLS AND SCHOOL DISTRICTS—TEACHERS AND SCHOOL
EMPLOYEES—PERFORMANCE BONUSES**

CHAPTER 52

A.B. No. 1114

AN ACT to add Article 10.6 (commencing with Section 44650) of Chapter 3 of Part 25 of the Education Code, relating to certificated school employees, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State July 1, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1114, Steinberg. Certificated Staff Performance Incentive Act.

Existing law, the National Board for Professional Teaching Standards Certification Incentive Program, awards grants to school districts for the purpose of providing one-time \$10,000 merit awards to teachers who are employed by school districts or charter schools, are assigned to teach in California public schools, and have attained certification from the National Board for Professional Teaching Standards. Existing law establishes the Public School Performance Accountability Program that consists in part of a state Academic Performance Index, known as the API.

This bill would establish the Certificated Staff Performance Incentive Act for the purpose of awarding one-time performance bonuses to certificated teachers and other certificated school employees in eligible underachieving schools where the academic performance of pupils significantly improves beyond a minimum percentage growth target. The bill would require the State Board of Education to establish criteria for determining the eligibility of schools to receive the awards and to determine the amount to be allocated to a school based on the number of teachers and other certificated staff eligible to receive an award, not to exceed 25,000 per full-time equivalent certificated staff.

The bill would provide the award program would only be implemented if funds are appropriated for these purposes in the annual Budget Act. The bill would require the superintendent of Public Instruction to allocate funds to school districts and charter schools that have certified that they satisfy certain eligibility requirements, and to notify the exclusive representative of the teachers and other certificated staff in each district of the availability of the funds. The bill would require the governing board of the school district, upon receiving an allocation for the purpose of making awards, to negotiate individual teacher and other certificated staff salary award amounts with the exclusive representative of the teachers and other certificated staff. The bill would provide for the amount of awards in the event that an agreement is not reached between the governing board of the school district and the exclusive representative of the teachers and other certificated staff.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Article 10.6 (commencing with Section 44650) is added to Chapter 3 of Part 25 of the Education Code, to read:

Additions or changes indicated by underline; deletions by asterisks * * *

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Article 10.6. Certificated Staff Performance Awards for Improved Student Achievement In Underachieving Schools

44650. (a) The Certificated Staff Performance Incentive Act is hereby established for the purpose of awarding one-time performance awards to teachers and other certificated staff in underachieving schools, where the academic performance of pupils significantly improves beyond the minimum percentage growth target established pursuant to Section 52052.

(b) The State Board of Education shall establish criteria for determining the eligibility of schools to receive the awards and shall determine the amount to be allocated to a school, based on the number of teachers and other certificated staff eligible to receive an award. The maximum award allocated to a school per full-time equivalent certificated staff shall not exceed twenty-five thousand dollars (\$25,000). The total amount of the awards allocated under this article shall not exceed the total amount appropriated for the purposes of this article.

(c) This article shall be implemented subject to the appropriation of funds for the purpose of this article in the annual Budget Act.

44651. (a) Any school district or charter school that maintains classes in kindergarten or any of grades 1 to 12, inclusive, may apply for funding under this article if it meets the conditions of subdivision (b). County boards of education, county superintendents of schools, and state agencies shall not be eligible to participate.

(b) To be eligible for funding under this article, a school shall meet all of the following conditions:

(1) The school's aggregate score for student performance on the state Academic Performance Index established pursuant to Section 52052 was below the 50th percentile relative to other public schools in the state in the prior year.

(2) The school has met the criteria established by the board pursuant to subdivision (b) of Section 44650.

44652. The Superintendent of Public Instruction shall allocate funds to school districts and charter schools that have certified to the superintendent that they satisfy the conditions of subdivision (b) of Section 44651, based on the amount determined pursuant to subdivision (b) of Section 44650. At the time of the allocation the Superintendent of Public Instruction shall notify the exclusive representatives of the teachers and other certificated staff in each district of the availability of these funds.

44653. Upon receiving an allocation from the Superintendent of Public Instruction for the purpose of awarding awards, the governing board of the school district shall negotiate individual teacher and other certificated staff salary award amounts with the exclusive representative of the bargaining unit of the teachers and other certificated staff. In the event that the governing board and the exclusive representative of teachers and other certificated staff do not reach an agreement regarding the amount of the award or if the teachers and other certificated staff are not represented by an exclusive bargaining representative, all teachers and other certificated staff at the school shall receive a salary award amount that is equal to a percentage of their base salary that is determined by dividing the total amount awarded to a school by the sum of the annual base salaries for teachers and other certificated staff of the school.

44654. (a) Funds awarded pursuant to this article shall not become part of a district's revenue limit, and shall be identified as a separate item of expenditure on any financial reports filed by school districts with the state pursuant to any state law or regulation.

(b) Salary award amounts received by teachers and other certificated staff pursuant to this article shall not be considered compensation for the purposes of calculating retirement benefits or contributions, or for any other benefit that an employee is eligible to receive where the benefit or contribution amount is calculated based on compensation.

(c) It is the intent of the Legislature that funds appropriated for the purposes of this article shall be fully expended based on the criteria established in subdivision (b) of Section

44659. However, if unexpended funds are available, they shall continue to be available for allocation for the intended purpose of the appropriation in subsequent years.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the statutory changes to implement the Budget Act of 1999 as soon as possible, it is necessary that the act take effect immediately.

**SCHOOLS AND SCHOOL DISTRICTS—PUBLIC SCHOOL PERFORMANCE
ACCOUNTABILITY PROGRAM—ACADEMIC PERFORMANCE INDEX**

CHAPTER 3

S.B. No. 1

AN ACT to add Chapter 6.1 (commencing with Section 52056) to Part 28 of the Education Code, relating to school performance, and making an appropriation therefor.

[Filed with Secretary of State April 5, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1, Alpert. Education accountability.

Existing law requires each school district, charter school, and county office of education to administer to each of its pupils in grades 2 to 11, inclusive, an achievement test designated by the State Board of Education as part of the Standardized Testing and Reporting program.

This bill would establish the Public School Performance Accountability Program that would consist of an Academic Performance Index, an Immediate Intervention/Underperforming Schools Program, and a Governor's High Achieving/Improving Schools Program.

This bill would require the Superintendent of Public Instruction, with approval of the State Board of Education, to develop the Academic Performance Index (API), consisting of a variety of indicators, to be used to measure performance of schools. The bill would require the Superintendent of Public Instruction to develop, and the State Board of Education to adopt, expected annual percentage growth targets for all schools based on their API baseline score and would prescribe a minimum percentage growth target of 5% annually. Upon

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Additions or changes indicated by underline; deletions by asterisks.***

adoption of state performance standards by the State Board of Education, the Superintendent of Public Instruction would be required to recommend, and the State Board of Education would be required to adopt, a statewide API performance target. The bill would also require the Superintendent of Public Instruction to establish an advisory committee to advise the Superintendent of Public Instruction and the State Board of Education on matters relative to the programs established by the bill.

This bill would require the Superintendent of Public Instruction, with the approval of the State Board of Education, to invite schools that scored below the 50th percentile on the Standardized Testing and Reporting program achievement tests to participate in the Immediate Intervention/Underperforming Schools Program that would be limited to 480 schools with a maximum number of schools in each of 8 grade level categories. This bill would impose a state-mandated local program by providing that if fewer than the number of schools in any grade level category apply, schools that scored below the 50th percentile in those grades may be randomly selected to participate in this program. A school selected to participate would be awarded a planning grant of \$50,000.

This bill would require the Superintendent of Public Instruction to develop, and the State Board of Education to approve, minimum qualifications for external evaluators and, with the approval of the State Board of Education, to develop and disseminate an application process by which to establish a list of external evaluators.

This bill would require the governing board of a school district having jurisdiction over a school selected for participation in the Immediate Intervention/Underperforming Schools Program to contract with an external evaluator and to appoint a broad-based schoolsite and community team. The bill would require the external evaluator to complete a review of the school that identifies weaknesses that contribute to the school's below-average performance and makes recommendations for improvement. The external evaluator and a broad-based schoolsite would be required to develop an action plan with prescribed components to improve the academic achievement of the pupils enrolled at the school. The bill would require the plan to be submitted to the governing board of the school district for its approval and after the plan is approved to be submitted to the Superintendent of Public Instruction with a request for funding. The bill would require the State Board of Education to review and approve or disapprove the school's request for funding, based on the recommendation of the Superintendent of Public Instruction, and would authorize the board to waive all or any part of any provision of the Education Code, or any board adopted regulation, controlling categorical education programs if certain conditions are met.

This bill would require a school whose application is approved to receive funding in each fiscal year that it participates in the program in an amount up to \$200 per pupil enrolled in the school, with a minimum allocation of \$50,000 per schoolsite. The bill would require the participating school or the school district having jurisdiction over that school to match the state funding and would require them to redirect for purposes of their academic improvement plan their new or existing categorical education funding. To the extent this requirement results in the expenditure of categorical education funding for purposes other than those for which it was appropriated, the bill would reappropriate those funds.

This bill would require the governing board of a school that fails to meet its annual short-term growth target within 12 months following receipt of funding to hold a public hearing at a regularly scheduled meeting to ensure that members of the school community are aware of the lack of progress and to choose from a range of interventions for the school to continue implementing the action plan and progressing toward meeting the school's growth targets.

This bill would require a school that meets or exceeds its growth target within 24 months after receipt of funding to receive an award under the Governor's Performance Award program. The bill would require a school that has not met its performance goals, but demonstrates significant growth within this period to continue to participate in the program for an additional year and to receive funding. The bill would deem a school that does not meet its performance goals within 24 months after receipt of funding and has failed to show significant growth a low-performing school.

This bill would require the Superintendent of Public Instruction to assume all the legal rights, duties, and powers of the governing board with respect to a low-performing school. The bill would require the Superintendent of Public Instruction, in consultation with the State

Board of Education and the governing board of the school district, to reassign the principal of that school and to take other enumerated actions.

This bill would require, under the High Achieving/Improving Schools Program, the Superintendent of Public Instruction to rank all public schools based on the API in decile categories by grade level of instruction provided. The bill would require that the rankings indicate the target annual growth rates, the actual growth rates attained by the schools, and how growth rates compare schools that have similar characteristics. The bill would require the Superintendent of Public Instruction to annually publish these rankings on the Internet.

This bill would require the governing board of each school district to discuss the results of the annual ranking at a regularly scheduled meeting, thereby imposing a state-mandated local program.

This bill would authorize a school that is eligible to participate in the Governor's Performance Award Program to request the State Board of Education to waive all, or any part of, any provision of the Education Code, or any board adopted regulation, controlling categorical education programs and would authorize the board to grant the request if certain conditions are met. The bill would also require that a school that demonstrates significant growth be granted maximum flexibility in its expenditure of new and existing categorical funds to enable the school to continue improvement in pupil performance.

This bill would provide that a school that fails to meet the established annual state growth targets may be subject to the Immediate Intervention/Underperforming Schools Program.

This bill would require the State Board of Education to establish a Governor's Performance Award program to provide monetary and nonmonetary awards to schools that meet or exceed API performance growth targets and would make all schools, including schools participating in the Immediate Intervention/Underperforming Schools Program eligible to participate in the Governor's Performance Award program.

This bill would appropriate \$198,200,000 to the Superintendent of Public Instruction for the purposes of its provisions, of which \$160,754,000 would be appropriated from the General Fund and \$32,446,000 would be appropriated from the Federal Trust Fund. The funds appropriated from the General Fund by this bill for allocation to school districts would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 6.1 (commencing with Section 52050) is added to Part 28 of the Education Code, to read:

CHAPTER 6.1. PUBLIC SCHOOLS ACCOUNTABILITY ACT OF 1999

Article 1. Legislative Findings and Intent

52050. This chapter shall be known and may be cited as the Public Schools Accountability Act of 1999.

52050.5. The Legislature finds and declares all of the following:

(a) The purpose of the California public school system is to provide for the academic development of each pupil and prepare each pupil, to the extent of his or her ability, to

become a lifelong learner, equipped to live and succeed within the economic and societal complexities of the 21st century.

(b) It is in the interest of the people and the future of this state to ensure that each child in California receives a high quality education consistent with all statewide content and performance standards, as adopted by the State Board of Education, and with a meaningful assessment system and reporting program requirements.

(c) Recent assessments indicate that many pupils in California are not now, generally, progressing at a satisfactory rate to achieve a high quality education.

(d) To remedy this, the state is in need of an immediate and comprehensive accountability system to hold each of the state's public schools accountable for the academic progress and achievement of its pupils within the resources available to schools.

(e) Any promising and effective accountability system must be based upon a constructive and collaborative process that seeks to include stakeholders in the accountability process.

(f) Any promising and effective accountability system requires the active involvement of parents and guardians, pupils, educators, community leaders, school boards, and schoolsite teams.

(g) The statewide school accountability system must encourage the active participation of parents and guardians, pupils, educators, and the local community in improving pupil achievement.

(h) The statewide accountability system must be easily accessible and understandable to parents and others.

(i) The statewide accountability system must include rewards that recognize high achieving schools as well as interventions and, ultimately, sanctions for schools that are continuously low performing.

(j) It is also the intent of the Legislature that the comprehensive and effective school accountability system primarily focus on increasing academic achievement.

(k) To achieve better pupil performance, it is the intent of the Legislature that any school accountability system do all of the following:

(1) Encourage teacher preparation that allows teachers to develop the ability to inspire pupils to become lifelong learners.

(2) Encourage teacher preparation and consistent ongoing professional development that serves to develop competency in content and pedagogy and that allows teachers to effectively involve themselves in promoting school accountability.

(3) Encourage the involvement of the community and its stakeholders in the accountability system.

(4) Encourage local community involvement in providing support for education and identifying causes of pupil failure and designing programs for remediation.

(5) Approach accountability with an attitude of collaboration, encouragement, and correction.

(6) Utilize the state infrastructure to support schools, school districts, and county offices of education in their efforts to improve pupil achievement and progress.

(7) Encourage each local community to support and sustain high-quality educational programs and to build the capacity of educators and schools to succeed in educating every pupil.

(8) Encourage active involvement of parents and guardians in the development and implementation of school accountability systems.

Article 2. Public School Performance Accountability Program

52051. The Public School Performance Accountability Program is hereby established and shall consist of the following three component parts:

(a) The state Academic Performance Index, to be known as the API:

(b) The Immediate Intervention/Underperforming Schools Program.

(c) The Governor's High Achieving/Improving Schools Program.

52051.5. For purposes of this chapter, all references to schools shall include charter schools.

52052. (a) By July 1, 1999, the Superintendent of Public Instruction, with approval of the State Board of Education, shall develop an Academic Performance Index, to be used to measure performance of schools, especially the academic performance of pupils, and demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools. A numerically significant ethnic or socioeconomically disadvantaged subgroup is a subgroup that constitutes at least 15 percent of a school's total pupil population and consists of at least 30 pupils. The index shall consist of a variety of indicators currently reported to the State Department of Education including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools. The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils enrolled in a school district for one year or more may be included in the test results reported in the API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index. Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data is currently reported to the state and the accuracy of the data. If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test development pursuant to Section 60604.

(2) The nationally normed test as augmented pursuant to paragraph (1) of subdivision (f) of Section 60644.

(3) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, expected annual percentage growth targets for all schools based on their API baseline score as measured in July 1999. Schools are expected to meet these growth targets through effective allocation of available resources. The minimum percentage growth target shall be 5 percent annually. However, the State Board of Education may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement.

(d) Upon adoption of state performance standards by the State Board of Education, the Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When fully developed, schools may either meet the state target or meet their growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057.

(e) Beginning in June 2000, the API shall be used for both of the following:

(1) Measure the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053.

(2) Rank all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f) Only comprehensive high schools, middle schools, and elementary schools that have a population of 100 or more pupils may be included in the API ranking.

(g) By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 pupils, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

52052.5. The Superintendent of Public Instruction shall establish a broadly representative and diverse advisory committee to advise the Superintendent of Public Instruction and the State Board of Education on all appropriate matters relative to the creation of the Academic Performance Index and the implementation of the Immediate Intervention/Underperforming Schools Program and the High Achieving/Improving Schools Program. Members of the advisory committee shall serve without compensation for terms not to exceed two years. The State Department of Education shall provide staff to the advisory panel.

Article 3. Immediate Intervention/Underperforming Schools Program

52053. (a) The Immediate Intervention/Underperforming Schools Program is hereby established. By August 15, 1999, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall invite schools that scored below the 50th percentile on the achievement tests administered pursuant to Section 60640 both in the spring of 1998 and in the spring of 1999 to participate in the Immediate Intervention/Underperforming Schools Program. A school invited to participate may take any action not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates to improve pupil performance.

(b) The total number of schools participating in the program shall be 430. Unless subdivision (d) applies, schools that apply will be selected based on the order in which they apply within ranks of deciles, not to exceed 86 per decile, within the following grade level categories:

- (1) No more than 301 elementary schools.
- (2) No more than 78 middle schools.
- (3) No more than 52 high schools.

(c) The 86 schools selected within each decile range pursuant to subdivision (b) shall proportionately represent elementary, middle, and high schools and shall provide statewide proportionate geographic representation of urban and rural schools.

(d) If fewer than the number of schools in any grade level category apply, schools that scored below the 50th percentile in those grade level categories that did not apply for the program shall randomly be selected by the Superintendent of Public Instruction, with the approval of the State Board of Education, to participate based on their proportional representation in the state until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(e) If more than the requisite number of schools apply for any grade level category, the Superintendent of Public Instruction shall select an array of schools that reflect a broad range of academic performance of schools that scored below the 50th percentile, until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(f) A school selected to participate on or before September 1, 1999, shall be awarded a planning grant from funds appropriated pursuant to paragraph (1) of subdivision (a) of Section 2 of the act adding this section in the amount of fifty thousand dollars (\$50,000). A school selected to receive federal funds pursuant to paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall be awarded an implementation grant in an amount of at least fifty thousand dollars (\$50,000) pursuant to Public Law 105-78.

(g) Schools receiving funding under paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall comply with Public Law 105-78.

(b) Schools selected for participation in the program shall be notified by the Superintendent of Public Instruction no later than September 1 of each year.

52053.5. (a) The Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, the minimum qualifications for external evaluators that shall include, but may not be limited to, recent successful professional, managerial or governing board experience in improving school achievement, and the ability to assist the school to systematically align curriculum, instruction, and assessment. The external evaluators shall also have demonstrated experience in working with diverse populations. With the approval of the State Board of Education, the Superintendent of Public Instruction shall develop and disseminate an application process by which to establish a list of external evaluators that meet the minimum qualifications. The list of approved external evaluators may include private sector experts, institutions of higher education, county offices of education, and educational consortia.

(b) The Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, the standards and criteria to be applied by external evaluators in carrying out their duties. The standards and criteria shall include, but are not limited to, the following areas:

- (1) Governing board policies.
- (2) Curriculum management.
- (3) Fiscal management.
- (4) Parental and community involvement.
- (5) Personnel management.
- (6) Facilities management.

52054. (a) By October 1 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program shall contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team, consisting of a majority of nonschoolsite personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(b) By November 15 of the year that the school is selected to participate, the selected external evaluator shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below-average performance.

(2) Hold a public meeting at the school, in cooperation with the principal, to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit, at the public meeting, the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section.

(4) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(c) By December 15 of the year that the school is selected to participate, the selected external evaluator shall complete a review of the school that identifies weaknesses that

contribute to the school's below average performance and makes recommendations for improvement.

(d) By March 15 of the year that follows the year the school is selected to participate, the external evaluator and the schoolsite and community team selected pursuant to subdivision (a) shall develop an action plan to improve the academic achievement of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a scope that requires reimbursement by the Commission on State Mandates for its implementation.

(e) At a minimum, the action plan shall do all of the following:

(1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 33126.

(2) Identify the current barriers at the school and district toward improvements in pupil achievement.

(3) Identify schoolwide and districtwide strategies to remove these barriers.

(4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.

(5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information regarding the achievement of English learners, economically disadvantaged pupils, and other groups of pupils, by race, ethnicity, and gender.

(6) Set short-term academic objectives pursuant to Section 52052 for a two-year period that will allow the school to make adequate progress toward the growth targets established for each participating school for pupil achievement as measured by all of the following to the extent that the data is available for the school:

(A) The achievement test administered pursuant to Section 60640.

(B) Graduation rates for grades 7 to 12, inclusive.

(C) Attendance rates for pupils and school personnel for elementary, middle, and secondary schools.

(D) Any other indicators approved by the State Board of Education.

(f) The school action plan shall focus on improving pupil academic performance, improving the involvement of parents and guardians, improving the effective and efficient allocation of resources and management of the school, and identifying and developing solutions that take into account the underlying causes for low performance by pupils.

(g) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(h) Upon its completion, the action plan shall be submitted to the governing board of the school districts for its approval. After the plan is approved, but no later than April 15 of the year that follows the year the school is selected to participate, the plan shall be submitted to the Superintendent of Public Instruction with a request for funding in the form prescribed by the Superintendent of Public Instruction.

(i) Not later than May 15 of the year next following the year in which a school is selected for participation, the State Board of Education shall review and approve or disapprove the school's request for funding, based on the recommendation of the Superintendent of Public Instruction. In conjunction with its approval of a request for funding to implement a school's action plan, the State Board of Education may waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 64000 if the waiver does not result in a decrease in the instructional time

otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46300.

52054.5. A school whose application is approved on or before June 15 of the year following the year in which a school is selected for funding shall receive a grant for implementing the program, in each fiscal year that it participates in the program, in an amount up to two hundred dollars (\$200) per pupil enrolled in the school, with a minimum allocation of fifty thousand dollars (\$50,000) per schoolsite. A school that applies after June 15 may receive a grant for implementing the program if funds are appropriated for this purpose in the Budget Act. As a condition of receiving this funding, a participating school or the school district having jurisdiction over that school shall match the amount of state funding from any new or existing sources of funding. To help meet this matching requirement, a participating school and the governing board of the school district having jurisdiction over that school shall receive maximum flexibility in the expenditure of any new or existing categorical funds not otherwise prohibited by state or federal law and shall redirect for the purposes of their academic improvement plan new or existing categorical or general purpose funds.

52055. The governing board of a school that fails to meet its annual short-term growth target within 12 months following receipt of funding pursuant to Section 52054.5 shall hold a public hearing at a regularly scheduled meeting to ensure that members of the school community are aware of the lack of progress. The governing board of the school district shall, upon consultation with the external evaluator and the schoolsite and community team selected pursuant to Section 52054, choose from a range of interventions for the school, including reassignment of school personnel to the extent authorized by law, negotiation of site-specific amendments to collective bargaining agreements, or other changes deemed appropriate in order to continue implementing the action plan approved pursuant to Section 51054, and to make progress toward meeting the school's growth targets.

52055.5. (a) Following 24 months after receipt of funding pursuant to Section 52054.5, a school that meets or exceeds its growth target each year shall receive a monetary or nonmonetary award, under the Governor's Performance Award Program, as set forth in Section 52057. Funds received from this program shall be used at the school's discretion.

(b) Following 24 months after receipt of funding pursuant to Section 52054.5, a school that has not met its performance goals, but demonstrates significant growth, as determined by the State Board of Education, shall continue to participate in the program for an additional year and to receive funding in the amount specified in Section 52054.5.

(c) A school that does not meet its performance goals within 24 months after receipt of funding pursuant to Section 52054.5 and has failed to show significant growth, as determined by the State Board of Education, shall be deemed a low-performing school. Notwithstanding any other provision of law, the Superintendent of Public Instruction shall assume all the legal rights, duties, and powers of the governing board with respect to that school. The Superintendent of Public Instruction, in consultation with the State Board of Education and the governing board of the school district, shall reassign the principal of that school subject to the findings in subdivision (e). In addition to reassigning the principal, the Superintendent of Public Instruction, in consultation with the State Board of Education, shall, notwithstanding any other provision of law, do at least one of the following:

(1) Revise attendance options for pupils to allow them to attend any public school in which space is available. If additional attendance options are made available, nothing in this option shall be construed to require either the sending or receiving school district to incur additional transportation costs.

(2) Allow parents to apply directly to the State Board of Education for the establishment of a charter school and allow parents to establish the charter school at the existing schoolsite.

(3) Under the supervision of the Superintendent of Public Instruction, assign the management of the school to a college, university, county office of education, or other appropriate educational institution. However, the Superintendent of Public Instruction may not assume the management of the school.

(4) Reassign other certificated employees of the school.

(5) Renegotiate a new collective bargaining agreement at the expiration of the existing collective bargaining agreement.

(6) Reorganize the school.

(7) Close the school.

(d) In addition to the actions listed in subdivision (c), the Superintendent of Public Instruction, in consultation with the State Board of Education, may take any other action considered necessary or desirable against the school district or the school district governing board, including appointment of a new superintendent or suspension of the authority of the governing board with respect to the school or schools identified pursuant to subdivision (c).

(e) Before the Superintendent of Public Instruction may take any action against a principal pursuant to subdivision (c), the Superintendent of Public Instruction or a designee of the superintendent shall hold a public hearing on the matter in the school district and make both of the following findings:

(1) A finding that the principal had the authority to take specific enumerated actions that would have helped the school meet its performance goals.

(2) A finding that the principal failed to take specific enumerated actions pursuant to paragraph (1).

(f) An action taken pursuant to subdivision (c), (d), or (e) shall not increase local costs or require reimbursement by the Commission on State Mandates.

(g) An action taken pursuant to subdivision (c), (d), or (e) shall be accompanied by specific findings by the Superintendent of Public Instruction and the State Board of Education that the action is directly related to the identified causes for continued failure by a school to meet its performance goals.

Article 4. High Achieving/Improving Schools Program

52056. (a) The High Achieving/Improving Schools Program is hereby established. Commencing in June 2000, and every June thereafter, the Superintendent of Public Instruction, with approval of the State Board of Education, shall rank all public schools based on the Academic Performance Index established pursuant to Section 52052. The schools shall be ranked in decile categories by grade level of instruction provided and shall include three categories: elementary, middle, and high school. Commencing in June 2001, the rankings shall indicate the target annual growth rates of schools, the actual growth rates attained by the schools, and how growth rates compare schools that have similar characteristics. For purposes of this section, similar characteristics include, but are not limited to, the following characteristics, insofar as data is available from the State Department of Education's data: pupil mobility, pupil ethnicity, pupil socioeconomic status, percentage of teachers who are fully credentialed, percentage of teachers who hold emergency credentials, percentage of pupils who are English language learners, average class size per grade level, and whether the schools operate multitrack year-round educational programs. The Superintendent of Public Instruction shall annually publish these rankings on the Internet.

(b) Commencing in July 2000, and every July thereafter, all schools shall report their ranking, including a description of the components of the ranking, in their annual school accountability report card pursuant to Sections 38126 and 35256.

(c) Commencing in July 2000, and every July thereafter, the governing board of each school district shall discuss the results of the annual ranking at a regularly scheduled meeting.

52056.5. Commencing with the 2000-01 fiscal year, a school that fails to meet annual state growth targets established pursuant to Section 52052 may, as determined by the Superintendent of Public Instruction with the approval of the State Board of Education, be subject to the Immediate Intervention/Underperforming Schools Program pursuant to subdivisions (e) and (f) of Section 52053, and Sections 52053.5, 52054, 52054.5, 52055, and 52055.5.

52057. (a) The State Board of Education shall establish a Governor's Performance Award Program to provide monetary and nonmonetary awards to schools that meet or exceed API performance growth targets established pursuant to Section 52052, and demonstrate compa-

rable improvement in academic achievement by all numerically significant ethnic and socio-economically disadvantaged subgroups within schools.

(b) All schools, including schools participating in the Immediate Intervention/Underperforming Schools Program are eligible to participate in the Governor's Performance Award Program. The manner and form in which the monetary and nonmonetary awards are given shall be established by the Superintendent of Public Instruction and approved by the State Board of Education. The monetary awards shall be made available on either a per pupil or per-school basis, not to exceed one hundred fifty dollars (\$150) per pupil enrolled and subject to funds appropriated in the annual Budget Act. A school that continues to show improvement in successive years is eligible to receive annual bonuses.

(c) In addition to or in substitution of monetary awards, the Superintendent of Public Instruction may establish, upon approval by the State Board of Education, nonmonetary awards that may include, but are not limited to, classification as a distinguished school, listing on a published public school honor roll, and public commendations by the Governor and the Legislature.

(d) A school that is eligible to participate in the Governor's Performance Award Program may request the State Board of Education to waive, all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 64000, and the board may grant the request if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46300.

(e) A school that demonstrates significant growth shall be granted maximum flexibility in its expenditure of any new or existing categorical funds not otherwise prohibited under state or federal law to enable the school to continue improvement in pupil performance.

52058. (a) By January 31, 2002, each school district with schools participating in the Immediate Intervention/Underperforming Schools Program established pursuant to Section 52053 shall submit to the Superintendent of Public Instruction an evaluation of the impact, costs, and benefits of the program as it relates to the school district and the schools under its jurisdiction that are participating in the program and whether or not the schools met their growth targets, with an analysis of the reasons why the schools have or have not met those growth targets. Costs to develop and submit the evaluation shall be funded with resources provided pursuant to Article 3 (commencing with Section 52053).

(b) By January 15, 2000, the Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, the guidelines for a request for proposal for an independent evaluator as described in this subdivision. By September 1, 2000, the Superintendent of Public Instruction shall contract with an independent evaluator to prepare a comprehensive evaluation of the implementation, impact, costs, and benefits of the Immediate Intervention/Underperforming Schools Program and the High Achieving/Improving Schools Program. The preliminary results of the evaluation shall be disseminated to the Legislature, the Governor, and interested parties no later than March 31, 2002, with a final report no later than June 30, 2002. The final report shall include recommendations for necessary or desirable modifications to the programs established pursuant to this chapter.

(c) The evaluations shall consider all of the following:

(1) Pupil performance data, including, but not limited to, results of assessments used to determine whether or not schools have made significant progress towards meeting their growth targets.

(2) Program implementation data, including, but not limited to, a review of startup activities, community support, parental participation, staff development activities associated with implementation of the program, percentage of fully credentialed teachers, percentage of teachers who hold emergency credentials, percentage of teachers assigned outside their subject area of competence, the accreditation status of the school if appropriate, average class size per grade level, and the number of pupils in a multitrack year-round educational program.

(3)(A) Pupil performance data, and its impact on the API, for each of the following subgroups:

- (i) English language learners.
 - (ii) Pupils with exceptional needs.
 - (iii) Pupils that qualify for free or reduced price meals and are enrolled in schools that receive funds under Chapter 1 of the federal Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (P.L. 100-290).
- (B) Information concerning individual pupils may not be disclosed in the process of preparing pupil performance data pursuant to this subdivision.
- (d) The Superintendent of Public Instruction shall recommend and the State Board of Education shall approve a schedule for biennial evaluations of the programs established pursuant to this chapter, subsequent to the evaluation required by this section. The biennial evaluations shall be submitted, with appropriate recommendations, by June 30 of every odd-numbered year, commencing with the year 2003.

SEC. 2. (a) The sum of one hundred ninety-three million two hundred thousand dollars (\$193,200,000) is hereby appropriated according to the following schedule:

(1) Sixty-three million seven hundred four thousand dollars (\$63,704,000) from the General Fund to the Superintendent of Public Instruction for allocation to school districts for purposes of providing funding for planning and grants for implementing the Immediate Intervention/Underperforming Schools Program as set forth in Article 3 (commencing with Section 52053) of Chapter 6.1 of Part 28 of the Education Code.

(2) Thirty-two million four hundred forty-six thousand dollars (\$32,446,000) from the Federal Trust Fund to the Superintendent of Public Instruction for allocation to school districts for purposes of providing funding for planning and grants for implementing the Immediate Intervention/Underperforming Schools Program as set forth in Article 3 (commencing with Section 52053) of Chapter 6.1 of Part 28 of the Education Code.

(3) Ninety-six million one hundred fifty thousand dollars (\$96,150,000) from the General Fund to the Superintendent of Public Instruction for allocation to school districts that meet or exceed performance growth targets established by the board pursuant to the High Achieving/Improving Schools Program as set forth in Article 4 (commencing with Section 52056) of Chapter 6.1 of Part 28 of the Education Code. Funds appropriated pursuant to this paragraph that have not been allocated by June 30, 2000, shall be available for allocation and expenditure for purposes of this paragraph in the 2001-02 fiscal year.

(4) Nine hundred thousand dollars (\$900,000) from the General Fund to the Superintendent of Public Instruction to provide support services related to programs established by the Public Schools Accountability Act of 1999 pursuant to Chapter 6.1 (commencing with Section 52050) of Part 28 of the Education Code.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraphs (1) and (3) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1999-2000 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1999-2000 fiscal year.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

EXHIBIT 4
COPIES OF REGULATIONS CITED

HISTORY

1. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39). For prior history see Register 74, No. 52.
2. Repealer and new section filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1022. Recording Test Scores.

Scores for individual pupils on these tests shall not be used by school districts or teachers for individual diagnosis or placement, or as a basis for any other decisions which would affect the pupil's school experience. Scores from these tests shall not in any manner be included on a pupil's cumulative school record.

HISTORY

1. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

§ 1023. Security of Test Material.

In order to afford protection to the security and reliability of the tests given pursuant to this article, all officers and employees of the district and other persons concerned with the state testing program shall take all reasonable precautions to prevent pupils from learning in advance of the specific content of the tests.

HISTORY

1. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

§ 1023.1. Practice Exercises.

No practice exercises other than those specifically designated or approved by the State Department of Education shall be given to pupils in preparation for the testing program or in the particular test used.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. New section filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1024. Responsibility of the County Superintendent of Schools.

The county superintendent is requested to cooperate with and give assistance to each school district under his jurisdiction which seeks such assistance from him in carrying out duties imposed on it by Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code. In addition for any district which does not have a district superintendent, the county superintendent shall make certain that the tests are administered in accordance with these regulations and with the instructions and testing procedures developed for the tests.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. Amendment filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
3. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Amendment filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1025. Related Information.

Each school district superintendent shall furnish to the State Department of Education such other pupil and school information that is requested by the Department in order to carry out the provisions of Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code and to properly analyze and evaluate the test results as required by Sections 60604.5 and 60660 of the Education Code.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. New section filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment of section and repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

3. Amendment filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1026. Reporting Test Results.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 60607 and 60640, Education Code.

HISTORY

1. New section filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment filed 9-27-76; effective thirtieth day thereafter (Register 76, No. 40).
3. Repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Repealer filed 11-29-84; effective thirtieth day thereafter (Register 84, No. 48).

Article 1.5. Education Improvement Incentive Program

§ 1030. Computation of Change in a School's Performance.

(a) The formula in subsection (b) shall be applied by the State Department of Education to all secondary schools eligible to compete in the Education Improvement Incentive Program and whose performance in the prior fiscal year has decreased from that in the next preceding fiscal year. All schools with a 12th grade enrollment of 50 students or fewer and all continuation education schools are excluded from the computation.

(b) The formula:

(1) Subtract the school's prior year composite score on the California Assessment Program (CAP) from the current year score to compute a change score.

(2) Regress the number of students tested in CAP and the square of the number of students tested onto the change score using a standard multiple regression procedure.

(3) Using the results of the multiple regression, compute a predicted change score.

(4) Subtract the actual change score obtained by the school from the predicted change score to obtain a residual.

(5) Studentize the residual to have a mean of zero and a standard deviation of 1.

(6) Identify those schools which have a studentized residual equal to or less than minus 1.5. A studentized residual is the ratio of the residual to its standard error after the model has been fit and predicted change scores and residuals calculated. The predicted change scores are calculated from the estimated regression equation. The residuals are calculated as actual minus predicted.

(7) For those schools identified in paragraph (6) of this subsection, the incentive award for the current year shall be based on the improvement in performance between the current year and the 1983-84 fiscal year or the fiscal year in which the school first participated in the incentive program.

(c) Any school whose incentive award is adversely affected by a calculation pursuant to subdivision (b) may appeal to the Superintendent of Public Instruction.

NOTE: Authority cited: Sections 33031 and 54653.6, Education Code. Reference: Section 54653.6, Education Code.

HISTORY

1. New section filed 5-1-87; operative 5-31-87 (Register 87, No. 20).

Article 1.7. Award Programs Linked to the Academic Performance Index (API)

§ 1031. Intent of the Regulations.

(a) The Academic Performance Index (API) measures the performance of California public schools, especially the academic performance of pupils, and demonstrates comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools pursuant to

Education Code section 52052 and the Framework for The Academic Performance Index, July 1999 and The 1999 Base Year Academic Performance Index, December 15, 1999, which are incorporated herein.

(b) The purpose of Article 1.7 is to implement the programs established by two statutes relating to the API:

(1) The Governor's Performance Award Program of the Public Schools Accountability Act of 1999 (Education Code sections 52050 et seq.).

(2) The Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New articles 1.7 (sections 1031-1038) and section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (b), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

3. Amendment of subsection (b), repealer of subsection (b)(3) and amendment of NOTE filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1032. General Eligibility Criteria for Award Programs Related to API Growth.

(a) For purposes of this Article, "schools" shall be defined as all schools, including charter schools, that receive a ranking on the API including schools participating in the Immediate Intervention/Underperforming Schools Program. These schools are eligible to participate in the award programs identified in Section 1031.

(b) For the purposes of these award programs, the API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system, once such a system is adopted by the State Board of Education as required by Education Code section 52052(g). The Superintendent of Public Instruction will develop an alternative accountability system for schools with fewer than 100 valid test scores, schools that fall under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

Alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API. If the school elects to be part of the API accountability system, the school shall remain in the system for at least the three subsequent years.

(c) For the purposes of these award programs, growth API means the API in the second year of two consecutive years for which the API is calculated.

(d) In 2001 and subsequent years, a school's API shall be considered invalid under any of the following circumstances:

(1) The local educational agency notifies the California Department of Education (department) that there were adult testing irregularities at the school affecting 5% or more of the pupils tested.

(2) The local educational agency notifies the department that the API is not representative of the pupil population at the school.

(3) The local educational agency notifies the department that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.

(4) The school's proportion of parental waivers compared to its Standardized Testing and Reporting Program (STAR) enrollment pursuant to Education Code section 60640 et seq., is equal to or greater than 15 percent for the 2000 STAR. For the 2001 STAR and each subsequent STAR, the school's proportion of parental waivers compared to its STAR enrollment is equal to or greater than 10 percent, except when the school's proportion of parental waivers compared to its STAR enrollment is equal to or greater than 10 percent but less than 20 percent. In this case, the department will conduct standard statistical tests to determine whether the pupils tested at the school represent the school's pupils by grade level. If the

standard statistical tests demonstrate that the pupils tested represent the school's pupils, then the school's API shall be considered valid. If the standard statistical tests demonstrate that the pupils tested do not represent the school's pupils, then the school's API shall be considered invalid. There shall be no rounding in determining this minimum parental waiver proportion (i.e., 9.99 percent is not 10 percent).

(5) In any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the school's proportion of the number of test-takers in that content area compared with the total number of test-takers is less than 85 percent. There shall be no rounding in determining the proportion of test-takers in each content area (i.e., 84.99 percent is not 85 percent).

(6) If, at any time, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the preceding circumstances occurred. If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized.

The department may invalidate or withhold the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(e) If a school's API is considered invalid pursuant to subdivisions (d)(1), (d)(2), (d)(4), or (d)(5), the school is ineligible for participation in any of the award programs for the current and subsequent year. If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.

(f) If fewer than 5% of the pupils tested are affected by adult testing irregularities, the school will receive a valid API; however, the school is not eligible for participation in any of the award programs for the current year.

(g) All schools that have an API score increase of at least 5% of the difference between the school's prior year score and 800 or an API score increase of five points, whichever is greater, and have comparable improvement as defined in subdivision (h), and meet the minimum participation rate in subdivision (i), shall be recognized through the Governor's Performance Award Program.

(h) Comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) shall be defined as an API score increase of at least 80% of the school's API growth target as established pursuant to Education Code section 52052 except when the sum of a subgroup's growth target and the subgroup's API is greater or equal to 800. In these cases, comparable improvement shall be defined as the distance from the subgroup's API to 800. In no case shall comparable improvement be less than 4 points.

(i) For elementary and middle schools, the minimum participation rate for the awards programs shall be 95 percent; for high schools, it shall be 90 percent, with the intention of increasing this rate to 95 percent in the future.

(1) If the test publisher determines, for grades 2 to 11, that a pupil did attempt to take any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the pupil shall be counted as a test-taker.

(2) No pupil shall be counted more than once as a test-taker.

(3) The participation rate shall be calculated as follows:

(A) Divide the total number of test-takers in grades 2-11 at the school site by

(B) The total enrollment in grades 2-11 minus the number of pupils exempted from taking the test either by their Individualized Education Program (IEP) pursuant to Education Code section 60640(e) or parental waivers pursuant to Education Code section 60615.

(4) For purposes of subdivision (3)(B) above, enrollment shall be determined by the enrollment information collected by the department as part of the Standardized Testing and Reporting Program (STAR), pursuant to Education Code sections 60640 et seq.

(5) In the case of pupil testing irregularities, the scores of affected pupils shall be eliminated from the calculations of the school's growth API, although the pupils are counted as tested and shall contribute to the school's participation rate.

(6) There shall be no rounding in determining this minimum participation rate (i.e., 94.9 percent does not equal 95 percent).

(j) The department will publish on its web site a report of STAR testing and demographic data used in the calculation and reporting of the API. Prior to publishing the report on its web site, the department will announce the report in writing and/or by electronic communication to each local educational agency that appears in the API report. The local educational agency must notify the department and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data. The local educational agency's notification must be received by the department and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on the department's web-site. The local educational agency must submit all data corrections to the test publisher in writing or e-mail. The test publisher shall specify a deadline for submittal of the data corrections that is no less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data.

(k) The criteria for awards eligibility based on the 2001 growth API for a school that had its 2000 API invalidated solely because of excessive parental waivers pursuant to subdivision (d)(4) or for a school whose school district obtained a State Board of Education waiver of Section 1032(c) on their behalf will be (1) twice the school's 1999 growth target or 10 points, whichever is greater, and (2) comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a), and the school has met all other 2001 eligibility criteria. Comparable improvement shall be defined as twice the 1999 subgroup target for each subgroup, except when the sum of a subgroup's 1999 growth target and the subgroup's 1999 API is greater than or equal to 800. In these cases, comparable improvement shall be defined as two times the distance from the subgroup's 1999 API to 800. In no case shall comparable improvement be less than 8 points. While being eligible for the Governor's Performance Awards, such a school would not be eligible for awards under the Certified Staff Performance Incentive Act (Education Code sections 44650 et seq.).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. New subsection (d)(4) and subsection renumbering filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including further amendments, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
4. Amendment of subsections (d)(4), (d)(6) and (h)(1) and new subsection (j) filed 8-2-2001 as an emergency; operative 8-2-2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-30-2001 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section heading and new subsection (i) filed 11-15-2001; operative 11-15-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 46).
6. Certificate of Compliance as to 8-2-2001 order, including further amendment of section and NOTE, transmitted to OAL 11-21-2001 and filed 1-8-2002 (Register 2002, No. 2).

§ 1033. Award Funding Criteria for Governor's Performance Award Program.

(a) Schools that meet the eligibility requirements in 2000-01 for the Governor's Performance Award Program (GPA) shall receive a per pupil award amount for each of their eligible pupils. Eligible pupils are those who received a score on any subject matter area test (Total Reading, Total

Math, Language, Spelling, Science, or Social Science) of the nationally normed test pursuant to Education Code section 60642 and a score on any standards-based achievement test pursuant to Education Code section 60642.5. A score on the nationally normed test pursuant to Education Code section 60642 can be a percentile, the number correct, a scale score, or a normal curve equivalent. A score on the standards-based achievement test pursuant to Education Code section 60642.5 is defined as the performance level.

(b) The amount allocated for this award shall be determined on a pro-rata basis from the total amount of funding available in the annual State Budget.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Section 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Amendment of subsections (a)(3) and (b) and new subsections (b)(1)-(5) filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including new subsection (b)(6), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
4. Amendment of section heading and subsection (a), repealer of subsections (a)(1)-(3), redesignation and amendment of former subsection (a)(4) as subsection (b), renumbering of former subsections (b)-(6) to section 1034, subsections (b)-(c) and new NOTE filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1034. Specific Eligibility Criteria for the Certified Staff Performance Incentive Act.

(a) To be eligible to receive awards under the Certified Staff Performance Incentive Act, school sites must have attained a statewide decile rank of 1-5 in the base year of the current growth API and must meet all of the relevant statutory requirements and each of the following requirements:

(1) Each school site must have improved by a minimum of two times its annual growth target on its API between the base year and the current growth year.

(2) All numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) at a school must have improved by a minimum of two times their annual growth targets, except when the sum of a subgroup's growth target and the subgroup's API is greater than or equal to 800. In these cases, comparable improvement shall be defined as two times the distance from the subgroup's API to 800. In no case shall comparable improvement be less than 8 points.

(3) Each school site shall have the required participation rate for the current growth API, pursuant to Section 1032(i), as calculated by the California Department of Education. Each school must have been eligible for API awards in the year preceding the current API growth year.

(4) The local educational agency must complete an application on behalf of its eligible schools, which shall include:

(A) Certification that the data used in the API calculations from the schools is accurate, and

(B) The number of certificated positions on an FTE basis at each of the eligible schools pursuant to subdivision (b) below.

(b) To participate in the Certified Staff Performance Incentive Act (CSPIA) awards, school districts and charter schools shall certify, as appropriate, the number of full-time equivalent (FTE) certificated employees employed by the school district or charter school, whether still resident in the school district or not, as of the second principal apportionment for the year in which the award was earned at each school site under their jurisdiction that is eligible for awards in accordance with Education Code section 44651.

(1) The number of full-time equivalent (FTE) certificated employees employed by the school district or charter school, whether still resident in the school district or not, as of the second principal apportionment"

shall be defined as the number of funded certificated FTE positions at the school site as of the date established annually by the department pursuant to Education Code sections 41935 and 41601 for the submission by school districts of the attendance documents necessary for the department to prepare the second principal apportionment.

(2) "Employees at the school site" shall be defined as positions filled by individuals employed by the school district or charter school at least 50 percent of the school year in which the award was earned, and who spent at least 50 percent of his/her total annual work hours at school sites, and who spent at least 20 percent of his/her total annual work hours at the eligible school site working with pupils in any of grades K-12. County office of education and state employees are not eligible to participate.

(3) "Full-time equivalent (FTE) positions" may include "full-time" and "part-time" positions. A "full-time" certificated position shall be defined as a position filled by a person that is required to work a minimum of a six hour work day. Workdays longer than six hours, if in accordance with local collective bargaining agreements, should be used as the basis for "full-time" and "part-time" FTE calculation. One person cannot generate more than one FTE position. Part-time positions shall generate a partial FTE on a proportional basis.

(4) "Certificated employee" shall be defined as an employee in a position requiring certification and who holds a document issued by the California Commission on Teacher Credentialing authorizing service in the public schools of California.

(5) "Document" shall be defined as a credential, emergency permit, or waiver issued by the California Commission on Teacher Credentialing.

(c) Starting in 2001-02, the deadline for submitting the application, including the certification of FTEs to the department shall be within the close of business on the 45th calendar day after the department's posting on its website of the certified list of schools eligible to receive the Certificated Staff Performance Incentive Act award. If a school's application is not received by the department by the deadline, the school will not receive the award.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652 and 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (d)(3), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
3. Repealer of former section 1034, new subsections (a)-(4)(B), and renumbering and amendment of former section 1033, subsections (b)-(6) to section 1034, subsections (b)-(c) filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1035. Award Funding Criteria for Certificated Staff Performance Incentive Act.

Distribution of Certificated Staff Performance Incentive Act awards pursuant to the 2000 growth API shall be as follows, with at least one thousand (1,000) \$25,000 awards, three thousand seven hundred fifty (3,750) \$10,000 awards and up to seven thousand five hundred (7,500) \$5,000 awards being distributed in the process. The total amount of funding for this Act provided in the annual State Budget shall be distributed proportionally across each of elementary, middle, and high schools statewide by the number of certificated staff as reported in the most current CBEDS report.

(a) Schools will be declared eligible or ineligible according to the rank of schools pursuant to Education Code section 52052. An "eligible list" will be determined for each type of school (elementary, middle, and high) for the awards distribution.

(b) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the certificated school site staff in certificated positions at that school. The number of

FTE positions counted shall be subtracted from the awards pool of 1,000 FTE positions.

(c) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(d) This process shall continue until all 1,000 \$25,000/FTE awards have been allocated to the eligible school sites. If, before all 1,000 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 1,000 FTE awards pool, all of that school site's FTE positions shall receive \$25,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement over its API growth target in the prior year shall receive \$25,000 awards.

(e) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target that did not receive \$25,000 awards, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool of 3,750 \$10,000 awards.

(f) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(g) This process shall continue in consecutive order until all 3,750 \$10,000/FTE awards have been allocated to the school sites. If, before all 3,750 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 3,750 FTE pool, all of that school site's FTE positions shall receive \$10,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement over its API growth target in the prior year shall receive \$10,000 awards.

(h) The sum of the awards distributed under subdivisions (b) through (g) shall be subtracted from \$100 million, and the remainder shall be divided by \$5,000 to determine the maximum number of \$5,000 awards to be distributed. The \$5,000 awards shall be distributed in the same manner as the \$25,000 and the \$10,000 awards, with the exception that the distribution process will end when the pool of available \$5,000 awards is not sufficient to fully fund the eligible FTE positions of the next school or schools in line for the awards.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of NOTE (Register 2001, No. 4).
3. Amendment of subsections (d) and (g) filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including further amendments, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
5. Amendment of subsections (d) and (g) filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1036. Waiver Deadline.

Starting in 2000-01, the deadline for submitting to the department a waiver of any of Sections 1031 through 1039 shall be no later than the close of business on the 60th calendar day after the department's posting on its website of the certified list of schools eligible to receive the Governor's Performance Award.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Sections 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (a), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
3. Amendment of section heading, repealer and new section and amendment of NOTE filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1037. Exemption from Statutory Benefits Calculations.

Certificated Staff Performance Incentive Act awards shall not be considered compensation for the purposes of calculating retirement benefits or contributions, or for any other benefit that an employee is eligible to receive where the benefit or contribution amount is calculated based on compensation.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
3. Amendment filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1038. Exemption from Indirect Costs.

Governor's Performance Awards and Certificated Staff Performance Incentive Act awards shall not be subject to school district, county, or school indirect charges or other administrative charges.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Renumbering of former section 1038 to section 1039 and new section 1038 filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including amendment of NOTE, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
4. Amendment of section and NOTE filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1039. Use of Award Funds Allocated to School Sites.

Use of funds at the school site for the Governor's Performance Award Program shall be decided by the existing school site governance team/school site council representing major stakeholders and then ratified by the governing board of each local educational agency.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Sections 52052 and 52057, Education Code.

HISTORY

1. Renumbering of former section 1038 to section 1039 filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-30-2001 order transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
3. Amendment of section and NOTE filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

Article 2. Physical Performance Testing Programs

§ 1040. Definition of "Pupil."

NOTE: Authority cited: Sections 60601 and 60603, Education Code.

HISTORY

1. Repealer filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1041. Required Program.

During the period of March-May, inclusive, the governing board of each school district maintaining grades 5, 7, and 10, or any one or more of such grades, shall administer to each pupil in those grades the physical performance test designated by the State Board of Education.

Each physically handicapped pupil and each pupil who is physically unable to take all of the physical performance test shall be given as much of the test as his condition will permit.

NOTE: Authority cited: sections 33031 and 60603, Education Code. Reference: Sections 60602(c), 60603 and 60608, Education Code.

HISTORY

1. Amendment filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. Amendment filed 5-18-72; effective thirtieth day thereafter (Register 72, No. 21).
3. Amendment filed 5-11-89 and 5-15-89; operative 5-15-89 (Register 89, No. 20).

§ 1042. Recommended Program.

When adequate facilities are available, tests pursuant to this article may be given more often than once yearly.

§ 1043. Methods of Administration.

The tests shall be scored by employees of the district or the employees of the county superintendent of schools. The scoring thereof shall be in compliance with the instructions of the publisher or developer for scoring, and the scores shall be submitted to the governing board of the school district on the dates required by, and on forms prescribed or approved by, such governing board.

§ 1044. Recording Test Scores.

The district superintendent or the county superintendent of schools, as the case may be, shall require that the pupil's scores on each of the tests given him in the physical performance testing program be included in the pupil's cumulative record. This requirement may be met by maintaining the regular physical performance testing program card with the cumulative record form.

§ 1045. Responsibility of County Superintendent of Schools.

As soon as possible after the State Board of Education, pursuant to subdivision (d) of Education Code Section 60603, has designated the physical performance test to be used during the ensuing school year in any grade, the county superintendent of schools shall secure, and until the close of the school year for which the test was designated, shall keep on file for reference purposes, a specimen set of that test.

The county superintendent of schools shall provide assistance to school districts in administering, recording, and reporting results of, the test.

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1046. Use of Reports.

The governing board of each school district shall use the reports of test scores submitted as required in this article for identifying physically underdeveloped pupils adapting instruction to individual needs, appraising pupil progress, adapting the physical education program to meet pupil needs and for such other purposes as may be permitted or required by law.

Article 3. Reading Testing Programs in Grades 1, 2, and 3

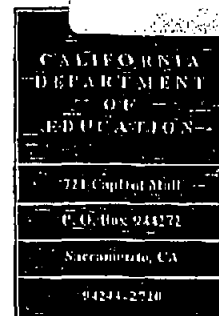
NOTE: Authority cited: Sections 33031, 54103, 60602, 60603, 60607, 60640, Education Code. Reference: Sections 60640-60644, Education Code.

HISTORY

1. Repealer of Article 3 (Sections 1050-1060) filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48). For prior history, see Registers 77, No. 39,



DELAINE EASTIN
State Superintendent of Public Instruction



August 7, 2002

RECEIVED

AUG 07 2002

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

COMMISSION ON
STATE MANDATES

Dear Ms. Higashi:

Correspondence from the Commission on State Mandates (CSM) dated July 8, 2002, requests comments from interested parties on a test claim submitted by the San Juan Unified School District titled: Academic Performance Index; 01-TC-22. Due to the fact that the test claim alleges reimbursable costs in multiple areas, comments have been provided for each area. The areas of the test claim are: 1) Academic Performance Index; 2) Immediate Intervention/Underperforming Schools; 3) High Achieving Schools Program or Governors Performance Awards (GPA); 4) School Site Employee Performance Bonus; and 5) Certificated Staff Performance Incentive Program.

Academic Performance Index (API)

The API is calculated from indicators currently reported to the CDE as part of the Standardized Testing and Reporting Program (STAR). Part III, Section 1.A of the Test Claim alleges reimbursable costs for activities which already receive funding under Title 5, California Code of Regulations, Division 1, Chapter 2 Pupils, Subchapter 3.75 Standardized Testing and Reporting Program. The budget provides \$65.6 million for STAR administration, continued development, scoring, error correction, and apportionment. In addition, test claim 97-TC-23, Standardized Testing and Reporting, will provide reimbursement for reimbursable costs not covered by the STAR apportionment.

Immediate Intervention/Underperforming Schools Program (IIUSP)

This is not a mandated program. Schools failing to meet growth targets and in the lower five API deciles are invited to apply for this award program and participation is at the discretion of school districts. Schools participating in the program are provided with a \$50,000 planning award and receive \$200 per pupil upon completion of an action plan. Any subsequent activities that result due to applying for or administering the awards (e.g. contracting with external evaluators and intervention teams, providing matching funds, conducting public hearings), are a function of a district's original election to participate in the program and are required only after the district's original election to participate in the program.

Ms. Paula Higashi, Executive Director

August 7, 2002

Page 2

High Achieving Schools Program or Governors Performance Awards (GPA)

This is not a mandated program. Eligible schools that meet or exceed API growth targets and Stanford 9 participation rates are notified that they will receive this award. Funding of up to \$150 per pupil tested in grades 2-11 is provided. Although school districts have the option of turning down these funds, this option was not explicitly stated to districts. Therefore, although not mandated, districts may have interpreted acceptance of the funds as being required. The program is designed to allow significant flexibility, so that districts have the ability to target unique needs and/or requirements. The use of funds is not restricted and their use is to be decided by existing School Site Councils. The School Site Councils are already required as a part of federal Title I programs. Any additional costs not covered by awards due to decisions made by School Site Councils are due to discretionary actions. Therefore, these activities do not meet the test of constituting mandated programs or activities. In addition, since the use of these funds is not restricted, districts' administrative, labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel costs can appropriately be funded from the actual grant awards.

School Site Employee Performance Bonus

This is not a mandated program. Schools that meet or exceed API growth targets and Stanford 9 participation rates are invited to apply for this award program and participation is at the discretion of school districts. Schools are funded at \$591 per full-time equivalent (FTE) and any subsequent activities that result from applying for or administering the awards are a function of a district's election to participate in the program. However, should the CSM decide to interpret this program as a mandated program, the employer portion of salary-driven benefit costs should be excluded from the Parameters and Guidelines. These costs can be recovered from the award itself as a result of prior legislation. (See AB 804, Ch. 734/2001).

Certificated Staff Performance Incentive Program

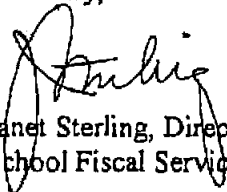
This is not a mandated program. Schools that meet or exceed API growth targets and Stanford 9 participation rates are invited to apply for this award program and participation is at the discretion of school districts. Schools are funded to a maximum of \$25,000 per certificated staff member on a FTE basis and any subsequent activities that result due to applying for or administering the awards are a function of a district's election to participate in the program. However, should the CSM decide to interpret this program as a mandated program, the program allows the employer portion of salary-driven benefit costs to be recovered via the collective bargaining process at the district level. Thus, the benefit costs can be built into the award and the salary portion adjusted accordingly to mitigate any resulting benefit costs to the district. Therefore, such costs should be excluded from the Parameters and Guidelines.

Ms. Paula Higashi, Executive Director
August 7, 2002
Page 3

As required by CSM regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list that accompanied your letter have been provided copies of this letter via either the United States Mail or, in the case of State agencies, Interagency Mail Service.

Should you have questions, please contact Juan Sanchez at (916) 322-3074, or Gerry Shelton at (916) 323-8068.

Sincerely,



Janet Sterling, Director
School Fiscal Services Division

JS:js

Attachments

PROOF OF SERVICE

Test Claim Name: Academic Performance Index
 Claim Number: 01-TC-22

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 560 J Street, Suite 150, Sacramento, CA 95814.

On August 7, 2002, I served the attached comment of the California Department of Education in said cause, by facsimile to the Commission on State Mandates and by placing a true copy Therefore: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 560 J Street, Suite 150, for Interagency Mail Service, addressed as follows:

Dr. Carol Berg, Ph. D
 Education Mandates Cost Network
 1121 L Street, Suite 1060
 Sacramento, CA 95814
 Fax: 446-2011

Ms. Harmeet Barkschat
 Mandate Resource Services
 5325 Elkhorn Blvd. #307
 Sacramento, CA 95842
 Fax: 727-1734

Ms. Diana Halpenny, General Counsel
 San Juan Unified School District
 3738 Walnut Avenue, P.O. BOX 477
 Carmichael, CA 95609-0477
 Fax: 971-7704

Ms. Beth Hunter, Director
 Centration, Inc
 8316 Red Oak Street, Suite 101
 Rancho Cucamonga, CA 91730
 Fax: (866) 481-2642

Mr. Paul Minney
 Spector, Middletown, Young & Minney, LLP
 7 Park Center Drive
 Sacramento, CA 95825
 Fax: (916) 646-1300

Mr. Tom Lutzenberger, Principal Analyst
 Department of Finance
 915 L Street, 6th Floor
 Sacramento, CA 95814
 Fax: 327-0225

Mr. Keith B. Peterson, President
 SixTen & Associates
 5252 Balboa Avenue, Suite 807
 San Diego, CA 92117
 Fax: (858) 514-8645

Ms. Annette Chinn
 Cost Recovery Systems
 705-2 East Bidwell Street #294
 Folsom, CA 95630
 Fax: 939-7801

Ms. Sandy Reynolds, President
 Reynolds Consulting, Inc.
 P.O. BOX 987
 Sun City, CA 92586
 Fax: (909) 672-9964

Mr. Glenn Haas, Bureau Chief
 State Controller's Office
 3301 C Street, Suite 500
 Sacramento, CA 95816
 Fax: 323-4807

Mr. Steve Smith, CEO
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670
Fax: 669-0889

Jim Spano, State Controller's Office,
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814
Fax: 327-0832

Mr. Andy Nichols, Senior Manager
Centration, Inc.
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670
Fax: 351-1020

Mr. Arthur Palkowitz
Legislative Mandate Specialist
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103-8363
Fax: (619) 725-7569

Ms. Pam Stone, Legal Counsel
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841
Fax: 485-0111

Mr. Gerry Shelton, Administrator
Department of Education
School Fiscal Services Division
560 J Street, Suite 150
Sacramento, CA 95814
Fax: 322-5102

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816
Fax: 454-7312

I declare under penalty of perjury under the laws of the State of California that the fore going is true and correct, and that this declaration was executed on August 7, 2002, at Sacramento, California.

Carina Saravia 8/7/2002
Carina Saravia



**DEPARTMENT OF
FINANCE**
OFFICE OF THE DIRECTOR

GRAY DAVIS, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

October 7, 2002

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RECEIVED

OCT 08 2002

**COMMISSION ON
STATE MANDATES**

Dear Ms. Higashi:

As requested in your letter of July 8, 2002, the Department of Finance has reviewed the test claim submitted by the San Juan Unified School District (claimant) asking the Commission to determine whether specified costs incurred under specified legislation associated with the Academic Performance Index (API) are reimbursable state mandated costs (Claim No. CSM-01-TC-22 "Academic Performance Index"). The claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- A. Establish, update, and maintain data gathering procedures to conduct the following:
- a. Pursuant to Title 5, California Code of Regulations, Section 1032, subdivision (d), notify the State Department of Education (SDE) of any situation that may invalidate a school's API.

The section of the California Code of Regulations referenced here does not require districts to provide information to the Superintendent of Public Instruction. Rather, Section 1032 states that a school's API shall be considered invalid under certain circumstances, but does not specifically require local educational agencies (LEAs) to provide any information. Additionally, Education Code Section 52052(f)(3) states that a school that participates in Immediate Intervention/Underperforming Schools Program (II/USP) will get an API unless the Superintendent determines that an API score would be an invalid measure due to specified reasons. Hence, the Education Code requires a greater level of service from the Superintendent, not LEAs. Therefore, Title 5, California Code of Regulations, Section 1032, subdivision (d) does not result in a reimbursable State mandate.

- b. Pursuant to Title 5, California Code of Regulations, Section 1032, subdivision (j), notify SDE and the test publisher whether there are errors in the Standardized Testing and Reporting (STAR) testing or demographics data.
- c. Pursuant to Title 5, California Code of Regulations, Section 1032, subdivision (j), submit all data corrections to the test publisher in writing or email.

LEAs receive district apportionments for costs associated with implementing the STAR program, including ensuring the quality of the test administration and

information provided to SDE and the test publisher. Currently, the test publisher is required to incur any costs associated with correcting an error made by the publisher in regards to the STAR program. Likewise, if an LEA provides inaccurate information, despite receiving funds to ensure the quality of the STAR data, the LEA should be held responsible for the fiscal implications at the local level.

- d. Pursuant to Education Code Section 52052, subdivision (a), respond to any requests from SDE for attendance rates for pupils and certificated staff personnel for elementary, middle, and high schools.
- e. Pursuant to Education Code Section 52052, subdivision (a), respond to any requests from SDE for graduation rates.
- f. Pursuant to Education Code Section 52052, subdivision (a), provide the Superintendent, when required, with data pertaining to high school graduation and attendance rates.

Education Code Section 52052, subdivision (a) does not require LEAs to provide this information. Rather, it states that the API shall consist of multiple indicators **currently reported** to SDE under existing law, including, but not limited to, attendance rates for pupils (currently reported pursuant to average daily attendance reporting, Education Code Section 41601), certificated personnel (reported on CBEDS), and graduation rates (reported on CBEDS). Given that this section of the Education Code does not impose any new requirements on LEAs, it does not result in a reimbursable State mandate. Further, while the long-term goal is to incorporate multiple indicators in the API, thus far, the API has consisted solely of test results.

- B. For schools that are required, pursuant to Education Code Section 52053 subdivision (j) and/or 52056.5, to participate in the II/USP, and to the extent funding is unavailable or insufficient, conduct the following duties:
 - a. Contract with an external evaluator and appoint a schoolsite and community team.
 - b. Assist the external evaluator and schoolsite and community team, as requested or required, in the preparation of an action plan.
 - c. Contribute matching funds for any implementation grants provided.
 - d. For schools that fail to meet their growth targets within 12 months of receiving funding, hold a public hearing and consult with the external evaluator and the schoolsite and community team in choosing interventions to continue the implementation of the action plan.
 - e. Enter into a contract with a school assistance and intervention team if required by the Superintendent.
 - f. For a school that is required to contract with a School Assistance and Intervention Team, provide support and assistance to enhance the work of the team at the schoolsite.
 - g. For a school that is required to contract with a School Assistance and Intervention Team, adopt the team's recommendations at a regularly scheduled meeting of the governing board and submit the recommendations to the Superintendent and State Board of Education (SBE).
 - h. For a school that is required to contract with a School Assistance and Intervention Team, no less than three times a year, present the team with data regarding progress toward the goals established by the team, and present the data to the governing board, Superintendent, and SBE.

- i. For a school participating in II/USP, submit an annual evaluation to the Superintendent of the impact, costs, and benefits along with a report on whether the school has met its growth targets.

While the Superintendent is allowed, under certain circumstances, to select a school for participation in the II/USP, no current II/USP participant has been selected in that manner. The three cohorts of II/USP consist entirely of volunteers. Therefore, the conditions necessary to create the reimbursable State-mandates specified in this claim do not exist. Hence, nothing required of II/USP schools would constitute a reimbursable State-mandate. Further, State funding is provided for all of the activities listed.

- C. For those school districts with schools that received the one-time Certificated Staff Performance Incentive Awards, establish, update, and maintain employee payroll records to receive, administer, and distribute award funds to staff.
- D. For those school districts that complete an application for the Certificated Staff Performance Incentive Awards, complete an application including the following:
 - a. Number of eligible schools.
 - b. Certification that the data used in the API calculations is accurate.
 - c. List of certificated staff on a Full Time Equivalent (FTE) basis at each eligible school.
 - d. After January 8, 2002, the application includes certification that the data used in the API calculations are accurate and a list of certificated staff on an FTE basis at each eligible school.
- E. For those school districts with schools that received the one-time Certificated Staff Performance Incentive Awards, negotiate with the bargaining unit of the teachers and other certificated staff to determine how the funds are to be distributed.
- F. If an agreement cannot be reached between the district and bargaining unit or if the teachers and other certificated staff do not have a bargaining unit, calculate and distribute awards amounts as a percentage of base salaries that is determined by dividing the total amount of the award by the sum of the annual base salaries for teachers and other certificated staff of the school.
- G. Calculate individual salary awards, determine and locate recipients, and deliver individual salary awards for the Certificated Staff Performance Incentive Awards.

Participation in the Certificated Staff Performance Incentive Award Program is voluntary for eligible schools. The implementing legislation (Chapter 71, Statutes of 2000) states that as a condition of receiving funds, LEAs shall certify the number of full-time equivalent employees. As such, it is clear that the Legislature intended that the awards program not be mandated. Schools, and districts that apply on their behalf, willingly choose to apply for and accept the awards, including any administrative costs associated with these awards.

- H. When requested by the Superintendent, certify the number of FTE employees for the purposes of the Academic Performance Index Schoolsite Employees Performance Bonus.
- I. For districts and counties with schools that received API Schoolsite Employees Performance Bonuses, establish, update, and maintain employee records to receive, administer, and distribute award funds to staff.
- J. Consult with the existing schoolsite governance team/council to decide how to use Governor's Performance Awards and the schoolsite portion of the API Schoolsite

Employees Performance Bonus, and have the distribution plan ratified by the governing board.

- K. Provide compensation-driven benefits, including but not limited to Medicare, unemployment insurance, and worker's compensation resulting from individual salary awards pursuant to the Governor's High Achieving Schools Program, the Certificated Staff Performance Incentive Act, or the API Schoolsite Employees Performance Bonus program.

LEAs are not required to apply for, or accept any awards associated with the API. As such, an LEA that applies for an award or accepts award funding accepts responsibility for any higher level of service, which may be required of the LEA, as a result of those awards. Further, Title 5, California Code of Regulations, Section 1037 specifically exempts the Certificated Staff Performance Incentive Act awards from being considered compensation for the purposes of calculating retirement benefits or contributions or any other benefit that an employee may receive based on compensation. Also, Section 1038 exempts the Certificated Staff Performance Incentive Act and Governor's Performance Awards from any school, district, and county indirect/administrative charges. Additionally, Chapter 734, Statutes of 2001 (AB 804, Committee on Education), states that administrative costs and salary-driven costs incurred as a result of implementation of the API Schoolsite Employees Performance Bonus program shall be paid from the schoolsite portion of the awards. Therefore, the activities specified in this claim are not reimbursable State mandates.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 8, 2002, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Michael Wilkening, Principal Program Budget Analyst at (916) 445-0328 or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF MICHAEL WILKENING
DEPARTMENT OF FINANCE
CLAIM NO. 01-TC-22 Academic Performance Index

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chaptered legislation sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

October 7, 2002

at Sacramento, CA

Michael Wilkening

Michael Wilkening

PROOF OF SERVICE

Test Claim Name: Academic Performance Index
 Test Claim Number: CSM-01-TC-22

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On October 7, 2002, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
 Commission on State Mandates
 980 Ninth Street, Suite 300
 Sacramento, CA 95814

Centration, Inc.

Attention: Beth Hunter
 8316 Red Oak Street, Suite 101
 Rancho Cucamonga, CA 91730

Sixten & Associates

Attention: Keith Petersen
 5252 Balboa Avenue, Suite 807
 San Diego, CA 92117

Mandated Cost Systems, Inc.

Attention: Steve Smith
 11130 Sun Center Drive, Suite 100
 Rancho Cordova, CA 95670

Cost Recovery Systems

Attention: Arinette Chinn
 705-2 East Bidwell Street, Suite 294
 Folsom, CA 95630

B-8

State Controller's Office
 Division of Accounting & Reporting
 Attention: Glenn Haas
 3301 C Street, Room 500
 Sacramento, CA 95816

Education Mandated Cost Network

C/O School Services of California
 Attention: Dr. Carol Berg, PhD
 1121 L Street, Suite 1080
 Sacramento, CA 95814

E-8

Department of Education
 School Fiscal Services
 Attention: Gerry Shelton
 560 J Street, Suite 150
 Sacramento, CA 95814

San Diego Unified School District

Attention: Arthur Palkowitz
 4100 Normal Street, Room 3159
 San Diego, CA 92103-2682

B-08

State Controller's Office
 Division of Audits
 Attention: Jim Spano
 300 Capitol Mall, Suite 518
 Sacramento, CA 95814

MAXIMUS

Attention: Pam Stone
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

Shields Consulting Group
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

Mandate Resource Services
Attention: Harmeest Barkschat
5325 Elkhorn Blvd., Suite 307
Sacramento, CA 95842

Reynolds Consulting Group
Attention: Sandy Reynolds
PO Box 987
Sun City, CA 92586

San Juan Unified School District
Attention: Diana Halpenny
3738 Walnut Avenue
Carmichael, CA 95608

Centration, Inc.
Attention: Andy Nichols
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 7, 2002, at Sacramento, California.

Chad Polara for JN
Jennifer Nelson

SixTen and Associates

Mandate Reimbursement Services

EXHIBIT C

KEITH B. PETERSEN, MPA, JD, President
252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

November 5, 2002

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED

NOV 07 2002

**COMMISSION ON
STATE MANDATES**

Re: Test Claim 01-TC-22
San Juan Unified School District
Academic Performance Index

Dear Ms. Higashi:

I have received the comments of the Department of Finance ("DOF") dated October 7, 2002 to which I now respond on behalf of the test claimant. I have also received the comments of the California Department of Education ("CDE") dated August 7, 2002, to which I will also respond on behalf of the test claimant.

Although none of the objections generated by DOF and CDE are included in the statutory exceptions set forth in Government Code Section 17556, the objections stated additionally fail for the following reasons:

1. The Comments of the DOF and CDE are incompetent and Should be Excluded

Test claimant objects to the Comments of the DOF and CDE, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1.183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The DOF and CDE comments do not comply with this essential requirement.

Furthermore, the test claimant objects to any and all assertions or representations of fact made in the responses [such as, "no current II/USP participant has been selected"] since DOF and CDE have failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

"If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury, signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

Furthermore, these "hearsay" statements do not even come up to the level of hearsay or the type of evidence people rely upon in the conduct of serious affairs. The comments submitted by DOF and CDE, and any allegations of unsupported facts therein, should be excluded from the record.

2. The Test Claim Legislation and Regulations Create New Mandated Duties

A. Duties mandated by Education Code Section 52052 and Section 1032 of Title 5, California Code of Regulations relative to the Academic Performance Index.

The DOF first argues that local educational agencies ("LEAs") are not required to provide any information to the Superintendent of Public Instruction. Subdivision (d) of Section 1032 of the California Code of Regulations provides that a school's API shall be considered invalid if (1) the local LEA notifies the California Department of Education that there were adult testing regularities, (2) the LEA notifies the CDE that the API is not representative of the pupil population, or (3) the LEA notifies the CDE that the school has experienced a significant demographic change in pupil population. Taking DOF's argument at face value, any local LEA would be permitted to take no action, i.e., fail to disclose these deficiencies when they exist. Certainly, this cannot be the intent of the law.

The DOF next argues that LEAs receive apportionments to cover costs associated with the implementation of the STAR program. CDE joins in this argument. The test claim alleges costs subsequent to and over and above those required by the STAR program. Subdivision (j) of Section 1032 of the California Code of Regulations requires the CDE to publish on its website a report of STAR

testing and demographic data used in the calculation of the API. The subdivision then goes on to state the LEA must notify the CDE and the test publisher via e-mail or in writing whether there are errors in the testing or demographic data, the notification must be received within 30 days, and the LEA must submit all data corrections to the test publisher in writing or by e-mail within a time specified by the test publisher. The apportionments referred to by DOF refer to the costs of the STAR testing process. The costs alleged in this test claim relate to the additional, post testing, duties required to insure the accuracy of the API.

Finally the DOF argues that Education Code Section 52052(a) does not require LEAs to provide information to the CDE concerning attendance or graduation rates. Subdivision(a)(3)(B) of Section 52052(a) provides that, before including high school and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data is currently reported and the accuracy of the data. The test claim alleges¹ only, that to the extent attendance rates and graduation rates are not available to the SDE, school districts shall respond to any requests from the SDE for this information. Subdivision (a)(3)(C) requires the Superintendent of Public Instruction to report to the Governor and the Legislature if he/she determines that accurate data is not available and recommend necessary action to implement an accurate reporting system. The test claim alleges² only, that when required by the Superintendent of Public Instruction, to provide him/her with data pertaining to the high school graduation and attendance rates. DOF apparently argues that LEAs are not required to cooperate with the Superintendent of Public Instruction when requested to implement insufficient data or correct incorrect data then available.

B: Duties mandated by Education Code Sections 52053 through 52055.51 relative to the Immediate Intervention/Underperforming School Program.

DOF argues that the "three cohorts of II/USP consist entirely of volunteers." DOF also argues that "State funding is provided for all of the activities listed". CDE argues that schools "are invited to apply for this award program" and that sufficient funds are provided. Both agencies are wrong on both counts.

Although the Immediate Intervention/Underperforming School Program was originally designed for 430 underperforming schools to "accept an invitation" to

¹ At page 94, lines 14 through 22

² At Page 95, lines 1 through 3

participate, Education Code Section 52053, subdivision (j), provides that if fewer schools apply for participation than can be funded, the Superintendent of Public Instruction, with the approval of the SDE, shall "randomly select" the balance of schools. Education Code Section 52056.5 provides that a school that fails to meet annual state growth targets may, as determined by the Superintendent of Public Instruction with the approval of the SDE, be "subject to" the Immediate Intervention/Underperforming School Program. These schools are not "invitees", they are "draftees". Test claimant recognized these situations and alleges³ a detailed list of new mandated duties "(F) or those schools who are required, pursuant to Education Code Sections 52053(j) and/or 52056.5, to participate in the Immediate Intervention/Underperforming School Program."

As to the funding issue, test claimant also alleges these duties exist "to the extent funding is unavailable or insufficient." It is also noted here, and ignored by DOF and CDE, that there is no funding provided to replace the matching implementation funds required by Education Code Section 52054.5.

C. Duties mandated by Education Code Sections 44653 relative to the one-time Certificated Staff Performance Incentive Act required by Education Code Sections 44650 through 44654 and Title 5, California Code of Regulations, Section 1034.

The duties alleged by the test claimant beginning at page 97, line 9 through page 98, line 17, are all required by the one-time Certificated Staff Performance Incentive Act set forth in Education Code Sections 44650 through 44654 and Title 5, California Code of Regulations, Section 1034. DOF erroneously refers only to the implementing legislation as Chapter 71, Statutes of 2000. Test claimant must, therefore, assume that DOF has no objections to the duties generated by Education Code Sections 44650 through 44654 or Title 5, California Code of Regulations, Section 1034, and stands on the record as to these duties.

The Superintendent of Public Instruction argues that "participation is at the discretion of the school districts" and "allows the employer portion of salary-driven benefit costs to be recovered via the collective bargaining process at the district level". The "discretion of the school districts" argument is treated with other similar arguments in Section 3, below. The argument concerning the recovery of salary-driven benefit costs is without foundation. Education Code Section 44653 provides that upon receipt of an allocation, the governing board of the school

³ Test Claim, at page 95, line 4 through page 97, line 8

district shall negotiate individual teacher and staff salary award amounts with the exclusive representative of the bargaining unit. The only thing that can be negotiated is the individual salary award amounts. This is further proven by the fact that, if the district and the union cannot reach an agreement, the allocation shall be divided among teachers and staff ratably.

D. Duties mandated by Chapter 71, Statutes of 2000, Section 40, and Title 5, California Code of Regulations, Section 1039, relative to the Academic Performance Index Schoolsite Employees Performance Bonus.

DOF argues that "LEAs are not required to apply for, or accept any awards associated with the API." CDE argues that schools are invited to apply for this award program and participation is discretionary. Again, both agencies are incorrect.

School districts do not apply for the Academic Performance Index Schoolsite Employees Performance Bonus program. Chapter 71, Statutes of 2000, Section 40, requires the Superintendent of Public Instruction to allocate the sums appropriated. As a condition of receiving an allocation, the school district is required to make a certification upon request of the Superintendent of Public Instruction. The CDE's argument that participation is discretionary must be that school districts can exercise discretion by refusing to reply to the Superintendent of Public Instruction's request. Once received, the school district must enter the awards in the employees' payroll records and distribute the money received. And, upon receipt, the school district is required by Title 5, California Code of Regulations, Section 1039, to consult with the school site governance team/school site council to decide the use of the awards. Nothing is discretionary.

E. Salary-driven benefit costs, including the employer's share of Medicare, Unemployment insurance and worker's compensation.

DOF argues that LEAs are not required to apply for, or accept any awards associated with the API and "(A)s such, an LEA that applies for or accepts award funding accepts responsibility for any higher level of service, which may be required..." CDE correctly notes that all eligible schools will receive the Governor's High Achieving Schools award without application but, unbelievably goes on to argue "(A)lthough school districts have the option of turning down these funds, this option was not explicitly stated to districts. Therefore, although not mandated, districts may have interpreted acceptance of the funds as being required."

DOF then points out that Chapter 734, Statutes of 2001, Section 83, requires school agency administrative costs and salary-driven benefit costs incurred as a result of implementation of Chapter 71, Statutes of 2000, Section 40 (the one-time Academic Performance Index Schoolsite Employees Performance Bonus) to be paid from the schoolsite portion of the bonus. Then, DOF makes the quantum leap to conclude that this later enacted legislation results in all activities specified in this claim to be nonreimbursable state mandates.

Notwithstanding, Section 1038 of Title 5, California Code of Regulations, after its January 8, 2002 amendment deleting reference to the Academic Performance Index Schoolsite Employees Performance Bonus, continues to state that the Governor's Performance Awards and the Certificated Staff Performance Incentive Act awards still shall not be subject to school district, county, or school indirect charges or other administrative charges. Therefore, salary-driven benefit costs, including the employer's share of Medicare, unemployment insurance and worker's compensation for these programs remain indirect costs that must be incurred by any school district upon receipt of these awards.

3. **School Districts have no reasonable alternative to the state scheme or no true choice but to participate in these programs.**

Recurring throughout the comments of the Department of Finance and the Department of Education is the argument that the various programs of the Public School Performance Accountability Program are discretionary programs. Both agencies repeatedly assert that the school districts are merely "invited" to accept the state's funds and any resulting costs are no more than the results of the school district's voluntary decision to participate.

The trend of the law today is away from the "shall" versus "may" legal compulsion arguments favored yesterday. The California Supreme Court has held that the determination of whether a program is truly voluntary depends upon (1) the nature and purpose of the program, (2) whether the program's design evidences an intent to coerce, (3) the penalties assessed for non-participation, and (4) the legal and other practical consequences of non participation. City of Sacramento v. State of California (1990) 50 Cal.3d 51, 76. The concept of state mandate is sufficiently broad to include situations where the local school district has no reasonable alternative to the state scheme or no true choice but to participate in it.

In the instant case, the legislature has designed a plan to award schools and teachers financially for academic improvement. It has offered substantial awards

to teachers and large sums of money to school districts for academic performance. The DOF and CDE offer an argument that says districts need not file an application that would result in monetary awards for their teachers (up to \$25,000 per eligible teacher) and needed funds (\$350 million dollars for the Academic Performance Index Schoolsite Employees Performance Bonus, alone) for your schools. Employees and their "exclusive representatives" know about these programs and funds and districts would be fiscally irresponsible to turn down these sources of funds.

In conclusion, the responses of the DOF and the CDE should be ignored as legally incompetent for their failure to comply with Section 1183.02 of Title 5, California Code of Regulations; they are legally and factually incorrect; and the test claim should be approved for the reason that school districts have no reasonable alternative or no true choice but to participate in each of the programs set forth in the test claim.

CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

Commission on State Mandates

Original List Date: 7/3/2002

Mailing Information Completeness Determination

Last Updated: 07/05/2002

List Print Date: 07/08/2002

Mailing List

Claim Number: 01-TC-22

Issue: Academic Performance Index

Ms. Harmeet Barkschat,
Mandate Resource Services

5325 Elkhorn Blvd. #307
Sacramento CA 95842

Tel: (916) 727-1350 Fax: (916) 727-1734 Interested Person

Ms. Beth Hunter, Director
Centration, Inc.

8316 Red Oak Street Suite 101
Rancho Cucamonga CA 91730

Tel: (866) 481-2642 Fax: (866) 481-5383 Interested Person

Dr. Carol Berg,
Education Mandated Cost Network

1121 L Street Suite 1060
Sacramento CA 95814

Tel: (916) 446-7517 Fax: (916) 446-2011 Interested Person

Mr. Tom Lutzenberger, Principal Analyst (A-15)
Department of Finance

915 L Street, 6th Floor
Sacramento CA 95814

Tel: (916) 445-8913 Fax: (916) 327-0225 State Agency

Ms. Annette Chinn,
Cost Recovery Systems

705-2 East Bidwell Street #294
Folsom CA 95630

Tel: (916) 939-7901 Fax: (916) 939-7801 Interested Person

Mr. Paul Minney,
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive
Sacramento CA 95825

Tel: (916) 646-1400 Fax: (916) 646-1300 Interested Person

Mr. Glenn Haas, Bureau Chief (B-8)
State Controller's Office

Division of Accounting & Reporting
3301 C Street Suite 500
Sacramento CA 95816

Tel: (916) 445-8757 Fax: (916) 323-4807 State Agency

Mr. Andy Nichols, Senior Manager
Centration, Inc.

12150 Tributary Point Drive Suite 140
Gold River CA 95670

Tel: (916) 351-1050 Fax: (916) 351-1020 Interested Person

Ms. Diana Halpenny, Chief Counsel
San Juan Unified School District

3738 Walnut Avenue P.O. Box 477
Carmichael CA 95609-0477

Tel: (916) 971-7109 Fax: (916) 971-7704 Claimant

Mr. Arthur Palkowitz, Legislative Mandates Specialist
San Diego Unified School District

4100 Normal Street Room 3159
San Diego CA 92103-8363

Tel: (619) 725-7565 Fax: (619) 725-7569 Interested Person

Commission on State Mandates

Original List Date: 7/3/2002

Mailing Information Completeness Determination

Last Updated: 07/05/2002

List Print Date: 07/08/2002

Claim Number: 01-TC-22

Mailing List

Issue: Academic Performance Index

Mr. Keith B. Petersen, President
SixTen & Associates

5252 Balboa Avenue Suite 807
San Diego CA 92117

Tel: (858) 514-8605 Fax: (858) 514-8645

Claimant

Mr. Jim Spano, (E-8)

State Controller's Office

Division of Audits

300 Capitol Mall, Suite 518

Sacramento CA 95814

Tel: (916) 323-5849 Fax: (916) 327-0832

State Agency

Ms. Sandy Reynolds, President
Reynolds Consulting Group, Inc.

P.O. Box 987
Sun City CA 92586

Tel: (909) 672-9964 Fax: (909) 672-9963

Interested Person

Ms. Pam Stone, Legal Counsel

MAXIMUS

4320 Auburn Blvd. Suite 2000

Sacramento CA 95841

Tel: (916) 485-8102 Fax: (916) 485-0111

Interested Person

Mr. Jerry Shelton, Administrator (E-8)

Department of Education

School Fiscal Services

560 J Street Suite 150

Sacramento CA 95814

Tel: (916) 323-2068 Fax: (916) 322-5102

State Agency

Mr. Steve Shields,
Shields Consulting Group, Inc.

1536 36th Street
Sacramento CA 95816

Tel: (916) 454-7310 Fax: (916) 454-7312

Interested Person

Mr. Steve Smith, CEO
Mandated Cost Systems, Inc.

11130 Sun Center Drive Suite 100
Rancho Cordova CA 95670

Tel: (916) 669-0888 Fax: (916) 669-0889

Interested Person

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3662
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

EXHIBIT D

August 24, 2007

Carol Bingham
School Fiscal Services Division
California Department of Education
721 Capitol Mall
P.O. Box 944272
Sacramento, CA 94244-2720

And Affected State Agencies and Interested Parties (see enclosed mailing list)

Re: Request for additional information on *Academic Performance Index*, 01-TC-22
Hearing date: December 6, 2007
San Juan Unified School District, Claimant
Education Code Sections 44560 et seq., 52050 et seq.
Title 5, California Code of Regulations, Sections 1031 through 1039
Statutes 2001, Chapter 887 (SB 1295), Statutes 2001, Chapter 749 (AB 961), Statutes
2001, Chapter 745 (SB 1991), Statutes 2001, Chapter 159 (SB 662), Statutes 2000,
Chapter 695 (SB 1552), Statutes 2000, Chapter 190 (AB 2162), Statutes 2000, Chapter
71 (SB 1667), Statutes 1999, Chapter 52 (AB 1114), Statutes 1999x, Chapter 3 (SB 1)

Dear Ms. Bingham:

Commission staff has reviewed the comments filed by the Department of Education in August 2002 on the *Academic Performance Index* test claim (01-TC-22) and requests additional information on the Intermediate Intervention/Underperforming Schools Program (II/USP).

The statutes indicate that there are three ways schools may enter the II/USP without applying. First, subdivision (d) of Education Code section 52053 requires the Superintendent of Public Instruction to randomly select eligible schools to participate if fewer than the number of schools in any grade level category apply to the program. Similarly, subdivision (j) of section 52053 states that if fewer schools apply for participation than can be funded, the Superintendent with the approval of the State Board shall randomly select the balance of schools from schools eligible to participate that did not apply. Third, section 52056.5 authorizes the Superintendent to make a school district subject to the II/USP if the school fails to meet annual state growth targets established pursuant to section 52052.

Please advise as to whether any schools have entered the II/USP under these provisions from June 1999 to the present, and if so, which schools have done so. Please file your comments by September 4, 2007.

The Department of Education's response must comply with section 1183.02 (c) and (d) of the Commission's regulations. Any assertions or representations of fact must be "supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. ... authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and ... based on the declarant's personal

Ms Carol Bingham
Page 2

knowledge or information or belief." Also, any "written response ... shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief. The date of signing, the representative's title, address, and telephone number shall be included."

Please contact Eric Feller at (916) 323-8221 if you have any questions regarding this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paula Higashi".

PAULA HIGASHI
Executive Director

Enclosure: Mailing List



CALIFORNIA
DEPARTMENT OF
EDUCATION

1430 N STREET
SACRAMENTO, CA
95814-5901

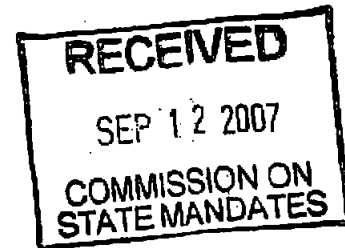
JACK O'CONNELL

State Superintendent of
Public Instruction

PHONE: (916) 319-0800

September 12, 2007

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Dear Ms. Higashi:

Correspondence from the Commission on State Mandates (CSM) dated August 24, 2007, requests information on the Immediate Intervention/Underperforming Schools Program (II/USP). I apologize for the delay in responding. Your letter arrived on September 6, 2007.

Specifically, you asked how many schools were selected for the II/USP based on certain California *Education Code* citations.

Our records indicate that since the inception of the II/USP in 1999, schools have participated in II/USP strictly on a voluntary basis. None of the participating schools were selected by the State Superintendent of Public Instruction as prescribed in *Education Code* sections 52053(d) and (j), and 52056.5.

The II/USP was funded in three cohorts (1999, 2000, and 2001). Attached are two pages of a report (attachment 1) that shows all the schools that were eligible in each cohort, the schools that applied, and the schools that received II/USP and Comprehensive School Reform grants (P=II/USP and C=Comprehensive School Reform). The complete report is over 100 pages and can be sent electronically or a hard copy if preferred.

The attached *Analysis of the 2001-02 Budget Bill* by the Legislative Analyst's Office also has a write-up that summarizes the number of eligible schools, the number of schools that applied, and the number of slots that were available for the II/USP, for the first two cohorts (the only data available as of the writing of the report in February 2001). For 1999, there were 1,419 schools that applied for the 430 slots that were available. For 2000, 938 schools were eligible, 532 applied, and 430 slots were available.

I have also attached some correspondence that went out to local educational agencies that will provide you with additional information on the grant process that was implemented.

Ms. Paula Higashi, Executive Director
September 12, 2007
Page 2

As required by Commission on State Mandates regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list that accompanied your letter have been provided copies of this letter via either the United States mail or, in the case of state agencies, Interagency Mail Service.

CERTIFICATION

I hereby declare, under penalty of perjury under the laws of the State of California, that the statements made in this document true and complete to the best of my own knowledge or information or belief.

If you have any questions regarding this subject, please contact me at (916) 324-4728 or by e-mail at cbingham@cde.ca.gov.

Sincerely,



Carol Bingham, Director
Fiscal Policy Division

CB:bs

Attachments

PROOF OF SERVICE

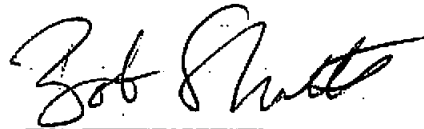
Test Claim Name: Immediate Intervention/Underperforming Schools Program
Claim Number:

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 1430 N Street, Suite 5602, Sacramento, CA 95814.

On September 12, 2007, I served the attached comment of the California Department of Education in said cause, by delivery to the Commission on State Mandates and by placing a true copy, therefore: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 1430 N Street, Suite 5602, for Interagency Mail Service, addressed as indicated on the attached mailing list:

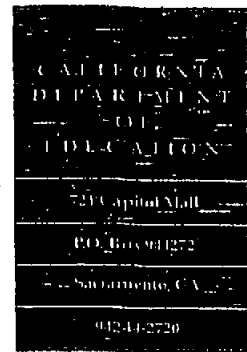
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 12, 2007, at Sacramento, California.



Bob Shotts



DELAINÉ EASTIN
State Superintendent of Public Instruction



August 13, 1999

Dear Principal:

Over the last four months, we have periodically written to your district superintendent about an important new program called the Immediate Intervention/Underperforming Schools Program (II/USP), which is part of the recently established Public Schools Accountability Act (PSAA). To be eligible, a school's results from the Standardized Testing and Reporting (STAR) achievement tests must place the school in the lower half of the statewide distribution for both 1998 and 1999. I am now writing to let you know that Superintendent Eastin has notified your superintendent that your school is eligible to participate in this program. Because schools must apply through their district office, she has invited your superintendent to apply on your behalf.

I encourage you to contact your superintendent for further information. In addition, information on the II/USP and other elements of the PSAA is available on our PSAA web site at <http://www.cde.ca.gov/psaa>.

Due to the requirements of the enacting legislation (SB1X, Chapter 3, Statutes of 1999), the timelines are very short. We must receive a response from your district superintendent postmarked no later than August 26, 1999.

Strong partnerships are essential if this program is to succeed, and we look forward to working with you to build an effective accountability program in California.

Sincerely,

Scott Hill
Chief Deputy Superintendent
Accountability and Administration

SH:pm

STATE PLANNING GRANT APPLICATION FORM

Immediate Intervention/Underperforming Schools Program (II/USP)

TO APPLY FOR AN II/USP PLANNING GRANT:

- 1) Check the box next to the name of each school applying
- 2) Sign, complete, and copy this form.
- 3) Return the entire original form via overnight mail. Keep the copy.
- 4) Email the name of your overnight mail carrier and the tracking number to CDE according to the instructions on page 2 of the accompanying "Application Process for State Planning Grants".

All applications must be postmarked on or before August 26, 1999. Priority will be given to schools with the earliest postmarks. All applications postmarked August 20 or earlier will be given the same priority.

RETURN FORM OVERNIGHT MAIL TO:

California Department of Education
 Office of Policy and Evaluation
 Educational Planning and Information Center
 721 Capitol Mall, 4th Floor
 Sacramento, CA 95814
 ATTN: Pat McCabe

QUESTIONS? Call the Educational Planning and Information Center at (916) 657-2273.

GOLDEN POPPY ELEMENTARY 60-12345

List of eligible schools. Check the box next to each school applying for an II/USP planning grant.

3001344 1 Golden Poppy Elementary

END OF LIST

Signature of District Superintendent or Designee: Telephone: FAX: Email:

_____ () () _____

Printed Name: Date:

When will CDE provide us with a list of external evaluators?

On September 1, 1999 CDE will furnish each district with an II/USP planning grant school a list of external evaluators. By October 1, 1999, the district must contract with an external evaluator from this list for each of its II/USP planning grant schools. The external evaluator will identify weaknesses at the school that contribute to the school's below average academic performance and, along with a school and community team, will develop an action plan to improve pupil academic achievement. Under guidelines adopted by the State Board of Education on June 10, 1999, external evaluators must be organizations or individuals external to the district in which the II/USP schools are located.

What is the relationship between the Comprehensive School Reform Demonstration (CSR D) Program and the II/USP? May a district apply for both a CSR D implementation grant and a state planning grant on behalf of the same school?

The first cohort of schools in the II/USP will include not only the approximately 330 planning grant schools but also about 100 schools that will receive federal implementation grants through the CSR D Program. The application deadline for CSR D was July 30, 1999. **Districts that applied for CSR D grants on behalf of their schools are encouraged to apply for state planning grants on behalf of the same schools.**

Schools that apply for both CSR D implementation grants and state planning grants will first be reviewed for CSR D grants. If the schools do not receive implementation grants, they will then be considered for planning grants; schools may not receive both federal and state grants. To apply for state planning grants, districts with CSR D applicant schools must follow the same procedures and meet the same deadlines as districts without CSR D applicant schools; submission of the CSR D application does not constitute an application for a planning grant.

What if I have a follow-up question?

If you have specific questions about the application process outlined in this letter, please call the Educational Planning and Information Center at (916) 657-2273. Inquiries about external evaluators should be directed to Jody McCarthy at (916) 657-3282. Other questions about the II/USP should be directed to Tomas Lopez at (916) 657-3510 or Basha Millhollen at (916) 657-2766.

Are there any other requirements that a district must satisfy in order to apply on behalf of its schools?

In applying for state planning grants, you should comply with any local requirements established by your own governing board. We also encourage you to contact the principals at eligible schools to ascertain their interest in applying for this program. **However, the law does not require any type of formal action or certification by your local governing board or principals for you to apply on behalf of your eligible schools.**

When will CDE accept applications for the state planning grants?

We will give first priority to any signed applications postmarked **August 20** or earlier. Signed applications postmarked August 21 will be given second priority; August 22 will be given third priority, and so on. The final cut-off date will be **August 26**. Once again, all applications must be returned by **overnight mail** to be considered.

Will the list of eligible schools be posted on the Internet?

On August 17, CDE plans to post the list of schools eligible for II/USP on its PSAA web site at <http://www.cde.ca.gov/psaa>. The list of eligible schools will remain available on the web site until August 31, 1999.

How will CDE select the schools that will receive planning grants?

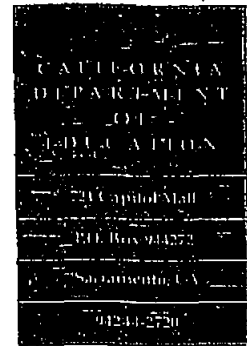
The PSAA provides that schools in the lower half of the statewide distribution based on both 1998 and 1999 STAR achievement test results are eligible for the II/USP. These eligible schools will be grouped into five equal ranks based on STAR achievement test results. The selection process must ensure that II/USP schools reflect an array of school performance levels based on these equal-sized ranks. The PSAA also requires that II/USP schools reflect statewide proportionate representation according to grade levels (elementary, middle, and high schools) as well as geographic distribution of rural and urban schools. Application filing dates will be used to establish priority among schools of similar types. Finally, it is possible that some eligible schools that do not volunteer may be included in the program to ensure the appropriate representation of schools.

When will CDE notify districts and schools which schools were selected?

The schools selected for state planning grants and the districts in which these schools are located will be notified by September 1. At that time, they will also receive detailed instructions about all activities that are required under the law to participate in the II/USP. A list of planning grant recipients will be posted on the PSAA web site at <http://www.cde.ca.gov/psaa>. Districts that applied for participation in the II/USP but did not have any schools selected will also be notified by September 10.



DELAINE EASTIN
State Superintendent of Public Instruction



July 6, 1999

Dear Superintendent:

On June 14, 1999, Superintendent of Public Instruction Delaine Eastin sent you information about the Immediate Intervention/ Underperforming Schools Program (II/USP), established by the Public Schools Accountability Act (Senate Bill 1X, Chapter 3, Statutes of 1999). My purpose in this letter is to update you on the II/USP, particularly to explain the application process for schools interested in receiving planning grants for this program.

The law requires that by August 15, 1999, the California Department of Education (CDE) must notify you if any of your schools qualify for the II/USP. To be eligible, schools must place in the bottom half of the statewide distribution for both the 1998 and 1999 Standardized Testing and Reporting (STAR) Program. Schools with fewer than 100 valid STAR scores in either year will be excluded. These small schools, along with alternative schools, continuation high schools and county schools, will participate in an alternative accountability system to be developed by July 1, 2000.

Eligible schools will have the opportunity to apply for grants to improve academic performance. As Superintendent Eastin noted in her letter of June 14, pupil achievement will be carefully monitored in II/USP schools. Schools that meet performance growth targets will be eligible for financial and non-monetary rewards; schools that fail to meet these targets over time may be subject to local or state interventions. Local intervention may occur if a participating school does not meet minimum growth targets within 12 months following receipt of implementation funding. State intervention may occur if a participating school does not meet its performance goals within 24 months after receipt of implementation funding.

I want to remind you that you will have to respond to the August notification very quickly if you are eligible for the program and are interested in participating. Later, this letter will explain the application process in detail. While the II/USP may seem somewhat complex, the application process for a planning grant will be very simple. Districts and schools will not need to complete a lengthy application to be considered for this portion of the II/USP.

State Planning Grant Schools

By September 1, 1999 about 330 schools will be selected to receive state II/USP planning grants from those schools that volunteer for the program. These grants will amount to \$50,000 for

developing school action plans with the purpose of improving pupil achievement. After approval of the action plans, schools will receive grants to implement the plans, sometime in the spring or early summer of 2000. State implementation grants will be a minimum of \$50,000, up to \$200 per pupil. Under the law, a participating school or school district must match the amount of state implementation grants from any new or existing sources of funding (Education Code Section 52054.5).

CSRD Applicants and State Planning Grants

The first cohort of schools in the II/USP will include not only the approximately 330 planning grant schools but also about 100 schools that will receive federal implementation grants through the Comprehensive School Reform Demonstration (CSRD) Program. While CSRD applicants must meet the basic eligibility criteria for the II/USP, they will participate in a separate grant application process, which is highly competitive. Successful CSRD applicants will be notified separately from planning grant schools of their selection and move directly to the implementation phase of the II/USP.

The CSRD application process has already begun. If your district is not participating in this process, I recommend that you instead consider applying for state-funded planning grants under the II/USP.

For those schools that are already pursuing CSRD funding, I encourage them also to apply for state planning grants. Schools that apply for both CSRD implementation grants and state planning grants will first be reviewed for CSRD grants. If the schools do not receive implementation grants, they will then be considered for planning grants; schools may not receive both federal and state grants. In order to apply for a state-planning grant, CSRD applicants must follow the same procedures as non-CSRD applicants; submission of the CSRD application does not constitute application for an II/USP planning grant.

Application Procedures for Planning Grants

As I noted earlier, applying for a state-planning grant will be very simple. On August 13 the CDE will mail you a list of schools in your district that are eligible to receive state planning grants under the II/USP. If none of your schools qualify, you will receive a notice to that effect. In order for one or more of your schools to be considered for a planning grant, you will simply have to:

- Check a box on the CDE's list of schools next to the name of each school that is applying for a planning grant.
- Sign the list (or have an authorized representative sign the list).
- **Mail the list back to us by overnight mail.** You should obtain proof of mailing and a tracking number in case there are problems with mail delivery. **We will not accept faxes in lieu of return mail.**

- **Confirm by e-mail** that you have returned the list to CDE. Include the name of the vendor that you used to mail the list along with the tracking number. This procedure is for document control only. **We will not accept applications by e-mail, only by surface mail.**

The application material to be mailed on August 13 will include the return mail address and e-mail address along with your list of eligible schools.

Application Filing Dates for Planning Grants

We will give first priority to any signed list postmarked **August 20** or earlier. Signed lists postmarked August 21 will be given second priority; August 22 will be given the third priority, and so on. The final cut-off date will be August 26. We will not accept applications postmarked after that date. Once again, all lists must be returned by **overnight mail** in order to be considered.

Posting List of Eligible Schools on Web Site

On August 17, we plan to post the list of schools eligible for II/USP on our PSAA web site at <http://www.cde.ca.gov/psaa>. This will ensure that the information will be available to you even if you do not receive your list promptly through the mail. In the event that you do not receive your list by August 19 and you have eligible schools that are interested in participating in II/USP, you should contact the Office of Policy and Evaluation at (916)-657-2273 for directions on how to proceed.

Selection Process

The Public Schools Accountability Act (PSAA) provides that schools in the lower half of the statewide distribution for 1998 and 1999 STAR are eligible for II/USP. These eligible schools will be placed in five "decile" rankings based on STAR results. The selection process must ensure that II/USP schools reflect an array of school performance levels based on these decile rankings. The PSAA also requires that II/USP schools should provide statewide proportionate representation according to grade levels (elementary, middle, and high schools) as well as geography. Application filing dates will be used to establish priority between schools of similar types. Finally, it is possible that even if 330 or more schools apply for planning grants, some schools that do not volunteer may be included in the program in order to have the appropriate representation of schools.

As I mentioned earlier in this letter, schools selected for planning grants will be notified by September 1, at which time they will also receive detailed instructions about all activities that are required under the law as well as a statewide list of external evaluators. By October 1, 1999, each district with an II/USP planning grant school must contract with an external evaluator from the statewide list for that planning grant school. The external evaluator will identify weaknesses at the school that contribute to the school's below average academic performance and, along with a school site and community team, develop an action plan to improve pupil academic achievement. Under guidelines adopted by the State Board of Education on June 10, 1999, external evaluators must be organizations or individuals **external to the district** in which the II/USP schools are located.

Projected Timeline

The timeline for notification, application, and selection is extremely tight:

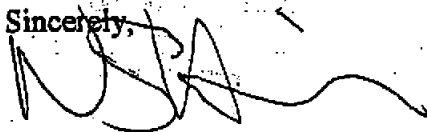
- You will be mailed a list of your eligible II/USP schools on August 13, 1999.
- On August 17 a list of eligible schools will be available via the Internet.
- You will have from August 20 to August 26 to apply to CDE for II/USP planning grants via overnight mail.
- You will be notified by September 1 regarding which if any of your schools will receive planning grants. We will also post the list of planning grant recipients on our web site soon after informing districts and schools.

Since there is only about two weeks between notification and selection, it is imperative that you now take steps to satisfy any local requirements for your schools to receive II/USP planning grants.

Follow-up Questions

If you have general questions about the II/USP or about the PSAA, please consult our web site at <http://www.cde.ca.gov/psaa>. If you have specific questions about how to apply for a planning grant, please call either Paula Wenzl at (916) 657-3380 or Richard Fattig at (916) 657-3796. Questions about the planning grants and school action plans should be directed to Basha Millhollen at (916) 657-2766. Inquiries about external evaluators should be directed to Jody McCarthy at (916) 657-2382.

Sincerely,



Scott Hill
Chief Deputy Superintendent
Accountability and Administration

SH:rf

CC: County Superintendents

Immediate Intervention/Underperforming Schools Program:

Application Process for State Planning Grants

The Public Schools Accountability Act (Senate Bill 1X, Chapter 3, Statutes of 1999) requires that by August 15, 1999, the California Department of Education (CDE) invite eligible schools to participate in the Immediate Intervention/ Underperforming Schools Program (II/USP). The accompanying "State Planning Grant Application Form" lists the eligible schools in your district. You should use this form to apply for II/USP State Planning Grants for these schools.

Which schools are eligible for the II/USP?

A school is eligible and appears on the attached application form if results from the Standardized Testing and Reporting (STAR) achievement tests place it in the lower half of the statewide distribution for both 1998 and 1999. Schools with fewer than 100 valid STAR scores in either year are excluded from consideration. These small schools, along with alternative schools, continuation high schools, and county-administered schools, will participate in an alternative accountability system to be developed by July 1, 2000.

What are II/USP state planning and implementation grants?

By September 1, 1999 the CDE will select about 330 schools to receive state II/USP planning grants from those schools that volunteer for the program. These \$50,000 grants are to be used for developing school action plans to improve pupil achievement.

After submission of the action plans to the State Superintendent of Public Instruction and the approval of applications for funding by the State Board of Education (SBE), schools will receive grants to implement the plans, sometime in the spring or early summer of 2000. State implementation grants will be a minimum of \$50,000, up to \$200 per pupil. Under the law, a participating school or school district must match the amount of state funding from any new or existing sources of funding (Education Code Section 52054.5).

What are the responsibilities of schools that receive II/USP funding to improve pupil achievement?

Please note that pupil achievement will be carefully monitored in schools that are receiving II/USP funding. Schools that meet performance growth targets will be eligible for financial and non-monetary rewards; schools that fail to meet these targets may be subject to local or state interventions. For more information regarding the Public Schools Accountability Act (PSAA), please refer to our PSAA web site at <<http://www.cde.ca.gov/psaa>>.

How does a district apply for II/USP planning grants on behalf of its schools?

It is very simple to apply for state planning grants. For one or more of your schools to be considered for a planning grant, the district superintendent (or designee) should simply review the attached application and:

- Check the box to the left of the name of **each school** on the list that is applying for a planning grant.
- Sign the application. If the list of schools has more than one page, please initial the additional pages in the box (es) provided. If the district superintendent is unavailable to sign the application, we will also accept the signature of a designee. Please provide all the information requested on the form.
- Make and retain a copy of the completed application.
- **Have the original signed application mailed back to CDE by overnight mail at the address indicated on the "Application Form."** Return all pages of the application. You should obtain proof of mailing and a tracking number from your overnight mail service to document the mailing date in case there are problems with mail-delivery. **Faxes in-lieu of overnight mail will not be accepted.**
- **Confirm by e-mail** that you have mailed the application to CDE. This procedure is for document tracking only. We will not accept applications via e-mail, only by overnight mail. You have two options to confirm by e-mail:

[either]

1. Complete and submit an electronic confirmation form available through the Public Schools Accountability Act (PSAA) web site at <http://www.cde.ca.gov/psaa>.

[or]

2. Send a confirmation to the following e-mail address: EPIC@cde.ca.gov. Please include
 - The name of the district superintendent or the name and title of the designee (if applicable)
 - The name of the district
 - The phone number of the district superintendent, or the phone number of the designee (if applicable)
 - **The name of the overnight mail carrier that was used, a mail tracking number, and date of mailing**

If none of your eligible schools is interested in applying, it is not necessary to return the application or to confirm by e-mail.

cds	CNAME	DNAME	SCH_NAME	School Type	1999 STAR Rank	1999 Eligible	1999 Apps received	1999 Selected	2000 STAR Rank	2000 Eligible	2000 Apps received	2000 Selected	2001 STAR Rank	2001 Eligible	2001 Apps received	2001 Selected
38-67819-6096283	SAN BERNARD	ONTARIO-MONTCLAIR	ELE LINCOLN DEV CENTER FOR HANDICAP	E				C								
01-61119-0130229	ALAMEDA	ALAMEDA CITY UNIFIED	ALAMEDA HIGH	H	8				9				8			
01-61119-6110779	ALAMEDA	ALAMEDA CITY UNIFIED	BAY FARM ELEMENTARY	E	10				10				10			
01-61119-6000004	ALAMEDA	ALAMEDA CITY UNIFIED	CHIPMAN MIDDLE	M	4	X	X	P	5				4			
01-61119-6100374	ALAMEDA	ALAMEDA CITY UNIFIED	EARHART (AMELIA) ELEMENTARY	E	10				10				10			
01-61119-6090013	ALAMEDA	ALAMEDA CITY UNIFIED	EDISON ELEMENTARY	E	9				9				9			
01-61119-0132878	ALAMEDA	ALAMEDA CITY UNIFIED	ENCINAL HIGH	H	4	X	X		5	X	X	P	5			
01-61119-6090039	ALAMEDA	ALAMEDA CITY UNIFIED	FRANKLIN ELEMENTARY	E	9				9				8			
01-61119-6090047	ALAMEDA	ALAMEDA CITY UNIFIED	HAIGHT ELEMENTARY	E	6				7				6			
01-61119-6090054	ALAMEDA	ALAMEDA CITY UNIFIED	LINCOLN MIDDLE	M	9				9				9			
01-61119-6090062	ALAMEDA	ALAMEDA CITY UNIFIED	LONGFELLOW ELEMENTARY	E	4	X	X		5				5	X	X	X
01-61119-6090005	ALAMEDA	ALAMEDA CITY UNIFIED	LUM (DONALD D.) ELEMENTARY	E	8				8				8			
01-61119-6090088	ALAMEDA	ALAMEDA CITY UNIFIED	MILLER (GEORGE P.) ELEMENTARY	S	5				5				5			
01-61119-6090021	ALAMEDA	ALAMEDA CITY UNIFIED	OTIS (FRANK) ELEMENTARY	E	8				8				8			
01-61119-6090120	ALAMEDA	ALAMEDA CITY UNIFIED	PADEN (WILLIAM G.) ELEMENTARY	E	8				8				9			
01-61119-6090104	ALAMEDA	ALAMEDA CITY UNIFIED	WASHINGTON ELEMENTARY	E	5				5				5	X	X	X
01-61119-6090112	ALAMEDA	ALAMEDA CITY UNIFIED	WOOD (WILL C.) MIDDLE	M	6				7				6			
01-61119-6090138	ALAMEDA	ALAMEDA CITY UNIFIED	WOODSTOCK ELEMENTARY	E	4	X	X	P	5				4			
01-61127-0130450	ALAMEDA	ALBANY CITY UNIFIED	ALBANY HIGH	H	10				10				10			
01-61127-6090161	ALAMEDA	ALBANY CITY UNIFIED	ALBANY MIDDLE	M	10				10				10			
01-61127-6090146	ALAMEDA	ALBANY CITY UNIFIED	CORNELL ELEMENTARY	E	10				9				9			
01-61127-6095376	ALAMEDA	ALBANY CITY UNIFIED	MARIN ELEMENTARY	E	10				10				10			
01-61127-6115222	ALAMEDA	ALBANY CITY UNIFIED	OCEAN VIEW ELEMENTARY	E	10				10				9			
01-61143-0131177	ALAMEDA	BERKELEY UNIFIED	BERKELEY HIGH	H	9				8				8			
01-61143-6090195	ALAMEDA	BERKELEY UNIFIED	CRAGMONT ELEMENTARY	E	5	X	X	P	7				7			
01-61143-6090211	ALAMEDA	BERKELEY UNIFIED	EMERSON ELEMENTARY	E	7				8				8			
01-61143-6090229	ALAMEDA	BERKELEY UNIFIED	FRANKLIN ELEMENTARY	S	3				3				3			
01-61143-6090252	ALAMEDA	BERKELEY UNIFIED	JEFFERSON ELEMENTARY	E	8				8				8			
01-61143-6056857	ALAMEDA	BERKELEY UNIFIED	KING MIDDLE	M	8				8				7			
01-61143-6090278	ALAMEDA	BERKELEY UNIFIED	LECONTE ELEMENTARY	E	6				6				5			
01-61143-6090294	ALAMEDA	BERKELEY UNIFIED	LONGFELLOW ARTS & TECHNOLOGY	M	8				7				7			
01-61143-6090288	ALAMEDA	BERKELEY UNIFIED	MALCOLM X ELEMENTARY	E	5				6				6			
01-61143-6105316	ALAMEDA	BERKELEY UNIFIED	MUIR (JOHN) ELEMENTARY	E	5				6				7			
01-61143-6090302	ALAMEDA	BERKELEY UNIFIED	OXFORD ELEMENTARY	E	8				8				7			
01-61143-6090187	ALAMEDA	BERKELEY UNIFIED	PARKS (ROSA) ENVIRONMENTAL SCI	E	3	X	X		4				4	X		
01-61143-6090310	ALAMEDA	BERKELEY UNIFIED	THOUSAND OAKS ELEMENTARY	E	4	X	X		4				4	X		
01-61143-6090328	ALAMEDA	BERKELEY UNIFIED	WASHINGTON ELEMENTARY	E	7				6				6			
01-61143-6097729	ALAMEDA	BERKELEY UNIFIED	WHITTIER/ARTS (ELEM)	E	7				7				7			
01-61143-6056865	ALAMEDA	BERKELEY UNIFIED	WILLARD MIDDLE	M	6				6				5			
01-61150-6097653	ALAMEDA	CASTRO VALLEY UNIFIED	CANYON MIDDLE	M	9				9				9			
01-61150-6090351	ALAMEDA	CASTRO VALLEY UNIFIED	CASTRO VALLEY ELEMENTARY	E	7				8				8			
01-61150-0132225	ALAMEDA	CASTRO VALLEY UNIFIED	CASTRO VALLEY HIGH	H	9				9				9			
01-61150-6090369	ALAMEDA	CASTRO VALLEY UNIFIED	CHABOT ELEMENTARY	E	9				9				9			
01-61150-6090385	ALAMEDA	CASTRO VALLEY UNIFIED	CREEKSIDE MIDDLE	M	9				9				9			
01-61150-6090393	ALAMEDA	CASTRO VALLEY UNIFIED	INDEPENDENT ELEMENTARY	E	10				10				10			
01-61150-6113005	ALAMEDA	CASTRO VALLEY UNIFIED	JENSEN RANCH (ELEM)	E	10				10				10			
01-61150-6090401	ALAMEDA	CASTRO VALLEY UNIFIED	MARSHALL ELEMENTARY	E	8				8				9			
01-61150-6090419	ALAMEDA	CASTRO VALLEY UNIFIED	PALOMARES ELEMENTARY	S	10				10				10			
01-61150-6090435	ALAMEDA	CASTRO VALLEY UNIFIED	PROCTOR ELEMENTARY	E	10				10				10			
01-61150-6090468	ALAMEDA	CASTRO VALLEY UNIFIED	STANTON ELEMENTARY	E	8				9				9			
01-61150-6090484	ALAMEDA	CASTRO VALLEY UNIFIED	VANNOY ELEMENTARY	E	9				10				10			
01-75093-6001374	ALAMEDA	DUBLIN UNIFIED	DUBLIN ELEMENTARY	E	9				9				9			
01-75093-0132704	ALAMEDA	DUBLIN UNIFIED	DUBLIN HIGH	H	9				8				9			
01-75093-6001390	ALAMEDA	DUBLIN UNIFIED	FREDERIKSEN ELEMENTARY	E	7				8				8			
01-75093-6001424	ALAMEDA	DUBLIN UNIFIED	MURRAY ELEMENTARY	E	8				8				8			
01-75093-6001432	ALAMEDA	DUBLIN UNIFIED	NIELSEN ELEMENTARY	E	9				9				9			
01-75093-6068484	ALAMEDA	DUBLIN UNIFIED	WELLS MIDDLE	M	8				9				9			
01-61168-6090492	ALAMEDA	EMERY UNIFIED	ANNA YATES ELEMENTARY	E	4	X	X	C	6				5			
01-61168-0132746	ALAMEDA	EMERY UNIFIED	EMERY HIGH	H	1	X	X	C	2				1			

Figure 3

Certificated Staff Incentive Program Funding

1999-00 Through 2001-02
(In Millions)

	Appropriation in Budget Act ^a	Proposed Expenditure (level)
1999-00	\$50	—
2000-01	100	\$100
2001-02 ^a	100	100
Totals	\$250	\$200

^a Amount proposed in Governor's budget.

The II/USP provides state and federal support for school-wide reform efforts at low-performing schools. The 2001-02 Governor's Budget proposes \$113.8 million from the General Fund (Proposition 98) for the program. The budget would provide planning grants for a third cohort of 430 schools, and implementation grants for the first and second cohorts (782 schools in total). Figure 4 shows the schools and number of students in each cohort for 2001-02. The Governor's budget continues to fund 78 schools with federal funds, which we discuss below.

In their first year in the program, participating schools are provided \$50,000 planning grants to develop a comprehensive school reform plan. As part of the planning phase, the schools must hire qualified external evaluators to assist in developing the reform plans. Once a school's plan is approved by the SBE, the school receives annual implementation grants of up to \$200 per enrolled student. Schools will receive the implementation grants for two years, and may be granted a third year of funding by the SBE if they continue to struggle to meet their API growth targets. The SBE can decide to impose sanctions after either the second or third year of funding for schools that continue to struggle. The first cohort will reach the end of their two-year implementation grant in July 2002 and potentially could face sanctions as early as fall of 2002.

Program Eligibility Has Changed. Any school whose average student score was below the 50th percentile on the Stanford-9 was eligible to participate in the first II/USP cohort in 1999-00. Under the original criteria, over half of the schools in the state were eligible to apply for the program, and 1,419 schools applied for the 430 slots available. Chapter 695, Statutes of 2000 (SB 1552, Alpert), amended the PSAA to change the eligi-

bility criteria to be based upon the API. As revised by Chapter 695, schools in the lower half of the API which did not meet their API growth targets were eligible. Based upon 1999-00 API scores, 938 schools were eligible in 2000. Of the 938 schools, 532 applied for the 430 slots available.

Figure 4

Participation in II/USP^a in 2001-02

Cohort 1 (participation started 1999-00)

- Grant: Implementation.
- Number of Schools: 352^b
- Number of Students: 285,000^c

Cohort 2 (participation started 2000-01)

- Grant: Implementation
- Number of Schools: 430^d
- Number of Students: 430,500

Cohort 3 (participation starts 2001-02)

- Grant: Planning
- Number of Schools: 430
- Number of Students: Unknown

^a Immediate Intervention/Underperforming Schools Program.
^b An additional 78 schools are funded with federal funds.
^c An additional 89,000 students are funded with federal funds.
^d Some schools in Cohort 2 may apply to be funded with federal funds.

Legislature Should Broaden II/USP Eligibility to Include Lowest-Achieving Schools. The policy change of Chapter 695 to focus on schools not making their growth targets makes sense to ensure that schools that are struggling to improve receive additional resources. However, only focusing on schools not achieving their growth targets may be too narrow. For example, under the eligibility criteria in Chapter 695, the school with the lowest API score in the entire state is not eligible for this immediate assistance program since it reached its annual growth target. Even though such a low-performing school is showing signs of improvement, we believe that its improvement could potentially be expedited by participation in this program. Such a low-performing school is likely to be in greater need of external assistance than a school in the fifth decile (close to the state average) which did not meet its annual API growth target. Accordingly, we recommend the Legislature expand the eligibility for the II/USP program to all schools in the lowest two deciles of API ranking.

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DELAINÉ EASTIN

State Superintendent of Public Instruction

June 14, 1999

Dear County and District Superintendents:

This letter provides important information about applying for participation in a new grants-based program for underperforming schools, established by the Public Schools Accountability Act (Senate Bill 1X, Chapter 3, Statutes of 1999). The act provides a wonderful opportunity for schools to participate in a comprehensive program to improve student performance.

Schools selected for the Immediate Intervention/Underperforming Schools Program (II/USP) will receive a minimum of \$50,000 or up to \$200 per student for planning and/or implementation of comprehensive reforms to improve student performance. Student achievement will be monitored carefully in this program. Schools that meet improvement goals will be eligible for financial and non-monetary rewards; schools that fail to meet growth targets over time, despite support and financial assistance, may be subject to district or state interventions. This letter is designed to help you determine if your schools are eligible for the program and what steps are necessary to participate.

Who is eligible?

Under this law, schools scoring in the lower half of the statewide distribution of the Standardized Testing and Reporting (STAR) Program in **both 1998 and 1999** will be eligible to participate in II/USP. Schools with fewer than 100 pupils with valid STAR scores in either year will be excluded. These small schools, along with alternative schools, continuation high schools and county schools, will participate in an alternative accountability system required to be developed by July 1, 2000.

Underperforming schools that need time and assistance to develop improvement plans should apply for state planning grants. Schools that have demonstrated readiness to implement comprehensive school reform and that meet state eligibility requirements may apply for federal Comprehensive School Reform Demonstration funds under this program.

How is eligibility determined?

Each district should first review its 1998 STAR results to determine if any of its schools fall in the lower half of the statewide distribution. The 1999 STAR results will be available by June 30, 1999. Attached to this letter is a copy of the statewide 1998 STAR results so that you can

compare your schools' results to the statewide averages. (See Attachment A.) If the percentage of pupils at a school scoring at or above the 50th national percentile rank (NPR) for all content areas is lower than the statewide figures, the school falls in the lower half.

Within a school, if some of the results are above and some below the statewide numbers, a rough estimate can be made by comparing the school's reading and mathematics results to the statewide reading and mathematics results. Assuming that all grade levels in the school have about the same number of students, a simple comparison of the school's reading and mathematics results to the statewide reading and mathematics results will enable you to make a rough estimate of whether a school is above or below the statewide average. Attachment B provides a worksheet to help you make this calculation.

If you think there is a possibility that any of your schools scored in the lower half of the statewide distribution in 1998 and that you would like to participate in II/USP, you should consider asking your local governing board for approval, as soon as possible. The deadlines for the program are very tight, and it will be important for you to apply quickly if your schools are eligible--that is why I am sending this letter to you at this time.

How do schools apply for an II/USP planning grant?

II/USP planning grants will be available to approximately 330 underperforming schools that need the time and assistance to systematically review student achievement and other variables in the school and to create a data-driven plan to improve student performance. II/USP schools will apply through their district office to the state for a \$50,000 planning grant. The application process for this program will be relatively simple, and selection will be on a first-come, first-served basis, within selection criteria established by law.

All eligible II/USP schools will be invited to participate in August. Districts will then have to respond quickly as to whether any of their schools will volunteer to participate. Districts will be notified of the final list of selected II/USP planning schools by September 1, 1999. These schools will be required to contract with an external evaluator to work with the school community on a comprehensive needs assessment and action plan. Upon district and state approval of the action plan, schools will receive a minimum of \$50,000 or up to \$200 per student for implementation of the plan.

Which schools should apply for II/USP implementation grants?

Approximately 100 underperforming schools which are truly ready to implement a comprehensive school reform and serve as "lighthouses" for the rest of the state will be eligible to implement their plans under this program with federal Comprehensive School Reform Demonstration (CSRSD) funds. Schools applying for federally funded CSRSD implementation grants must demonstrate readiness to implement reforms. In addition to being in the lower half of the statewide distribution on STAR for 1998 and 1999, these schools must be on either the 1997 or 1998 Program Improvement list and be on the CDE certified Program Improvement list. *Readiness* will be measured by an assessment of the school's analysis of its needed reforms and its plans for implementing these reforms to improve student achievement. The due date for applications is July 30, 1999. For more information about how to apply, refer to <http://www.cde.ca.gov/iasa/csrd>. Because I am anticipating that the CSRSD process will be very competitive and not all applications will be funded, I urge you to consider also applying for the planning grants.

Where can you find additional information?

Given the timeline, it is important that districts and schools immediately assess each school's needs and readiness to participate in either the planning or implementation portion of II/USP. (See Attachment C for a flowchart regarding planning and implementation.)

More details about applying for planning grants will be provided later this month. For more information about the Public Schools Accountability Act, please consult the CDE web site at <<http://www.cde.ca.gov/psaa>>. Additional information about the II/USP planning and implementation grants is available at <<http://www.cde.ca.gov/iusp>>.

Questions regarding the identification of schools eligible for II/USP should be directed to Bill Padia at (916) 657-2757. Questions about II/USP planning and implementation grants should be directed to Hanna Walker at (916) 657-2577.

I will continue to give you updates regarding the II/USP as additional details become available. I am attempting to give you as much advance notice as possible, but, as a result, I know this information is incomplete. We will endeavor to update you on these opportunities as soon as possible. Remember--accountability is coming to California. By being one of the pioneers, you will help to create a better final product. I urge you to be one of our leaders in shaping a fair and high quality system of accountability in our great state.

I hope you have an enjoyable summer, and I look forward to our work together to implement our state's educational reform efforts.

Sincerely,



DELAINE EASTIN
State Superintendent of Public Instruction

DE:pm
Attachments



State: California

Total Enrollment Reported: 4,431,786

Total Number Tested: 4,128,022

Total LEP Tested: 798,769

STAR State Summary Report for All Students

Spring, 1998

CS
CO

Grades

	2	3	4	5	6	7	8	9	10	11
Total Reading	N= 406331	N= 415981	N= 398275	N= 395640	N= 391624	N= 390659	N= 379055	N= 388378	N= 355762	N= 303626
NPR for "Avg." Student Score	39	36	40	40	43	41	44	34	32	37
% Scoring Above 75th NPR	18	17	21	20	21	21	19	12	13	17
% Scoring At or Above 50th NPR	40	38	40	41	42	44	46	34	32	36
% Scoring Above 25th NPR	61	59	62	63	66	66	70	59	55	62
Mean Scaled Score	571.4	600.2	627.3	643.8	656.2	671.3	684.9	684.2	689.7	697.4
Total Math	N= 443340	N= 425961	N= 418903	N= 408323	N= 400747	N= 394942	N= 382325	N= 394911	N= 359866	N= 306508
NPR for "Avg." Student Score	43	42	39	41	48	45	45	50	43	46
% Scoring Above 75th NPR	21	18	20	20	25	21	20	22	17	22
% Scoring At or Above 50th NPR	43	40	39	41	46	42	42	47	41	43
% Scoring Above 25th NPR	65	64	62	61	67	65	64	71	68	66
Mean Scaled Score	564.9	590.7	614.2	638.7	656.4	667.8	676.6	688.5	694.9	699.9
Language	N= 431615	N= 412326	N= 413126	N= 404147	N= 393217	N= 389042	N= 377053	N= 387844	N= 352819	N= 301622
NPR for "Avg." Student Score	40	39	44	44	47	49	47	47	36	43
% Scoring Above 75th NPR	23	16	20	23	25	28	23	20	16	18
% Scoring At or Above 50th NPR	43	38	45	46	47	50	47	48	37	45
% Scoring Above 25th NPR	59	61	66	66	69	68	69	70	58	67
Mean Scaled Score	581.2	596.7	620.9	634.6	643.8	656.1	662.2	668.7	669.4	678.4
Spelling	N= 437039	N= 425430	N= 419011	N= 408712	N= 401279	N= 396924	N= 384293			
NPR for "Avg." Student Score	38	38	36	38	40	42	36			
% Scoring Above 75th NPR	15	14	18	20	18	22	14			
% Scoring At or Above 50th NPR	38	34	35	40	38	43	35			
% Scoring Above 25th NPR	61	64	57	62	63	67	57			
Mean Scaled Score	558.8	589.8	612.8	630.0	643.2	657.4	668.8			
Science								N= 392739	N= 357166	N= 304267
NPR for "Avg." Student Score								43	44	44
% Scoring Above 75th NPR								14	18	21
% Scoring At or Above 50th NPR								39	44	41
% Scoring Above 25th NPR								73	68	68
Mean Scaled Score								670.5	677.2	682.2
Social Science								N= 391174	N= 355631	N= 302671
NPR for "Avg." Student Score								42	38	54
% Scoring Above 75th NPR								15	18	32
% Scoring At or Above 50th NPR								44	38	57
% Scoring Above 25th NPR								72	60	74
Mean Scaled Score								649.5	652.7	666.1

Immediate Intervention/Underperforming School Program (II/USP)

How to estimate where your school scored in the 1998 STAR statewide distribution

This worksheet is for local use only. Do not submit to California Department of Education.

A	Your School			State		
	B READING Step 1	C MATHEMATICS Step 2	D READING & MATHEMATICS Step 3	E READING	F MATHEMATICS	G READING & MATHEMATICS Step 4
Grades tested statewide for 1998 STAR	Enter the % scoring at or above 50th NPR in READING for each grade tested at YOUR SCHOOL ¹	Enter the % scoring at or above 50th NPR in MATHEMATICS for each grade tested at YOUR SCHOOL ¹	Add Column B + Column C for each grade tested at YOUR SCHOOL	STATE average % scoring at or above 50th NPR in READING	STATE average % scoring at or above 50th NPR in MATHEMATICS	Add Column E STATE average + Column F STATE average ONLY for those grades that have been tested at YOUR SCHOOL
2				40	43	
3				38	40	
4				40	39	
5				41	41	
6				42	46	
7				44	42	
8				46	42	
9				34	47	
10				32	41	
11				36	43	

Step 5

Step 6

TOTALS:

Add Column D
for all grades
tested at YOUR
SCHOOL

Add Column G
for all grades
tested at YOUR
SCHOOL

- If **TOTAL Column D (Step 5)** is **GREATER THAN TOTAL Column G (Step 6)**, your school is probably in the upper half of the statewide 1998 STAR distribution.
- If **TOTAL Column D (Step 5)** is **LESS THAN TOTAL Column G (Step 6)**, your school is probably in the lower half of the statewide 1998 STAR distribution.

¹ You can obtain school percentages from the 1998 STAR Summary Report (by school, by grade) for All Students from CDE website: <<http://star.cde.ca.gov>>

NOTE: Use this worksheet only for schools having at least 100 valid 1998 STAR test scores.

Public Schools Accountability Act of 1999 Immediate Intervention/Underperforming Schools Program (II/USP)¹

Federal Funds (CSRD²)

\$32.4 million (2 years)

State Funds

\$64 million

SCHOOL ELIGIBILITY

- At least 100 valid student SAT-9 scores AND
- Lower half on 1998 SAT-9 results AND
- Lower half on 1999 SAT-9 results AND
- Program Improvement Schools in 1997 or 1998
(Schools applying under Title X do not have to meet the Program Improvement School criteria.)

- At least 100 valid student SAT-9 scores AND
- Lower half on 1998 SAT-9 results AND
- Lower half on 1999 SAT-9 results

8/99

Competitive
Application

SELECTION PROCESS

Volunteers and
Random Selection

8/99

9/99

Select and Notify
Approx. 100 Schools for
Implementation Grants

Select and Notify
Approx. 330 Schools
for Planning Grants

9/99

Contract with
External Evaluator

10/99

Submit Action Plan

4/00

Receive
Implementation Grant

6/00

¹ Program details are available at our website: <<http://www.cde.ca.gov/psaa>>

² CSRD (Comprehensive School Reform Demonstration Program) details are available at our website: <<http://www.cde.ca.gov/iasa/csrd/>>

DELAINE EASTIN

State Superintendent of Public Instruction

August 12, 1999

Dear District Superintendents:

Over the last four months, I have periodically written to you about an important new program called the Immediate Intervention/Underperforming Schools Program (II/USP), which is part of the recently established Public Schools Accountability Act of 1999. It is now time to apply to participate in this program, and I would like to strongly encourage your involvement.

My office has heard from a number of school districts that are on the path to improved student achievement, and some of these districts have expressed interest in including all of their eligible schools under the II/USP. This interest confirms what I have always believed about California's public education system--that districts and schools in this state will do what it takes to raise the achievement for all students in their communities. Educators are willing to make the long-term commitment to improve their schools.

Enclosed you will find the *Immediate Intervention/Underperforming Schools Program: Application Process for State Planning Grants*. You will also find the *State Planning Grant Application Form*, which lists the schools in your district that are eligible to participate in the II/USP. **Due to the requirements of the enacting legislation (SB1X, Chapter 3, Statutes of 1999), the timelines are extremely short, and your application must be postmarked no later than August 26, 1999.** Priority will be given to schools on a first-come, first-served basis.

Please consider this exciting opportunity by applying on behalf of *all* the eligible schools in your district. The II/USP requires a diverse selection of schools, so the more schools from your district that apply, the greater your chances are of having one or more of your schools chosen to participate. Selected schools will receive new funds to support planning and implementation of reforms over a three-year period. Student achievement will be carefully monitored, and schools must meet improvement goals. Schools that fail to meet growth targets may be subject to district or state interventions; on the other hand, schools and teachers who work in underperforming schools that meet or exceed growth targets may be eligible for monetary and non-monetary awards in the future. Incentives to improve academic achievement are an important part of Governor Davis' reform effort.

District Superintendents
August 12, 1999
Page 2

Finally, I strongly encourage you to confer immediately with your principals who work in the schools that are eligible for the II/USP. Because of the short timeline, we have taken the liberty of informing these principals, through a separate mailing, of their schools' eligibility. I hope this will facilitate your decision-making about this significant opportunity.

Strong partnerships are critical for success in this program. Accordingly, my office stands ready to work with you and support local efforts to make the II/USP work for the students in your community.

If you have any questions regarding the selection process for the II/USP, please contact me or Bill Padia, Director of the Office of Planning and Evaluation, at (916) 657-2757.

Sincerely,



DELAINE EASTIN
State Superintendent of Public Instruction

DE:ssg
Enclosures

Commission on State Mandates

Original List Date: 7/3/2002
Last Updated: 4/26/2007
Last Print Date: 09/07/2007
Claim Number: 01-TC-22
Issue: Academic Performance Index

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Claimant Representative

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Fax: (916) 564-6103

SixTen and Associates Mandate Reimbursement Services

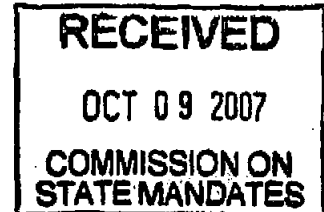
Exhibit E

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October 5, 2007



Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: CSM. 01-TC -22
Academic Performance Index

Dear Ms. Higashi:

Please find enclosed a supplement to the test claim filing, specifically, a history of the Title 5, CCR, sections included in the test claim.

Sincerely,

A handwritten signature in black ink, appearing to read "KB Petersen".

Keith B. Petersen

1 Keith B. Petersen
2 SixTen and Associates
3 3841 North Freeway Blvd, Suite 170
4 Sacramento, CA 95834
5 Voice: (916) 565-6104
6 Fax: (916) 564-6103
7 kbpsixten@aol.com

8 BEFORE THE
9 COMMISSION ON STATE MANDATES
10 STATE OF CALIFORNIA

11 **Supplement to the:**) No. CSM. 01-TC -22
12)
13 Test Claim Filed June 28, 2002) Academic Performance Index
14)
15) History Index for
16) Title 5, California Code of Regulations
17 by San Juan Unified School District)
18) Sections 1031 through 1039
19)

20 REQUEST FOR SUPPLEMENTAL INFORMATION

21 This supplement to the test claim provides an index and copy of each change to
22 the Title 5, CCR, sections included in the test claim. The Registers cited are attached
23 as Exhibit A. Amended language is underlined (new language) or stricken out (deleted
24 language).

25 HISTORY OF TITLE 5, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

26 **Register 00-52** Added §§ 1031-1038 as emergency regulations.
27 **Register 01-04** Editorial correction of NOTE in § 1035.
28 **Register 01-05** Amended:
29 § 1032: New subsection (d)(4) and subsection renumbering.
30 § 1033: Amendment of subsections (a)(3) and (b) and new

1 subsections (b)(1)-(5) as emergency regulations.

2 § 1035: Amendment of subsections (d) and (g) filed as emergency
3 regulations.

4 Renumbered:

5 § 1038: Renumbered former §1038 to § 1039 as emergency
6 regulations.

7 Added:

8 § 1038: New section filed as emergency regulation.

9 § 1039: New section filed as emergency regulation.

10 **Register 01-24** Certificate of Compliance for §§ 1031 - 1039.

11 Amended:

12 § 1031: Amendment of subsection (b).

13 § 1032: Various amendments.

14 § 1033: New subsection (b)(6).

15 § 1034: Amendment of subsection (d)(3).

16 § 1035: Various amendments.

17 § 1036: Amendment of subsection (a).

18 § 1038: Amendment of NOTE section.

19 **Register 01-31** Amended:

20 § 1032: Amendment of subsections (d)(4), (d)(6) and (h)(1) and
21 new subsection (j).

22 **Register 01-46** Amended:

1 § 1032: Amendment of section heading and new subsection (i).

2 **Register 02-02** Amended:

3 § 1031: Amendment of subsection (b), repealer of subsection (b)(3)
4 and amendment of NOTE section.

5 § 1032: Further amendment of section and NOTE section.

6 §1033:Amendment of section heading and subsection (a), repealer
7 of subsections (a)(1)-(3), redesignation and amendment of
8 former subsection (a)(4) as subsection (b), renumbering of
9 former subsections (b)-(b)(6) to section 1034, subsections
10 (b)-(c) and new NOTE section.

11 § 1034: Repealer of former section 1034, new subsections (a)-
12 (a)(4)(B), and renumbering and amendment of former
13 section 1033, subsections (b)-(b)(6) to section 1034,
14 subsections (b)-(c).

15 § 1035: Amendment of subsections (d) and (g).

16 § 1036: Amendment of section heading, repealer, and new section
17 and amendment of NOTE.

18 § 1037: Amendment of section:

19 § 1038: Amendment of section and NOTE.

20 § 1039: Amendment of section and NOTE.

21 Repealed:

22 § 1034

1 § 1036

2 Added:

3 § 1034

4 § 1036

5 **Subsequent Registers:** There may be changes to the regulations after the date the
6 test claim was filed, which are not included.

7 /

8 /

9 /

10 CERTIFICATION

11 By my signature below, I hereby declare, under penalty of perjury under the laws
12 of the State of California, that the information in this document is true and complete to
13 the best of my own knowledge or information or belief, and that the attached regulations
14 are true and correct copies of documents from archives of a recognized law library.

15 EXECUTED this 5 day of October 2007, at Sacramento, California

16 

17 FOR THE TEST CLAIMANT

18 Keith Petersen, President

19 SixTen and Associates

20 ATTACHMENT

21 Exhibit A Title 5, CCR Registers

Register 00-52

§§ 1031 - 1038

HISTORY

1. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39). For prior history see Register 74, No. 52.
2. Repealer and new section filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1022. Recording Test Scores.

Scores for individual pupils on these tests shall not be used by school districts or teachers for individual diagnosis or placement, or as a basis for any other decisions which would affect the pupil's school experience. Scores from these tests shall not in any manner be included on a pupil's cumulative school record.

HISTORY

1. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

§ 1023. Security of Test Material.

In order to afford protection to the security and reliability of the tests given pursuant to this article, all officers and employees of the district and other persons concerned with the state testing program shall take all reasonable precautions to prevent pupils from learning in advance of the specific content of the tests.

HISTORY

1. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

§ 1023.1. Practice Exercises.

No practice exercises other than those specifically designated or approved by the State Department of Education shall be given to pupils in preparation for the testing program or in the particular test used.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. New section filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1024. Responsibility of the County Superintendent of Schools.

The county superintendent is requested to cooperate with and give assistance to each school district under his jurisdiction which seeks such assistance from him in carrying out duties imposed on it by Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code. In addition for any district which does not have a district superintendent, the county superintendent shall make certain that the tests are administered in accordance with these regulations and with the instructions and testing procedures developed for the tests.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. Amendment filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
3. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Amendment filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1025. Related Information.

Each school district superintendent shall furnish to the State Department of Education such other pupil and school information that is requested by the Department in order to carry out the provisions of Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code and to properly analyze and evaluate the test results as required by Sections 60604.5 and 60660 of the Education Code.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. New section filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment of section and repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

3. Amendment filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1028. Reporting Test Results.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 60607 and 60640, Education Code.

HISTORY

1. New section filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment filed 9-27-76; effective thirtieth day thereafter (Register 76, No. 40).
3. Repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Repealer filed 11-29-84; effective thirtieth day thereafter (Register 84, No. 48).

Article 1.5. Education Improvement Incentive Program**§ 1030. Computation of Change in a School's Performance.**

(a) The formula in subsection (b) shall be applied by the State Department of Education to all secondary schools eligible to compete in the Education Improvement Incentive Program and whose performance in the prior fiscal year has decreased from that in the next preceding fiscal year. All schools with a 12th grade enrollment of 50 students or fewer and all continuation education schools are excluded from the computation.

(b) The formula:

(1) Subtract the school's prior year composite score on the California Assessment Program (CAP) from the current year score to compute a change score.

(2) Regress the number of students tested in CAP and the square of the number of students tested onto the change score using a standard multiple regression procedure.

(3) Using the results of the multiple regression, compute a predicted change score.

(4) Subtract the actual change score obtained by the school from the predicted change score to obtain a residual.

(5) Studentize the residual to have a mean of zero and a standard deviation of 1.

(6) Identify those schools which have a studentized residual equal to or less than minus 1.5. A studentized residual is the ratio of the residual to its standard error after the model has been fit and predicted change scores and residuals calculated. The predicted change scores are calculated from the estimated regression equation. The residuals are calculated as actual minus predicted.

(7) For those schools identified in paragraph (6) of this subsection, the incentive award for the current year shall be based on the improvement in performance between the current year and the 1983-84 fiscal year or the fiscal year in which the school first participated in the incentive program.

(c) Any school whose incentive award is adversely affected by a calculation pursuant to subdivision (b) may appeal to the Superintendent of Public Instruction.

NOTE: Authority cited: Sections 33031 and 54653.6, Education Code. Reference: Section 54653.6, Education Code.

HISTORY

1. New section filed 5-1-87; operative 5-31-87 (Register 87, No. 20).

Article 1.7. Award Programs Linked to the Academic Performance Index (API)**§ 1031. Intent of the Regulations.**

(a) The Academic Performance Index (API) measures the performance of California public schools, especially the academic performance of pupils, and demonstrates comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools pursuant to

Education Code section 52052 and the Framework for The Academic Performance Index, July 1999 and The 1999 Base Year Academic Performance Index, December 15, 1999, which are incorporated herein.

(h) The purpose of these regulations is to implement the programs established by three statutes relating to the API:

(1) The Governor's Performance Award Program of the Public Schools Accountability Act of 1999 (Education Code sections 52050 et seq.).

(2) The Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.).

(3) The Academic Performance Index Schools Site Employees Performance Bonus (Section 40, Chapter 71 of the Statutes of 2000).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New article 1.7 (sections 1031-1038) and section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1032. General Eligibility Criteria for Awards Programs Related to API Growth.

(a) For purposes of this Article, "schools" shall be defined as all schools, including charter schools, that receive a ranking on the API including schools participating in the Immediate Intervention/Underperforming Schools Program. These schools are eligible to participate in all three award programs identified in Section 1031.

(b) The API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system. An alternative accountability system will be developed for schools with fewer than 100 valid test scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

Once the alternative accountability system required by Education Code section 52052(g) is adopted by the State Board of Education, alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API. If the school elects to be part of the API accountability system, the school shall remain in the system for at least three subsequent years.

(c) For the purposes of these award programs, growth API means the second of two consecutive years for which the API is calculated. If a school does not receive an API pursuant to subdivisions (d)(1) or (d)(2), the school is ineligible for participation in any of the award programs for the current and subsequent year. If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.

(d) A school's API shall be considered invalid under the following circumstances:

(1) The local educational agency has certified that there were adult testing irregularities at the school.

(2) The local educational agency has certified that the API is not representative of the pupil population at the school.

(3) The local educational agency has certified that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.

(4) Information is made available to or obtained by the California Department of Education (department) that indicates that the integrity of the API may have been compromised. If after reviewing the information the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized.

(e) In the event that, subsequent to the calculation of an API for a school, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the circumstances set out in subdivision (d) occurred, the department may in-

validate the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(f) All schools that reach their growth targets or have an API of 800 and growth of at least 1 point, have comparable improvement as defined in subdivision (g), and meet the minimum participation rate in subdivision (h), shall be recognized through the Governor's Performance Award Program and the Academic Performance Index Schools Site Employees Performance Bonus program.

(g) Comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) shall be defined as either: 1) 80 percent of the school-wide API improvement goal for schools with APIs less than 800, simplified to the nearest whole number (i.e., 1.51 equals 2); or 2) the actual distance to 800. Numerically significant subgroups with APIs below 800 at schools with API scores of 800 or above shall also show a one-point gain. Numerically significant subgroups at 800 or above shall maintain a score at or above 800.

(h) For elementary and middle schools, the minimum participation rate for all three awards programs shall be 95 percent; for high schools, it shall be 90 percent for the 2000 API growth, with the intention of increasing this rate to 95 percent in the future.

(1) If the test publisher includes the pupil's answer forms or test booklets for the nationally-normed test pursuant to Education Code section 60642 for grades 2-11 in the number of used test forms, the pupil shall be counted as a test-taker.

(2) No pupil shall be counted more than once as a test-taker.

(3) The participation rate shall be calculated as follows:

(A) Divide the total number of test-takers in grades 2 through 11 at the school site by

(B) The total enrollment in grades 2-11 minus the number of pupils exempted from taking the test either by their Individualized Education Program (IEP) pursuant to Education Code section 60640(e) or parental waivers pursuant to Education Code section 60615.

(4) For purposes of subdivision (3)(B) above, enrollment shall be determined by the enrollment information collected by the department as part of the Standardized Testing and Reporting Program (STAR), pursuant to Education Code sections 60640 et seq.

(5) In the case of pupil testing irregularities, the scores of affected pupils shall be eliminated from the calculations of the school's growth API, although the pupils are counted as tested and shall contribute to the school's participation rate.

(6) There shall be no rounding in determining this minimum participation rate (i.e., 94.9 percent does not equal 95 percent).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1033. Award Funding Criteria for Governor's Performance Award Program and Academic Performance Index Schools Site Employees Performance Bonus.

(a) Schools that meet the eligibility requirements for the Governor's Performance Award Program (GPA) shall receive the per pupil award amount for each of their eligible pupils determined as follows:

(1) The school funding rate is the total number of test-takers divided by the total enrollment on the first day of testing for grades 2-11 minus the IEP exemptions.

(2) There shall be no rounding in determining the school funding rate (i.e., 94.9% does not equal 95%).

(3) The kindergarten, first grade and 12th grade enrollment as established for that school year by the California Basic Education Data System (CBEDS) shall be added to the number of test-takers, less the number of pupils with testing irregularities plus the number of IEP exemptions, then

multiplied by the school funding rate. This result, simplified to the nearest whole number (i.e., 1.51 equals 2) shall determine the number of eligible pupils upon which the GPA awards are based.

(4) The amount allocated per pupil shall be determined on a prorata basis from the total amount of funding available in the annual State Budget.

(b) The Academic Performance Index Schoolsite Employees Performance Bonus awards shall be divided equally among school site individual employees on a full-time equivalent (FTE) basis and to the school site, using the same eligibility criteria as the GPA.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Section 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1034. Specific Eligibility Criteria for the Certificated Staff Performance Incentive Act.

To be eligible to receive awards under the Certificated Staff Performance Incentive Act, school sites must have attained a statewide decile rank of 1-5 in the base year of the current growth API and must meet all of the relevant statutory requirements and each of the following requirements:

(a) Each school site must have improved by a minimum of two times its annual growth target on its API between the base year and the current growth year.

(b) All numerically significant ethnic or socioeconomically disadvantaged subgroups at a school must have improved by a minimum of two times their annual growth targets, simplified to the nearest whole number (i.e., 1.51 equals 2). However, all numerically significant ethnic or socioeconomically disadvantaged subgroups with an API of 800 or above must maintain a subgroup API of 800 or above.

(c) In addition to subdivisions (a) and (b) above, each school site shall have the required participation rate for the 2000 growth API, as calculated by the department. For the 2000 growth API, each school must show improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642.

(d) The local educational agency must complete an application on behalf of their eligible schools, which shall include:

(1) The number of eligible schools;

(2) Certification that the data used in the API calculations from the schools is accurate; and

(3) A list of certificated staff in certificated positions on an FTE basis at each of the eligible schools.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652 and 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1035. Award Funding Criteria for Certificated Staff Performance Incentive Act.

Distribution of Certificated Staff Performance Incentive Act awards pursuant to the 2000 growth API shall be as follows, with at least one thousand (1,000) \$25,000 awards, three thousand seven hundred fifty (3,750) \$10,000 awards and up to seven thousand five hundred (7,500) \$5,000 awards being distributed in the process. The total amount of funding for this Act provided in the annual State Budget shall be distributed proportionally across each of elementary, middle, and high schools statewide by the number of certificated staff as reported in the most current CBEDS report.

(a) Schools will be declared eligible or ineligible according to the rank of schools pursuant to Education Code section 52052. An "eligible list" shall be determined for each type of school (elementary, middle, and high) for the awards distribution.

(b) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE to be distributed to the certificated school site staff in certificated positions at that school. The number of FTE counted shall be subtracted from the awards pool of 1,000 FTE positions.

(c) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE counted shall be subtracted from the awards pool remainder.

(d) This process shall continue until all 1,000 \$25,000/FTE awards have been allocated to the eligible school sites. If, before all 1,000 awards have been allocated, an eligible school site has more eligible FTE than remain in the 1,000 FTE awards pool, all of that school site's FTE shall receive \$25,000 awards. If more than one school site has an identical score in this circumstance, all eligible FTE at each of the school site(s) shall receive \$25,000 awards.

(e) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target that did not receive \$25,000 awards, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE counted shall be subtracted from the awards pool of 3,750 \$10,000 awards.

(f) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE counted shall be subtracted from the awards pool remainder.

(g) This process shall continue in consecutive order until all 3,750 \$10,000/FTE awards have been allocated to the school sites. If, before all 3,750 awards have been allocated, an eligible school site has more eligible FTE than remain in the 3,750 FTE pool, all of that school site's FTE shall receive \$10,000 awards. If more than one school site has an identical score in this circumstance, all eligible FTE at the school site(s) shall receive \$10,000 awards.

(h) The sum of the awards distributed under subdivisions (b) through (g) shall be subtracted from \$100 million, and the remainder shall be divided by \$5,000 to determine the maximum number of \$5,000 awards to be distributed. The \$5,000 awards shall be distributed in the same manner as the \$25,000 and the \$10,000 awards, with the exception that the distribution process will end when the pool of available \$5,000 awards is not sufficient to fully fund the eligible FTE of the next school or schools in line for the awards.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1036. Staff Eligibility for Individual Awards.

(a) The Academic Performance Index Schoolsite Employees Performance Bonus shall be allocated to individuals and to the school site. Funds will be distributed to the school site for those individuals who worked at the school site for the school year for which the growth API was calculated. These bonuses shall be distributed on an FTE basis to all employees assigned to the school site. Staff who were employed at a school site part-time or for less than the full school year shall have their awards pro-rated on an FTE basis, as determined by the local educational agency contract.

(b) For the purpose of the Certificated Staff Performance Incentive Act awards, "certificated staff" include those certificated staff employed at

the school site in certificated positions for the school year and certificated staff that were employed at the school site part-time or for less than the full school year for which the growth API was calculated. Except as otherwise provided through bargaining unit negotiations pursuant to Education Code section 44653, certificated staff employed at a school site part-time or for less than the full school year shall have their award allocations pro-rated on an FTE basis.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44650, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1037. Exemption from Statutory Benefits Calculations.

Academic Performance Index Schoolsite Employees Performance Bonus awards and Certificated Staff Performance Incentive Act awards shall not be considered compensation for the purposes of calculating retirement benefits or contributions, or for any other benefit that an employee is eligible to receive where the benefit or contribution amount is calculated based on compensation.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1038. Use of Award Funds Allocated to School Sites.

Use of funds at the school site for the Governor's Performance Award Program and the school site portion of the Academic Performance Index Schoolsite Employees Performance Bonus awards shall be decided by the existing school site governance team/school site council representing major stakeholders and then ratified by the governing board of each local educational agency.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

Article 2. Physical Performance Testing Programs.

§ 1040. Definition of "Pupil."

NOTE: Authority cited: Sections 60601 and 60603, Education Code.

HISTORY

1. Repealer filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1041. Required Program.

During the period of March-May, inclusive, the governing board of each school district maintaining grades 5, 7, and 10, or any one or more of such grades, shall administer to each pupil in those grades the physical performance test designated by the State Board of Education.

Each physically handicapped pupil and each pupil who is physically unable to take all of the physical performance test shall be given as much of the test as his condition will permit.

NOTE: Authority cited: sections 33031 and 60603, Education Code. Reference: Sections 60602(c), 60603 and 60608, Education Code.

HISTORY

1. Amendment filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. Amendment filed 5-18-72; effective thirtieth day thereafter (Register 72, No. 21).

3. Amendment filed 5-11-89 and 5-15-89; operative 5-15-89 (Register 89, No. 20).

§ 1042. Recommended Program.

When adequate facilities are available, tests pursuant to this article may be given more often than once yearly.

§ 1043. Methods of Administration.

The tests shall be scored by employees of the district or the employees of the county superintendent of schools. The scoring thereof shall be in compliance with the instructions of the publisher or developer for scoring, and the scores shall be submitted to the governing board of the school district on the dates required by, and on forms prescribed or approved by, such governing board.

§ 1044. Recording Test Scores.

The district superintendent or the county superintendent of schools, as the case may be, shall require that the pupil's scores on each of the tests given him in the physical performance testing program be included in the pupil's cumulative record. This requirement may be met by maintaining the regular physical performance testing program card with the cumulative record form.

§ 1045. Responsibility of County Superintendent of Schools.

As soon as possible after the State Board of Education, pursuant to subdivision (d) of Education Code Section 60603, has designated the physical performance test to be used during the ensuing school year in any grade, the county superintendent of schools shall secure, and until the close of the school year for which the test was designated, shall keep on file for reference purposes, a specimen set of that test.

The county superintendent of schools shall provide assistance to school districts in administering, recording, and reporting results of the test.

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1046. Use of Reports.

The governing board of each school district shall use the reports of test scores submitted as required in this article for identifying physically underdeveloped pupils adapting instruction to individual needs, appraising pupil progress, adapting the physical education program to meet pupil needs and for such other purposes as may be permitted or required by law.

Article 3. Reading Testing Programs in Grades 1, 2, and 3

NOTE: Authority cited: Sections 33031, 54103, 60602, 60603, 60607, 60640, Education Code. Reference: Sections 60640-60644, Education Code.

HISTORY

1. Repealer of Article 3 (Sections 1050-1060) filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48). For prior history, see Registers 77, No. 39, 76, No. 40, 74, No. 52, 72, No. 18, 72, No. 8, 71, No. 25, 69, No. 39 and 67, No. 51.

Article 4. Alternative Assessment Pilot Project

§ 1061. Eligibility.

NOTE: Authority cited: Sections 33031 and 60731, Education Code. Reference: Sections 60730, 60731 and 60731.5, Education Code.

HISTORY

1. New section filed 5-20-91 as an emergency; operative 5-20-91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9-17-91 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 39).

§ 1062. Application Process.

NOTE: Authority cited: Sections 33031 and 60730, Education Code. Reference: Sections 60730, 60731 and 60731.5, Education Code.

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multiplied by the school funding rate. This result, simplified to the nearest whole number (i.e., 1.51 equals 2) shall determine the number of eligible pupils upon which the GPA awards are based.

(4) The amount allocated per pupil shall be determined on a prorata basis from the total amount of funding available in the annual State Budget.

(b) The Academic Performance Index Schoolsite Employees Performance Bonus awards shall be divided equally among school site individual employees on a full-time equivalent (FTE) basis and to the school site, using the same eligibility criteria as the GPA.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code; Reference: Section 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1034. Specific Eligibility Criteria for the Certificated Staff Performance Incentive Act.

To be eligible to receive awards under the Certificated Staff Performance Incentive Act, school sites must have attained a statewide decile rank of 1-5 in the base year of the current growth API and must meet all of the relevant statutory requirements and each of the following requirements:

(a) Each school site must have improved by a minimum of two times its annual growth target on its API between the base year and the current growth year.

(b) All numerically significant ethnic or socioeconomically disadvantaged subgroups at a school must have improved by a minimum of two times their annual growth targets, simplified to the nearest whole number (i.e., 1.51 equals 2). However, all numerically significant ethnic or socioeconomically disadvantaged subgroups with an API of 800 or above must maintain a subgroup API of 800 or above.

(c) In addition to subdivisions (a) and (b) above, each school site shall have the required participation rate for the 2000 growth API, as calculated by the department. For the 2000 growth API, each school must show improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642.

(d) The local educational agency must complete an application on behalf of their eligible schools, which shall include:

(1) The number of eligible schools;

(2) Certification that the data used in the API calculations from the schools is accurate; and

(3) A list of certificated staff in certificated positions on an FTE basis at each of the eligible schools.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652 and 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1035. Award Funding Criteria for Certificated Staff Performance Incentive Act.

Distribution of Certificated Staff Performance Incentive Act awards pursuant to the 2000 growth API shall be as follows, with at least one thousand (1,000) \$25,000 awards, three thousand seven hundred fifty (3,750) \$10,000 awards and up to seven thousand five hundred (7,500) \$5,000 awards being distributed in the process. The total amount of funding for this Act provided in the annual State Budget shall be distributed proportionally across each of elementary, middle, and high schools statewide by the number of certificated staff as reported in the most current CBEDS report.

(a) Schools will be declared eligible or ineligible according to the rank of schools pursuant to Education Code section 52052. An "eligible list" will be determined for each type of school (elementary, middle, and high) for the awards distribution.

(b) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE to be distributed to the certificated school site staff in certificated positions at that school. The number of FTE counted shall be subtracted from the awards pool of 1,000 FTE positions.

(c) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE counted shall be subtracted from the awards pool remainder.

(d) This process shall continue until all 1,000 \$25,000/FTE awards have been allocated to the eligible school sites. If, before all 1,000 awards have been allocated, an eligible school site has more eligible FTE than remain in the 1,000 FTE awards pool, all of that school site's FTE shall receive \$25,000 awards. If more than one school site has an identical score in this circumstance, all eligible FTE at each of the school site(s) shall receive \$25,000 awards.

(e) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target that did not receive \$25,000 awards, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE counted shall be subtracted from the awards pool of 3,750 \$10,000 awards.

(f) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE counted shall be subtracted from the awards pool remainder.

(g) This process shall continue in consecutive order until all 3,750 \$10,000/FTE awards have been allocated to the school sites. If, before all 3,750 awards have been allocated, an eligible school site has more eligible FTE than remain in the 3,750 FTE pool, all of that school site's FTE shall receive \$10,000 awards. If more than one school site has an identical score in this circumstance, all eligible FTE at the school site(s) shall receive \$10,000 awards.

(h) The sum of the awards distributed under subdivisions (b) through (g) shall be subtracted from \$100 million, and the remainder shall be divided by \$5,000 to determine the maximum number of \$5,000 awards to be distributed. The \$5,000 awards shall be distributed in the same manner as the \$25,000 and the \$10,000 awards, with the exception that the distribution process will end when the pool of available \$5,000 awards is not sufficient to fully fund the eligible FTE of the next school or schools in line for the awards.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

2. Editorial correction of NOTE (Register 2001, No. 4).

§ 1038. Staff Eligibility for Individual Awards.

(a) The Academic Performance Index Schoolsite Employees Performance Bonus shall be allocated to individuals and to the school site. Funds will be distributed to the school site for those individuals who worked at the school site for the school year for which the growth API was calculated. These bonuses shall be distributed on an FTE basis to all employees assigned to the school site. Staff who were employed at a school site part-time or for less than the full school year shall have their awards pro-rated on an FTE basis, as determined by the local educational agency contract.

(b) For the purpose of the Certificated Staff Performance Incentive Act awards, "certificated staff" include those certificated staff employed at

the school site in certificated positions for the school year and certificated staff that were employed at the school site part-time or for less than the full school year for which the growth API was calculated. Except as otherwise provided through bargaining unit negotiations pursuant to Education Code section 44653, certificated staff employed at a school site part-time or for less than the full school year shall have their award allocations pro-rated on an FTE basis.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44650, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1037. Exemption from Statutory Benefits Calculations.

Academic Performance Index Schoolsite Employees Performance Bonus awards and Certificated Staff Performance Incentive Act awards shall not be considered compensation for the purposes of calculating retirement benefits or contributions, or for any other benefit that an employee is eligible to receive where the benefit or contribution amount is calculated based on compensation.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1038. Use of Award Funds Allocated to School Sites.

Use of funds at the school site for the Governor's Performance Award Program and the school site portion of the Academic Performance Index Schoolsite Employees Performance Bonus awards shall be decided by the existing school site governance team/school site council representing major stakeholders and then ratified by the governing board of each local educational agency.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

Article 2. Physical Performance Testing Programs

§ 1040. Definition of "Pupil."

NOTE: Authority cited: Sections 60601 and 60603, Education Code.

HISTORY

1. Repealer filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1041. Required Program.

During the period of March-May, inclusive, the governing board of each school district maintaining grades 5, 7, and 10, or any one or more of such grades, shall administer to each pupil in those grades the physical performance test designated by the State Board of Education.

Each physically handicapped pupil and each pupil who is physically unable to take all of the physical performance test shall be given as much of the test as his condition will permit.

NOTE: Authority cited: sections 33031 and 60603, Education Code. Reference: Sections 60602(c), 60603 and 60608, Education Code.

HISTORY

1. Amendment filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. Amendment filed 5-18-72; effective thirtieth day thereafter (Register 72, No. 21).

3. Amendment filed 5-11-89 and 5-15-89; operative 5-15-89 (Register 89, No. 20).

§ 1042. Recommended Program.

When adequate facilities are available, tests pursuant to this article may be given more often than once yearly.

§ 1043. Methods of Administration.

The tests shall be scored by employees of the district or the employees of the county superintendent of schools. The scoring thereof shall be in compliance with the instructions of the publisher or developer for scoring, and the scores shall be submitted to the governing board of the school district on the dates required by, and on forms prescribed or approved by, such governing board.

§ 1044. Recording Test Scores.

The district superintendent or the county superintendent of schools, as the case may be, shall require that the pupil's scores on each of the tests given him in the physical performance testing program be included in the pupil's cumulative record. This requirement may be met by maintaining the regular physical performance testing program card with the cumulative record form.

§ 1045. Responsibility of County Superintendent of Schools.

As soon as possible after the State Board of Education, pursuant to subdivision (d) of Education Code Section 60603, has designated the physical performance test to be used during the ensuing school year in any grade, the county superintendent of schools shall secure, and until the close of the school year for which the test was designated, shall keep on file for reference purposes, a specimen set of that test.

The county superintendent of schools shall provide assistance to school districts in administering, recording, and reporting results of, the test.

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1046. Use of Reports.

The governing board of each school district shall use the reports of test scores submitted as required in this article for identifying physically underdeveloped pupils adapting instruction to individual needs, appraising pupil progress, adapting the physical education program to meet pupil needs and for such other purposes as may be permitted or required by law.

Article 3. Reading Testing Programs in Grades 1, 2, and 3

NOTE: Authority cited: Sections 33031, 54103, 60602, 60603, 60607, 60640, Education Code. Reference: Sections 60640-60644, Education Code.

HISTORY

1. Repealer of Article 3 (Sections 1050-1060) filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48). For prior history, see Registers 77, No. 39, 76, No. 40, 74, No. 52, 72, No. 18, 72, No. 8, 71, No. 25, 69, No. 39 and 67, No. 51.

Article 4. Alternative Assessment Pilot Project

§ 1061. Eligibility.

NOTE: Authority cited: Sections 33031 and 60731, Education Code. Reference: Sections 60730, 60731 and 60731.5, Education Code.

HISTORY

1. New section filed 5-20-91 as an emergency; operative 5-20-91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9-17-91 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 39).

§ 1062. Application Process.

NOTE: Authority cited: Sections 33031 and 60730, Education Code. Reference: Sections 60730, 60731 and 60731.5, Education Code.

HISTORY

1. New section filed 5-20-91 as an emergency; operative 5-20-91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9-17-91 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 39).

§ 1063. Mandatory Application Requirements and Review Process.

NOTE: Authority cited: Sections 33031 and 60730, Education Code. Reference: Sections 60731, 60731.5 and 60731.6, Education Code; and Statutes of 1990, Chapter 12, Section 1.

HISTORY

1. New section filed 5-20-91 as an emergency; operative 5-20-91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9-17-91 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 39).
3. Editorial correction of Authority cite (Register 95, No. 9).

§ 1064. Quality Requirements and Review Process.

NOTE: Authority cited: Sections 33031 and 60730, Education Code. Reference: Sections 60731, 60731.5 and 60731.6, Education Code; and Statutes of 1990, Chapter 12, Section 1.

HISTORY

1. New section filed 5-20-91 as an emergency; operative 5-20-91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9-17-91

or emergency language will be repealed by operation of law on the following day.

2. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 39).

§ 1065. Eligibility of Agency Providing Independent Evaluation.

NOTE: Authority cited: Sections 33031 and 60731, Education Code. Reference: Sections 60730 and 60731.5, Education Code; and Statutes of 1990, Chapter 12, Section 1.

HISTORY

1. New section filed 5-20-91 as an emergency; operative 5-20-91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9-17-91 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 39).

§ 1066. Evaluation of Proposals to Conduct Independent Evaluation.

NOTE: Authority cited: Sections 33031 and 60730, Education Code. Reference: Sections 60730 and 60731.5, Education Code.

HISTORY

1. New section filed 5-20-91 as an emergency; operative 5-20-91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9-17-91 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 39).

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- § 1032
- § 1033
- § 1035
- § 1038
- § 1039

HISTORY

1. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39). For prior history see Register 74, No. 52.
2. Repealer and new section filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1022. Recording Test Scores.

Scores for individual pupils on these tests shall not be used by school districts or teachers for individual diagnosis or placement, or as a basis for any other decisions which would affect the pupil's school experience. Scores from these tests shall not in any manner be included on a pupil's cumulative school record.

HISTORY

1. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

§ 1023. Security of Test Material.

In order to afford protection to the security and reliability of the tests given pursuant to this article, all officers and employees of the district and other persons concerned with the state testing program shall take all reasonable precautions to prevent pupils from learning in advance of the specific content of the tests.

HISTORY

1. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

§ 1023.1. Practice Exercises.

No practice exercises other than those specifically designated or approved by the State Department of Education shall be given to pupils in preparation for the testing program or in the particular test used.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. New section filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1024. Responsibility of the County Superintendent of Schools.

The county superintendent is requested to cooperate with and give assistance to each school district under his jurisdiction which seeks such assistance from him in carrying out duties imposed on it by Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code. In addition for any district which does not have a district superintendent, the county superintendent shall make certain that the tests are administered in accordance with these regulations and with the instructions and testing procedures developed for the tests.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. Amendment filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
3. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Amendment filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1025. Related Information.

Each school district superintendent shall furnish to the State Department of Education such other pupil and school information that is requested by the Department in order to carry out the provisions of Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code and to properly analyze and evaluate the test results as required by Sections 60604.5 and 60660 of the Education Code.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. New section filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment of section and repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

3. Amendment filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1026. Reporting Test Results.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 60607 and 60640, Education Code.

HISTORY

1. New section filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment filed 9-27-76; effective thirtieth day thereafter (Register 76, No. 40).
3. Repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Repealer filed 11-29-84; effective thirtieth day thereafter (Register 84, No. 48).

Article 1.5. Education Improvement Incentive Program**§ 1030. Computation of Change in a School's Performance.**

(a) The formula in subsection (b) shall be applied by the State Department of Education to all secondary schools eligible to compete in the Education Improvement Incentive Program and whose performance in the prior fiscal year has decreased from that in the next preceding fiscal year. All schools with a 12th grade enrollment of 50 students or fewer and all continuation education schools are excluded from the computation.

(b) The formula:

(1) Subtract the school's prior year composite score on the California Assessment Program (CAP) from the current year score to compute a change score.

(2) Regress the number of students tested in CAP and the square of the number of students tested onto the change score using a standard multiple regression procedure.

(3) Using the results of the multiple regression, compute a predicted change score.

(4) Subtract the actual change score obtained by the school from the predicted change score to obtain a residual.

(5) Studentize the residual to have a mean of zero and a standard deviation of 1.

(6) Identify those schools which have a studentized residual equal to or less than minus 1.5. A studentized residual is the ratio of the residual to its standard error after the model has been fit and predicted change scores and residuals calculated. The predicted change scores are calculated from the estimated regression equation. The residuals are calculated as actual minus predicted.

(7) For those schools identified in paragraph (6) of this subsection, the incentive award for the current year shall be based on the improvement in performance between the current year and the 1983-84 fiscal year or the fiscal year in which the school first participated in the incentive program.

(c) Any school whose incentive award is adversely affected by a calculation pursuant to subdivision (b) may appeal to the Superintendent of Public Instruction.

NOTE: Authority cited: Sections 33031 and 54653.6, Education Code. Reference: Section 54653.6, Education Code.

HISTORY

1. New section filed 5-1-87; operative 5-31-87 (Register 87, No. 20).

Article 1.7. Award Programs Linked to the Academic Performance Index (API)**§ 1031. Intent of the Regulations.**

(a) The Academic Performance Index (API) measures the performance of California public schools, especially the academic performance of pupils, and demonstrates comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools pursuant to

Education Code section 52052 and the Framework for The Academic Performance Index, July 1999 and The 1999 Base Year Academic Performance Index, December 15, 1999, which are incorporated herein.

(b) The purpose of these regulations is to implement the programs established by three statutes relating to the API:

(1) The Governor's Performance Award Program of the Public Schools Accountability Act of 1999 (Education Code sections 52050 et seq.).

(2) The Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.).

(3) The Academic Performance Index Schoolsite Employees Performance Bonus (Section 40, Chapter 71 of the Statutes of 2000).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New article 1.7 (sections 1031-1038) and section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1032. General Eligibility Criteria for Awards Programs Related to API Growth.

(a) For purposes of this Article, "schools" shall be defined as all schools, including charter schools, that receive a ranking on the API including schools participating in the Immediate Intervention/Underperforming Schools Program. These schools are eligible to participate in all three award programs identified in Section 1031.

(b) The API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system. An alternative accountability system will be developed for schools with fewer than 100 valid test scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, county day schools, and alternative schools, including continuation high schools and independent study schools.

Once the alternative accountability system required by Education Code section 52052(g) is adopted by the State Board of Education, alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API. If the school elects to be part of the API accountability system, the school shall remain in the system for at least three subsequent years.

(c) For the purposes of these award programs, growth API means the second of two consecutive years for which the API is calculated. If a school does not receive an API pursuant to subdivisions (d)(1) or (d)(2), the school is ineligible for participation in any of the award programs for the current and subsequent year. If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.

(d) A school's API shall be considered invalid under the following circumstances:

(1) The local educational agency has certified that there were adult testing irregularities at the school.

(2) The local educational agency has certified that the API is not representative of the pupil population at the school.

(3) The local educational agency has certified that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.

(4) The school's proportion of parental waivers compared to its Standardized Testing and Reporting Program (STAR) enrollment, pursuant to Education Code section 60640 et seq., is equal to or greater than 15 percent. There shall be no rounding in determining this minimum parental waiver proportion (i.e., 14.99 percent is not 15 percent).

(5) Information is made available to or obtained by the California Department of Education (department) that indicates that the integrity of the API may have been compromised. If after reviewing the information the department determines that further investigation is warranted, the depart-

ment may conduct an investigation to determine if the integrity of the API has been jeopardized.

(e) In the event that, subsequent to the calculation of an API for a school, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the circumstances set out in subdivision (d) occurred, the department may invalidate the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(f) All schools that reach their growth targets or have an API of 800 and growth of at least 1 point, have comparable improvement as defined in subdivision (g), and meet the minimum participation rate in subdivision (h), shall be recognized through the Governor's Performance Award Program and the Academic Performance Index Schoolsite Employees Performance Bonus program.

(g) Comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) shall be defined as either: 1) 80 percent of the school-wide API improvement goal for schools with APIs less than 800, simplified to the nearest whole number (i.e., 1.51 equals 2); or 2) the actual distance to 800. Numerically significant subgroups with APIs below 800 at schools with API scores of 800 or above shall also show a one-point gain. Numerically significant subgroups at 800 or above shall maintain a score at or above 800.

(h) For elementary and middle schools, the minimum participation rate for all three awards programs shall be 95 percent; for high schools, it shall be 90 percent for the 2000 API growth, with the intention of increasing this rate to 95 percent in the future.

(1) If the test publisher includes the pupil's answer forms or test booklets for the nationally-normed test pursuant to Education Code section 60642 for grades 2-11 in the number of used test forms, the pupil shall be counted as a test-taker.

(2) No pupil shall be counted more than once as a test-taker.

(3) The participation rate shall be calculated as follows:

(A) Divide the total number of test-takers in grades 2 through 11 at the school site by

(B) The total enrollment in grades 2-11 minus the number of pupils exempted from taking the test either by their Individualized Education Program (IEP) pursuant to Education Code section 60640(e) or parental waivers pursuant to Education Code section 60615.

(4) For purposes of subdivision (3)(B) above, enrollment shall be determined by the enrollment information collected by the department as part of the Standardized Testing and Reporting Program (STAR), pursuant to Education Code sections 60640 et seq.

(5) In the case of pupil testing irregularities, the scores of affected pupils shall be eliminated from the calculations of the school's growth API, although the pupils are counted as tested and shall contribute to the school's participation rate.

(6) There shall be no rounding in determining this minimum participation rate (i.e., 94.9 percent does not equal 95 percent).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

2. New subsection (d)(4) and subsection renumbering filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.

§ 1033. Award Funding Criteria for Governor's Performance Award Program and Academic Performance Index Schoolsite Employees Performance Bonus.

(a) Schools that meet the eligibility requirements for the Governor's Performance Award Program (GPA) shall receive the per pupil award amount for each of their eligible pupils determined as follows:

(1) The school funding rate is the total number of test-takers divided by the total enrollment on the first day of testing for grades 2-11 minus the IEP exemptions.

(2) There shall be no rounding in determining the school funding rate (i.e., 94.9% does not equal 95%).

(3) The kindergarten, first grade and 12th grade enrollment as established for that school year by the California Basic Education Data System (CBEDS) shall be added to the total enrollment on the first day of testing for grades 2-11, less the number of pupils with testing irregularities, then multiplied by the school funding rate. This result, simplified to the nearest whole number (i.e., 1.51 equals 2) shall determine the number of eligible pupils upon which the GPA awards are based.

(4) The amount allocated per pupil shall be determined on a prorata basis from the total amount of funding available in the annual State Budget.

(b) To participate in the Academic Performance Index Schoolsite Employees Performance Bonus awards school districts, county offices of education, and charter schools shall certify the number of full-time equivalent (FTE) employees employed as of the second principal apportionment of the 1999-2000 school year at each school site under their jurisdiction that are eligible for awards in accordance with Education Code section 52057(a).

(1) The "number of full-time equivalent employees (FTE) employed as of the second principal apportionment" shall be defined as the number of funded FTE positions at the school site as of June 23, 2000.

(2) "Employees at each school site" shall be defined as positions filled by individuals employed by the school district, county office of education, or charter school at least 50 percent of the school year in which the award was earned, and who spent at least 50 percent of his/her total annual work hours at school sites, and who spent at least 20 percent of his/her total annual work hours at the eligible school site.

(3) "Full-time equivalent (FTE) position" shall be defined as a position filled by a person that is required to work a minimum of a six hour work day. School districts, county offices of education, and charter schools may choose to use a longer work day in accordance with their local collective bargaining agreements. One person cannot generate more than one FTE position. Part-time positions shall generate a partial FTE on a proportional basis.

(4) The certification shall indicate the number of certificated and classified FTE positions at each school site. The number of certificated employees reported by the school districts, county offices of education, and charter schools shall also be used for purposes of making awards under the Certificated Staff Performance Incentive Act.

(A) "Classified employee" shall be defined as an employee not requiring certification and who meets the school site employee criteria specified in subdivision (b)(2).

(B) "Certificated employee" shall be defined as an employee in a position requiring certification and who holds a document issued by the California Commission on Teacher Credentialing authorizing service in the public schools of California.

(C) "Document" shall be defined as a credential, emergency permit, or waiver issued by the California Commission on Teacher Credentialing.

(5) For purposes of this subdivision, the deadline for submitting the certification of FTE to the department shall be November 1, 2000 or as soon thereafter as the eligible schools are identified and no later than February 1, 2001. If certification is not received by the department by February 1, 2001, those schools will not receive either the Certificated Staff Performance Incentive Act award or the Academic Performance Index Schoolsite Employees Performance Bonus award.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Section 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

2. Amendment of subsections (a)(3) and (b) and new subsections (b)(1)-(5) filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.

§ 1034. Specific Eligibility Criteria for the Certificated Staff Performance Incentive Act.

To be eligible to receive awards under the Certificated Staff Performance Incentive Act, school sites must have attained a statewide decile rank of 1-5 in the base year of the current growth API and must meet all of the relevant statutory requirements and each of the following requirements:

(a) Each school site must have improved by a minimum of two times its annual growth target on its API between the base year and the current growth year.

(b) All numerically significant ethnic or socioeconomically disadvantaged subgroups at a school must have improved by a minimum of two times their annual growth targets, simplified to the nearest whole number (i.e., 1.51 equals 2). However, all numerically significant ethnic or socioeconomically disadvantaged subgroups with an API of 800 or above must maintain a subgroup API of 800 or above.

(c) In addition to subdivisions (a) and (b) above, each school site shall have the required participation rate for the 2000 growth API, as calculated by the department. For the 2000 growth API, each school must show improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642.

(d) The local educational agency must complete an application on behalf of their eligible schools, which shall include:

(1) The number of eligible schools;

(2) Certification that the data used in the API calculations from the schools is accurate; and

(3) A list of certificated staff in certificated positions on an FTE basis at each of the eligible schools.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652 and 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1035. Award Funding Criteria for Certificated Staff Performance Incentive Act.

Distribution of Certificated Staff Performance Incentive Act awards pursuant to the 2000 growth API shall be as follows, with at least one thousand (1,000) \$25,000 awards, three thousand seven hundred fifty (3,750) \$10,000 awards and up to seven thousand five hundred (7,500) \$5,000 awards being distributed in the process. The total amount of funding for this Act provided in the annual State Budget shall be distributed proportionally across each of elementary, middle, and high schools statewide by the number of certificated staff as reported in the most current CBEDS report.

(a) Schools will be declared eligible or ineligible according to the rank of schools pursuant to Education Code section 52052. An "eligible list" will be determined for each type of school (elementary, middle, and high) for the awards distribution.

(b) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE to be distributed to the certificated school site staff in certificated positions at that school. The number of FTE counted shall be subtracted from the awards pool of 1,000 FTE positions.

(c) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE counted shall be subtracted from the awards pool remainder.

(d) This process shall continue until all 1,000 \$25,000/FTE awards have been allocated to the eligible school sites. If, before all 1,000 awards have been allocated, an eligible school site has more eligible FTE than remain in the 1,000 FTE awards pool, all of that school site's FTE shall receive \$25,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642 shall receive \$25,000 awards.

(e) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target that did not receive \$25,000 awards, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE counted shall be subtracted from the awards pool of 3,750 \$10,000 awards.

(f) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE to be distributed to the certificated school site staff at that school. The number of FTE counted shall be subtracted from the awards pool remainder.

(g) This process shall continue in consecutive order until all 3,750 \$10,000/FTE awards have been allocated to the school sites. If, before all 3,750 awards have been allocated, an eligible school site has more eligible FTE than remain in the 3,750 FTE pool, all of that school site's FTE shall receive \$10,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642 shall receive \$10,000 awards.

(h) The sum of the awards distributed under subdivisions (b) through (g) shall be subtracted from \$100 million, and the remainder shall be divided by \$5,000 to determine the maximum number of \$5,000 awards to be distributed. The \$5,000 awards shall be distributed in the same manner as the \$25,000 and the \$10,000 awards, with the exception that the distribution process will end when the pool of available \$5,000 awards is not sufficient to fully fund the eligible FTE of the next school or schools in line for the awards.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of NOTE (Register 2001, No. 4).
3. Amendment of subsections (d) and (g) filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.

§ 1036. Staff Eligibility for Individual Awards.

(a) The Academic Performance Index Schoolsite Employees Performance Bonus shall be allocated to individuals and to the school site. Funds will be distributed to the school site for those individuals who worked at the school site for the school year for which the growth API was calculated. These bonuses shall be distributed on an FTE basis to all employees assigned to the school site. Staff who were employed at a school site part-time or for less than the full school year shall have their awards pro-rated on an FTE basis, as determined by the local educational agency contract.

(b) For the purpose of the Certificated Staff Performance Incentive Act awards, "certificated staff" include those certificated staff employed at the school site in certificated positions for the school year and certificated staff that were employed at the school site part-time or for less than the school year for which the growth API was calculated. Except as otherwise provided through bargaining unit negotiations pursuant to Education Code section 44653, certificated staff employed at a school

site part-time or for less than the full school year shall have their award allocations pro-rated on an FTE basis.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44650, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1037. Exemption from Statutory Benefits Calculations.

Academic Performance Index Schoolsite Employees Performance Bonus awards and Certificated Staff Performance Incentive Act awards shall not be considered compensation for the purposes of calculating retirement benefits or contributions, or for any other benefit that an employee is eligible to receive where the benefit or contribution amount is calculated based on compensation.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

§ 1038. Exemption from Indirect Costs.

Governor's Performance Awards, Academic Performance Index Schoolsite Employees Performance Bonus awards, and Certificated Staff Performance Incentive Act awards shall not be subject to school district, county, or school indirect charges or other administrative charges.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b) and 52052, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Renumbering of former section 1038 to section 1039 and new section 1038 filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.

§ 1039. Use of Award Funds Allocated to School Sites.

Use of funds at the school site for the Governor's Performance Award Program and the school site portion of the Academic Performance Index Schoolsite Employees Performance Bonus awards shall be decided by the existing school site governance team/school site council representing major stakeholders and then ratified by the governing board of each local educational agency.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. Renumbering of former section 1038 to section 1039 filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.

Article 2. Physical Performance Testing Programs

§ 1040. Definition of "Pupil."

NOTE: Authority cited: Sections 60601 and 60603, Education Code.

HISTORY

1. Repealer filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1041. Required Program.

During the period of March-May, inclusive, the governing board of each school district maintaining grades 5, 7, and 10, or any one or more of such grades, shall administer to each pupil in those grades the physical performance test designated by the State Board of Education.

Register 01-24

§§ 1031-1039

HISTORY:

NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 48).
NOTE history see Register 74, No. 52.
and new section filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

Recording Test Scores.

Individual pupils on these tests shall not be used by school teachers for individual diagnosis or placement, or as a basis for decisions which would affect the pupil's school experience. These tests shall not in any manner be included on a pupil's school record.

HISTORY

NOTE filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

Security of Test Material.

To afford protection to the security and reliability of the tests pursuant to this article, all officers and employees of the district and persons concerned with the state testing program shall take all reasonable precautions to prevent pupils from learning in advance of the content of the tests.

HISTORY

NOTE filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

§ 1021. Practice Exercises.

Practice exercises other than those specifically designated or approved by the State Department of Education shall be given to pupils in preparation for the testing program or in the particular test used.

Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

NOTE filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1024. Responsibility of the County Superintendent of Schools.

The county superintendent is requested to cooperate with and give assistance to each school district under his jurisdiction which seeks such assistance from him in carrying out duties imposed on it by Chapter 5 of Part 13 of Division 4 of Title 2 of the Education Code. In addition for any school which does not have a district superintendent, the county superintendent shall make certain that the tests are administered in accordance with these regulations and with the instructions and testing procedures developed for the tests.

Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

NOTE filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 48).

NOTE filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 48).

NOTE filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1025. Related Information.

Each school district superintendent shall furnish to the State Department of Education such other pupil and school information that is requested by the Department in order to carry out the provisions of Chapter 13 of Part 33 of Division 4 of Title 2 of the Education Code and to properly evaluate and evaluate the test results as required by Sections 60604.5 and 60605 of the Education Code.

Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

NOTE filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

NOTE of section and repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

3. Amendment filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1026. Reporting Test Results.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 60607 and 60640, Education Code.

HISTORY

1. New section filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

2. Amendment filed 9-27-76; effective thirtieth day thereafter (Register 76, No. 40).

3. Repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

4. Repealer filed 11-29-84; effective thirtieth day thereafter (Register 84, No. 48).

Article 1.5. Education Improvement Incentive Program

§ 1030. Computation of Change in a School's Performance.

(a) The formula in subsection (b) shall be applied by the State Department of Education to all secondary schools eligible to compete in the Education Improvement Incentive Program and whose performance in the prior fiscal year has decreased from that in the next preceding fiscal year. All schools with a 12th grade enrollment of 50 students or fewer and all continuation education schools are excluded from the computation.

(b) The formula:

(1) Subtract the school's prior year composite score on the California Assessment Program (CAP) from the current year score to compute a change score.

(2) Regress the number of students tested in CAP and the square of the number of students tested onto the change score using a standard multiple regression procedure.

(3) Using the results of the multiple regression, compute a predicted change score.

(4) Subtract the actual change score obtained by the school from the predicted change score to obtain a residual.

(5) Studentize the residual to have a mean of zero and a standard deviation of 1.

(6) Identify those schools which have a studentized residual equal to or less than minus 1.5. A studentized residual is the ratio of the residual to its standard error after the model has been fit and predicted change scores and residuals calculated. The predicted change scores are calculated from the estimated regression equation. The residuals are calculated as actual minus predicted.

(7) For those schools identified in paragraph (6) of this subsection, the incentive award for the current year shall be based on the improvement in performance between the current year and the 1983-84 fiscal year or the fiscal year in which the school first participated in the incentive program.

(c) Any school whose incentive award is adversely affected by a calculation pursuant to subdivision (b) may appeal to the Superintendent of Public Instruction.

NOTE: Authority cited: Sections 33031 and 54653.6, Education Code. Reference: Section 54653.6, Education.

HISTORY

1. New section filed 5-1-87; operative 5-31-87 (Register 87, No. 20).

Article 1.7. Award Programs Linked to the Academic Performance Index (API)

§ 1031. Intent of the Regulations.

(a) The Academic Performance Index (API) measures the performance of California public schools, especially the academic performance of pupils, and demonstrates comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools pursuant to

Education Code section 52052 and the Framework for The Academic Performance Index, July 1999 and The 1999 Base Year Academic Performance Index, December 15, 1999, which are incorporated herein.

(b) The purpose of Article 1.7 is to implement the programs established by three statutes relating to the API:

(1) The Governor's Performance Award Program of the Public Schools Accountability Act of 1999 (Education Code sections 52050 et seq.).

(2) The Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.).

(3) The Academic Performance Index Schoolsite Employees Performance Bonus (Section 40, Chapter 71 of the Statutes of 2000).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New article 1.7 (sections 1031-1038) and section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (b), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1032. General Eligibility Criteria for Awards Programs Related to API Growth.

(a) For purposes of this Article, "schools" shall be defined as all schools, including charter schools, that receive a ranking on the API including schools participating in the Immediate Intervention/Underperforming Schools Program. These schools are eligible to participate in all three award programs identified in Section 1031.

(b) The API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system. The Superintendent of Public Instruction will develop an alternative accountability system for schools with fewer than 100 valid test scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

Once the alternative accountability system required by Education Code section 52052(g) is adopted by the State Board of Education, alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API. If the school elects to be part of the API accountability system, the school shall remain in the system for at least the three subsequent years.

(c) For the purposes of these award programs, growth API means the API in the second year of two consecutive years for which the API is calculated. If a school does not receive an API pursuant to subdivisions (d)(1), (d)(2), or (d)(4), the school is ineligible for participation in any of the award programs for the current and subsequent year. If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.

(d) A school's API shall be considered invalid under any of the following circumstances:

(1) The local educational agency notifies the California Department of Education (department) that there were adult testing irregularities at the school.

(2) The local educational agency notifies the department that the API is not representative of the pupil population at the school.

(3) The local educational agency notifies the department that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.

(4) The school's proportion of parental waivers compared to its Standardized Testing and Reporting Program (STAR) enrollment, pursuant to Education Code section 60640 et seq., is equal to or greater than 15 percent for the 2000 STAR. For the 2001 STAR, the school's proportion of

parental waivers compared to its STAR enrollment is equal to or greater than 10 percent. There shall be no rounding in determining this minimum parental waiver proportion (i.e., 14.99 percent is not 15 percent).

(5) Information is made available to or obtained by the department that indicates that the integrity of the API may have been compromised. If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized.

(6) The minimum participation in each content area tested pursuant to Education Code section 60642 for grades 2-11 is less than 85 percent of the school participation rate as defined by Section 1032(h)(3) multiplied by the total number of test-takers. There shall be no rounding in determining the minimum participation in each content area tested.

(e) In the event that, subsequent to the calculation of an API for a school, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the circumstances set out in subdivision (d) occurred, the department may invalidate the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(f) All schools that reach their growth targets or have an API of 800 or more and growth of at least 1 point, have comparable improvement as defined in subdivision (g), and meet the minimum participation rate in subdivision (h), shall be recognized through the Governor's Performance Award Program and the Academic Performance Index Schoolsite Employees Performance Bonus program.

(g) Comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) shall be defined as either: 1) 80 percent of the school-wide API improvement goal for schools with APIs less than 800, simplified to the nearest whole number (i.e., 1.51 equals 2); or 2) the actual distance to 800. Numerically significant subgroups with APIs below 800 at schools with API scores of 800 or above shall also show a one-point gain. Numerically significant subgroups at 800 or above shall maintain a score at or above 800.

(h) For elementary and middle schools, the minimum participation rate for all three awards programs shall be 95 percent; for high schools, it shall be 90 percent, with the intention of increasing this rate to 95 percent in the future.

(1) If the test publisher includes the pupil's answer forms or test booklets for the nationally-normed test pursuant to Education Code section 60642 for grades 2-11 at the school in the number of used test forms, the pupil shall be counted as a test-taker.

(2) No pupil shall be counted more than once as a test-taker.

(3) The participation rate shall be calculated as follows:

(A) Divide the total number of test-takers in grades 2-11 at the school site by

(B) The total enrollment in grades 2-11 minus the number of pupils exempted from taking the test either by their Individualized Education Program (IEP) pursuant to Education Code section 60640(e) or parental waivers pursuant to Education Code section 60615.

(4) For purposes of subdivision (3)(B) above, enrollment shall be determined by the enrollment information collected by the department as part of the Standardized Testing and Reporting Program (STAR), pursuant to Education Code sections 60640 et seq.

(5) In the case of pupil testing irregularities, the scores of affected pupils shall be eliminated from the calculations of the school's growth API, although the pupils are counted as tested and shall contribute to the school's participation rate.

(6) There shall be no rounding in determining this minimum participation rate (i.e., 94.9 percent does not equal 95 percent).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by

- 12-27-2001 or emergency language will be repealed by operation of law on the following day.
- New subsection (d)(4) and subsection renumbering filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
- Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including further amendments, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1033. Award Funding Criteria for Governor's Performance Award Program and Academic Performance Index Schoolsite Employees Performance Bonus.

(a) Schools that meet the eligibility requirements for the Governor's Performance Award Program (GPA) shall receive the per pupil award amount for each of their eligible pupils determined as follows:

(1) The school funding rate is the total number of test-takers divided by the total enrollment on the first day of testing for grades 2-11 minus the IEP exemptions.

(2) There shall be no rounding in determining the school funding rate (i.e., 94.9% does not equal 95%).

(3) The kindergarten, first grade and 12th grade enrollment as established for that school year by the California Basic Education Data System (CBEDS) shall be added to the total enrollment on the first day of testing for grades 2-11, less the number of pupils with testing irregularities, then multiplied by the school funding rate. This result, simplified to the nearest whole number (i.e., 1.51 equals 2) shall determine the number of eligible pupils upon which the GPA awards are based.

(4) The amount allocated per pupil shall be determined on a prorata basis from the total amount of funding available in the annual State Budget.

(b) To participate in the Academic Performance Index Schoolsite Employees Performance Bonus awards school districts, county offices of education, and charter schools shall certify the number of full-time equivalent (FTE) employees employed as of the second principal apportionment of the 1999-2000 school year at each school site under their jurisdiction that are eligible for awards in accordance with Education Code section 52057(a).

(1) The "number of full-time equivalent employees (FTE) employed as of the second principal apportionment" shall be defined as the number of funded FTE positions at the school site as of June 23, 2000.

(2) "Employees at each school site" shall be defined as positions filled by individuals employed by the school district, county office of education, or charter school at least 50 percent of the school year in which the award was earned, and who spent at least 50 percent of his/her total annual work hours at school sites, and who spent at least 20 percent of his/her total annual work hours at the eligible school site.

(3) "Full-time equivalent (FTE) position" shall be defined as a position filled by a person that is required to work a minimum of a six hour work day. School districts, county offices of education, and charter schools may choose to use a longer work day in accordance with their local collective bargaining agreements. One person cannot generate more than one FTE position. Part-time positions shall generate a partial FTE on a proportional basis.

(4) The certification shall indicate the number of certificated and classified FTE positions at each school site. The number of certificated employees reported by the school districts, county offices of education, and charter schools shall also be used for purposes of making awards under the Certificated Staff Performance Incentive Act.

(A) "Classified employee" shall be defined as an employee not requiring certification and who meets the school site employee criteria specified in subdivision (b)(2).

(B) "Certificated employee" shall be defined as an employee in a position requiring certification and who holds a document issued by the California Commission on Teacher Credentialing authorizing service in the public schools of California.

(C) "Document" shall be defined as a credential, emergency permit, or waiver issued by the California Commission on Teacher Credentialing.

(5) For purposes of this subdivision, the deadline for submitting the certification of FTE to the department shall be November 1, 2000 or as soon thereafter as the eligible schools are identified and no later than February 1, 2001. If certification is not received by the department by February 1, 2001, those schools will not receive either the Certificated Staff Performance Incentive Act award or the Academic Performance Index Schoolsite Employees Performance Bonus award.

(6) Starting with STAR 2001 testing, the deadline for submitting the certification of FTEs to the department shall be within 90 days of the department's posting on the website of the certified list of schools eligible to receive the Governor's Performance Award. If the schools' certification is not received by the department by the deadline, the schools will not receive the Certificated Staff Performance Incentive Act award.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Section 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Amendment of subsections (a)(3) and (b) and new subsections (b)(1)-(5) filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including new subsection (b)(6), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1034. Specific Eligibility Criteria for the Certificated Staff Performance Incentive Act.

To be eligible to receive awards under the Certificated Staff Performance Incentive Act, school sites must have attained a statewide decile rank of 1-5 in the base year of the current growth API and must meet all of the relevant statutory requirements and each of the following requirements:

(a) Each school site must have improved by a minimum of two times its annual growth target on its API between the base year and the current growth year.

(b) All numerically significant ethnic or socioeconomically disadvantaged subgroups at a school must have improved by a minimum of two times their annual growth targets, simplified to the nearest whole number (i.e., 1.51 equals 2). However, all numerically significant ethnic or socioeconomically disadvantaged subgroups with an API of 800 or above must maintain a subgroup API of 800 or above.

(c) In addition to subdivisions (a) and (b) above, each school site shall have the required participation rate for the 2000 growth API, as calculated by the department. For the 2000 growth API, each school must show improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642.

(d) The local educational agency must complete an application on behalf of their eligible schools, which shall include:

- (1) The number of eligible schools;
- (2) Certification that the data used in the API calculations from the schools is accurate; and

(3) A list of certificated positions on an FTE basis at each of the eligible schools.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652 and 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (d)(3), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1035. Award Funding Criteria for Certificated Staff Performance Incentive Act.

Distribution of Certificated Staff Performance Incentive Act awards pursuant to the 2000 growth API shall be as follows, with at least one thousand (1,000) \$25,000 awards, three thousand seven hundred fifty (3,750) \$10,000 awards and up to seven thousand five hundred (7,500) \$5,000 awards being distributed in the process. The total amount of funding for this Act provided in the annual State Budget shall be distributed proportionally across each of elementary, middle, and high schools statewide by the number of certificated staff as reported in the most current CBEDS report.

(a) Schools will be declared eligible or ineligible according to the rank of schools pursuant to Education Code section 52052. An "eligible list" will be determined for each type of school (elementary, middle, and high) for the awards distribution.

(b) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the certificated school site staff in certificated positions at that school. The number of FTE positions counted shall be subtracted from the awards pool of 1,000 FTE positions.

(c) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(d) This process shall continue until all 1,000 \$25,000/FTE awards have been allocated to the eligible school sites. If, before all 1,000 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 1,000 FTE awards pool, all of that school site's FTE positions shall receive \$25,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642 shall receive \$25,000 awards.

(e) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target that did not receive \$25,000 awards, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool of 3,750 \$10,000 awards.

(f) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(g) This process shall continue in consecutive order until all 3,750 \$10,000/FTE awards have been allocated to the school sites. If, before all 3,750 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 3,750 FTE pool, all of that school site's FTE positions shall receive \$10,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642 shall receive \$10,000 awards.

(h) The sum of the awards distributed under subdivisions (b) through (g) shall be subtracted from \$100 million, and the remainder shall be divided by \$5,000 to determine the maximum number of \$5,000 awards to be distributed. The \$5,000 awards shall be distributed in the same manner as the \$25,000 and the \$10,000 awards, with the exception that the distribution process will end when the pool of available \$5,000 awards is not

sufficient to fully fund the eligible FTE positions of the next school or schools in line for the awards.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of Note (Register 2001, No. 4).
3. Amendment of subsections (d) and (g) filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including further amendments, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1036. Staff Eligibility for Individual Awards.

(a) The Academic Performance Index Schoolsite Employees Performance Bonus shall be allocated to individuals and to the school site. Funds shall be distributed to the school site for those individuals who worked at the school site for the school year for which the growth API was calculated. These bonuses shall be distributed on an FTE basis to employees assigned to the school site. Staff who were employed at a school site part-time or for less than the full school year shall have their awards pro-rated on a per FTE basis, as determined by the local educational agency contract.

(b) For the purpose of the Certificated Staff Performance Incentive Act awards, "certificated staff" include those certificated staff employed at the school site in certificated positions for the school year and certificated staff that were employed at the school site part-time or for less than the full school year for which the growth API was calculated. Except as otherwise provided through bargaining unit negotiations pursuant to Education Code section 44653, certificated staff employed at a school site part-time or for less than the full school year shall have their award allocations pro-rated on an FTE basis.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44650, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (a), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1037. Exemption from Statutory Benefits Calculations.

Academic Performance Index Schoolsite Employees Performance Bonus awards and Certificated Staff Performance Incentive Act awards shall not be considered compensation for the purposes of calculating retirement benefits or contributions, or for any other benefit that an employee is eligible to receive where the benefit or contribution amount is calculated based on compensation.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1038. Exemption from Indirect Costs.

Governor's Performance Awards, Academic Performance Index Schoolsite Employees Performance Bonus awards, and Certificated Staff Performance Incentive Act awards shall not be subject to school district, county, or school indirect charges or other administrative charges.

NOTE: Authority cited: Sections 33031, 446) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 42052 and 52057, Education Code; Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2001, No. 52). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.

Renumbering of former section 1038 to section 1039 and new section 1038 filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.

Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including Amendment of NOTE, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1039. Use of Award Funds Allocated to School Sites.

Use of funds at the school site for the Governor's Performance Award program and the school site portion of the Academic Performance Index Schoolsite Employees Performance Bonus awards shall be decided by the existing school site governance team/school site council representing all stakeholders and then ratified by the governing board of each local educational agency.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

Renumbering of former section 1038 to section 1039 filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.

Certificate of Compliance as to 1-30-2001 order transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

Article 2. Physical Performance Testing Programs**§ 1040. Definition of "Pupil."**

NOTE: Authority cited: Sections 60601 and 60603, Education Code.

HISTORY

Repealer filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).

New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1041. Required Program.

During the period of March-May, inclusive, the governing board of each school district maintaining grades 5, 7, and 10, or any one or more of such grades, shall administer to each pupil in those grades the physical performance test designated by the State Board of Education.

Each physically handicapped pupil and each pupil who is physically unable to take all of the physical performance test shall be given as much of the test as his condition will permit.

NOTE: Authority cited: sections 33031 and 60603, Education Code. Reference: Sections 60602(c), 60603 and 60608, Education Code.

HISTORY

Amendment filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).

Amendment filed 5-18-72; effective thirtieth day thereafter (Register 72, No. 21).

Amendment filed 5-11-89 and 5-15-89; operative 5-15-89 (Register 89, No. 21).

§ 1042. Recommended Program.

When adequate facilities are available, tests pursuant to this article may be given more often than once yearly.

§ 1043. Methods of Administration.

The tests shall be scored by employees of the district or the employees of the county superintendent of schools. The scoring thereof shall be in compliance with the instructions of the publisher or developer for scoring and the scores shall be submitted to the governing board of the school district on the dates required by, and on forms prescribed or approved by, the governing board.

§ 1044. Record of Test Scores.

The district superintendent or the county superintendent of schools, as the case may be, shall require that the pupil's scores on each of the tests given him in the physical performance testing program be included in the pupil's cumulative record. This requirement may be met by maintaining the regular physical performance testing program card with the cumulative record form.

§ 1045. Responsibility of County Superintendent of Schools.

As soon as possible after the State Board of Education, pursuant to subdivision (d) of Education Code Section 60603, has designated the physical performance test to be used during the ensuing school year in any grade, the county superintendent of schools shall secure, and until the close of the school year for which the test was designated, shall keep on file for reference purposes, a specimen set of that test.

The county superintendent of schools shall provide assistance to school districts in administering, recording, and reporting results of, the test.

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1046. Use of Reports.

The governing board of each school district shall use the reports of test scores submitted as required in this article for identifying physically underdeveloped pupils adapting instruction to individual needs, appraising pupil progress, adapting the physical education program to meet pupil needs and for such other purposes as may be permitted or required by law.

Article 3. Reading Testing Programs in Grades 1, 2, and 3

NOTE: Authority cited: Sections 33031, 54103, 60602, 60603, 60607, 60640, Education Code. Reference: Sections 60640-60644, Education Code.

HISTORY

1. Repealer of Article 3 (Sections 1050-1060) filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48). For prior history, see Registers 77, No. 39, 76, No. 40, 74, No. 52, 72, No. 18, 72, No. 8, 71, No. 25, 69, No. 39 and 67, No. 51.

Article 4. Alternative Assessment Pilot Project**§ 1061. Eligibility.**

NOTE: Authority cited: Sections 33031 and 60731, Education Code. Reference: Sections 60730, 60731 and 60731.5, Education Code.

HISTORY

1. New section filed 5-20-91 as an emergency; operative 5-20-91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9-17-91 or emergency language will be repealed by operation of law on the following day.

2. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 39).

§ 1062. Application Process.

NOTE: Authority cited: Sections 33031 and 60730, Education Code. Reference: Sections 60730, 60731 and 60731.5, Education Code.

HISTORY

1. New section filed 5-20-91 as an emergency; operative 5-20-91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9-17-91 or emergency language will be repealed by operation of law on the following day.

2. Repealed by operation of Government Code section 11346.1(g) (Register 92, No. 39).

§ 1063. Mandatory Application Requirements and Review Process.

NOTE: Authority cited: Sections 33031 and 60730, Education Code. Reference: Sections 60731, 60731.5 and 60731.6, Education Code; and Statutes of 1990, Chapter 12, Section 1.

HISTORY

1. New section filed 5-20-91 as an emergency; operative 5-20-91 (Register 91, No. 26). A Certificate of Compliance must be transmitted to OAL by 9-17-91

Register 01-31

§ 1032

HISTORY

1. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39). For prior history see Register 74, No. 52.
2. Repealer and new section filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1022. Recording Test Scores.

Scores for individual pupils on these tests shall not be used by school districts or teachers for individual diagnosis or placement, or as a basis for any other decisions which would affect the pupil's school experience. Scores from these tests shall not in any manner be included on a pupil's cumulative school record.

HISTORY

1. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

§ 1023. Security of Test Material.

In order to afford protection to the security and reliability of the tests given pursuant to this article, all officers and employees of the district and other persons concerned with the state testing program shall take all reasonable precautions to prevent pupils from learning in advance of the specific content of the tests.

HISTORY

1. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

§ 1023.1. Practice Exercises.

No practice exercises other than those specifically designated or approved by the State Department of Education shall be given to pupils in preparation for the testing program or in the particular test used.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. New section filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1024. Responsibility of the County Superintendent of Schools.

The county superintendent is requested to cooperate with and give assistance to each school district under his jurisdiction which seeks such assistance from him in carrying out duties imposed on it by Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code. In addition for any district which does not have a district superintendent, the county superintendent shall make certain that the tests are administered in accordance with these regulations and with the instructions and testing procedures developed for the tests.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. Amendment filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
3. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Amendment filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1025. Related Information.

Each school district superintendent shall furnish to the State Department of Education such other pupil and school information that is requested by the Department in order to carry out the provisions of Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code and to properly analyze and evaluate the test results as required by Sections 60604.5 and 60660 of the Education Code.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. New section filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment of section and repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

3. Amendment filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1026. Reporting Test Results.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 60607 and 60640, Education Code.

HISTORY

1. New section filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment filed 9-27-76; effective thirtieth day thereafter (Register 76, No. 40).
3. Repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Repealer filed 11-29-84; effective thirtieth day thereafter (Register 84, No. 48).

Article 1.5. Education Improvement Incentive Program

§ 1030. Computation of Change in a School's Performance.

(a) The formula in subsection (b) shall be applied by the State Department of Education to all secondary schools eligible to compete in the Education Improvement Incentive Program and whose performance in the prior fiscal year has decreased from that in the next preceding fiscal year. All schools with a 12th grade enrollment of 50 students or fewer and all continuation education schools are excluded from the computation.

(b) The formula:

(1) Subtract the school's prior year composite score on the California Assessment Program (CAP) from the current year score to compute a change score.

(2) Regress the number of students tested in CAP and the square of the number of students tested onto the change score using a standard multiple regression procedure.

(3) Using the results of the multiple regression, compute a predicted change score.

(4) Subtract the actual change score obtained by the school from the predicted change score to obtain a residual.

(5) Studentize the residual to have a mean of zero and a standard deviation of 1.

(6) Identify those schools which have a studentized residual equal to or less than minus 1.5. A studentized residual is the ratio of the residual to its standard error after the model has been fit and predicted change scores and residuals calculated. The predicted change scores are calculated from the estimated regression equation. The residuals are calculated as actual minus predicted.

(7) For those schools identified in paragraph (6) of this subsection, the incentive award for the current year shall be based on the improvement in performance between the current year and the 1983-84 fiscal year or the fiscal year in which the school first participated in the incentive program.

(c) Any school whose incentive award is adversely affected by a calculation pursuant to subdivision (b) may appeal to the Superintendent of Public Instruction.

NOTE: Authority cited: Sections 33031 and 54653.6, Education Code. Reference: Section 54653.6, Education Code.

HISTORY

1. New section filed 5-1-87; operative 5-31-87 (Register 87, No. 20).

Article 1.7. Award Programs Linked to the Academic Performance Index (API)

§ 1031. Intent of the Regulations.

(a) The Academic Performance Index (API) measures the performance of California public schools, especially the academic performance of pupils, and demonstrates comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools pursuant to

Education Code section 52052 and the Framework for The Academic Performance Index, July 1999 and The 1999 Base Year Academic Performance Index, December 15, 1999, which are incorporated herein.

(h) The purpose of Article 1.7 is to implement the programs established by three statutes relating to the API:

(1) The Governor's Performance Award Program of the Public Schools Accountability Act of 1999 (Education Code sections 52050 et seq.).

(2) The Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.).

(3) The Academic Performance Index Schoolsite Employees Performance Bonus (Section 40, Chapter 71 of the Statutes of 2000).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New article 1.7 (sections 1031-1038) and section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (b), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1032. General Eligibility Criteria for Awards Programs Related to API Growth.

(a) For purposes of this Article, "schools" shall be defined as all schools, including charter schools, that receive a ranking on the API including schools participating in the Immediate Intervention/Underperforming Schools Program. These schools are eligible to participate in all three award programs identified in Section 1031.

(b) The API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system. The Superintendent of Public Instruction will develop an alternative accountability system for schools with fewer than 100 valid test scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

Once the alternative accountability system required by Education Code section 52052(g) is adopted by the State Board of Education, alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API. If the school elects to be part of the API accountability system, the school shall remain in the system for at least the three subsequent years.

(c) For the purposes of these award programs, growth API means the API in the second year of two consecutive years for which the API is calculated. If a school does not receive an API pursuant to subdivisions (d)(1), (d)(2), or (d)(4), the school is ineligible for participation in any of the award programs for the current and subsequent year. If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.

(d) A school's API shall be considered invalid under any of the following circumstances:

(1) The local educational agency notifies the California Department of Education (department) that there were adult testing irregularities at the school.

(2) The local educational agency notifies the department that the API is not representative of the pupil population at the school.

(3) The local educational agency notifies the department that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.

(4) The school's proportion of parental waivers compared to its Standardized Testing and Reporting Program (STAR) enrollment, pursuant to Education Code section 60640 et seq., is equal to or greater than 15 percent for the 2000 STAR. For the 2001 STAR and each subsequent STAR, the school's proportion of parental waivers compared to its STAR enrollment

is equal to or greater than 10 percent, except when the school's proportion of parental waivers compared to its STAR enrollment is equal to or greater than 10 percent but less than 20 percent. In this case, the department will conduct standard statistical tests to determine whether the pupils tested at the school represent the school's pupils by grade level. If the standard statistical tests demonstrate that the pupils tested represent the school's pupils, then the school's API shall be considered valid. If the standard statistical tests demonstrate that the pupils tested do not represent the school's pupils, then the school's API shall be considered invalid. There shall be no rounding in determining this minimum parental waiver proportion (i.e., 9.99 percent is not 10 percent).

(5) Information is made available to or obtained by the department that indicates that the integrity of the API may have been compromised. If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized.

(6) In any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the school's proportion of the number of test-takers in that content area compared with the total number of test-takers is less than 85 percent. There shall be no rounding in determining the proportion of test-takers in each content area (i.e., 84.99 percent is not 85 percent).

(e) In the event that, subsequent to the calculation of an API for a school, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the circumstances set out in subdivision (d) occurred, the department may invalidate the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(f) All schools that reach their growth targets or have an API of 800 or more and growth of at least 1 point, have comparable improvement as defined in subdivision (g), and meet the minimum participation rate in subdivision (h), shall be recognized through the Governor's Performance Award Program and the Academic Performance Index Schoolsite Employees Performance Bonus program.

(g) Comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) shall be defined as either: 1) 80 percent of the school-wide API improvement goal for schools with APIs less than 800, simplified to the nearest whole number (i.e., 1.51 equals 2); or 2) the actual distance to 800. Numerically significant subgroups with APIs below 800 at schools with API scores of 800 or above shall also show a one-point gain. Numerically significant subgroups at 800 or above shall maintain a score at or above 800.

(h) For elementary and middle schools, the minimum participation rate for all three awards programs shall be 95 percent; for high schools, it shall be 90 percent, with the intention of increasing this rate to 95 percent in the future.

(1) If the test publisher determines, for grades 2 to 11, that a pupil did attempt to take any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the pupil shall be counted as a test-taker.

(2) No pupil shall be counted more than once as a test-taker.

(3) The participation rate shall be calculated as follows:

(A) Divide the total number of test-takers in grades 2-11 at the school site by

(B) The total enrollment in grades 2-11 minus the number of pupils exempted from taking the test either by their Individualized Education Program (IEP) pursuant to Education Code section 60640(e) or parental waivers pursuant to Education Code section 60615.

(4) For purposes of subdivision (3)(B) above, enrollment shall be determined by the enrollment information collected by the department as part of the Standardized Testing and Reporting Program (STAR), pursuant to Education Code sections 60640 et seq.

(5) In the case of pupil testing irregularities, the scores of affected pupils shall be eliminated from the calculations of the school's growth API.

although the pupils are counted as tested and shall contribute to the school's participation rate.

(6) There shall be no rounding in determining this minimum participation rate (i.e., 94.9 percent does not equal 95 percent).

(i) (Reserved)

(j) A school that had its 2000 API invalidated solely because of excessive parental waivers (subdivision (d)(4)) will be eligible for the Governor's Performance Awards based on the 2001 growth API if the school and all of its numerically significant subgroups achieve twice the growth targets associated with the school's 1999 base API and the school has met all other 2001 eligibility criteria. While being eligible for the Governor's Performance Awards, such a school would not be eligible for awards under the Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. New subsection (d)(4) and subsection renumbering filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including further amendments, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
4. Amendment of subsections (d)(4), (d)(6) and (h)(1) and new subsection (j) filed 8-2-2001 as an emergency; operative 8-2-2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-30-2001 or emergency language will be repealed by operation of law on the following day.

§ 1033. Award Funding Criteria for Governor's Performance Award Program and Academic Performance Index Schoolsite Employees Performance Bonus.

(a) Schools that meet the eligibility requirements for the Governor's Performance Award Program (GPA) shall receive the per pupil award amount for each of their eligible pupils determined as follows:

(1) The school funding rate is the total number of test-takers divided by the total enrollment on the first day of testing for grades 2-11 minus the IEP exemptions.

(2) There shall be no rounding in determining the school funding rate (i.e., 94.9% does not equal 95%).

(3) The kindergarten, first grade and 12th grade enrollment as established for that school year by the California Basic Education Data System (CBEDS) shall be added to the total enrollment on the first day of testing for grades 2-11, less the number of pupils with testing irregularities, then multiplied by the school funding rate. This result, simplified to the nearest whole number (i.e., 1.51 equals 2) shall determine the number of eligible pupils upon which the GPA awards are based.

(4) The amount allocated per pupil shall be determined on a prorata basis from the total amount of funding available in the annual State Budget.

(b) To participate in the Academic Performance Index Schoolsite Employees Performance Bonus awards school districts, county offices of education, and charter schools shall certify the number of full-time equivalent (FTE) employees employed as of the second principal apportionment of the 1999-2000 school year at each school site under their jurisdiction that are eligible for awards in accordance with Education Code section 52057(a).

(1) The "number of full-time equivalent employees (FTE) employed as of the second principal apportionment" shall be defined as the number of funded FTE positions at the school site as of June 23, 2000.

(2) "Employees at each school site" shall be defined as positions filled by individuals employed by the school district, county office of education, or charter school at least 50 percent of the school year in which the award was earned, and who spent at least 50 percent of his/her total annu-

al work hours at school sites, and who spent at least 20 percent of his/her total annual work hours at the eligible school site.

(3) "Full-time equivalent (FTE) position" shall be defined as a position filled by a person that is required to work a minimum of a six hour work day. School districts, county offices of education, and charter schools may choose to use a longer work day in accordance with their local collective bargaining agreements. One person cannot generate more than one FTE position. Part-time positions shall generate a partial FTE on a proportional basis.

(4) The certification shall indicate the number of certificated and classified FTE positions at each school site. The number of certificated employees reported by the school districts, county offices of education, and charter schools shall also be used for purposes of making awards under the Certificated Staff Performance Incentive Act.

(A) "Classified employee" shall be defined as an employee not requiring certification and who meets the school site employee criteria specified in subdivision (h)(2).

(B) "Certificated employee" shall be defined as an employee in a position requiring certification and who holds a document issued by the California Commission on Teacher Credentialing authorizing service in the public schools of California.

(C) "Document" shall be defined as a credential, emergency permit, or waiver issued by the California Commission on Teacher Credentialing.

(5) For purposes of this subdivision, the deadline for submitting the certification of FTE to the department shall be November 1, 2000 or as soon thereafter as the eligible schools are identified and no later than February 1, 2001. If certification is not received by the department by February 1, 2001, those schools will not receive either the Certificated Staff Performance Incentive Act award or the Academic Performance Index Schoolsite Employees Performance Bonus award.

(6) Starting with STAR 2001 testing, the deadline for submitting the certification of FTEs to the department shall be within 90 days of the department's posting on the website of the certified list of schools eligible to receive the Governor's Performance Award. If the school's certification is not received by the department by the deadline, the schools will not receive the Certificated Staff Performance Incentive Act award.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Section 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Amendment of subsections (a)(3) and (b) and new subsections (b)(1)-(5) filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including new subsection (b)(6), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1034. Specific Eligibility Criteria for the Certificated Staff Performance Incentive Act.

To be eligible to receive awards under the Certificated Staff Performance Incentive Act, school sites must have attained a statewide decile rank of 1-5 in the base year of the current growth API and must meet all of the relevant statutory requirements and each of the following requirements:

(a) Each school site must have improved by a minimum of two times its annual growth target on its API between the base year and the current growth year.

(b) All numerically significant ethnic or socioeconomically disadvantaged subgroups at a school must have improved by a minimum of two times their annual growth targets, simplified to the nearest whole number (i.e., 1.51 equals 2). However, all numerically significant ethnic or socioeconomically disadvantaged subgroups with an API of 800 or above must maintain a subgroup API of 800 or above.

(c) In addition to subdivisions (a) and (b) above, each school site shall have the required participation rate for the 2000 growth API, as calculated by the department. For the 2000 growth API, each school must show improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642.

(d) The local educational agency must complete an application on behalf of their eligible schools, which shall include:

- (1) The number of eligible schools;
- (2) Certification that the data used in the API calculations from the schools is accurate; and
- (3) A list of certificated positions on an FTE basis at each of the eligible schools.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652 and 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (d)(3), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1035. Award Funding Criteria for Certificated Staff Performance Incentive Act.

Distribution of Certificated Staff Performance Incentive Act awards pursuant to the 2000 growth API shall be as follows, with at least one thousand (1,000) \$25,000 awards, three thousand seven hundred fifty (3,750) \$10,000 awards and up to seven thousand five hundred (7,500) \$5,000 awards being distributed in the process. The total amount of funding for this Act provided in the annual State Budget shall be distributed proportionally across each of elementary, middle, and high schools statewide by the number of certificated staff as reported in the most current CBEDS report.

(a) Schools will be declared eligible or ineligible according to the rank of schools pursuant to Education Code section 52052. An "eligible list" will be determined for each type of school (elementary, middle, and high) for the awards distribution.

(b) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the certificated school site staff in certificated positions at that school. The number of FTE positions counted shall be subtracted from the awards pool of 1,000 FTE positions.

(c) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(d) This process shall continue until all 1,000 \$25,000/FTE awards have been allocated to the eligible school sites. If, before all 1,000 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 1,000 FTE awards pool, all of that school site's FTE positions shall receive \$25,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642 shall receive \$25,000 awards.

(e) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target that did not receive \$25,000 awards, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool of 3,750 \$10,000 awards.

(f) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(g) This process shall continue in consecutive order until all 3,750 \$10,000/FTE awards have been allocated to the school sites. If, before all 3,750 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 3,750 FTE pool, all of that school site's FTE positions shall receive \$10,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642 shall receive \$10,000 awards.

(h) The sum of the awards distributed under subdivisions (b) through (g) shall be subtracted from \$100 million, and the remainder shall be divided by \$5,000 to determine the maximum number of \$5,000 awards to be distributed. The \$5,000 awards shall be distributed in the same manner as the \$25,000 and the \$10,000 awards, with the exception that the distribution process will end when the pool of available \$5,000 awards is not sufficient to fully fund the eligible FTE positions of the next school or schools in line for the awards.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of NOTE (Register 2001, No. 4).
3. Amendment of subsections (d) and (g) filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including further amendments, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1036. Staff Eligibility for Individual Awards.

(a) The Academic Performance Index Schoolsite Employees Performance Bonus shall be allocated to individuals and to the school site. Funds shall be distributed to the school site for those individuals who worked at the school site for the school year for which the growth API was calculated. These bonuses shall be distributed on an FTE basis to employees assigned to the school site. Staff who were employed at a school site part-time or for less than the full school year shall have their awards pro-rated on a per FTE basis, as determined by the local educational agency contract.

(b) For the purpose of the Certificated Staff Performance Incentive Act awards, "certificated staff" include those certificated staff employed at the school site in certificated positions for the school year and certificated staff that were employed at the school site part-time or for less than the full school year for which the growth API was calculated. Except as otherwise provided through bargaining unit negotiations pursuant to Education Code section 44653, certificated staff employed at a school site part-time or for less than the full school year shall have their award allocations pro-rated on an FTE basis.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44650, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (a), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1037. Exemption from Statutory Benefits Calculations.

Academic Performance Index Schoolsite Employees Performance Awards and Certificated Staff Performance Incentive Act awards shall not be considered compensation for the purposes of calculating retirement benefits or contributions, or for any other benefit that an employee is eligible to receive where the benefit or contribution amount is calculated based on compensation.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1038. Exemption from Indirect Costs.

Governor's Performance Awards, Academic Performance Index Schoolsite Employees Performance Bonus awards, and Certificated Staff Performance Incentive Act awards shall not be subject to school district, county, or school indirect charges or other administrative charges.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Renumbering of former section 1038 to section 1039 and new section 1038 filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including amendment of NOTE, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1039. Use of Award Funds Allocated to School Sites.

Use of funds at the school site for the Governor's Performance Award Program and the school site portion of the Academic Performance Index Schoolsite Employees Performance Bonus awards shall be decided by the existing school site governance team/school site council representing major stakeholders and then ratified by the governing board of each local educational agency.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. Renumbering of former section 1038 to section 1039 filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-30-2001 order transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

Article 2. Physical Performance Testing Programs

§ 1040. Definition of "Pupil."

NOTE: Authority cited: Sections 60601 and 60603, Education Code.

HISTORY

1. Repealer filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1041. Required Program.

During the period of March-May, inclusive, the governing board of each school district maintaining grades 5, 7, and 10, or any one or more of such grades, shall administer to each pupil in those grades the physical performance test designated by the State Board of Education.

Each physically handicapped pupil and each pupil who is physically unable to take all of the physical performance test shall be given as much of the test as his condition will permit.

NOTE: Authority cited: sections 33031 and 60603, Education Code. Reference: Sections 60602(c), 60603 and 60608, Education Code.

HISTORY

1. Amendment filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. Amendment filed 5-18-72; effective thirtieth day thereafter (Register 72, No. 21).
3. Amendment filed 5-11-89 and 5-15-89; operative 5-15-89 (Register 89, No. 20).

§ 1042. Recommended Program.

When adequate facilities are available, tests pursuant to this article may be given more often than once yearly.

§ 1043. Methods of Administration.

The tests shall be scored by employees of the district or the employees of the county superintendent of schools. The scoring thereof shall be in compliance with the instructions of the publisher or developer for scoring, and the scores shall be submitted to the governing board of the school district on the dates required by, and on forms prescribed or approved by, such governing board.

§ 1044. Recording Test Scores.

The district superintendent or the county superintendent of schools, as the case may be, shall require that the pupil's scores on each of the tests given him in the physical performance testing program be included in the pupil's cumulative record. This requirement may be met by maintaining the regular physical performance testing program card with the cumulative record form.

§ 1045. Responsibility of County Superintendent of Schools.

As soon as possible after the State Board of Education, pursuant to subdivision (d) of Education Code Section 60603, has designated the physical performance test to be used during the ensuing school year in any grade, the county superintendent of schools shall secure, and until the close of the school year for which the test was designated, shall keep on file for reference purposes, a specimen set of that test.

The county superintendent of schools shall provide assistance to school districts in administering, recording, and reporting results of, the test.

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1046. Use of Reports.

The governing board of each school district shall use the reports of test scores submitted as required in this article for identifying physically underdeveloped pupils adapting instruction to individual needs, appraising pupil progress, adapting the physical education program to meet pupil needs and for such other purposes as may be permitted or required by law.

Article 3. Reading Testing Programs in Grades 1, 2, and 3

NOTE: Authority cited: Sections 33031, 54103, 60602, 60603, 60607, 60640, Education Code. Reference: Sections 60640-60644, Education Code.

HISTORY

1. Repealer of Article 3 (Sections 1050-1060) filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48). For prior history, see Registers 77, No. 39, 76, No. 40, 74, No. 52, 72, No. 18, 72, No. 8, 71, No. 25, 69, No. 39 and 67, No. 51.

Article 4. Alternative Assessment Pilot Project

§ 1061. Eligibility.

NOTE: Authority cited: Sections 33031 and 60731, Education Code. Reference: Sections 60730, 60731 and 60731.5, Education Code.

Register 01-46

§ 1032

HISTORY

1. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39). For prior history see Register 74, No. 52.
2. Repealer and new section filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1022. Recording Test Scores.

Scores for individual pupils on these tests shall not be used by school districts or teachers for individual diagnosis or placement, or as a basis for any other decisions which would affect the pupil's school experience. Scores from these tests shall not in any manner be included on a pupil's cumulative school record.

HISTORY

1. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

§ 1023. Security of Test Material.

In order to afford protection to the security and reliability of the tests given pursuant to this article, all officers and employees of the district and other persons concerned with the state testing program shall take all reasonable precautions to prevent pupils from learning in advance of the specific content of the tests.

HISTORY

1. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

§ 1023.1. Practice Exercises.

No practice exercises other than those specifically designated or approved by the State Department of Education shall be given to pupils in preparation for the testing program or in the particular test used.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. New section filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

1024. Responsibility of the County Superintendent of Schools.

The county superintendent is requested to cooperate with and give assistance to each school district under his jurisdiction which seeks such assistance from him in carrying out duties imposed on it by Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code. In addition for any district which does not have a district superintendent, the county superintendent shall make certain that the tests are administered in accordance with these regulations and with the instructions and testing procedures developed for the tests.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. Amendment filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
3. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Amendment filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1025. Related Information.

Each school district superintendent shall furnish to the State Department of Education such other pupil and school information that is requested by the Department in order to carry out the provisions of Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code and to properly analyze and evaluate the test results as required by Sections 60604.5 and 60660 of the Education Code.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. New section filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment of section and repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

3. Amendment filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1026. Reporting Test Results.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 60607 and 60640, Education Code.

HISTORY

1. New section filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment filed 9-27-76; effective thirtieth day thereafter (Register 76, No. 40).
3. Repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Repealer filed 11-29-84; effective thirtieth day thereafter (Register 84, No. 48).

Article 1.5. Education Improvement Incentive Program**§ 1030. Computation of Change in a School's Performance.**

(a) The formula in subsection (b) shall be applied by the State Department of Education to all secondary schools eligible to compete in the Education Improvement Incentive Program and whose performance in the prior fiscal year has decreased from that in the next preceding fiscal year. All schools with a 12th grade enrollment of 50 students or fewer and all continuation education schools are excluded from the computation.

(b) The formula:

(1) Subtract the school's prior year composite score on the California Assessment Program (CAP) from the current year score to compute a change score.

(2) Regress the number of students tested in CAP and the square of the number of students tested onto the change score using a standard multiple regression procedure.

(3) Using the results of the multiple regression, compute a predicted change score.

(4) Subtract the actual change score obtained by the school from the predicted change score to obtain a residual.

(5) Studentize the residual to have a mean of zero and a standard deviation of 1.

(6) Identify those schools which have a studentized residual equal to or less than minus 1.5. A studentized residual is the ratio of the residual to its standard error after the model has been fit and predicted change scores and residuals calculated. The predicted change scores are calculated from the estimated regression equation. The residuals are calculated as actual minus predicted.

(7) For those schools identified in paragraph (6) of this subsection, the incentive award for the current year shall be based on the improvement in performance between the current year and the 1983-84 fiscal year or the fiscal year in which the school first participated in the incentive program.

(c) Any school whose incentive award is adversely affected by a calculation pursuant to subdivision (b) may appeal to the Superintendent of Public Instruction.

NOTE: Authority cited: Sections 33031 and 54653.6, Education Code. Reference: Section 54653.6, Education Code.

HISTORY

1. New section filed 5-1-87; operative 5-31-87 (Register 87, No. 20).

Article 1.7. Award Programs Linked to the Academic Performance Index (API)**§ 1031. Intent of the Regulations.**

(a) The Academic Performance Index (API) measures the performance of California public schools, especially the academic performance of pupils, and demonstrates comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools pursuant to

Education Code section 52052 and the Framework for The Academic Performance Index, July 1999 and The 1999 Base Year Academic Performance Index, December 15, 1999, which are incorporated herein.

(b) The purpose of Article 1.7 is to implement the programs established by three statutes relating to the API:

(1) The Governor's Performance Award Program of the Public Schools Accountability Act of 1999 (Education Code sections 52050 et seq.).

(2) The Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.).

(3) The Academic Performance Index Schoolsite Employees Performance Bonus (Section 40, Chapter 71 of the Statutes of 2000).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New article 1.7 (sections 1031-1038) and section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (b), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1032. General Eligibility Criteria for Award Programs

Related to API Growth

(a) For purposes of this Article, "schools" shall be defined as all schools, including charter schools, that receive a ranking on the API including schools participating in the Immediate Intervention/Underperforming Schools Program. These schools are eligible to participate in all three award programs identified in Section 1031.

(b) The API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system. The Superintendent of Public Instruction will develop an alternative accountability system for schools with fewer than 100 valid test scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

Once the alternative accountability system required by Education Code section 52052(g) is adopted by the State Board of Education, alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API. If the school elects to be part of the API accountability system, the school shall remain in the system for at least the three subsequent years.

(c) For the purposes of these award programs, growth API means the API in the second year of two consecutive years for which the API is calculated. If a school does not receive an API pursuant to subdivisions (d)(1), (d)(2), or (d)(4), the school is ineligible for participation in any of the award programs for the current and subsequent year. If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.

(d) A school's API shall be considered invalid under any of the following circumstances:

(1) The local educational agency notifies the California Department of Education (department) that there were adult testing irregularities at the school.

(2) The local educational agency notifies the department that the API is not representative of the pupil population at the school.

(3) The local educational agency notifies the department that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.

(4) The school's proportion of parental waivers compared to its Standardized Testing and Reporting Program (STAR) enrollment, pursuant to Education Code section 60640 et seq., is equal to or greater than 15 percent for the 2000 STAR. For the 2001 STAR and each subsequent STAR, the school's proportion of parental waivers compared to its STAR enroll-

ment is equal to or greater than 10 percent, except when the school's proportion of parental waivers compared to its STAR enrollment is equal to or greater than 10 percent but less than 20 percent. In this case, the department will conduct standard statistical tests to determine whether the pupils tested at the school represent the school's pupils by grade level. If the standard statistical tests demonstrate that the pupils tested represent the school's pupils, then the school's API shall be considered valid. If the standard statistical tests demonstrate that the pupils tested do not represent the school's pupils, then the school's API shall be considered invalid. There shall be no rounding in determining this minimum parental waiver proportion (i.e., 9.99 percent is not 10 percent).

(5) Information is made available to or obtained by the department that indicates that the integrity of the API may have been compromised. If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized.

(6) In any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the school's proportion of the number of test-takers in that content area compared with the total number of test-takers is less than 85 percent. There shall be no rounding in determining the proportion of test-takers in each content area (i.e., 84.99 percent is not 85 percent).

(e) In the event that, subsequent to the calculation of an API for a school, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the circumstances set out in subdivision (d) occurred, the department may invalidate the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(f) All schools that reach their growth targets or have an API of 800 or more and growth of at least 1 point, have comparable improvement as defined in subdivision (g), and meet the minimum participation rate in subdivision (h), shall be recognized through the Governor's Performance Award Program and the Academic Performance Index Schoolsite Employees Performance Bonus program.

(g) Comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) shall be defined as either: 1) 80 percent of the school-wide API improvement goal for schools with APIs less than 800, simplified to the nearest whole number (i.e., 1.51 equals 2); or 2) the actual distance to 800. Numerically significant subgroups with APIs below 800 at schools with API scores of 800 or above shall also show a one-point gain. Numerically significant subgroups at 800 or above shall maintain a score at or above 800.

(h) For elementary and middle schools, the minimum participation rate for all three awards programs shall be 95 percent; for high schools, it shall be 90 percent, with the intention of increasing this rate to 95 percent in the future.

(1) If the test publisher determines, for grades 2 to 11, that a pupil did attempt to take any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the pupil shall be counted as a test-taker.

(2) No pupil shall be counted more than once as a test-taker.

(3) The participation rate shall be calculated as follows:

(A) Divide the total number of test-takers in grades 2-11 at the school site by

(B) The total enrollment in grades 2-11 minus the number of pupils exempted from taking the test either by their Individualized Education Program (IEP) pursuant to Education Code section 60640(e) or parental waivers pursuant to Education Code section 60615.

(4) For purposes of subdivision (3)(B) above, enrollment shall be determined by the enrollment information collected by the department as part of the Standardized Testing and Reporting Program (STAR) pursuant to Education Code sections 60640 et seq.

(5) In the case of pupil testing irregularities, the scores of affected pupils shall be eliminated from the calculations of the school's growth API.

although the pupils are counted as tested and shall contribute to the school's participation rate.

(6) There shall be no rounding in determining this minimum participation rate (i.e., 94.9 percent does not equal 95 percent).

(i) The department will publish on its web site a report of STAR testing and demographic data used in the calculation and reporting of the API. Prior to publishing the report on its web site, the department will announce the report in writing and/or by electronic communication to each local educational agency that appears in the API report. The local educational agency must notify the department and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data. The local education agency's notification must be received by the department and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on the department's web-site. The local educational agency must submit all data corrections to the test publisher in writing or e-mail. The test publisher shall specify a deadline for submittal of the data corrections that is no less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data.

(j) A school that had its 2000 API invalidated solely because of excessive parental waivers (subdivision (d)(4)) will be eligible for the Governor's Performance Awards based on the 2001 growth API if the school and all of its numerically significant subgroups achieve twice the growth targets associated with the school's 1999 base API and the school has met all other 2001 eligibility criteria. While being eligible for the Governor's Performance Awards, such a school would not be eligible for awards under the Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. New subsection (d)(4) and subsection renumbering filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including further amendments, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
4. Amendment of subsections (d)(4), (d)(6) and (h)(1) and new subsection (j) filed 8-2-2001 as an emergency; operative 8-2-2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-30-2001 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section heading and new subsection (i) filed 11-15-2001; operative 11-15-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 46).

§ 1033. Award Funding Criteria for Governor's Performance Award Program and Academic Performance Index Schoolsite Employees Performance Bonus.

(a) Schools that meet the eligibility requirements for the Governor's Performance Award Program (GPA) shall receive the per pupil award amount for each of their eligible pupils determined as follows:

(1) The school funding rate is the total number of test-takers divided by the total enrollment on the first day of testing for grades 2-11 minus the IEP exemptions.

(2) There shall be no rounding in determining the school funding rate (i.e., 94.9% does not equal 95%).

(3) The kindergarten, first grade and 12th grade enrollment as established for that school year by the California Basic Education Data System (CBEDS) shall be added to the total enrollment on the first day of testing for grades 2-11, less the number of pupils with testing irregularities, then multiplied by the school funding rate. This result, simplified to the near-

est whole number (i.e., 1.51 equals 2) shall determine the number of eligible pupils upon which the GPA awards are based.

(4) The amount allocated per pupil shall be determined on a prorata basis from the total amount of funding available in the annual State Budget.

(b) To participate in the Academic Performance Index Schoolsite Employees Performance Bonus awards school districts, county offices of education, and charter schools shall certify the number of full-time equivalent (FTE) employees employed as of the second principal apportionment of the 1999-2000 school year at each school site under their jurisdiction that are eligible for awards in accordance with Education Code section 52057(a).

(1) The "number of full-time equivalent employees (FTE) employed as of the second principal apportionment" shall be defined as the number of funded FTE positions at the school site as of June 23, 2000.

(2) "Employees at each school site" shall be defined as positions filled by individuals employed by the school district, county office of education, or charter school at least 50 percent of the school year in which the award was earned, and who spent at least 50 percent of his/her total annual work hours at school sites, and who spent at least 20 percent of his/her total annual work hours at the eligible school site.

(3) "Full-time equivalent (FTE) position" shall be defined as a position filled by a person that is required to work a minimum of a six hour work day. School districts, county offices of education, and charter schools may choose to use a longer work day in accordance with their local collective bargaining agreements. One person cannot generate more than one FTE position. Part-time positions shall generate a partial FTE on a proportional basis.

(4) The certification shall indicate the number of certificated and classified FTE positions at each school site. The number of certificated employees reported by the school districts, county offices of education, and charter schools shall also be used for purposes of making awards under the Certificated Staff Performance Incentive Act.

(A) "Classified employee" shall be defined as an employee not requiring certification and who meets the school site employee criteria specified in subdivision (b)(2).

(B) "Certificated employee" shall be defined as an employee in a position requiring certification and who holds a document issued by the California Commission on Teacher Credentialing authorizing service in the public schools of California.

(C) "Document" shall be defined as a credential, emergency permit, or waiver issued by the California Commission on Teacher Credentialing.

(5) For purposes of this subdivision, the deadline for submitting the certification of FTE to the department shall be November 1, 2000 or as soon thereafter as the eligible schools are identified and no later than February 1, 2001. If certification is not received by the department by February 1, 2001, those schools will not receive either the Certificated Staff Performance Incentive Act award or the Academic Performance Index Schoolsite Employees Performance Bonus award.

(6) Starting with STAR 2001 testing, the deadline for submitting the certification of FTEs to the department shall be within 90 days of the department's posting on the website of the certified list of schools eligible to receive the Governor's Performance Award. If the schools' certification is not received by the department by the deadline, the schools will not receive the Certificated Staff Performance Incentive Act award.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Section 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Amendment of subsections (a)(3) and (b) and new subsections (b)(1)-(5) filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 12-28-2000 and 1-10-2001 orders, including new subsection (b)(6), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1034. Specific Eligibility Criteria for the Certificated Staff Performance Incentive Act.

To be eligible to receive awards under the Certificated Staff Performance Incentive Act, school sites must have attained a statewide decile rank of 1-5 in the base year of the current growth API and must meet all of the relevant statutory requirements and each of the following requirements:

(a) Each school site must have improved by a minimum of two times its annual growth target on its API between the base year and the current growth year.

(b) All numerically significant ethnic or socioeconomically disadvantaged subgroups at a school must have improved by a minimum of two times their annual growth targets, simplified to the nearest whole number (i.e., 1.51 equals 2). However, all numerically significant ethnic or socioeconomically disadvantaged subgroups with an API of 800 or above must maintain a subgroup API of 800 or above.

(c) In addition to subdivisions (a) and (b) above, each school site shall have the required participation rate for the 2000 growth API, as calculated by the department. For the 2000 growth API, each school must show improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642.

(d) The local educational agency must complete an application on behalf of their eligible schools, which shall include:

(1) The number of eligible schools;

(2) Certification that the data used in the API calculations from the schools is accurate; and

(3) A list of certificated positions on an FTE basis at each of the eligible schools.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652 and 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (d)(3), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1035. Award Funding Criteria for Certificated Staff Performance Incentive Act.

Distribution of Certificated Staff Performance Incentive Act awards pursuant to the 2000 growth API shall be as follows, with at least one thousand (1,000) \$25,000 awards, three thousand seven hundred fifty (3,750) \$10,000 awards and up to seven thousand five hundred (7,500) \$5,000 awards being distributed in the process. The total amount of funding for this Act provided in the annual State Budget shall be distributed proportionally across each of elementary, middle, and high schools statewide by the number of certificated staff as reported in the most current CBEDS report.

(a) Schools will be declared eligible or ineligible according to the rank of schools pursuant to Education Code section 52052. An "eligible list" will be determined for each type of school (elementary, middle, and high) for the awards distribution.

(b) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the certificated school site staff in certificated positions at that school. The number of FTE positions counted shall be subtracted from the awards pool of 1,000 FTE positions.

(c) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the cer-

tificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(d) This process shall continue until all 1,000 \$25,000/FTE awards have been allocated to the eligible school sites. If, before all 1,000 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 1,000 FTE awards pool, all of that school site's FTE positions shall receive \$25,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642 shall receive \$25,000 awards.

(e) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target that did not receive \$25,000 rewards, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool of 3,750 \$10,000 awards.

(f) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(g) This process shall continue in consecutive order until all 3,750 \$10,000/FTE awards have been allocated to the school sites. If, before all 3,750 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 3,750 FTE pool; all of that school site's FTE positions shall receive \$10,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement between the 1998 and 1999 testing on the nationally-normed test pursuant to Education Code section 60642 shall receive \$10,000 awards.

(h) The sum of the awards distributed under subdivisions (b) through (g) shall be subtracted from \$100 million, and the remainder shall be divided by \$5,000 to determine the maximum number of \$5,000 awards to be distributed. The \$5,000 awards shall be distributed in the same manner as the \$25,000 and the \$10,000 awards, with the exception that the distribution process will end when the pool of available \$5,000 awards is not sufficient to fully fund the eligible FTE positions of the next school or schools in line for the awards.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.

2. Editorial correction of NOTE (Register 2001, No. 4).

3. Amendment of subsections (d) and (g) filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including further amendments, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1036. Staff Eligibility for Individual Awards.

(a) The Academic Performance Index Schoolsite Employees Performance Bonus shall be allocated to individuals and to the school site. Funds shall be distributed to the school site for those individuals who worked at the school site for the school year for which the growth API was calculated. These bonuses shall be distributed on an FTE basis to employees assigned to the school site. Staff who were employed at a school site part-time or for less than the full school year shall have their awards pro-rated on a per FTE basis, as determined by the local educational agency contract.

(b) For the purpose of the Certificated Staff Performance Incentive Act awards, "certificated staff" include those certificated staff employed at

the school site in certificated positions for the school year and certificated staff that were employed at the school site part-time or for less than the full school year for which the growth API was calculated. Except as otherwise provided through bargaining unit negotiations pursuant to Education Code section 44653, certificated staff employed at a school site part-time or for less than the full school year shall have their award allocations pro-rated on an FTE basis.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44650, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (a), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1037. Exemption from Statutory Benefits Calculations.

Academic Performance Index Schoolsite Employees Performance Bonus awards and Certificated Staff Performance Incentive Act awards shall not be considered compensation for the purposes of calculating retirement benefits or contributions, or for any other benefit that an employee is eligible to receive where the benefit or contribution amount is calculated based on compensation.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1038. Exemption from Indirect Costs.

Governor's Performance Awards, Academic Performance Index Schoolsite Employees Performance Bonus awards, and Certificated Staff Performance Incentive Act awards shall not be subject to school district, county, or school indirect charges or other administrative charges.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code; and Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Renumbering of former section 1038 to section 1039 and new section 1038 filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including amendment of NOTE, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

§ 1039. Use of Award Funds Allocated to School Sites.

Use of funds at the school site for the Governor's Performance Award Program and the school site portion of the Academic Performance Index Schoolsite Employees Performance Bonus awards shall be decided by the existing school site governance team/school site council representing major stakeholders and then ratified by the governing board of each local educational agency.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Section 40, Chapter 71 of the Statutes of 2000.

HISTORY

1. Renumbering of former section 1038 to section 1039 filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-30-2001 order transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).

Article 2. Physical Performance Testing Programs

§ 1040. Definition of "Pupil."

NOTE: Authority cited: Sections 60601 and 60603, Education Code.

HISTORY

1. Repealer filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1041. Required Program.

During the period of March-May, inclusive, the governing board of each school district maintaining grades 5, 7, and 10, or any one or more of such grades, shall administer to each pupil in those grades the physical performance test designated by the State Board of Education.

Each physically handicapped pupil and each pupil who is physically unable to take all of the physical performance test shall be given as much of the test as his condition will permit.

NOTE: Authority cited: sections 33031 and 60603, Education Code. Reference: Sections 60602(c), 60603 and 60608, Education Code.

HISTORY

1. Amendment filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. Amendment filed 5-18-72; effective thirtieth day thereafter (Register 72, No. 21).
3. Amendment filed 5-11-89 and 5-15-89; operative 5-15-89 (Register 89, No. 20).

§ 1042. Recommended Program.

When adequate facilities are available, tests pursuant to this article may be given more often than once yearly.

§ 1043. Methods of Administration.

The tests shall be scored by employees of the district or the employees of the county superintendent of schools. The scoring thereof shall be in compliance with the instructions of the publisher or developer for scoring, and the scores shall be submitted to the governing board of the school district on the dates required by, and on forms prescribed or approved by, such governing board.

§ 1044. Recording Test Scores.

The district superintendent or the county superintendent of schools, as the case may be, shall require that the pupil's scores on each of the tests given him in the physical performance testing program be included in the pupil's cumulative record. This requirement may be met by maintaining the regular physical performance testing program card with the cumulative record form.

§ 1045. Responsibility of County Superintendent of Schools.

As soon as possible after the State Board of Education, pursuant to subdivision (d) of Education Code Section 60603, has designated the physical performance test to be used during the ensuing school year in any grade, the county superintendent of schools shall secure, and until the close of the school year for which the test was designated, shall keep on file for reference purposes, a specimen set of that test.

The county superintendent of schools shall provide assistance to school districts in administering, recording, and reporting results of, the test.

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1046. Use of Reports.

The governing board of each school district shall use the reports of test scores submitted as required in this article for identifying physically underdeveloped pupils adapting instruction to individual needs, appraising pupil progress, adapting the physical education program to meet pupil needs and for such other purposes as may be permitted or required by law.

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HISTORY

1. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39). For prior history see Register 74, No. 52.
Repealer and new section filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1022. Recording Test Scores.

Scores for individual pupils on these tests shall not be used by school districts or teachers for individual diagnosis or placement, or as a basis for any other decisions which would affect the pupil's school experience. Scores from these tests shall not in any manner be included on a pupil's cumulative school record.

HISTORY

1. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

§ 1023. Security of Test Material.

In order to afford protection to the security and reliability of the tests given pursuant to this article, all officers and employees of the district and other persons concerned with the state testing program shall take all reasonable precautions to prevent pupils from learning in advance of the specific content of the tests.

HISTORY

1. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).

§ 1023.1. Practice Exercises.

No practice exercises other than those specifically designated or approved by the State Department of Education shall be given to pupils in preparation for the testing program or in the particular test used.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. New section filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

1024. Responsibility of the County Superintendent of Schools.

The county superintendent is requested to cooperate with and give assistance to each school district under his jurisdiction which seeks such assistance from him in carrying out duties imposed on it by Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code. In addition for any district which does not have a district superintendent, the county superintendent shall make certain that the tests are administered in accordance with these regulations and with the instructions and testing procedures developed for the tests.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. Amendment filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
3. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Amendment filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1025. Related Information.

Each school district superintendent shall furnish to the State Department of Education such other pupil and school information that is requested by the Department in order to carry out the provisions of Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code and to properly analyze and evaluate the test results as required by Sections 60604.5 and 60660 of the Education Code.

NOTE: Authority cited: Sections 33031, 60603, 60640, Education Code. Reference: Sections 60600-60614 and 60640-60644, Education Code.

HISTORY

1. New section filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment of section and repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

3. Amendment filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48).

§ 1026. Reporting Test Results.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 60607 and 60640, Education Code.

HISTORY

1. New section filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment filed 9-27-76; effective thirtieth day thereafter (Register 76, No. 40).
3. Repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Repealer filed 11-29-84; effective thirtieth day thereafter (Register 84, No. 48).

Article 1.5. Education Improvement Incentive Program

§ 1030. Computation of Change in a School's Performance.

(a) The formula in subsection (b) shall be applied by the State Department of Education to all secondary schools eligible to compete in the Education Improvement Incentive Program and whose performance in the prior fiscal year has decreased from that in the next preceding fiscal year. All schools with a 12th grade enrollment of 50 students or fewer and all continuation education schools are excluded from the computation.

(b) The formula:

(1) Subtract the school's prior year composite score on the California Assessment Program (CAP) from the current year score to compute a change score.

(2) Regress the number of students tested in CAP and the square of the number of students tested onto the change score using a standard multiple regression procedure.

(3) Using the results of the multiple regression, compute a predicted change score.

(4) Subtract the actual change score obtained by the school from the predicted change score to obtain a residual.

(5) Studentize the residual to have a mean of zero and a standard deviation of 1.

(6) Identify those schools which have a studentized residual equal to or less than minus 1.5. A studentized residual is the ratio of the residual to its standard error after the model has been fit and predicted change scores and residuals calculated. The predicted change scores are calculated from the estimated regression equation. The residuals are calculated as actual minus predicted.

(7) For those schools identified in paragraph (6) of this subsection, the incentive award for the current year shall be based on the improvement in performance between the current year and the 1983-84 fiscal year or the fiscal year in which the school first participated in the incentive program.

(c) Any school whose incentive award is adversely affected by a calculation pursuant to subdivision (b) may appeal to the Superintendent of Public Instruction.

NOTE: Authority cited: Sections 33031 and 54653.6, Education Code. Reference: Section 54653.6, Education Code.

HISTORY

1. New section filed 5-1-87; operative 5-31-87 (Register 87, No. 20).

Article 1.7. Award Programs Linked to the Academic Performance Index (API)

§ 1031. Intent of the Regulations.

(a) The Academic Performance Index (API) measures the performance of California public schools, especially the academic performance of pupils, and demonstrates comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools pursuant to

Education Code section 52052 and the Framework for The Academic Performance Index, July 1999 and The 1999 Base Year Academic Performance Index, December 15, 1999, which are incorporated herein.

(b) The purpose of Article 1.7 is to implement the programs established by two statutes relating to the API:

(1) The Governor's Performance Award Program of the Public Schools Accountability Act of 1999 (Education Code sections 52050 et seq.).

(2) The Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New article 1.7 (sections 1031-1038) and section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (b), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
3. Amendment of subsection (b), repeal of subsection (b)(3) and amendment of NOTE filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1032. General Eligibility Criteria for Award Programs Related to API Growth.

(a) For purposes of this Article, "schools" shall be defined as all schools, including charter schools, that receive a ranking on the API including schools participating in the Immediate Intervention/Underperforming Schools Program. These schools are eligible to participate in the award programs identified in Section 1031.

(b) For the purposes of these award programs, the API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system, once such a system is adopted by the State Board of Education as required by Education Code section 52052(g). The Superintendent of Public Instruction will develop an alternative accountability system for schools with fewer than 100 valid test scores, schools that fall under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

Alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API. If the school elects to be part of the API accountability system, the school shall remain in the system for at least the three subsequent years.

(c) For the purposes of these award programs, growth API means the API in the second year of two consecutive years for which the API is calculated.

(d) In 2001 and subsequent years, a school's API shall be considered invalid under any of the following circumstances:

(1) The local educational agency notifies the California Department of Education (department) that there were adult testing irregularities at the school affecting 5% or more of the pupils tested.

(2) The local educational agency notifies the department that the API is not representative of the pupil population at the school.

(3) The local educational agency notifies the department that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.

(4) The school's proportion of parental waivers compared to its Standardized Testing and Reporting Program (STAR) enrollment, pursuant to Education Code section 60640 et seq., is equal to or greater than 15 percent for the 2000 STAR. For the 2001 STAR and each subsequent STAR, the school's proportion of parental waivers compared to its STAR enrollment is equal to or greater than 10 percent, except when the school's proportion of parental waivers compared to its STAR enrollment is equal to or greater than 10 percent but less than 20 percent. In this case, the department will conduct standard statistical tests to determine whether the pupils tested at the school represent the school's pupils by grade level. If the

standard statistical tests demonstrate that the pupils tested represent the school's pupils, then the school's API shall be considered valid. If the standard statistical tests demonstrate that the pupils tested do not represent the school's pupils, then the school's API shall be considered invalid. There shall be no rounding in determining this minimum parental waiver proportion (i.e., 9.99 percent is not 10 percent).

(5) In any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the school's proportion of the number of test-takers in that content area compared with the total number of test-takers is less than 85 percent. There shall be no rounding in determining the proportion of test-takers in each content area (i.e., 84.99 percent is not 85 percent).

(6) If, at any time, information is made available to or obtained by the department that would lead a reasonable person to conclude that one or more of the preceding circumstances occurred, if after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized.

The department may invalidate or withhold the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(c) If a school's API is considered invalid pursuant to subdivisions (d)(1), (d)(2), (d)(4), or (d)(5), the school is ineligible for participation in any of the award programs for the current and subsequent year. If a school does not receive an API pursuant to subdivision (d)(3), the school is ineligible for participation in any of the award programs for the current year only.

(d) If fewer than 5% of the pupils tested are affected by adult testing irregularities, the school will receive a valid API; however, this school is not eligible for participation in any of the award programs for the current year.

(g) All schools that have an API score increase of at least 5% of the difference between the school's prior year score and 800 or an API score increase of five points, whichever is greater, and have comparable improvement as defined in subdivision (h), and meet the minimum participation rate in subdivision (i), shall be recognized through the Governor's Performance Award Program.

(h) Comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) shall be defined as an API score increase of at least 80% of the school's API growth target as established pursuant to Education Code section 52052 except when the sum of a subgroup's growth target and the subgroup's API is greater or equal to 800. In these cases, comparable improvement shall be defined as the distance from the subgroup's API to 800. In no case shall comparable improvement be less than 4 points.

(i) For elementary and middle schools, the minimum participation rate for the awards programs shall be 95 percent; for high schools, it shall be 90 percent, with the intention of increasing this rate to 95 percent in the future.

(1) If the test publisher determines, for grades 2 to 11, that a pupil did attempt to take any content area tested pursuant to Education Code sections 60642 and 60642.5 and included in the API, the pupil shall be counted as a test-taker.

(2) No pupil shall be counted more than once as a test-taker.

(3) The participation rate shall be calculated as follows:

(A) Divide the total number of test-takers in grades 2-11 at the school site by

(B) The total enrollment in grades 2-11 minus the number of pupils exempted from taking the test either by their Individualized Education Program (IEP) pursuant to Education Code section 60640(e) or parental waivers pursuant to Education Code section 60615.

(4) For purposes of subdivision (3)(B) above, enrollment shall be determined by the enrollment information collected by the department as part of the Standardized Testing and Reporting Program (STAR), pursuant to Education Code sections 60640 et seq.

(5) In the case of pupil testing irregularities, the scores of affected pupils shall be eliminated from the calculations of the school's growth API, although the pupils are counted as tested and shall contribute to the school's participation rate.

(6) There shall be no rounding in determining this minimum participation rate (i.e., 94.9 percent does not equal 95 percent).

(j) The department will publish on its web site a report of STAR testing and demographic data used in the calculation and reporting of the API. Prior to publishing the report on its web site, the department will announce the report in writing and/or by electronic communication to each local educational agency that appears in the API report. The local educational agency must notify the department and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data. The local educational agency's notification must be received by the department and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on the department's web-site. The local educational agency must submit all data corrections to the test publisher in writing or e-mail. The test publisher shall specify a deadline for submittal of the data corrections that is no less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data.

(k) The criteria for awards eligibility based on the 2001 growth API for a school that had its 2000 API invalidated solely because of excessive parental waivers pursuant to subdivision (d)(4) or for a school whose school district obtained a State Board of Education waiver of Section 1032(c) on their behalf will be (1) twice the school's 1999 growth target or 10 points, whichever is greater, and (2) comparable improvement for numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a), and the school has met all other 2001 eligibility criteria. Comparable improvement shall be defined as twice the 1999 subgroup target for each subgroup, except when the sum of a subgroup's 1999 growth target and the subgroup's 1999 API is greater than or equal to 800. In these cases, comparable improvement shall be defined as two times the distance from the subgroup's 1999 API to 800. In no case shall comparable improvement be less than 8 points. While being eligible for the Governor's Performance Awards, such a school would not be eligible for awards under the Certificated Staff Performance Incentive Act (Education Code sections 44650 et seq.).

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. New subsection (d)(4) and subsection renumbering filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including further amendments, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
4. Amendment of subsections (d)(4), (d)(6) and (h)(1) and new subsection (j) filed 8-2-2001 as an emergency; operative 8-2-2001 (Register 2001, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-30-2001 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section heading and new subsection (i) filed 11-15-2001; operative 11-15-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 46).
6. Certificate of Compliance as to 8-2-2001 order, including further amendment of section and NOTE, transmitted to OAL 11-21-2001 and filed 1-8-2002 (Register 2002, No. 2).

§ 1033. Award Funding Criteria for Governor's Performance Award Program.

(a) Schools that meet the eligibility requirements in 2000-01 for the Governor's Performance Award Program (GPA) shall receive a per pupil award amount for each of their eligible pupils. Eligible pupils are those who received a score on any subject matter area test (Total Reading, Total

Math, Language, Spelling, Science, or Social Science) of the nationally normed test pursuant to Education Code section 60642 and a score on any standards-based achievement test pursuant to Education Code section 60642.5. A score on the nationally normed test pursuant to Education Code section 60642 can be a percentile, the number correct, a scale score, or a normal curve equivalent. A score on the standards-based achievement test pursuant to Education Code section 60642.5 is defined as the performance level.

(b) The amount allocated for this award shall be determined on a pro-rata basis from the total amount of funding available in the annual State Budget.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Section 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Amendment of subsections (a)(3) and (b) and new subsections (b)(1)-(5) filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including new subsection (b)(6), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
4. Amendment of section heading and subsection (a), repealer of subsections (a)(1)-(3), redesignation and amendment of former subsection (a)(4) as subsection (b), renumbering of former subsections (b)-(b)(6) to section 1034, subsections (b)-(c) and new NOTE filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1034. Specific Eligibility Criteria for the Certified Staff Performance Incentive Act.

(a) To be eligible to receive awards under the Certified Staff Performance Incentive Act, school sites must have attained a statewide decile rank of 1-5 in the base year of the current growth API and must meet all of the relevant statutory requirements and each of the following requirements:

(1) Each school site must have improved by a minimum of two times its annual growth target on its API between the base year and the current growth year.

(2) All numerically significant ethnic or socioeconomically disadvantaged subgroups pursuant to Education Code section 52052(a) at a school must have improved by a minimum of two times their annual growth targets, except when the sum of a subgroup's growth target and the subgroup's API is greater than or equal to 800. In these cases, comparable improvement shall be defined as two times the distance from the subgroup's API to 800. In no case shall comparable improvement be less than 8 points.

(3) Each school site shall have the required participation rate for the current growth API, pursuant to Section 1032(i), as calculated by the California Department of Education. Each school must have been eligible for API awards in the year preceding the current API growth year.

(4) The local educational agency must complete an application on behalf of its eligible schools, which shall include:

(A) Certification that the data used in the API calculations from the schools is accurate, and

(B) The number of certificated positions on an FTE basis at each of the eligible schools pursuant to subdivision (b) below.

(b) To participate in the Certificated Staff Performance Incentive Act (CSPIA) awards, school districts and charter schools shall certify, as appropriate, the number of full-time equivalent (FTE) certificated employees employed by the school district or charter school, whether still resident in the school district or not, as of the second principal apportionment for the year in which the award was earned at each school site under their jurisdiction that is eligible for awards in accordance with Education Code section 44651.

(1) The "number of full-time equivalent (FTE) certificated employees employed by the school district or charter school, whether still resident in the school district or not, as of the second principal apportionment"

shall be defined as the number of funded certificated FTE positions at the school site as of the date established annually by the department pursuant to Education Code sections 41335 and 41601 for the submission by school districts of the attendance documents necessary for the department to prepare the second principal apportionment.

(2) "Employees at the school site" shall be defined as positions filled by individuals employed by the school district or charter school at least 50 percent of the school year in which the award was earned, and who spent at least 50 percent of his/her total annual work hours at school sites, and who spent at least 20 percent of his/her total annual work hours at the eligible school site working with pupils in any of grades K-12. County office of education and state employees are not eligible to participate.

(3) "Full-time equivalent (FTE) positions" may include "full-time" and "part-time" positions. A "full-time" certificated position shall be defined as a position filled by a person that is required to work a minimum of a six hour work day. Workdays longer than six hours, if in accordance with local collective bargaining agreements, should be used as the basis for "full-time" and "part-time" FTE calculation. One person cannot generate more than one FTE position. Part-time positions shall generate a partial FTE on a proportional basis.

(4) "Certificated employee" shall be defined as an employee in a position requiring certification and who holds a document issued by the California Commission on Teacher Credentialing authorizing service in the public schools of California.

(5) "Document" shall be defined as a credential, emergency permit, or waiver issued by the California Commission on Teacher Credentialing.

(c) Starting in 2001-02, the deadline for submitting the application, including the certification of FTEs to the department shall be within the close of business on the 45th calendar day after the department's posting on its website of the certified list of schools eligible to receive the Certificated Staff Performance Incentive Act award. If a school's application is not received by the department by the deadline, the school will not receive the award.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652 and 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (d)(3), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
3. Repealer of former section 1034, new subsections (a)-(a)(4)(B), and renumbering and amendment of former section 1033, subsections (b)-(b)(6) to section 1034, subsections (b)-(c) filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1035. Award Funding Criteria for Certificated Staff Performance Incentive Act.

Distribution of Certificated Staff Performance Incentive Act awards pursuant to the 2000 growth API shall be as follows, with at least one thousand (1,000) \$25,000 awards, three thousand seven hundred fifty (3,750) \$10,000 awards and up to seven thousand five hundred (7,500) \$5,000 awards being distributed in the process. The total amount of funding for this Act provided in the annual State Budget shall be distributed proportionally across each of elementary, middle, and high schools statewide by the number of certificated staff as reported in the most current CBEDS report.

(a) Schools will be declared eligible or ineligible according to the rank of schools pursuant to Education Code section 52052. An "eligible list" will be determined for each type of school (elementary, middle, and high) for the awards distribution.

(b) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the certificated school site staff in certificated positions at that school. The number of

FTE positions counted shall be subtracted from the awards pool of 1,000 FTE positions.

(c) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$25,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(d) This process shall continue until all 1,000 \$25,000/FTE awards have been allocated to the eligible school sites. If, before all 1,000 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 1,000 FTE awards pool, all of that school site's FTE positions shall receive \$25,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement over its API growth target in the prior year shall receive \$25,000 awards.

(e) Beginning with the school on each of the three "eligible lists" with the greatest raw score API improvement over two times its annual target that did not receive \$25,000 awards, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool of 3,750 \$10,000 awards.

(f) Beginning with the school on each of the three "eligible lists" with the next greatest raw score API improvement over two times its annual target, the Superintendent of Public Instruction shall apportion \$10,000 per certificated school site staff FTE position to be distributed to the certificated school site staff at that school. The number of FTE positions counted shall be subtracted from the awards pool remainder.

(g) This process shall continue in consecutive order until all 3,750 \$10,000/FTE awards have been allocated to the school sites. If, before all 3,750 awards have been allocated, an eligible school site has more eligible FTE positions than remain in the 3,750 FTE pool, all of that school site's FTE positions shall receive \$10,000 awards. If more than one school site has an identical score in this circumstance, the school with the greatest improvement over its API growth target in the prior year shall receive \$10,000 awards.

(h) The sum of the awards distributed under subdivisions (b) through (g) shall be subtracted from \$100 million, and the remainder shall be divided by \$5,000 to determine the maximum number of \$5,000 awards to be distributed. The \$5,000 awards shall be distributed in the same manner as the \$25,000 and the \$10,000 awards, with the exception that the distribution process will end when the pool of available \$5,000 awards is not sufficient to fully fund the eligible FTE positions of the next school or schools in line for the awards.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of NOTE (Register 2001, No. 4).
3. Amendment of subsections (d) and (g) filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including further amendments, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
5. Amendment of subsections (d) and (g) filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1036. Waiver Deadline.

Starting in 2000-01, the deadline for submitting to the department a waiver of any of Sections 1031 through 1039 shall be no later than the close of business on the 60th calendar day after the department's posting on its website of the certified list of schools eligible to receive the Governor's Performance Award.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Sections 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order, including amendment of subsection (a), transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
3. Amendment of section heading, repealer and new section and amendment of NOTE filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1037. Exemption from Statutory Benefits Calculations.

Certificated Staff Performance Incentive Act awards shall not be considered compensation for the purposes of calculating retirement benefits or contributions, or for any other benefit that an employee is eligible to receive where the benefit or contribution amount is calculated based on compensation.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Section 44654(b), Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-28-2000 order transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
3. Amendment filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1038. Exemption from Indirect Costs.

Governor's Performance Awards and Certificated Staff Performance Incentive Act awards shall not be subject to school district, county, or school indirect charges or other administrative charges.

NOTE: Authority cited: Sections 33031, 44650(b) and 52057(a), Education Code. Reference: Sections 44650-44652, 44654(b), 52052 and 52057, Education Code.

HISTORY

1. New section filed 12-28-2000 as an emergency; operative 12-28-2000 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-27-2001 or emergency language will be repealed by operation of law on the following day.
2. Renumbering of former section 1038 to section 1039 and new section 1038 filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-28-2000 and 1-30-2001 orders, including amendment of NOTE, transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
4. Amendment of section and NOTE filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

§ 1039. Use of Award Funds Allocated to School Sites.

Use of funds at the school site for the Governor's Performance Award Program shall be decided by the existing school site governance team/school site council representing major stakeholders and then ratified by the governing board of each local educational agency.

NOTE: Authority cited: Sections 33031 and 52057(a), Education Code. Reference: Sections 52052 and 52057, Education Code.

HISTORY

1. Renumbering of former section 1038 to section 1039 filed 1-30-2001 as an emergency; operative 1-30-2001 (Register 2001, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-30-2001 order transmitted to OAL 4-27-2001 and filed 6-11-2001 (Register 2001, No. 24).
3. Amendment of section and NOTE filed 1-8-2002; operative 1-8-2002 (Register 2002, No. 2).

Article 2. Physical Performance Testing Programs

§ 1040. Definition of "Pupil."

NOTE: Authority cited: Sections 60601 and 60603, Education Code.

HISTORY

1. Repealer filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. New NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1041. Required Program.

During the period of March-May, inclusive, the governing board of each school district maintaining grades 5, 7, and 10, or any one or more of such grades, shall administer to each pupil in those grades the physical performance test designated by the State Board of Education.

Each physically handicapped pupil and each pupil who is physically unable to take all of the physical performance test shall be given as much of the test as his condition will permit.

NOTE: Authority cited: sections 33031 and 60603, Education Code. Reference: Sections 60602(c), 60603 and 60608, Education Code.

HISTORY

1. Amendment filed 9-25-69; effective thirtieth day thereafter (Register 69, No. 39).
2. Amendment filed 5-18-72; effective thirtieth day thereafter (Register 72, No. 21).
3. Amendment filed 5-11-89 and 5-15-89; operative 5-15-89 (Register 89, No. 20).

§ 1042. Recommended Program.

When adequate facilities are available, tests pursuant to this article may be given more often than once yearly.

§ 1043. Methods of Administration.

The tests shall be scored by employees of the district or the employees of the county superintendent of schools. The scoring thereof shall be in compliance with the instructions of the publisher or developer for scoring, and the scores shall be submitted to the governing board of the school district on the dates required by, and on forms prescribed or approved by, such governing board.

§ 1044. Recording Test Scores.

The district superintendent or the county superintendent of schools, as the case may be, shall require that the pupil's scores on each of the tests given him in the physical performance testing program be included in the pupil's cumulative record. This requirement may be met by maintaining the regular physical performance testing program card with the cumulative record form.

§ 1045. Responsibility of County Superintendent of Schools.

As soon as possible after the State Board of Education, pursuant to subdivision (d) of Education Code Section 60603, has designated the physical performance test to be used during the ensuing school year in any grade, the county superintendent of schools shall secure, and until the close of the school year for which the test was designated, shall keep on file for reference purposes, a specimen set of that test.

The county superintendent of schools shall provide assistance to school districts in administering, recording, and reporting results of, the test.

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 1046. Use of Reports.

The governing board of each school district shall use the reports of test scores submitted as required in this article for identifying physically underdeveloped pupils adapting instruction to individual needs, appraising pupil progress, adapting the physical education program to meet pupil needs and for such other purposes as may be permitted or required by law.

Article 3. Reading Testing Programs in Grades 1, 2, and 3

NOTE: Authority cited: Sections 33031, 54103, 60602, 60603, 60607, 60640, Education Code. Reference: Sections 60640-60644, Education Code.

HISTORY

1. Repealer of Article 3 (Sections 1050-1060) filed 11-29-79; effective thirtieth day thereafter (Register 79, No. 48). For prior history, see Registers 77, No. 39,

COMMISSION ON STATE MANDATES**Exhibit F**

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October 19, 2007

Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Draft Staff Analysis and Hearing Date*Academic Performance Index, 01-TC-22*

Education Code Sections 44560 et al.;

Title 5, California Code of Regulations, Sections 1031 through 1039;

Statutes 2001, Chapter 887 (SB 1295); Statutes 2001, Chapter 749 (AB 961);

Statutes 2001, Chapter 745 (SB 1991); Statutes 2001, Chapter 159 (SB 662);

Statutes 2000, Chapter 695 (SB 1552); Statutes 2000, Chapter 190 (AB 2162);

Statutes 2000, Chapter 71 (SB 1667); Statutes 1999, Chapter 52 (AB 1114);

Statutes 1999, Chapter 3 (SB 1)

San Juan Unified School District, Claimant

Dear Mr. Petersen:

The draft staff analysis of this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Friday, **November 9, 2007**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Thursday, December 6, 2007**, at 9:30 a.m. in Room 126, State Capitol, Sacramento, CA. The final staff analysis will be issued on or about November 21, 2007. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Eric Feller at (916) 323-8221 with any questions regarding the above.

Sincerely,



PAULA HIGASHI
Executive Director

Enclosures

ITEM ____
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 44650-44654, 52050-52055.51, 52056-52057, 52058
California Code of Regulations, Title 5, Sections 1031-1039
Statutes 1999-2000x1, Chapter 3; Statutes 1999, Chapter 52;
Statutes 2000, Chapters 71, 190 and 695; Statutes 2001, Chapters 159, 745, 749, and 887

Academic Performance Index
(01-TC-22)

San Juan Unified School District, Claimant

EXECUTIVE SUMMARY

The test claim consists of programs of the Public Schools Accountability Act and the Certificated Staff Performance Incentive Act, and related regulations. The Public Schools Accountability Act contains the following programs: (1) the Academic Performance Index (API), a method of measuring pupil performance, (2) the Governor's High Achieving/Improving Schools Program, an incentive program that rewards high-performing schools, and (3) the Intermediate Intervention/ Underperforming Schools Program (II/USP), an intervention and sanctions program to assist low-performing schools.¹ The Certificated Staff Performance Incentive Act, in addition to the Governor's Performance Award and the Schoolsite Employees Performance Bonus program that the claimant also pled, reward certificated staff for making improvements in the academic progress of their pupils.

For reasons specified in the analysis, staff finds that the test claim statutes impose a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for school districts to do the following:

- Effective June 25, 1999, for the governing board to discuss the results of the annual ranking at the next regularly scheduled meeting following the annual publication of the API and SPI school rankings (Ed. Code § 52056, subd. (c)).
- From November 15, 2001 to June 30, 2004, for the district to: (1) notify CDE and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data. The school district's notification must be received by CDE and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on CDE's web-site; and (2) submit all data corrections to the publisher in writing or e-mail, according to a test-publisher specified deadline for submittal of the data corrections that is no

¹ Education Code section 52051 et seq..

less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data. (Cal. Code Regs., tit. 5, § 1032, subd. (j).)

For fiscal years 2004-2005 to 2007-2008, staff finds that this activity in section 1032, subdivision (j), does not impose "costs mandated by the state" because of State Budget Act language that the funds provided for STAR "shall first be used to offset any state-mandated reimbursable costs within the meaning of Section 17556 of the Government Code."² This finding only applies in years that the Legislature, in "a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate."³

Staff also finds that these activities are not a reimbursable mandate for schools with 11-99 valid test scores that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, alternative schools, including continuation high schools and opportunity schools and independent study schools. (Ed. Code, § 52052, subd. (f)(1), Stats. 2001, ch. 887) and Cal. Code Regs., tit. 5, § 1032, subd. (b).)

Staff also finds that since no schools or school districts have participated in the II/USP pursuant to section 52053, subdivisions (d) and (j), and thus have not incurred costs mandated by the state as of September 12, 2007, these provisions do not impose costs mandated by the state within the meaning of Government Code section 17514.

Staff also finds that all other test claim statutes and regulations do not constitute a reimbursable state-mandated program.

Recommendation

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activities listed above.

² State Budget Act (Stats. 2007, chs 171 & 172) Item 6110-113-0001, Schedule 2, Provision 7. This conclusion is the same for fiscal year 2004-2005, which contained no reference to Government Code section 17556, subdivision (e).

³ Government Code section 17556, subdivision (e).

STAFF ANALYSIS

Claimant

San Juan Unified School District

Chronology

- 6/28/02 Claimant files test claim
- 8/7/02 California Department of Education files comments on the test claim
- 9/10/02 Department of Finance requests extension to file test-claim comments
- 10/7/02 Department of Finance files comments on the test claim
- 11/7/02 Claimant files rebuttal comments on the test claim
- 8/24/07 Commission staff requests further information from California Dept. of Education
- 8/27/07 Commission staff severs Education Code section 52056, subdivision (b) from the test claim to create a *Student Accountability Report Cards IV* test claim
- 9/12/07 Department of Education replies to Commission staff's request for information
- 10/09/07 Claimant files a history of the title 5 regulations in the test claim
- 10/19/07 Commission staff issues draft staff analysis

Background

This test claim alleges activities based on the Public Schools Accountability Act,⁴ the Certificated Staff Performance Incentive Act,⁵ and related statutes⁶ and regulations.⁷

The Public Schools Accountability Act consists of the following programs: (1) the Academic Performance Index (API), a method of measuring pupil performance, (2) the Governor's High Achieving/Improving Schools Program, an incentive program that rewards high-performing schools, and (3) the Intermediate Intervention/ Underperforming Schools Program (II/USP), an intervention and sanctions program to assist low-performing schools.⁸

⁴ Statutes 1999-2000x1 chapter 3; Education Code section 52050 et seq.. The Public Schools Accountability Act was effective June 25, 1999, because statutes enacted in a special session of the Legislature are not effective until the 91st day after the adjournment of the session at which they are passed. (Cal. Const. art. IV, § 8 (c)(1)).

⁵ Statutes 1999, chapter 52; Education Code section 44650 et seq.

⁶ Statutes 2000, chapter 71; section 40, uncodified.

⁷ California Code of Regulations, title 5, sections 1031-1039. The regulations implement the Governor's Performance Award Program of the Public Schools Accountability Act, as well as the Certificated Staff Performance Incentive Act.

⁸ Education Code section 52051.

One of the legislative findings of the Public Schools Accountability Act states: "The statewide accountability system must include rewards that recognize high achieving schools as well as interventions and, ultimately, sanctions for schools that are continuously low performing."⁹

The Certificated Staff Performance Incentive Act, in addition to the Governor's Performance Award and the Schoolsite Employees Performance Bonus program that the claimant also pled, reward certificated staff for making improvements in the academic progress of their pupils.

Test Claim Statutes

Academic Performance Index (Ed. Code, §§ 52050 – 52052.5, Cal. Code Regs., tit. 5, § 1032): The purpose of the Academic Performance Index (API) is to "measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools."¹⁰ The California Department of Education's (CDE) website describes the API as follows:

It is a numeric index (or scale) that ranges from a low of 200 to a high of 1000. A school's score on the API is an indicator of a school's performance level. The statewide API performance target for all schools is 800. A school's growth is measured by how well it is moving toward or past that goal. A school's API Base is subtracted from its API Growth to determine how much the school improved in a year.¹¹

The API is calculated annually for each school using a variety of indicators that are reported to CDE, including but not limited to the results of the STAR tests,¹² and the High School Exit Exam.¹³ Attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools may also be used.¹⁴ Pupil data is disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group.¹⁵

⁹ Education Code section 52050.5, subdivision (i). All references herein are to the Education Code unless otherwise indicated.

¹⁰ Education Code section 52052, subdivision (a)(1).

¹¹ See <<http://www.cde.ca.gov/ta/ac/ap/apidescription.asp>> as of August 22, 2007.

¹² The Standardized Testing and Reporting Program, or STAR, consists of four testing programs: the (1) California Standards Tests, (2) The California Achievement Tests, Sixth Edition Survey (a national norm referenced achievement test, formerly the Stanford 9), (3) Spanish Assessment of Basic Education, Second Edition, and (4) the California Alternative Performance Assessment for pupils with significant cognitive disabilities that prevent them from taking the other tests.

¹³ Education Code section 52052, subdivision (b)(4).

¹⁴ Education Code section 52052, subdivision (a)(4). Attendance information for certificated school personnel was deleted from section 52052 by Statutes 2004, chapter 915 (SB 722)

¹⁵ Education Code section 52052, subdivision (a)(4)(B).

The Superintendent of Public Instruction (SPI) is required to develop, and the State Board of Education (SBE) to adopt, expected annual percentage growth targets for all schools based on their API baseline score measured from the previous year. The minimum growth target is 5 percent of the difference between the school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target need only maintain their API score above the statewide API performance target. To meet its growth target, a school must demonstrate that all ethnic and socioeconomically disadvantaged subgroups, as defined, are making comparable improvement.¹⁶

The API is used to measure the progress of schools selected for participation in the II/USP (pursuant to § 52053), and rank all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.¹⁷

Originally, the SPI was to create an alternative accountability system for schools with less than 100 pupils, but those schools now receive an API with an asterisk to indicate less statistical certainty than an API based on 100 or more test scores.¹⁸ These small schools are eligible to participate in the Governor's Performance Awards Program and in the II/USP,¹⁹ both of which are discussed below. The SPI is required to develop an alternative accountability system for schools under the jurisdiction of a county board of education, or county superintendent of schools, community day schools, nonpublic, nonsectarian schools, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools.²⁰

Section 52052.5 requires the SPI to establish an advisory committee to advise the SPI and SBE on "all appropriate matters relative to the creation of the Academic Performance Index and the implementation of the Immediate Intervention/Underperforming School Program and the High Achieving/Improving Schools Program."²¹

The API is also used to meet federal "Adequate Yearly Progress" requirements under the No Child Left Behind Act of 2001 (NCLB). NCLB requires, as a condition of funding, all states to develop and implement a single, statewide accountability system that will ensure all public schools make their Adequate Yearly Progress toward the federal goal that all pupils perform at the proficient or above level in English-language arts and mathematics by 2014. Under Adequate Yearly Progress requirements, schools and local educational agencies²² are required to meet criteria in four areas: participation rate, percent proficient, API as an additional indicator, and graduation rate (if applicable).²³

¹⁶ Education Code section 52052, subdivision (c) (Stats. 2001, ch. 887).

¹⁷ Education Code section 52052, subdivision (e).

¹⁸ Education Code section 52052, subdivision (f)(1).

¹⁹ Education Code section 52052.2.

²⁰ Education Code section 52052, subdivision (h).

²¹ Education Code section 52052.5.

²² Local educational agencies (LEAs) are school districts and county offices of education.

²³ See <<http://www.cde.ca.gov/ta/ac/ap/documents/infoguide07g.pdf>> as of August 22, 2007.

Intermediate Intervention/Underperforming Schools Program (Ed. Code, §§ 52053 – 52055.51 & 52056.5 & 52058): The purpose of the II/USP is to provide schools in decile ranks 1-5 (that score in the lower 50% on STAR tests) an opportunity to apply for funding to improve pupil achievement in exchange for greater accountability.²⁴ The SPI, with approval from the SBE, invites schools that scored below the 50th percentile on both the spring 1998 and spring 1999 STAR tests to participate in the program. "A school invited to participate may take any action not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates to improve pupil performance."²⁵ The program is limited to 430 schools, no more than 301 elementary schools, 78 middle schools, and 52 high schools.²⁶

The test claim statutes provide three ways that schools may be selected to participate in the II/USP without applying to CDE. Subdivision (d) of section 52053 requires the SPI to randomly select eligible schools to participate if fewer than the number of schools in any grade level category apply to the program. Similarly, subdivision (j) states that if fewer schools apply for participation than can be funded, the SPI with the approval of the SBE shall randomly select the balance of schools from schools eligible to participate that did not apply. Also, section 52056.5 authorizes the SPI to make a school subject to the II/USP if the school fails to meet annual state growth targets established pursuant to Section 52052.

Schools districts with schools in the II/USP must choose between contracting with an external evaluator or contracting with an entity that has proven successful expertise specific to challenges in low-performing schools.²⁷ The external evaluator or entity has a litany of specified duties, including developing an action plan with the school and consulting employee organizations. Schools that participate receive state grants, some of which may be from federal funds (Pub. Law 105-78).²⁸ The grants require a school district match.²⁹

If a school has not met its growth targets each year and has failed to show significant growth 24 months after receipt of funding, it is deemed a state-monitored school (formerly a low-performing school). The SPI may take one or more actions with regard to a state-monitored school, including reorganizing or closing it.³⁰

High Achieving/Improving Schools Program (Ed. Code, § 52056, except subdivision (b)): This program provides monetary and non-monetary rewards, pursuant to a Governor's Performance Award Program, to schools that meet or exceed performance targets or demonstrate

²⁴ See <<http://www.cde.ca.gov/re/lr/wr/documents/policy4iiusp.doc>> as of August 22, 2007.

²⁵ Education Code section 52053, subdivision (a).

²⁶ Education Code section 52053, subdivision (b).

²⁷ Education Code section 52054, subdivision (a) (Stats. 2001, ch. 749).

²⁸ Education Code section 52053, subdivision (f).

²⁹ Education Code section 52054.5.

³⁰ Education Code section 52055.5, subdivision (b). The statute states that the SPI "shall do one or more of the following with respect to a state-monitored school."

high achievement.³¹ The SPI, with approval of the SBE, ranks all public schools based on the API in decile categories. The SPI also reports the target annual growth rates of schools and the actual growth rates attained. Schools are also ranked by API compared with schools that have similar characteristics. The SPI publishes these rankings annually on the Internet.³²

According to section 52056, subdivision (b), "schools shall report their ranking, including a description of the components of the API, in their annual school accountability report card pursuant to Section 33126 and 35256." This provision was severed from this test claim in August 2007 and was renamed *School Accountability Report Cards IV*. Subdivision (c) of section 52056 states that the school district governing board "shall discuss the results of the annual ranking" at a regularly scheduled meeting.

Governor's Performance Award Program (Ed. Code, § 52057; Cal. Code Regs., tit. 5, §§ 1031-1033, 1036, 1038-1039): This program is under article 4, the High Achieving/Improving Schools Program, of chapter 6.1, the Public School Accountability Act. To be eligible for the Governor's Performance Awards, schools must "meet or exceed their API performance growth targets and demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools." All schools, including those in the II/USP may participate in the Governor's Performance Award Program.³³ The monetary awards, made available on either a per-pupil or per-school basis, may not exceed \$150 per pupil who receive a score on the STAR tests, and are subject to budget act appropriation.³⁴ The SPI, with approval of the SBE, may also establish nonmonetary awards for schools, as specified.³⁵ Schools that are eligible for performance awards may request that the SBE waive all code sections or any part of code sections, or any regulations controlling specified education programs, with some specified exceptions.³⁶

Title 5 of the California Code of Regulations provide the regulatory intent (§ 1031) and describe general eligibility criteria (§ 1032) and award funding criteria (§ 1033) for the Governor's Performance Award. They also state the waiver deadline (§ 1036), and exemption from school district, county, or school indirect charges or other administrative charges (§ 1038), and that use of funds is decided by the school site governance team/school site council (§ 1039).

Schoolsite Employees Performance Bonus Program (Stats. 2000, ch. 71): This uncodified program was established in Statutes 2000, chapter 71, section 40, with an appropriation of \$350 million to the State School Fund for allocation on a one-time basis by the SPI to school districts, county offices of education and charter schools. It requires school districts, county offices of education and charter schools, "as a condition of receiving funds pursuant to this section" upon request from the SPI, to certify the number of full-time equivalent employees at each schoolsite

³¹ Education code section 52057, subdivision (a).

³² Education Code section 52056, subdivision (a).

³³ Education Code section 52057, subdivision (b).

³⁴ *Ibid.*

³⁵ Education Code section 52057, subdivision (c).

³⁶ Education Code section 52057, subdivisions (d) & (e).

under their jurisdiction that are eligible for awards under the Governor's Performance Award Program. Schools use 50% of the award for one-time bonuses to employees, and the other 50% for any one-time purpose.

Certificated Staff Performance Incentive Act (Ed. Code, §§ 44650 et seq.; Cal. Code Regs., tit. 5, §§ 1031-1032 & 1034 -1038): The purpose of this program is to make one-time performance awards to teachers and other certificated staff in underachieving schools, where the academic performance of pupils significantly improves beyond the minimum percentage growth target established by the SPI based on the school's API. "Any school district or charter school that maintains classes in kindergarten or in any of grades 1 to 12, inclusive, may apply for funding ... if it meets the conditions of subdivision (b)."³⁷ The required conditions are (1) the school's aggregate score on the API must be below the 50th percentile relative to other public schools in the state in the prior year, and (2) the school must meet any other SBE criteria.³⁸ Maximum awards may not exceed \$25,000 per full-time equivalent certificated staff person.³⁹

The SBE criteria are in the title 5 regulations, which state their intent is to implement the Certificated Staff Performance Incentive Act (§ 1031). The regulations also specify the general (§ 1032) and specific (§ 1034) eligibility criteria for the awards, describe funding distribution (§ 1035) and the waiver deadline (§ 1036), and specify that the awards are not considered compensation when calculating retirement benefits (§ 1037). The regulations also state that this program is not subject to school district, county, or school indirect charges or other administrative charges (§1038).

Prior Law

The Focus Schools Program was enacted in 1992 (Stats. 1992, ch. 1335) but, according to the bill analysis for the Public Schools Accountability Act, was never implemented because it was never funded.⁴⁰ Under the program, the SPI was to designate the schools with the lowest performing pupils, which were to develop a school action plan to improve pupil achievement and were entitled to expert assistance and additional resources to implement the plan. The SPI was to appoint an outside management consultant to assist and, in some circumstances, intervene in the management of schools that fail to improve performance.⁴¹ The Focus Schools program became inoperative, by its own terms, on July 1, 1998, about a year before the Public Schools Accountability Act was enacted.

³⁷ Education Code section 44651, subdivision (a).

³⁸ Education Code section 44651, subdivision (b).

³⁹ Education Code section 44650, subdivision (b).

⁴⁰ The 1992 statute stated legislative intent that funding be provided for the program in future Budget Acts, and that the SPI was only required to implement the provisions in fiscal years in which sufficient funds were appropriated (Sen. Bill No. 171, Stats. 1992, ch. 1335, § 3).

⁴¹ Assembly Committee on Education, Analysis of Senate Bill No. 1 (1999-2000 1st Ex. Sess.) as amended March 4, 1999, page 7.

Related Commission Decisions

Of the testing programs that are components of the API, the following two have been the subject of prior Commission decisions.

Standardized Testing and Reporting (STAR): In August 2000, the Commission determined that two tests in the STAR program (Stats. 1997, ch. 828) constitute a reimbursable state-mandated program (97-TC-23). At the time the claim was decided, the only two tests within the STAR program were (1) a national norm-referenced achievement test (formerly the Stanford 9, now the California Achievement Tests, Sixth Edition Survey or CAT/6) and (2) a primary language test (the Spanish Assessment of Basic Education, Second Edition or SABE/2). The Commission's prior parameters and guidelines identified reimbursable activities related to administering the Stanford 9 and the SABE/2. The later-enacted components of the STAR program: the California Standards Tests, and the California Alternative Performance Assessment, were not pled in 97-TC-23 or in any other test-claim, so the Commission made no findings on them.

In July 2005, the Commission issued a new Statement of Decision on the STAR program as a result of a legislatively directed reconsideration of test-claim 97-TC-23 (in Stats. 2004, ch. 216 & Stats. 2004, ch. 895). The Commission found that the CAT/6 is a reimbursable state mandate and that the SABE/2 is a federal mandate. The Commission determined that in any year that school districts are legally required (typically by the Budget Act) they must offset all activities associated with the CAT/6 exam by state funds appropriated for the STAR tests, as well as by federal Title VI funds appropriated for STAR. The parameters and guidelines were renamed *The National Norm-Referenced Achievement Test*, the official name of the CAT/6.

California High School Exit Exam: In March 2004, the Commission adopted the Statement of Decision for the *California High School Exit Exam* test claim (00-TC-06). The Commission found that the test claim statutes and regulations impose a reimbursable state-mandated program on school districts for various activities related to administration of the High School Exit Exam.

Claimant Position

Claimant seeks reimbursement based on article XIII B, section 6 of the California Constitution, for the following activities, as stated in its declaration:

- A. Establish, periodically update and maintain data gathering proceedings to collect and report data as may be required by the SPI for computation of the API (Ed. Code, § 52052) "This includes, but is not limited to:"
 1. Notifying CDE when circumstances may exist which would invalidate a school's API (Cal. Code Regs., tit. 5, § 1032, subd. (d)).
 2. Upon receipt of a report of STAR testing and demographic data from the CDE, notify the department and the test publisher within 30 days by way of e-mail or writing that there are errors in the STAR testing or demographic data (Cal. Code Regs., tit. 5, § 1032, subd. (j)).
 3. Submit all data corrections to the test publisher in writing or e-mail on or before a deadline specified by the test publisher (Cal. Code Regs., tit. 5, § 1032, subd. (j)).

4. To the extent current rates are not available to the CDE, to respond to any requests from the CDE for attendance rates for pupils and certificated school personnel for elementary, middle and secondary schools (§ 52052, subd. (a)).
 5. To the extent current rates are not available to the CDE, to respond to any requests from the CDE for graduation rates for pupils in secondary schools (§ 52052, subd. (a)).
 6. To provide the SPI, when required, with data pertaining to high school graduation and attendance rates (§ 52052, subd. (a)).
- B. For schools that are required (under §§ 52053, subd. (j) & 52056.5) to participate in the Immediate Intervention/Underperforming School Program and to the extent funding is unavailable or insufficient:
1. To contract with an external evaluator and appoint a broad-based schoolsite and community team (§ 52054, subd. (a)).
 2. To assist the external evaluator and schoolsite and community team, as requested or required, in the preparation of an action plan (§ 52054, subds. (b)-(i)).
 3. To contribute matching funds to any implementation grant provided (§ 52054.5).
 4. For those which fail to meet their annual short-term growth targets within 12 months following receipt of funding, to hold a public hearing and to consult with the external evaluator and the schoolsite and community team in choosing interventions in order to continue to implement the action plan (§ 52055).
 5. For schools that may be deemed low-performing schools under § 52055.5, when required by the SPI, to enter into a contract with a school assistance and intervention team (contracting schools) (§ 52055.51).
 6. For contracting schools to provide support and assistance to the team at the targeted schoolsites (§ 52055.51).
 7. For contracting schools to adopt the team's recommendations at a regularly scheduled meeting of the governing board and to submit the recommendations to the SPI and SBE (§ 52055.51).
 8. For contracting schools, no less than three times during the year, to present the team with data regarding progress toward the goals established by the team, and to present the data to the governing board, the SPI, and SBE (§ 52055.51).
 9. By November 30 after the first full year of implementation, and every November 30 thereafter, to submit an evaluation to the SPI of the impact, costs, and benefits of the program, and a report on whether the schools have, or have not, met their program growth targets (§ 52058, subd. (a)).
- C. For school districts and charter schools (not county offices of education) to establish, periodically update and maintain employee payroll records to receive, administer and distribute award monies to staff, as part of the one-time Certificated Staff Performance Incentive Act (§ 44653).

- D. Before January 8, 2002, for each school district and charter school (not county offices of education) to complete an application on behalf of its eligible schools to participate in the Certificated Staff Performance Incentive Act which shall include: (1) the number of eligible schools, (2) certification that the data used in the API calculations is accurate, and (3) a list of certificated staff positions on a full-time equivalent basis at each eligible school. After January 8, 2002, the application shall certify: (a) that the data used in the API calculations from the schools is accurate, and (b) to report the number of certificated positions on an FTE basis at each of the eligible schools (§ 44651, Cal. Code Regs., tit. 5, § 1034).
- E. When an award is received, school districts and charter schools to negotiate with the exclusive representative of the bargaining unit of the teachers and other certificated staff to determine how the funds are to be distributed (§ 44653).
- F. In case there is no agreement on disbursement, for school districts and charter schools to calculate and distribute the award amounts as a percentage of base salaries that is determined by a specified formula (§ 44653).
- G. When requested by the SPI, to certify the number of FTE employees for the period requested in the creation of the one-time API Schoolsite Employees Performance Bonus. (Stats. 2000, ch. 71, § 40).
- H. For school districts, charter schools, and county offices of education, to establish and periodically update and maintain employee payroll records to receive, administer and distribute award moneys to staff as part of the API Schoolsite Employees Performance Bonus (Stats. 2000, ch. 71, § 40).
- I. Upon receipt of an award from the Governor's Performance Award Program and schoolsite portion of the API Schoolsite Employees Performance Bonus, to consult with the existing school site governance team/school site council to decide the use of the award and have a distribution plan ratified by the governing board (Stats. 2000, ch. 71; Cal. Code Regs., tit. 5, § 1039).
- J. The administrative costs to calculate individual salary awards, to determine and locate recipients, and to deliver those salary awards (§ 44654, Cal. Code Regs., tit. 5, § 1038).
- K. Compensation-driven benefit costs (employer's share of Medicare, unemployment insurance, worker's compensation) incurred as a result of individual salary awards made pursuant to the Governor's High Achieving Schools' Program, the Certificated Staff Performance Incentive Act, or the API Schoolsite Employees Performance Bonus Program (§ 44654, Cal. Code Regs., tit. 5, § 1038).

State Agency Positions

Department of Education: In comments dated August 7, 2002, the CDE discusses each program separately, arguing that none of them are reimbursable. As to the API, CDE states in part:

The API is calculated from indicators currently reported to the CDE as part of the Standardized Testing and Reporting Program (STAR). Part III, Section 1.A of the Test Claim alleges reimbursable costs for activities which already receive funding under Title 5, California Code of Regulations, Division 1, Chapter 2 Pupils,

Subchapter 3.75 Standardized Testing and Reporting Program. The Budget provides \$65 million for STAR administration, continued development, scoring, error correction, and apportionment.

CDE alleges that the other programs are not reimbursable because they are voluntary and are already funded.

For the High Achieving Schools Program or Governor's Performance Awards, CDE states it is not a mandated program. Eligible schools that meet or exceed API growth targets and testing participation rates are notified that they will receive the award, but districts have the option of turning down these funds (although CDE admits that this option was not explicitly stated to school districts). The funding for this program is to be decided by existing School Site Councils, and "any additional costs not covered by awards due to decisions made by School Site Councils are due to discretionary actions.

In September 2007 comments responding to a question from Commission staff, CDE reiterates that the II/USP is a voluntary program, and that the statutes authorizing or requiring the SPI to select schools for participation in the II/USP have not been used by the SPI.

Department of Finance: Finance, in its October 2002 comments, also argues that the test claim is not reimbursable. Finance asserts that the activities are discretionary because they stem from voluntary programs, and that they are already funded.

The CDE and Finance comments are discussed in more detail in the analysis below.

Claimant rebuttal comments

Claimant submitted comments in November 2002, rebutting those of the Department of Finance and CDE and arguing that their comments should be stricken from the record because they do not comply with section 1183.02, subdivision (d) of the Commission's regulations. This regulation requires that assertions or representations of fact be supported by documentary evidence submitted with the state agency's response, and authenticated by declarations under penalty of perjury.⁴² Claimant also made substantive comments that are discussed in the analysis below.

⁴² The existence of a reimbursable state mandate is a question of law. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 89.) Thus, state agency or other comments are not relied on by staff, which reaches conclusions based on independent analysis of the statutes pled and (when relevant) facts supported in the record. The Commission may weigh the evidence accordingly.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution⁴³ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁴⁴ “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.”⁴⁵ 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.⁴⁶

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.⁴⁷

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.⁴⁸ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim.

⁴³ Article XIII B, section 6, subdivision (a), (as amended in Nov. 2004) provides:

(a) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

⁴⁴ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁴⁵ *County of San Diego v. State of California (County of San Diego)* (1997) 15 Cal.4th 68, 81.

⁴⁶ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁴⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

⁴⁸ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

legislation.⁴⁹ A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."⁵⁰

Finally, the newly required activity or increased level of service must impose costs mandated by the state.⁵¹

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 6.⁵² 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."⁵³

Issue 1: Are the test claim statutes and regulations subject to article XIII B, section 6 of the California Constitution?

A. Do the test claim statutes and regulations impose state-mandated activities on school districts within the meaning of article XIII B, section 6?

Academic Performance Index (Ed. Code, §§ 52050 – 52052.5, Cal. Code Regs., tit.5, § 1032): As indicated above, the purpose of the API is to measure the performance of schools and to demonstrate comparable improvement in academic achievement.

Section 52020 names chapter 6.1 as the "Public Schools Accountability Act of 1999," and section 52050.5 contains legislative findings and declarations. Section 52051 states that the Public School Accountability program is established and consists of the API, the II/USP and the Governor's High Achieving/Improving Schools Program. Section 52051.5 states that all references to schools in chapter 6.1 shall include charter schools. Section 52052 describes the API's purpose, indicators, pupil subgroups, included test scores, growth targets, performance target, uses, and alternative accountability systems. Section 52052.3 indicates which pupil test scores are included in the API.⁵⁴ Section 52052.5 requires the SPI to form an advisory committee to advise the SPI and SBE on matters related to the API, the II/USP and the Governor's High Achieving/Improving Schools Program. Section 1032 of the title 5 regulations outlines general eligibility criteria for award programs related to API growth.

⁴⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

⁵⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

⁵¹ *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

⁵² *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁵³ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁵⁴ Section 52052.3 was repealed by Statutes 2002, chapter 1035.

Claimant alleges establishing, periodically updating and maintaining data gathering procedures to collect and report data as may be required by the SPI for computation of the API, as follows:

- To the extent current rates are not available to the CDE, to respond to any requests from the CDE for attendance rates for pupils and certificated school personnel for elementary, middle and secondary schools (§ 52052, subd. (a));
- To provide the SPI, when required, with data pertaining to high school ... attendance rates (§ 52052, subd. (a)).
- Notifying the CDE when circumstances may exist that would invalidate a school's API (Cal Code Regs., tit.5, § 1032, subd. (d));
- Upon receipt of a report of STAR testing and demographic data from the CDE, notify the CDE and the test publisher within 30 days by way of e-mail or writing that there are errors in the STAR testing or demographic data (Cal Code Regs., tit. 5, § 1032, subd. (j));
- Submit all data corrections to the test publisher in writing or e-mail on or before a deadline specified by the test publisher (*Ibid.*).

CDE and Finance comment that the API is calculated from indicators currently reported to the CDE as part of the STAR Program. Also, CDE states that the test claim alleges activities that already receive funding under the STAR program, including error correction. CDE also states that test claim 97-TC-23 "will provide reimbursement for reimbursable costs not covered by the STAR apportionment."⁵⁵

Reporting attendance and graduation rates (Ed. Code, §§ 52050 – 52052.5): Section 52052, subdivision (a)(3), as of Statutes 2001, chapter 887 (the last amendment claimant pled)⁵⁶ states that the API "shall consist of a variety of indicators *currently reported to the State Department of Education*, including, but not limited to ... attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools." [Emphasis added.] Thus, although the statute states that the API shall consist of indicators currently reported to CDE, subdivisions (a)(3)(B) and (C) state:

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data is currently reported to the state and the accuracy of the data.

(C) If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall

⁵⁵ As explained in the introduction, the Commission, on test claim 97-TC-23, found only that activities related to national norm referenced test (CAT/6) are reimbursable, and are subject to offsets for state STAR funding and federal Title VI funding.

⁵⁶ This section has been further amended by Statutes 2002, chapter 42, Statutes 2002, chapter 1168, Statutes 2003, chapter 91 and Statutes 2004, chapter 183. Staff makes no findings on these later amendments.

report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.⁵⁷

In its *Analysis of the 2001-02 Budget Bill*, the Office of the Legislative Analyst stated: "The SDE [State Dept. of Education] has not included graduation rates, student attendance nor teacher attendance in the API because it is currently not able to collect accurate school-level data on these outcome measures."⁵⁸ And the CDE's current description of the API does not indicate that pupil or teacher attendance or graduation rates are included in it.⁵⁹ Moreover, there is no evidence in the record that CDE has ever required schools to report attendance information or graduation rates, or that they are currently incorporated into the API.

Staff finds that section 52052 does not expressly require schools to report attendance data for pupils or certificated personnel,⁶⁰ or graduation rates to CDE for the API, so doing so does not impose a state mandate within the meaning of article XIII B, section 6.

Staff also finds that the remaining sections, 52020 (title of act), 52050.5 (legislative findings and declarations), 52051 (programs within the act), 52051.5 (charter schools included), 52052.5 (advisory committee) and former section 52052.3 (test scores in API), do not require any activities of school districts, so they do not impose state-mandated activities within the meaning of article XIII B, section 6.

Notifying CDE regarding invalidation of school's API (Cal. Code Regs. tit. 5, § 1032):

Subdivision (d) of section 1032 describes the conditions under which the API is considered invalid, including if the school district notifies CDE of any of the following: (d)(1), there were adult testing irregularities at the school affecting five percent or more of pupils tested; or (d)(2) that the API is not representative of the pupil population at the school; or (d)(3) that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.⁶¹ Subdivision (d)(6) and (e) state as follows:

⁵⁷ Education Code section 52052, subdivision (a) (Stats. 1999-2000x1, ch. 3). The second sentence was removed by Statutes 2001, chapter 745, effective October 12, 2001, but the first sentence remains in subdivision (a)(4)(C).

⁵⁸ See <http://www.lao.ca.gov/analysis_2001/education/ed_10_sch_acct_anl01.htm> as of September 12, 2007.

⁵⁹ <<http://www.cde.ca.gov/ta/ac/ap/apidescription.asp>> as of September 14, 2007.

⁶⁰ Attendance information for certificated school personnel was deleted from section 52052 by Statutes 2004, chapter 915 (Sen. Bill No. 722).

⁶¹ Other information that can also invalidate a school's API (but is silent on whether the district notifies CDE of the information) include: in subdivision (d)(4), the schools proportion of parental waivers compared to its STAR enrollment, is equal to or greater than 15 percent for the 2000 STAR, or greater than 10 percent for the 2001 and each subsequent STAR, with exceptions. Also, (in subd. (d)(5)) the STAR can be invalidated if the school's proportion of the number of test-takers in any content area of the California Standard's Test compared with the total number of test-takers is less than 85 percent. And (subd. (d)(6)) if information is made

(6) If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized. The department may invalidate or withhold the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.

(e) If a school's API is considered invalid pursuant to subdivisions (d)(1) [district notifies CDE of adult testing irregularities at the school affecting 5% or more of the pupils tested], (d)(2) [district notifies CDE that the API is not representative of the pupil population at the school], (d)(4) [school's proportion of parental waivers compared to its STAR test enrollment is equal to or greater than 15% for the 2000 STAR, or 10 % for subsequent STARs, with exceptions], or (d)(5) [In any content area of the California Standards Tests, the school's proportion of the number of test-takers in that content area compared with the total numbers of test-takers is less than 85 percent], *the school is ineligible for participation in any of the award programs for the current and subsequent year.* If a school does not receive an API pursuant to subdivision (d)(3) [the district notifies CDE that the school has experienced a significant demographic change in pupil population between the base year and growth year, and the API between years is not comparable], *the school is ineligible for participation in any of the award programs for the current year only.* [Emphasis added.]

Claimant pleads the following activity: (1) Notifying CDE when circumstances may exist which would invalidate a school's API (Cal Code Regs., tit.5, § 1032, subd. (d)).

Finance, in October 2002, comments that this regulation does not require districts to provide information to the SPL, but states that a school's API shall be considered invalid under certain circumstances.

Claimant disagrees, stating that it cannot be the intent of the law for local districts to fail to disclose data deficiencies when they exist regarding testing irregularities, the API not being representative of the pupil population, or a school experiencing a significant demographic change in pupil population. Regarding the STAR apportionments, claimant argues they are for the costs of the STAR testing process, but costs alleged in this claim relate to additional post-test duties required to ensure the accuracy of the API.

The issue is whether section 1032, subdivision (d), imposes a state-mandated activity within the meaning of article XIII B, section 6.

Although the regulation states that the API "shall be considered invalid" if the school district reports the information in subdivisions (d)(1) through (d)(3), it does not expressly require the school district to report it. Therefore, staff finds that school districts are not legally compelled under section 1032 to report this information.

available or obtained by CDE that would lead a reasonable person to conclude that one or more of the preceding circumstances occurred, the API shall be considered invalid.

The next issue is whether there is practical compulsion by the state to certify the information in subdivisions (d)(1) through (d)(3) of section 1032, when doing so would invalidate the school's API. Staff finds that there is not.

As quoted above, section 1032 states in subdivision (d)(6) that CDE "may investigate" information "to determine if the integrity of the API has been jeopardized" and authorizes CDE to "invalidate or withhold the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized." According to subdivision (e), the consequence of having an invalid API is that "the school is ineligible for participation in any of the award programs for the current and subsequent year" except in the case of the school experiencing a significant demographic change in pupil population between the base and growth years, in which case, the school is ineligible for participation in any of the award programs for the current year only.

For a school district that certifies the information in subdivisions (d)(1) through (d)(3) of section 1032, its API "shall be considered invalid" which in turn, renders it ineligible for the Governor's Performance Award Program or the Certificated Staff Performance Incentive Act, according to subdivision (e).

In the *Kern High School District* case, the California Supreme Court considered school district's voluntary participation in the School Improvement Program, which the court called "substantial" because it provided \$394 million statewide in fiscal year 1998-1999.⁶² In finding that claimants were not practically compelled to participate in that and the other programs at issue, the court stated:

In essence, claimants assert that their participation in the education-related programs here at issue is so beneficial that, as a practical matter, they feel they must participate in the programs, accept program funds, and-by virtue of ...[the test claim statutes]- incur expenses necessary to comply with the procedural conditions imposed on program participation. Although it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of continued participation in the program, just as such a participant would be disappointed if the total amount of the annual funds provided for the program were reduced by legislative or gubernatorial action, the circumstance that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render the local entity's decision whether to continue its participation in the modified program any less voluntary.⁶³

As discussed below, the Governor's Performance Award Program and the Certificated Staff Performance Incentive Act are voluntary programs. Therefore, the regulatory activities of notifying CDE of testing irregularities or other factors that would invalidate a school's API, like the notice and agenda activities in the *Kern* case, do not constitute practical compulsion. Rather,

⁶² *Id.* at p. 732.

⁶³ *Id.* at p. 753.

"claimants have found the benefits of various funded programs 'too good to refuse' - even though as a condition of program participation, they have been forced to incur some costs."⁶⁴

Therefore, in the absence of legal or practical compulsion to notify the CDE when circumstances may exist that would invalidate a school's API (Cal Code Regs., tit.5, § 1032, subd. (d)), staff finds that subdivision (d) of section 1032 of the title 5 regulations does not impose a state mandate within the meaning of article XIII B, section 6.

Notify CDE and publisher of errors in STAR testing and demographic data: Subdivision (j) of section 1032 states:

The local educational agency [school district or county office of education] *must* notify the department and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data. The local education agency's notification *must* be received by the department and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on the department's web-site. The local education agency *must* submit all data corrections to the publisher in writing or e-mail. The test publisher shall specify a deadline for submittal of the data corrections that is no less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data. [Emphasis added.]

Claimant pleads the following activities:

- (1) Upon receipt of a report of STAR testing and demographic data from the CDE, notify the department and the test publisher within 30 days by way of e-mail or writing that there are errors in the STAR testing or demographic data (Cal Code Regs., tit. 5, § 1032, subd. (j)); and
- (2) Submit all data corrections to the test publisher in writing or e-mail on or before a deadline specified by the test publisher (*Ibid*).

Finance, in its October 2002 comments, states that the section does not specifically require districts to provide any information. Also, CDE states that school districts already receive funding under the STAR program for administration and error correction. Finance alleges that currently it is the test publisher's responsibility to incur costs associated with correcting a publishing error in regards to the STAR program. According to Finance, if the district provides inaccurate data despite receiving funds to ensure the quality of the STAR data, the district should be held responsible for the fiscal implications at the local level.

Although this regulation states that the local educational agency "must" notify the department and publisher of errors in the STAR testing and demographic data, and "must" submit data corrections to the publisher, the word "must" is as mandatory as the word "shall."⁶⁵ As one court has said regarding these words in statutes: "[T]he use of particular terms [is] generally

⁶⁴ *Id.* at p. 731.

⁶⁵ Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

indicative of a command rendering the provision mandatory, including terms such as 'must' or 'shall,' which as used in statutes is ordinarily the language of command ...⁶⁶

Given this interpretation of "must" in the regulation, its plain language requires districts to: (1) notify CDE and the test publisher whether there are errors in the STAR testing or demographic data that must be received by CDE and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on the department's web-site; and (2) to submit all data corrections to the publisher in writing or e-mail within the specified deadline. Therefore, staff finds that subdivision (j) of section 1032 of title 5 of the California Code of Regulations imposes a state mandate on school districts to perform these activities.

The other subdivisions in section 1032 (subs. (a) – (i) & (k)) do not require a school district activity, so staff finds that they do not impose a state mandate within the meaning of article XIII B, section 6.

Discuss API ranking: Subdivision (c) of section 52056 requires the governing board of each school district, after the annual publication of the API and SPI school rankings, to "discuss the results of the annual ranking at the next regularly scheduled meeting." (As of Stats. 2000, ch. 695.) Because this statute uses the word "shall,"⁶⁷ staff finds that section 52056, subdivision (c), is a mandate on a school district governing board to discuss its API annual ranking at the next regularly scheduled meeting following the annual API publication by the SPI.⁶⁸

⁶⁶ *Marcus & Millichap Real Estate Investment Brokerage Co. v. Woodman Investment Group* (2005) 129 Cal.App.4th 508, 519.

⁶⁷ Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

⁶⁸ Although staff makes no finding on it because it was not pled by claimant, section 52056, subdivision (c) was amended, and a new (d) was added by Statutes 2003, chapter 45, as follows:

(c) The governing board is strongly encouraged to include in the discussion an examination by school, grade, and subgroup enumerated by and in accordance with subclause (II) of clause (v) of subparagraph (C) of paragraph (2) of subsection (b) of Section 6311 of Title 20 of the United States Code, of scores on the tests administered pursuant to the Standardized Testing and Reporting (STAR) Program set forth in Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(d) If the average STAR test score of the school is below the 50th percentile, or if the test scores of more than 25 percent of the pupils of a school are below the 50th percentile, the school district governing board may do both of the following:

(1) Conduct an assessment of the reasons for the performance results of the school, by grade.

(2) Adopt an improved performance plan that includes methods determined by the district to have been used by schools with similar pupil populations elsewhere in the district or state and significantly higher pupil scores. If it is deemed not feasible to adopt those methods, the plan shall explain why an alternate approach is preferable. If a school district governing board adopts an improved

Intermediate Intervention/Underperforming Schools Program (Ed. Code, §§ 52053-52055.51 & 52056.5 & 52058): As indicated above, the SPI with approval from the SBE, invites schools that scored below the 50th percentile on the Spring 1998 and Spring 1999 administrations of the STAR tests to participate in the II/USP, the purpose of which is to provide those schools with the opportunity to apply for funding to improve pupil achievement in exchange for greater accountability.

Section 52053 establishes the program and how schools are selected. Section 52053.5 describes qualifications for external evaluators, and 52054 concerns school contracts with and duties of external evaluators, including developing an action plan with specified contents. Section 52054.3 provides an option of using an existing plan instead of developing an action plan, and section 52054.5 details the grants available for the II/USP, including a local school district matching requirement. Section 52055 requires schools that have not met their growth targets⁶⁹ within 12 months after receiving funding to hold public hearings and, after consulting specified groups, choose from a range of interventions. Section 52055.5 states the fate of schools that, 24 months after receiving funding, have not met their growth targets. If the school is making substantial progress, it may participate in the program for an additional year. If the school is not making substantial progress, it is deemed a state-monitored school (formerly a low-performing school) and the SPI must assume the legal rights, duties and powers of the governing board and reassign the principal. The SPI must also take other action, to include such options as reorganizing or closing the school. Section 52055.51 authorizes the SPI to require the school to contract with a school assistance and intervention team instead of taking action as a result of the school's state-monitored school status in section 52055.5, subdivision (b). Section 52056.5 authorizes the SPI to make schools that fail to meet annual state growth targets subject to the II/USP. Section 52058 requires school districts with schools participating in the II/USP to submit evaluation reports, as specified.

Claimant pleads the following activities under the II/USP, "to the extent funding is unavailable or insufficient."

- (1) Contracting with an external evaluator and appointing a broad-based schoolsite and community team (§ 52054, subd. (a));
- (2) Assisting the external evaluator and schoolsite and community team in preparing the plan (§ 52054, subs. (b)-(i));

performance plan, it shall reevaluate the plan at each future annual meeting described by subdivision (c), until STAR test scores reach a level above those specified in this subdivision.

The federal law cited in subdivision (c) above is the definition of "adequate yearly progress" that "(v) includes separate measurable annual objectives for continuous and substantial improvement for each of the following ... (II) The achievement of (aa) economically disadvantaged students; (bb) students from major racial and ethnic groups; (cc) students with disabilities; and (dd) students with limited English proficiency;"

⁶⁹ Growth targets are selected by the SPI based on the previous year's API (Ed. Code, § 52052, subs. (c) & (d)).

- (3) Contributing matching funds to any implementation grant provided (§ 52054.5);
- (4) Holding a public hearing and consulting with external evaluator and schoolsite and community team in choosing interventions if school fails to meet its annual short-term growth target within 12 months (§ 52055);
- (5) Contracting with a school assistance and intervention team if the school is deemed a low-performing school, as required by the SPI (§ 52055.51), and for contracting schools to do the following:
 - a. Provide support and assistance to the team at targeted schoolsites (§ 52055.51);
 - b. Adopt the team's recommendations at a regularly scheduled meeting of the governing board and to submit the recommendations to the SPI and SBE (§ 52055.51); and
 - c. No less than three times during the year, present the team with data regarding progress toward the goals established by the team, and to present the data to the governing board, the SPI and SBE (§ 52055.51).
- (6) By November 30 after the first full year of implementation, and every November 30 thereafter, to submit an evaluation to the SPI of the impact, costs, and benefits of the program and report on whether schools have met their program growth targets (§ 52058, subd. (a)).

CDE, in its August 2002 comments, states that the II/USP is not mandated, but is discretionary, so all the activities associated with the election by the district to be in the program are not mandated. Finance also states that the program is voluntary in its September 2007 comments.

The first statute establishing the program states: "the Superintendent of Public Instruction, with the approval of the State Board of Education, shall invite schools that scored below the 50th percentile on the achievement tests ... to participate in the ... Program."⁷⁰ [Emphasis added.] The program is limited to 430 schools, no more than 301 elementary schools, 78 middle schools, and 52 high schools.⁷¹ Nothing in the statute requires schools to accept the invitation from CDE. Therefore, based on the plain language of section 52053, subdivision (a) (which describes eligibility for the II/USP), it does not legally compel the school or the school district to participate in the program.

In the *Kern High School Dist.* case,⁷² as discussed above, the California Supreme Court stated, "if a school district elects to participate in or continue participation in any underlying voluntary education-related funded program, the district's obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate."⁷³

Applying the reasoning of *Kern*, the downstream activities pled by claimant for participating in the II/USP are not a state mandates because program participation is voluntary. Since

⁷⁰ Education Code section 52053, subdivision (a).

⁷¹ *Ibid.*

⁷² *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

⁷³ *Id.* at page 743. Emphasis in original.

participation is at the discretion of the school district, staff finds there is no legal compulsion to implement it.

Claimant argues that the California Supreme Court, in *City of Sacramento v. State of California*⁷⁴ has held that:

[T]he determination of whether a program is truly voluntary depends upon (1) the nature and purpose of the program, (2) whether the program's design evidences an intent to coerce, (3) the penalties assessed for non-participation, (4) the legal and other practical consequences of non participation.

According to claimant, "the concept of state mandate is sufficiently broad to include situations where the local school district has no reasonable alternative to the state scheme or no true choice but to participate in it." Claimant argues it would be fiscally irresponsible to turn down the state funds, since district employees and their "exclusive representatives" (unions) know about the program.

Staff disagrees. Although the Supreme Court in *Kern* stated that state mandates could be found in cases of practical compulsion on the local entity, it described this as the statute imposing "certain and severe penalties such as double taxation or other draconian consequences"⁷⁵ for not participating in the programs. The court also described practical compulsion as "a substantial penalty (independent of the program funds at issue) for not complying with the statute."⁷⁶

Here, the only consequence of a school district not participating in the II/USP is losing the program funds at issue. There are no certain and severe penalties, or draconian consequences in the statute or the record for nonparticipation. Nor is there a "substantial penalty independent of the program funds at issue" for not complying with the II/USP statute.⁷⁷ Therefore, in the absence of both legal and practical compulsion to participate, staff finds that a school's voluntary participation in the II/USP (Ed. Code, §§ 52053 (except subs. (d) & (j)) 52053.5-52055.51 & 52056.5 & 52058) is not a state-mandated program within the meaning of article XIII B, section 6.

Claimant's rebuttal comments state that the test claim alleges the "detailed list of mandated duties for those schools who are required, pursuant to Education Code Sections 52053 (j) and/or 52056.5, to participate in the Immediate Intervention/Underperforming School Program."

Section 52056.5 authorizes the SPI to make a school subject to the II/USP if the school fails to meet annual state growth targets established pursuant to section 52052. On its face, this section does not require a school district activity.⁷⁸ Therefore, staff finds that section 52056.5 is not a state mandate within the meaning of article XIII B, section 6.

⁷⁴ *City of Sacramento v. State of California* (1990) 50 Cal. App. 3d 51.

⁷⁵ *Kern High School Dist., supra*, 30 Cal.4th 727, 751.

⁷⁶ *Id.* at p. 731.

⁷⁷ *Kern High School Dist., supra*, 30 Cal.4th 727, 731.

⁷⁸ Staff makes no finding on the mandate implication of the SPI issuing an executive order (as defined in Gov. Code, § 17516) under the authority of section 52056.5 of the Education Code.

Staff acknowledges that two provisions require the SPI to select a school to participate in the II/USP without the school applying. Section 52053, subdivision (d), requires the SPI to randomly select schools to participate if fewer than the eligible number of schools in any grade level category apply to the program. Similarly, if fewer schools apply than can be funded, the SPI is required to randomly select schools to participate (§ 52053, subd. (j)). Because these statutes require the SPI to require a school to participate in the II/USP, staff finds that section 52053, subdivisions (d) and (j), imposes a state mandate within the meaning of article XIII B, section 6.

Thus, for schools that participate in the II/USP under section 52053, subdivisions (d) and (j), the various downstream activities are mandated, including contracting with an external evaluator or entity with proven expertise specific to challenges in low-performing schools.

However, as discussed below under issue 3, section 52053, subdivisions (d) and (j), do not constitute a reimbursable state-mandated program because, based on Government Code section 17514,⁷⁹ no school or school district has incurred costs pursuant to these provisions as of September 12, 2007.

High Achieving/Improving Schools Program (Ed. Code, § 52056, except subdivision (b)):

This program provides monetary and non-monetary rewards, including the Governor's Performance Award Program (discussed separately below), to schools that meet or exceed performance targets or demonstrate high achievement. Claimant pled this section as it was amended by Statutes 2000, chapter 695.

Subdivision (a) of section 52056 describes the program and requires the SPI to rank all public schools based on the API in decile categories by grade level of instruction, and rank them by value of the API when compared to schools with similar characteristics. The SPI must also report the target annual growth rate of schools and the actual growth rates attained, and must publish the rankings on the Internet. Because subdivision (a) does not require a school or school district activity, staff finds it is not a mandate within the meaning of article XIII B, section 6.

Governor's Performance Award Program (Ed. Code, § 52057; Cal. Code Regs., tit. 5, §§ 1031-1033, 1036, 1038-1039): This program provides monetary and nonmonetary awards to schools that meet or exceed API performance growth targets, as described above.

Section 52057 establishes the program eligibility, awards, waiver of certain provisions, and expenditure of funds. Section 1031 of the title 5 regulations states the regulatory intent is to implement the Governor's Performance Award Program and the Certificated Staff Performance Incentive Act. Section 1032 details the general eligibility criteria for these awards. Section 1033 outlines the award funding criteria and states in part, "Schools that meet the eligibility requirements in 2000-2001 for the Governor's Performance Award Program (GPA) shall receive

⁷⁹ Government Code section 17514 defines 'costs mandated by the state' as "any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

a per pupil award amount for each of their eligible pupils.” Section 1033 also describes eligible pupils, and how the amount allocated for the award is determined. Section 1036 states the deadline for requesting waivers of the regulations, and section 1038 states that the award is not subject to indirect or other administrative charges. Section 1039 of the regulations states that the use of funds at the school site for the program shall be decided by the existing school site governance team/school site council and then ratified by the governing board of each local educational agency.

There is nothing in Education Code section 52057 or the applicable title 5 regulations that states that schools or school districts are required to participate in the Governor’s Performance Award Program, so there is no legal compulsion to do so. And neither the statute nor the record indicates practical compulsion, defined as: “certain and severe penalties such as double taxation or other draconian consequences”⁸⁰ for not participating in the program, or “a substantial penalty (independent of the program funds at issue) for not complying with the statute.”⁸¹

Therefore, staff finds that section 52057 is not a state mandate within the meaning of article XIII B, section 6. Staff also finds that California Code of Regulations, title 5, sections 1031, 1033, 1036, and 1038 do not constitute a state mandate on schools or school districts for purposes of the Governor’s Performance Award Program.⁸²

Deciding on use of Governor’s Performance Award Program funds: Section 1039 of the title 5 regulations state:

Use of funds at the school site for the Governor’s Performance Award Program shall be decided by the existing school site governance team/school site council representing major stakeholders and then ratified by the governing board of each local education agency.

Although this provision appears to be mandatory based on the plain meaning of “shall be decided by the existing school site governance team . . . and then ratified by the governing board,” it is not because these activities are conditional on participation in the Governor’s Performance Award Program, which is voluntary.

As the Supreme Court stated in *Kern*, “if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate.”

Because deciding the use of funds, and ratifying this decision, is a downstream activity that results from *voluntary* participation in the Governor’s Performance Award Program, staff finds that section 1039 of the title 5 regulations is not a state mandate within the meaning of article XIII B, section 6.

⁸⁰ *Kern High School Dist., supra*, 30 Cal.4th 727, 751.

⁸¹ *Id.* at p. 731.

⁸² The regulations also apply to the API and the Certificated Staff Performance Incentive Act. The finding here is limited to the regulations as they apply to the Governor’s Performance Award program.

Schoolsite Employees Performance Bonus (Stats. 2000, ch. 71, § 40, former Cal. Code Regs., tit. 5, § 1033, subd. (b)): This uncodified statute requires school districts, county offices of education and charter schools, "as a condition of receiving funds" upon request from the SPI, to certify the number of full-time equivalent employees at each schoolsite under their jurisdiction that are eligible for awards under the Governor's Performance Award Program. Schools are to use 50% of the award for one-time bonuses to employees, and the other 50% for any one-time purpose.

Claimant alleges the following activities as a result of this program:

- (1) When requested by the SPI, to certify the number of full-time equivalent employees for the period requested in the creation of the one-time API Schoolsite Employees Performance Bonus (Stats. 2000, ch. 71, § 40);
- (2) For school districts and county offices of education to establish, periodically update and maintain employee records to receive, administer and distribute award moneys to staff as part of the Bonus program (*Ibid*);
- (3) Upon receipt of an award from the Governor's Performance Award Program and the Schoolsite Employees Performance Bonus Award, to consult with the existing school site governance team/school site council to decide the use of the awards and have the distribution plan ratified by the governing board. The Superintendent of Public Instruction shall then apportion an equal amount per full-time equivalent employee to the appropriate school district, county office of education, or charter school for allocation to the schoolsites that have met or exceeded their Academic Performance Index growth target (*Ibid*).

CDE and Finance state that this program is voluntary and not a state mandate.

Claimant argues that the requirement to certify the number of full-time equivalent employees is mandatory upon the SPI's request. Claimant argues that school districts do not apply for this program, but that the statute requires the SPI to allocate the sums appropriated, so the program is not discretionary.

The test claim statute (Stats. 2000, ch. 71, § 40) states in part:

- (a)(2) *As a condition of receiving funds pursuant to this section*, school districts, county offices of education, and charter schools shall, upon request by the Superintendent of Public Instruction and by November 1, 2000, certify the number of full-time equivalent employees employed... " [¶]... [¶]
- (a)(4) *As a condition of receiving funds pursuant to this section*, a schoolsite shall expend 50 percent of the funds to provide one-time bonuses, to its employees, to be divided equally among all schoolsite employees on a full-time equivalent basis. The other 50 percent may be used at the discretion of the schoolsite for any one-time purpose. [Emphasis added.]

The Schoolsite Employees Performance Bonus program is not mandated by the state. The school district requirements are only imposed "as a condition of receiving funds pursuant to this section." (Stats. 2000, ch. 71, § 40, subd. (a)(2) & (a)(4).) The statute does not state that schools are required to accept the funds, so there is no legal compulsion to participate in the program.

Moreover, there is no practical compulsion to participate in the Schoolsite Employees Performance Bonus program. There are no "certain and severe penalties"⁸³ for not participating in the program, nor is there "a substantial penalty (independent of the program funds at issue) for not complying with the statute."⁸⁴

Thus, the downstream activities (e.g., administering and distributing award funds and deciding on the use of funds) in this program are also not mandated, in accordance with the reasoning in the *Kern* case. Therefore, staff finds that Statutes 2000, chapter 71, section 40 (Schoolsite Employees Performance Bonus Program) is not a state mandate within the meaning of article XIII B, section 6.

Certification of FTE employees: As originally adopted, section 1033, subdivision (b), of the title 5 regulations stated:

To participate in the Academic Performance Index Schoolsite Employees Performance Bonus awards school districts, county offices of education, and charter schools shall certify the number of full-time equivalent (FTE) employees employed as of the second principal apportionment of the 1999-2000 school year at each school site under their jurisdiction that are eligible for awards in accordance with Education Code section 52057 (a).^[85]

Although this provision appears to be mandatory based on the plain meaning of "shall certify the number of" FTEs, it is not because this activity is conditional on participation in the Academic Performance Index Schoolsite Employees Performance Bonus awards, which is voluntary.

Based on the Supreme Court's reasoning in *Kern* regarding voluntary participation, and because certification of FTEs is a downstream activity that results from *voluntary* participation in the Schoolsite Employees Performance Bonus awards, staff finds that former section 1033, subdivision (b), is not a state mandate within the meaning of article XIII B, section 6.

Certificated Staff Performance Incentive Act (Ed. Code, §§ 44650-44654; added by Stats. 1999, ch. 52; Cal. Code Regs., tit. 5, §§ 1031-1032 & 1034 -1038): As indicated above, this act establishes one-time performance awards for teachers and other certificated staff in underachieving schools, where the academic performance of pupils significantly improves beyond the minimum percentage growth target established by the SPI based on the school's API. Section 44650 establishes the act and the maximum award at \$25,000 per full-time equivalent (FTE) employee, subject to annual Budget Act appropriation. Section 44651 describes eligibility for funding. Section 44652 provides for allocation of funds by the SPI to school districts and charter schools. Section 44653 states that after receiving the allocation from the SPI, the governing board shall negotiate individual teacher and other certificated staff salary award amounts with the exclusive representative of the bargaining unit. Section 44654 details how funds are to be classified for purposes of the district's revenue limit, and for purposes of teacher

⁸³ *Kern High School Dist., supra*, 30 Cal.4th 727, 751.

⁸⁴ *Id.* at p. 731.

⁸⁵ This provision in subdivision (b) was repealed effective January 8, 2002.

retirement or benefits. Section 44650, subdivision (b), states that the SBE shall establish criteria for determining the eligibility of schools to receive the awards.

The criteria are in the title 5 regulations, which state their intent is to implement the Governor's Performance Award Program and the Certificated Staff Performance Incentive Act (§ 1031). The regulations also specify the general (§ 1032) and specific (§ 1034) eligibility criteria for the awards, describe funding distribution (§ 1035), specify the waiver deadline (§ 1036), and specify that the awards are not considered compensation when calculating retirement benefits (§ 1037), and that the Certificated Staff Performance Incentive program and the Governor's Performance Awards are not subject to the school district or school or indirect or other administrative charges (§1038).

Claimant alleges the following activities associated with the Certificated Staff Performance Incentive Act:

- (1) Establishing, periodically updating and maintaining employee payroll records to receive, administer and distribute the awards as part of the One-time Certificated Staff Performance Incentive Act (§ 44653);
- (2) For each school district to complete an application on behalf of its eligible schools to participate in the program, to include (a) the number of eligible schools, (b) certification that the data used in the API calculations is accurate, and (c) a list of certificated staff positions on a full-time equivalent (FTE) basis at each of the eligible schools. After January 8, 2002, the application shall certify the data used in the API calculations is accurate, and report the number of certificated positions on an FTE basis at each of the eligible schools (§ 44651 & Cal.Code Regs., tit. 5, § 1034);
- (3) When an award is received, for school districts to negotiate with the exclusive representative of the bargaining unit of the teachers and other certificated staff to determine the distribution of funds (§ 44653);
- (4) In the event the governing board and the exclusive representative of teachers and other certificated staff do not reach an agreement regarding the distribution of an award under the program, or if the teachers and other certificated staff are not represented by an exclusive bargaining representative, for districts to calculate and distribute the award amounts as a percentage of base salaries that is determined by formula (§ 44653);
- (5) Claimant also pleads the administrative costs to calculate individual salary awards, determine and locate recipients, and to deliver the awards and the cost of compensation-driven benefits incurred as a result of this program, as well as the Governor's High Achieving Schools Program and the API Schoolsite Employees Performance Bonus Program (§ 44654 & Cal.Code Regs., tit. 5, § 1038);

CDE and Finance allege in their comments that this program is not a state mandate because it is voluntary.

Claimant argues that districts have no reasonable alternative to participate, as detailed above. Claimant also disagrees with CDE that salary-driven costs can be recovered through the awards program.

According to the program's eligibility statute: "Any school district or charter school that maintains classes in kindergarten or any of grades 1 to 12, inclusive, *may apply* for funding under this article if it meets the condition of subdivision (b)." [Emphasis added.] Subdivision (b) requires the school's API to be below the 50th percentile relative to other public schools in the state in the prior year, and requires schools to meet other SPI-established criteria (§ 44651, subs. (a) & (b)). These criteria are in the regulations (Cal. Code Regs., tit. 5, §§ 1031-1032 & 1034 -1039).

The Certificated Staff Performance Incentive Act and applicable regulations do not legally compel school districts to participate, since the plain language of section 44651 authorizes but does not require districts to apply for the program. Nor is there any practical compulsion to participate in this program, independent of the program funds at issue.⁸⁶ There are no "certain and severe penalties ... or other draconian consequences"⁸⁷ for not participating in the program.

Therefore, staff finds that the Certificated Staff Performance Incentive Act (Ed. Code, §§ 44650-44654) is not a state mandate within the meaning of article XIII B, section 6. Staff also finds California Code of Regulations, title 5, sections 1031 and 1034-1039 do not impose state mandates for purposes of the Certificated Staff Performance Incentive Act.⁸⁸

Schools that choose the API: Not all schools are required to participate in the API. Section 52052, subdivision (h), as amended by Statutes 2001, chapter 887, states:

By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 test scores contributing to the schools' API scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools [formerly "independent study schools"].

The issue is whether schools with 11-99 valid test scores that are under the jurisdiction of the county board of education or a county superintendent of schools, community day schools, alternative schools (including continuation high schools, and opportunity schools or independent study schools) are mandated by the state to participate in the API. Staff finds that they are not.

As added by Statutes 2001, chapter 887, subdivisions (f)(1), (f)(2) and (g) of section 52052 stated:

(f)(1) A comprehensive high school, middle school, or elementary school with 11 to 99 valid test scores of pupils who were enrolled in a school within the same school district in the prior fiscal year shall receive an API score with an asterisk

⁸⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

⁸⁷ *Id.* at 751.

⁸⁸ The regulations also apply to the API and Governor's Performance Award programs, so the finding here is limited to the regulations as they apply to the Certificated Staff Performance Incentive Act.

that indicates less statistical certainty than API scores based on 100 or more test scores.

(f)(2) A school under the jurisdiction of a county board of education or a county superintendent of schools, a community day school, or an alternative school, including continuation high schools and opportunity schools, may receive an API score if the school has 11 more [sic] or more valid test scores **and the school chooses to receive an API score** for at least three years.⁸⁹ [Emphasis added.]

Similarly, the title 5 regulations apply to "schools" defined as "all schools, including charter schools, that receive a ranking on the API including schools participating in the ... [II/USP]." (Cal. Code Regs., tit. 5, § 1032, subd. (a).) Subdivision (b) of section 1032 further states:

For the purposes of these award programs, the API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system, once such a system is adopted by the [SBE] ... as required by Education Code section 52052(g). The Superintendent of Public Instruction will develop an alternative accountability system for schools with fewer than 100 valid test scores, schools that fall under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

Alternative schools **may elect to be part of the API accountability system** for the purposes of awards and interventions pursuant to the API.⁹⁰ If the school elects to be part of the API accountability system, the school shall remain in the system for at least three subsequent years. [Emphasis added.]

According to the plain language of section 52052, subdivision (f), and the section 1032, subdivision (b) regulation, as quoted above, schools in the alternative accountability system participate in the API system voluntarily. The statute states that schools under the jurisdiction of a county board of education or county superintendent of schools, or a community day school or an alternative school may receive an API score "if the school has 11 or more valid test scores **and the school chooses to receive an API score** for at least three years."⁹¹ And alternative schools, according to the regulation, may "elect" to be part of the API accountability system.⁹²

⁸⁹ Statutes 2004, chapter 915 deleted this subdivision (f)(2). Because it was not pled by claimant, staff makes no finding on Statutes 2004, chapter 915.

⁹⁰ This provision originally read: "Once the alternative accountability system required by Education Code section 52052 (g) is adopted by the State Board of Education, alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API." Although in earlier versions of the regulation, this choice is contingent on SBE's adoption of an alternative accountability system, the finding is based on the statute (former Ed. Code, § 52052, subd. (f)(2)) which is not.

⁹¹ Education Code section 52052, subdivision (f). Emphasis added.

⁹² California Code of Regulations, title 5, section 1032, subdivision (b).

As the Supreme Court stated: "if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate."⁹³ In this case, the test claim statutes and regulations plainly state that the API is voluntary as to the following types of schools: schools with 11-99 valid test scores that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, or alternative schools, including continuation high schools and opportunity schools and independent study schools. Therefore, based on the plain language of the statute and regulation, there is no legal compulsion for these schools to participate in the API program.

The Supreme Court, in *Kern*, also stated that state mandates could be found in cases of practical compulsion, which it described as the statute imposing "certain and severe penalties such as double taxation or other draconian consequences"⁹⁴ for not participating in the programs. In another part of the *Kern* opinion, the court described practical compulsion as "a substantial penalty (independent of the program funds at issue) for not complying with the statute."⁹⁵

There is, however, no practical compulsion to participate in the API. Section 52052.2 states that a school with an API score with an asterisk (11-99 valid test scores) may participate in the Governor's Performance Awards Program and the II/USP. But even for schools not eligible for award programs due to lacking an API, there is no evidence of practical compulsion.

Having an invalid API score is not practical compulsion, even though it excludes the school from some award programs. This is also true of not having an API score, even though it may also exclude the school from award programs. Like the claimants in *Kern*, there is no practical compulsion merely because "claimants have found the benefits of various funded programs 'too good to refuse'—even though, as a condition of program participation, they have been forced to incur some costs."⁹⁶ In short, there is no practical compulsion to participate in the API if the consequence of not participating is a school's ineligibility for the Governor's Performance Awards and the II/USP that the school finds "too good to refuse."

Because there is no legal or practical compulsion for these specified types of schools to have an API, staff finds that the following schools are not mandated by the state to participate in the API system: schools with 11-99 valid test scores that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, or alternative schools, including continuation high schools and opportunity schools and independent study schools. For purposes of the API as a state mandate, 'schools' does not include these types of schools.

⁹³ *Kern High School Dist., supra*, 30 Cal.4th 727, 743. Emphasis in original.

⁹⁴ *Id.* at p. 751.

⁹⁵ *Id.* at p. 731.

⁹⁶ *Id.* at p. 731.

B. Do Education Code section 52056, subdivision (c), and section 52053, subdivisions (d) and (j), and California Code of Regulations, title 5, section 1032, subdivision (j) constitute a program within the meaning of article XIII B, section 6?

Discussion is now limited to the following provisions that impose a state mandate on school districts:

- California Code of Regulations, title 5, section 1032, subdivision (j) - For the school district to notify the department and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data. The local education agency's notification must be received by the department and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on the department's web-site. The school district must submit all data corrections to the publisher in writing or e-mail. The test publisher shall specify a deadline for submittal of the data corrections that is no less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data.
- Education Code section 52053, subdivisions (d) and (j) - For schools that are selected by the SPI to participate in the II/USP.
- Education Code section 52056, subdivision (c) - For the governing board of each school district, after the annual publication of the API and SPI school rankings, to "discuss the results of the annual ranking at the next regularly scheduled meeting." (Stats. 2000, ch. 695.)

In order for these statutes and regulation to be subject to article XIII B, section 6 of the California Constitution, they must constitute a "program." This means 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.⁹⁷ Only one of these findings is necessary to trigger article XIII B, section 6.⁹⁸

The activities in the API statute and regulation and the II/USP statute are within the purview of public education accountability and improvement, programs that carry out a governmental function of providing a service to the public.⁹⁹ Moreover, the statutes and regulation impose unique requirements on school districts. Therefore, these provisions carry out the governmental function of providing accountability and improvement in public education, and are laws which, to implement state policy, impose unique requirements on school districts and do not apply generally to all residents and entities in the state. Thus, staff finds that Education Code section 52053, subdivisions (d) and (j), section 52056, subdivision (c), and California Code of Regulations, title 5, section 1032, subdivision (j), constitute a program within the meaning of article XIII B, section 6.

⁹⁷ *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d 46, 56.

⁹⁸ *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

⁹⁹ "Education in our society is ... a peculiarly governmental function." *Long Beach Unified School District v. State of California*, *supra*, 225 Cal.App.3d 155, 172.

Issue 2: Do Education Code section 52056, subdivision (c), and section 52053, subdivisions (d) and (j), and California Code of Regulations, title 5, section 1032, subdivision (j) impose a new program or higher level of service?

The next issue is whether the provisions at issue, i.e., found above to be a state-mandated program, are a new program or higher level of service. To determine this, the test claim statute is compared to the legal requirements in effect immediately before enacting the test claim statute.¹⁰⁰

Notify CDE and test publisher regarding errors in STAR testing or demographic data (Cal. Code Regs., tit. 5, § 1032, subd. (j)): This provision requires the school district to notify CDE and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data, and requires submitting all data corrections to the publisher in writing or via e-mail within the specified deadline. This regulation, originally in subdivision (i), was effective on November 15, 2001.¹⁰¹

Much of the preexisting law regarding the STAR test is in the California Code of Regulations, title 5, section 851 et seq.. One of these regulations, section 857, requires the appointment of a school district STAR coordinator¹⁰² whose duties include the following:

Assisting the test publisher and the Department in the resolution of any discrepancies in the test information and materials, including but not limited to, pre-identification files and all pupil level data required to comply with Sections 861 and 862. (Cal. Code Regs., tit. 5, § 857, subd. (b)(8).) [¶]... [¶]

(d) Within five (5) working days of completed school district testing, the school district superintendent and the STAR program district coordinator shall certify the following information with respect to the designated achievement test and the standards-based achievement tests to the Department: that the school district has ... collected all data and information as required by Sections 861 and 862 ... and assisted the test publisher in the resolution of any discrepancies in the test or test materials as required by Section 868. (former Cal. Code Regs., tit. 5, § 857, subd. (d).)¹⁰³

¹⁰⁰ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

¹⁰¹ California Code of Regulations, title 5, section 1032, history note #4 (Register 2001, No. 31).

¹⁰² In the parameters and guidelines for the reconsideration of the STAR test claim (97-TC-23), the following are reimbursable activities of the district STAR coordinator: "Resolving any discrepancies in the quantity of CAT/6 test and test materials received from and returned to the test publisher" and "Certifying information with respect to the CAT/6 test to the California Department of Education within five (5) working days of completed school district testing. Commission on State Mandates, Amended parameters and guidelines, *National Norm-Referenced Achievement Test* (05-PGA-03), page 5.

¹⁰³ This provision was later amended and renumbered as follows: "After receiving summary reports and files from the contractor, the district STAR coordinator shall review the files and

Similarly, one of the STAR test-site coordinator's duties is "assisting the STAR district coordinator, the test publisher, and the Department in the resolution of any discrepancies in the test information" and "overseeing the collection of all pupil level and other data required to comply with sections 861 and 862." (Cal.Code Regs., tit. 5, § 858, subs. (b)(7) & (b)(8).)¹⁰⁴

Section 861, subdivision (a), of the regulations requires districts to report to the publisher the pupils' demographic data,¹⁰⁵ including gender, ethnicity, language fluency and home language, handicapping condition or disability (all of which are "significant pupil subgroups" measured by the API).¹⁰⁶

Section 862 is an apportionment information report on the designated achievement test and the standards-based achievement tests by grade level for each of grades 2 to 11, inclusive; that was reported by the school district to CDE.¹⁰⁷ The report includes: (1) the number of pupils enrolled in each school and in the district "on the first day of testing"¹⁰⁸ (2) the number of pupils in each school and in the district exempted from testing at the request of their parents or guardians; and (3) the number of pupils to whom the designated achievement test was administered.

Subdivision (b)(1) of section 862 states in part: "The superintendent of each school district shall certify the accuracy of all information submitted."

In addition, section 868 requires districts to "process discrepancies determined by the designated publisher upon receipt of returned tests and test materials pursuant to this subdivision." It requires the STAR district coordinator, on receiving notice of a discrepancy, to respond within

reports for completeness and accuracy, and shall notify the contractor and the Department of any errors, discrepancies, or incomplete information." (Cal.Code Regs., tit. 5, § 857, subd. (b)(11).)

¹⁰⁴ These are also reimbursable in the STAR parameters and guidelines, (97-TC-23), but only for administration of the CAT/6 (National Norm-Referenced Achievement test). Commission on State Mandates, Amended parameters and guidelines, *National Norm-Referenced Achievement Test* (05-PGA-03), page 5.

¹⁰⁵ A subdivision (f) was later added to section 861 that states: "If the information required by section 861 (a) is incorrect, the school district may enter into a separate agreement with the contractor to have the district's student data file corrected. The district STAR coordinator shall provide the correct information to the contractor within the contractor's timeline. Any costs for correcting the student data shall be the district's responsibility." Because this provision was enacted after the test-claim regulation, it is not relied on as prior or preexisting law.

¹⁰⁶ "Numerically significant pupil subgroups" are defined in Education Code section 52052, subdivision (a)(2).

¹⁰⁷ Currently, the regulation states that it is received by the school district annually rather than reported by the school district. (Cal.Code Regs., tit. 5, § 862, subd. (a).) However, the parameters and guidelines ((05-PGA-03) reflect this regulation as it read before it was amended, by authorizing reimbursement for "Submitting to the Superintendent of Public Instruction a report on the CAT/6 test." (p. 6.)

¹⁰⁸ Later, the following was added: "as indicated by the number of answer documents submitted to the test contractor for scoring."

24 hours. Although the thrust of section 868 deals with discrepancies in the number of tests and test materials, it also includes "information on scannable documents or test support materials that is inconsistent, incomplete, or missing, according to criteria established with the Department." (Cal.Code Regs., tit. 5, § 868, subd. (a)(1)(B).)

Taken together, these preexisting regulations require the school district to cooperate with the publisher or contractor in identifying discrepancies and data errors and to certify the accuracy of the data, but not to affirmatively notify the contractor or CDE of errors in demographic and STAR-testing information. The regulations now require error reporting (Cal.Code Regs., tit. 5, § 857, subd. (b)(11).) but did not on August 2, 2001, the date the test claim statute became effective.

Preexisting law also does not require submitting data corrections to the publisher or contractor in writing or e-mail within a publisher or contractor-set deadline no less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data. (Cal.Code Regs., tit. 5, § 1032, subd. (j).) Nor does preexisting law require reporting errors in the STAR testing or demographic data to CDE. Reporting these errors to CDE is not the same as assisting CDE in resolving discrepancies (Cal.Code Regs., tit. 5, § 857, subd. (b)(8)) or certifying to CDE that it has "collected all data and information ... and assisted the test publisher in the resolution of any discrepancies in the test or test materials." (*Id.* at subd. (d).)

Therefore, staff finds that California Code of Regulations, title 5, section 1032, subdivision (j) imposes a new program or higher level of service on school districts to: (1) notify CDE and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data. The school district's notification must be received by CDE and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on CDE's web-site; and (2) submit all data corrections to the publisher in writing or e-mail, according to a test-publisher specified deadline for submittal of the data corrections that is no less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data.

This activity is not state-mandated for schools with 11-99 valid test scores that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, or alternative schools, including continuation high schools and opportunity schools and independent study schools.

Discuss the API (Ed. Code, § 52056, subd. (c)): This provision requires the governing board of each school district, after the annual publication of the API and SPI school rankings, to "discuss the results of the annual ranking at the next regularly scheduled meeting." (As of Stats. 2000, ch. 695.)

Staff finds that this activity is a new program or higher level of service, since prior law did not require this discussion. Nor could it have, given that the API did not exist prior to the test claim statute.

Therefore, staff finds that the requirement for the school district governing board to discuss the API at its next meeting (Ed. Code, § 52056, subd. (c)) is a new program or higher level of service.

This activity is not state-mandated for schools with 11-99 valid test scores that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, or alternative schools, including continuation high schools and opportunity schools and independent study schools.

II/USP: Two provisions require the SPI to select a school to participate in the II/USP. Section 52053, subdivision (d), requires the SPI to randomly select schools to participate if fewer than the eligible number of schools in any grade level category apply to the program. Similarly, if fewer schools apply than can be funded, the SPI is required to randomly select schools to participate (§ 52053, subd. (j)).

Prior law did not require participation in the II/USP, since the II/USP was newly enacted with the test claim statutes. And although the focus schools statute (Stats. 1992, ch. 1335) contained similar requirements, it had a sunset provision that made it cease to be effective on July 1, 1998, a year before the II/USP statute was enacted. Thus, it cannot be considered 'prior law' for purposes of mandates analysis because it was not in effect immediately before the II/USP statute was enacted.¹⁰⁹ Because the II/USP is new, staff finds that it is a new program or higher level of service within the meaning of article XIII B, section 6.

This activity is not state-mandated for schools with 11-99 valid test scores that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, or alternative schools, including continuation high schools and opportunity schools and independent study schools.

Issue 3: Do Education Code section 52056, subdivision (c), and section 52053, subdivisions (d) and (j), and California Code of Regulations, title 5, section 1032, subdivision (j) impose costs mandated by the state within the meaning of Government Code sections 17514 and 17556?

The final issue is whether Education Code sections 52056, subdivision (c), and 52053, subdivisions (d) and (j), and California Code of Regulations, title 5, section 1032, subdivision (j) impose costs mandated by the state,¹¹⁰ and whether any statutory exceptions listed in Government Code section 17556 apply to the claim. Government Code section 17514 defines "cost mandated by the state" as follows:

[A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

In the test claim,¹¹¹ claimant declares that it will incur costs in excess of \$200 during 2000-2002 to implement the claim statutes.¹¹²

¹⁰⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹¹⁰ *Lucia Mar*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

¹¹¹ Test Claim 01-TC-22, Exhibit 1, Declaration of Diana Halpenny, June 24, 2002.

Notify CDE and test publisher regarding errors in STAR testing or demographic data (Cal. Code Regs., tit. 5, § 1032, subd. (j)): This provision is a new program or higher level of service to (1) notify CDE and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data. The school district's notification must be received by CDE and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on CDE's web-site; and (2) submit all data corrections to the publisher in writing or e-mail, according to a test-publisher specified deadline for submittal of the data corrections that is no less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data. This regulation is operative as of November 15, 2001.

This issue is whether this activity is subject to Government Code section 17556, subdivision (e), which prohibits the Commission from finding "costs mandated by the state" if:

The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

Applying this statute to the activity in section 1032, subdivision (j), we turn to the State Budget Act appropriations for STAR. From 2001 to 2004, the following amounts were appropriated:

Year	Budget Item	Amount
2001-2002	6110-113-0001	\$ 65,643,000
2002-2003	6110-113-0001	\$ 15,027,000
	6110-113-0890 Provision 10	\$ 4,218,000 from federal Title VI funds.
2003-2004	6110-113-0001	\$ 60,836,000
	6110-113-0890 Provision 2	\$ 5,119,000

CDE's regulations designate the SBE to apportion¹¹³ funding to school districts for the cost of administering the component tests in the STAR program, and describe the costs included in the administrative costs for activities intended to provide the complete and accurate data required in section 861.¹¹⁴ As section 870 of the title 5 regulations states in subdivision (a):

¹¹² Government Code section 17564. The current requirement is \$1000 in costs.

¹¹³ An apportionment, according to CDE's glossary of budget terms, is "Synonymous with *allocation*. The term is used primarily in situations in which funding is distributed to local educational agencies (LEAs) based on a statutory formula." [Emphasis in original.] See <<http://www.cde.ca.gov/fg/fo/ft/ap/fundingterms.asp>> as of October 15, 2007.

¹¹⁴ Section 861 is the demographic data on the pupil, and includes gender and ethnicity.

For purposes of this portion of the apportionment, administration of the designated achievement test, the standards-based achievement tests, and the designated primary language test includes the following items:

(1) All *staffing costs*, including the STAR program district coordinator and the STAR test site coordinators, staff training and other staff expenses related to testing. [¶]... [¶]

(5) All costs associated with pre-identification of answer sheets and consumable test booklets, and other *activities intended to provide the complete and accurate data* required in section 861 [demographic data] of these regulations. [Emphasis added.]

Additionally, CDE's August 2002 comments state that "The budget provides \$65.6 million for STAR administration, continued development, scoring, error correction, and apportionment." Finance's October 2002 comments state that districts "receive district apportionments for costs associated with implementing the STAR program, including ensuring the quality of the test administration and information provided to [the Department of Education] and the test publisher."

Section 870 of the STAR regulations provides a process for apportionment for activities related to providing complete and accurate STAR demographic data. The law does not require that the funds appropriated in the State Budget Act in fiscal years 2001-2004 be used to pay for this activity. And the administrative record contains no evidence that CDE's apportionment satisfies the requirement of Government Code section 17556, subdivision (e), i.e., that it results in "no net costs" or includes revenue that was "specifically intended to fund the costs of the state mandate" in an "amount sufficient to fund the cost of the state mandate" in section 1032, subdivision (j). Therefore, staff finds that, from November 15, 2001 (the effective date of Cal. Code Regs., tit. 5, § 1032, subd. (j)) until June 30, 2004 (the end of the 2003-04 Fiscal Year) that California Code of Regulations, title 5, section 1032, subdivision (j), imposes costs mandated by the state within the meaning of article XIII B, section 6.

Funding for the STAR program changed beginning fiscal year 2004-2005, when the Legislature first inserted the following language in the state Budget Act:

Funds provided in Schedules (3) [STAR], (4), and (5) shall first be used to offset any state-mandated reimbursable costs that otherwise may be claimed through the state mandates reimbursement process for the Standardized Testing and Reporting Program, the California English Language Development Test, and the California High School Exit Exam, respectively. Local education agencies accepting funding from these schedules shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from these schedules.¹¹⁵

In the 2005-2006 State Budget Act, the language changed slightly to add a reference to Government Code section 17556 as follows:

¹¹⁵ Statutes 2004, chapter 208, Item 6110-113-0001, Schedule 3, Provision 8.

Funds provided in Schedules (2), [STAR] (3), and (4) shall first be used to offset any state-mandated reimbursable costs within the meaning of Section 17556 of the Government Code, that otherwise may be claimed through the state mandates reimbursement process for the Standardized Testing and Reporting Program, the California English Language Development Test, and the High School Exit Examination, respectively. Local educational agencies accepting funding from these schedules shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from these schedules.¹¹⁶

The 2006-2007 and 2007-2008 State Budget states this provision as follows:

Funds provided to local educational agencies from Schedules (2) [STAR], (3), and (4) shall first be used to offset any state-mandated reimbursable costs within the meaning of Section 17556 of the Government Code, that otherwise may be claimed through the state mandates reimbursement process for the STAR Program, the California English Language Development Test, and the California High School Exit Examination. Local educational agencies receiving funding from these schedules shall reduce their estimated and actual mandated reimbursement claims by the amount of funding provided to them from these schedules.¹¹⁷

Local assistance appropriated for the STAR program since 2004 is as follows:

Year	Budget Item	Amount
2004-2005	6110-113-0001	\$ 53,835,000
	6110-113-0890 federal Title VI funds	\$ 8,549,000
2005-2006	6110-113-0001	\$ 63,946,000
2006-2007	6110-113-0001	\$ 65,433,000
2007-2008	6110-113-0001	\$ 62,124,000

There is no evidence in the record that these budget appropriations are insufficient to fund the mandate in section 1032, subdivision (j). Therefore, staff finds that California Code of Regulations, title 5, section 1032, subdivision (j), does not impose costs mandated by the state within the meaning of Government Code sections 17514 and 17556 for fiscal years 2004-2008 for school districts to:

- (1) notify CDE and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data, which notification must be received by CDE and

¹¹⁶ Statutes 2005, chapter 38 and 39, Item 6110-113-0001, Schedule 2, Provision 8.

¹¹⁷ State Budget Act (Stats. 2007, chs 171 & 172) Item 6110-113-0001, Schedule 2, Provision 7. There is a similar provision for the appropriation for instruction support for STAR from the Title VI trust fund: Item 6110-113-0890, Schedule 3, Provision 7. Statutes 2006, chapters 47 and 48, Item 6110-113-0001, Schedule 2, Provision 6 and Item 6110-113-0890, Schedule 3, Provision 7.

the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on CDE's web-site; and

(2) submit all data corrections to the publisher in writing or e-mail, according to a test-publisher specified deadline for submittal of the data corrections that is no less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data.

This finding is based on the State Budget Act language that the funds provided for STAR "shall first be used to offset any state-mandated reimbursable costs within the meaning of Section 17556 of the Government Code" and only applies in years that the Budget Act or other legislation requires this offset.

Discuss the API (Ed. Code, § 52056, subd. (c)): This provision requires the governing board of each school district, after the annual publication of the API and SPI school rankings, to "discuss the results of the annual ranking at the next regularly scheduled meeting." Based on claimant's declaration accompanying the test claim, staff finds that Education Code section 52056, subdivision (c), imposes costs mandated by the state within the meaning of Government Code section 17514, and that no exceptions to reimbursement in Government Code section 17556 apply.

II/USP: The next issue is whether section 52053, subdivisions (d) and (j), impose costs mandated by the state. These subdivisions require the SPI to randomly select schools to participate in the II/USP under specified conditions.

In a September 12, 2007 reply to a request for information from Commission staff, CDE commented, "schools have participated in II/USP strictly on a voluntary basis. None of the participating schools were selected by the State Superintendent of Public Instruction as prescribed in Education Code sections 52053 (d) and (j), and 52056.5."

Therefore, because no schools or school districts, as of September 12, 2007, have incurred costs pursuant to section 52053; subdivisions (d) and (j), staff finds that these provisions do not impose costs mandated by the state within the meaning of Government Code section 17514.

CONCLUSION

For the reasons discussed above, staff finds that the test claim statutes impose a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for school districts to do the following:

- Effective June 25, 1999, for the governing board to discuss the results of the annual ranking at the next regularly scheduled meeting following the annual publication of the API and SPI school rankings (Ed. Code § 52056, subd. (c)).
- From November 15, 2001 to June 30, 2004, for the district to: (1) notify CDE and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data. The school district's notification must be received by CDE and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on CDE's web-site; and (2) submit all data corrections to the publisher in writing or e-mail, according to a test-publisher specified deadline for submittal of the data corrections that is no

less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data. (Cal. Code Regs., tit. 5, § 1032, subd. (j).)

For fiscal years 2004-2005 to 2007-2008, staff finds that this activity in section 1032, subdivision (j), does not impose "costs mandated by the state" because of State Budget Act language that the funds provided for STAR "shall first be used to offset any state-mandated reimbursable costs within the meaning of Section 17556 of the Government Code."¹¹⁸ This finding only applies in years that the Legislature, in "a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate."¹¹⁹

Staff also finds that these activities are not a reimbursable mandate for schools with 11-99 valid test scores that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, alternative schools, including continuation high schools and opportunity schools and independent study schools. (Ed. Code, § 52052, subd. (f)(1), Stats. 2001, ch. 887) and Cal. Code Regs., tit. 5, § 1032, subd. (b).)

Staff also finds that since no schools or school districts have participated in the II/USP pursuant to section 52053, subdivisions (d) and (j), and thus have not incurred costs mandated by the state as of September 12, 2007, these provisions do not impose costs mandated by the state within the meaning of Government Code section 17514.

Staff also finds that all other test claim statutes and regulations do not constitute a reimbursable state-mandated program.

Recommendation

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activities listed above.

¹¹⁸ State Budget Act (Stats. 2007, chs 171 & 172) Item 6110-113-0001, Schedule 2, Provision 7. This conclusion is the same for fiscal year 2004-2005, which contained no reference to Government Code section 17556, subdivision (e).

¹¹⁹ Government Code section 17556, subdivision (e).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
COMMISSION DECISION ON:

Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643, as added or amended by Statutes 1997, Chapter 828; California Code of Regulations, Title 5, Sections 850-904 (Excluding Cal. Code Regs., tit. 5, §§ 853.5, 864.5, 867.5, 894 & 898)

Claim No. 97-TC-23

Directed by Statutes 2004, Chapter 216, Section 34 (Sen. Bill No. 1108, eff. 8/11/04) and Statutes 2004, Chapter 895, Section 19 (Assem. Bill No. 2855, eff. 1/1/05)

Effective July 1, 2004.

No. 04-RL-9723-01

Standardized Testing and Reporting (STAR)

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 28, 2005)

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

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
COMMISSION DECISION ON:

Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643, as added or amended by Statutes 1997, Chapter 828; California Code of Regulations, Title 5, Sections 850-904 (Excluding Cal. Code Regs., tit. 5, §§ 853.5, 864.5, 867.5, 894 & 898)

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REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on July 28, 2005)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on July 28, 2005. Art Palkowitz appeared on behalf of the San Diego Unified School District. David Scribner appeared on behalf of the Grant Joint Union High School District. Paul Warren appeared on behalf of the Office of the Legislative Analyst. Pete Cervinka and Lenin del Castillo appeared on behalf of the Department of Finance.

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 at the hearing by a vote of 5-0.

BACKGROUND

Statutes 2004, chapter 216, section 34 (Sen. Bill No. 1108, eff. Aug. 11, 2004) and Statutes 2004, chapter 895, section 19 (Assem. Bill No. 2855, eff. Jan. 1, 2005) direct the Commission to reconsider its prior final decision and parameters and guidelines for the *Standardized Testing and Reporting* (STAR) program. Section 34 of Senate Bill 1108 (almost identical to Assem. Bill No. 2855, section 19) states the following:

Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision in 97-TC-23, relating to the Standardized Testing and Reporting (STAR) program mandate, and its parameters

and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes¹ in light of federal statutes enacted and state court decisions rendered since these statutes were enacted:

- (a) Chapter 975 of the Statutes of 1995.
- (b) Chapter 828 of the Statutes of 1997.
- (c) Chapter 576 of the Statutes of 2000.
- (d) Chapter 722 of the Statutes of 2001.²

The STAR Program

The precursor to the STAR program was enacted in 1995 (Stats. 1995, ch. 975, Assem. Bill No. 265) as the Leroy Greenè California Assessment of Academic Achievement Act. The Act required the Superintendent of Public Instruction (SPI) to design and implement a statewide pupil assessment program, with specified content (former Ed. Code, § 60604). The State Board of Education (SBE), by January 1, 1998, was required to adopt statewide academically rigorous content and performance standards (former Ed. Code, § 60605, subd. (a)), and to recommend achievement tests (former Ed. Code, § 60605, subd. (b)) to assess basic academic skills in grades 4, 5, 8 and 10 ((former Ed. Code, § 60605, subd. (c)).³ Former section 60640,⁴ the Pupil Testing Incentive Program, offered apportionments of \$5 per pupil tested to districts that administer to all pupils in grades 2 through 10, inclusive, an achievement test selected from among those approved by the SBE. To be eligible for the apportionment, districts had to certify that (1) tests were administered at the time of year specified by the SPI; (2) test results were reported to pupils' parents or guardians; (3) test results were reported to the pupil's school and teachers, and were included in the pupil's records; and (4) district-wide and school-level results were reported to the governing board of the school district at a regularly scheduled meeting (former Ed. Code, § 60641). The Leroy Greenè California Assessment of Academic Achievement Act also provided for other programs and requirements not within the scope of this reconsideration.

The STAR program was enacted in October 1997 (Stats. 1997, ch. 828, Sen. Bill No. 376). It required school districts to administer the achievement test of section 60640 (formerly administered on an incentive basis) to all pupils in grades 2 through 11 inclusive, and required reporting various statistics to the SPI. Two sets of pupils were exempted: (1) those whose

¹ The only STAR statute on which Commission issued a Statement of Decision is Statutes 1997, chapter 828.

² In Assembly Bill 2855, section 19, the order of subdivisions (c) and (d) is reversed.

³ Claimants and Commission staff agreed to sever Education Code sections 60605 and 60607 from the original test claim. These provisions made up the Academic Skills Assessment Program, but regulations were never adopted and the program was discontinued by Statutes 2000, chapter 576.

⁴ All statutory references are to the Education Code unless otherwise indicated.

Individualized Education Plans⁵ specified that they were to have an alternate assessment; and (2) those for whom a parent/guardian requested in writing to exempt the pupil from testing.

As a result, the SBE designated the Stanford Achievement Test Series, Ninth Edition (Stanford 9) as the national norm-referenced achievement test for the STAR program. It was first administered to public school pupils in grades two through 11 during spring 1998 and was last administered during spring 2002. Pupils in grades two through eleven were tested in reading, language, and mathematics. Pupils in grades two through eight were also tested in spelling, and pupils in grades nine through eleven were tested in science and social science. The purpose of the Stanford 9 was to compare each pupil's achievement of general skills taught throughout the United States to the achievement of a national sample of pupils tested in the same grade at the same time.⁶

In 1998, the SBE designated the Spanish Assessment of Basic Education, Second Edition (SABE/2) as the primary language test for the STAR program. Starting in spring 1999, Spanish-speaking English learners who were enrolled in public schools less than 12 months when testing began were required to take the SABE/2, as well as the Stanford 9 and the Stanford 9 Augmentation/California Standards Tests. Districts were given the option of also testing Spanish-speaking English learners enrolled 12 months or more with the SABE/2.⁷

In 2000, the Legislature enacted changes to the STAR program (Stats. 2000, ch. 576, Assem. Bill No. 2812), the foremost of which deleted the requirements of the Academic Skills Assessment Program for pupils in grades 4, 5, 8 and 10. In its place, the SPI was required to develop a standards-based achievement test to include, at a minimum, a direct writing assessment once in elementary school and once in middle or junior high school (Ed. Code, § 60642.5). The Commission's original STAR Statement of Decision did not address this standards-based achievement test (currently known as the California Standards Tests).

In 2001 (Stats. 2001, ch. 722, Sen. Bill No. 233) the Legislature extended the sunset date for the Leroy Greene California Assessment of Academic Achievement Act (that includes the STAR program) to January 1, 2005.⁸ In addition to other changes, that bill named the standards-based achievement test the California Standards Tests (CSTs) and required an assessment in history/social science and science in at least one elementary or middle school grade level, to be decided by the SBE.

The purpose of the CSTs⁹ is to determine pupil achievement of the California Academic Content Standards for each grade or course. Pupils' scores are compared to preset criteria to determine if

⁵ An Individualized Education Plan (IEP) is a program for special education students that stems from the federal Individuals with Disabilities Education Act (IDEA). (20 U.S.C. § 1414 (d).)

⁶ See <http://star.cde.ca.gov/star2004/aboutSTAR_programbg.asp> as of February 15, 2005.

⁷ *Ibid.*

⁸ It was extended to January 1, 2011, by Statutes 2004, chapter 233.

⁹ The CSTs are in English-Language Arts (grades 2-11, but the writing test is in grades 4 and 7), Mathematics (grades 2-11), Science (grades 5 and 9-11) and History/Social Science (grades 8, 10

performance on the test is advanced, proficient, basic, below basic, or far below basic. The state target is for all students to score at the proficient and advanced levels.¹⁰

In 2002, the SBE selected the California Achievement Tests, Sixth Edition Survey (hereafter the CAT/6 or CAT/6 exam)¹¹ to replace the Stanford 9 as the national norm-referenced test for the program beginning with spring 2003. The SBE also authorized the development of the California Alternate Performance Assessment (CAPA), for pupils with significant cognitive disabilities that preclude them from taking the CSTs and CAT/6 Survey. First administered in spring 2003, the CAPA assesses a subset of the California English-Language Arts and Mathematics Content Standards that are appropriate for pupils with significant cognitive disabilities. The Commission's STAR Statement of Decision did not address the CAPA.

The current STAR Program has four components: (1) CSTs; (2) CAPA; (3) CAT/6 Survey; and (4) SABE/2. As stated above, however, the CSTs (or standards-based achievement tests) and the CAPA are not reimbursable under the Commission's STAR Statement of Decision because they were not pled in the test claim.¹² Thus, the Commission's jurisdiction is limited to the CAT/6 exam, and the SABE/2 Spanish language examination.

In 2003, the Legislature reduced the administrations of the CAT/6 exam, starting in the 2004-05 school year, to only grades 3 and 8.¹³ This provision was amended in 2004 to administer the CAT/6 only to grades 3 and 7.¹⁴

The CST and CAPA are a major part of California's accountability system for schools and districts, and the results of those tests are also the major criteria for calculating each school's Academic Performance Index. The results are also used to determine if elementary and middle schools are making adequate progress in pupil proficiency on the state's academic content standards under the federal No Child Left Behind Act (NCLB).¹⁵

Commission Statement of Decision

On August 24, 2000, the Commission determined that the STAR program (as enacted by Stats. 1997, ch. 828, Sen. Bill No. 376) imposes a reimbursable mandate on school districts (claim 97-TC-23, filed by the San Diego Unified School District).

and 11). See <http://star.cde.ca.gov/star2004/aboutSTAR_gradesandsubjects.asp> as of February 15, 2005.

¹⁰ See <http://star.cde.ca.gov/star2004/aboutSTAR_programbg.asp> as of February 15, 2005.

¹¹ References to the CAT/6 in this analysis would include a successor national norm-referenced test adopted by the SBE.

¹² According to the adopted STAR parameters and guidelines (Exhibit A, p. 750), "Only the designated achievement and primary language tests enacted by Statutes of 1997, chapter 828 are reimbursable, pursuant to these parameters and guidelines." (See Exhibit A, p. 751, fn. 3).

¹³ Statutes 2003, chapter 773.

¹⁴ Statutes 2004 chapter 233. See Education Code section 60640, subdivision (b).

¹⁵ See <http://star.cde.ca.gov/star2004/aboutSTAR_programbg.asp> as of February 15, 2005.

The Commission determined, in summary, that:

The STAR Program requires school districts, between March 15 and May 15 each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education. [Footnote omitted.] School districts must also: designate a STAR Program district coordinator and STAR Program test site coordinator at each test site; administer an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was enrolled in the district for less than 12 months before the time the last STAR Program test was administered; exempt pupils under certain circumstances; include STAR Program test results in the pupil's record or [sic] achievement; report STAR Program test results to the district's governing board or county board of education and to the pupil's parent or guardian; submit a report to the Superintendent of Public Instruction; contract with a test publisher to receive the tests; and submit whatever information the State Department of Education deems necessary to permit the State Superintendent of Public Instruction to prepare reports on the results of the STAR Program.¹⁶

A detailed description of the STAR program's reimbursable activities is in the Commission's parameters and guidelines, as follows.

Commission Parameters and Guidelines

The Commission adopted parameters and guidelines (Ps&Gs) for the test claim statute in January 2002.¹⁷ Under the heading "Reimbursable Costs," the Ps&Gs state:

For each eligible claimant, the following activities to administer the designated achievement and primary language tests are eligible for reimbursement:

A. Training, Policies, and Procedures

Reviewing the requirements of the STAR Program and conducting or attending training sessions. Increased costs for substitute teacher time during the school day or for teacher stipends to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement. However, the time the teacher spends to attend training sessions during that teacher's normal classroom hours is not reimbursable. (One-time activity per employee per test site).

Developing internal policies, procedures, and forms to implement *Standardized Testing and Reporting*. (One-time activity)

The cost of travel for and materials and supplies used or distributed in training sessions is reimbursable under this activity.

¹⁶ Commission on State Mandates, STAR Statement of Decision, pages 3-4 (Exhibit A, p. 383). Findings are based on Education Code sections 60607, 60615, 60630, 60640, 60641, 60643, and California Code of Regulations, title 5, sections 851-853, 855-860, 865, 867-869, 871, 873.

¹⁷ Exhibit A, page 750.

B. Test Materials, Supplies, and Equipment (*Reimbursement period: January 2, 1998 – December 15, 1999*)^[18]

[¶]...[¶] [Based on the dates listed, these activities are no longer reimbursable.]

C. Pretest and Posttest Coordination (*Reimbursement period begins January 2, 1998*)

Processing requests for exemption from testing filed by parents and guardians. (Ed. Code, §§ 60615, 60640, subd. (j); Cal. Code Regs., tit. 5, §§ 852, subd. (a), & 881, subd. (a).)

Reviewing the Individualized Education Program (IEP) of children with disabilities to determine if the IEP contains an express exemption from testing.^[19] (Ed. Code, § 60640; subds. (e), (j); Cal. Code Regs., tit. 5, §§ 852, subd. (b), & 881, subd. (b).)

Determining the appropriate grade level test for special education pupils and providing appropriate testing adaptations and accommodations for these pupils. (Cal. Code Regs., tit. 5, §§ 853, subd. (c),²⁰ & 882, subd. (c).)

Designating a school district employee as a STAR program district coordinator. The school district shall notify the publisher of the identity and contact information for the STAR program district coordinator. (Cal. Code Regs., tit. 5, §§ 857, 859, 865, 867, 868, 886, 888, 895, 897, & 899.)

- [¶]...[¶] [Based on the dates listed, this activity is no longer reimbursable.]
- Beginning January 1, 2001, the STAR program district coordinator, or the school district superintendent or his or her designee, shall be available through August 15 to complete school district testing.

Designating a school district employee as a STAR program test site coordinator at each test site. (Cal. Code Regs., tit. 5, §§ 858, 859, 867, 868, 887, 888, 897, & 899.)

- [¶]...[¶] [Based on the dates listed, this activity is no longer reimbursable.]
- Beginning January 1, 2001, the STAR program test site coordinator, or the site principal or his or her designee, shall be available to the STAR program

¹⁸ California Code of Regulations, title 5, sections 856, 869, and 871 were repealed effective December 16, 1999.

¹⁹ Section 60640, subdivision (e) was amended in 2002 (Stats. 2002, ch. 492) to include disabled pupils in testing, and to add a citation to IDEA.

²⁰ California Code of Regulations, title 5, section 853, subdivision (c), was formerly section 852, subdivision (b). [Section 853, subdivision (c), was amended in February 2004 to allow for testing IEP pupils below grade level for the 2003-04 school year only, and to prohibit it beginning in the 2004-05 school year.]

district coordinator by telephone through August 15 for purposes of resolving discrepancies or inconsistencies in materials or errors in reports.

STAR Program District Coordinator

Activities performed by the STAR program district coordinator include, but are not limited to:

Responding to correspondence and inquiries from the publisher in a timely manner and as provided in the publisher's instructions. (Cal. Code Regs., tit. 5, §§ 857, subd. (b), & 886.)

Determining school district and individual school test and test material needs in conjunction with the test publisher, using California Basic Education Data System (CBEDS) and current enrollment data. (Cal. Code Regs., tit. 5, §§ 857, subd. (b), & 886.)

Overseeing the acquisition and distribution of tests and test materials to individual schools and test sites. (Cal. Code Regs., tit. 5, §§ 857, subd. (b), 866, subd. (a), 886, & 896, subd. (a).)

Providing a signed receipt to the test publisher upon receipt of the testing materials. (Cal. Code Regs., tit. 5, §§ 865, subd. (a), & 895, subd. (a).)

Coordinating testing dates and make-up testing dates for the school district. (Cal. Code Regs., tit. 5, §§ 857, subd. (b), & 886.)

Maintaining security over test material and test data. (Cal. Code Regs., tit. 5, §§ 857, subd. (b), & 886.)

Overseeing the administration of the designated achievement test and primary language test, if applicable, to eligible students. (Cal. Code Regs., tit. 5, §§ 857, subd. (b), & 886.)

Overseeing the collection and return of all test materials and tests to the publisher. (Cal. Code Regs., tit. 5, §§ 857, subd. (b), & 886.)

Resolving any discrepancies in the quantity of test and test materials received from and returned to the test publisher. (Cal. Code Regs., tit. 5, §§ 857, subd. (b), 868, 886, & 899.)

Certifying information with respect to the designated achievement test to the California Department of Education within five (5) working days of completed school district testing. (Cal. Code Regs., tit. 5, §§ 857, subd. (c), & 886.)

Preparing, executing, and collecting STAR Test Security Agreements and Affidavits from every person who has access to tests and other test materials. (Cal. Code Regs., tit. 5, §§ 859 & 888.)

Returning test materials, test order data, and enrollment data by grade level to the test publisher. (Cal. Code Regs., tit. 5, § 867.5.)

STAR Program Test Site Coordinator

Activities performed by the STAR test site coordinator include, but are not limited to:

Determining site test and test material needs. (Cal. Code Regs., tit. 5, §§ 858, subd. (b), & 887.)

Overseeing the acquisition and distribution of tests and test materials at the test site. (Cal. Code Regs., tit. 5, §§ 858, subd. (b), & 887.)

Cooperating with the STAR program district coordinator to provide the testing and make-up testing days for the site. (Cal. Code Regs., tit. 5, §§ 858, subd. (b), & 887.)

Maintaining security over test material and test data. (Cal. Code Regs., tit. 5, §§ 858, subd. (b), & 887.)

Overseeing the administration of the designated achievement test and primary language test, if applicable, to eligible students at the test site. (Cal. Code Regs., tit. 5, §§ 858, subd. (b), & 887.)

Overseeing the collection and return of all testing materials and tests to the STAR program district coordinator. (Cal. Code Regs., tit. 5, §§ 858, subd. (b), & 887.)

Assisting the STAR program district coordinator and the test publisher in resolving any discrepancies in the test information and materials. (Cal. Code Regs., tit. 5, §§ 858, subd. (b), & 887.)

Certifying information to the STAR program district coordinator within three (3) working days of complete site testing. (Cal. Code Regs., tit. 5, §§ 858, subd. (b), & 887.)

Preparing, executing, and collecting STAR Test Security Agreements and Affidavits from every person who has access to tests and other test materials. (Cal. Code Regs., tit. 5, §§ 859 & 888.)

D. Test Administration (*Reimbursement period begins January 2, 1998*)

Conducting and monitoring the STAR Program designated achievement and primary language tests given to all pupils in grades 2 through 11, inclusive. (Ed. Code, §§ 60640, subds. (b), (c), 60641, subd. (a); Cal. Code Regs., tit. 5, §§ 851, 853, 855, 880, 882, & 884.)

To the extent that such tests are available, giving an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given. (Ed. Code, § 60640, subd. (g); Cal. Code Regs., tit. 5, § 880, subd. (a).)

Time spent by the classroom teacher during his or her normal classroom hours for test administration is not reimbursable.

E. Reporting and Record Keeping (*Reimbursement period begins January 2, 1998*)

Recording and maintaining individual records of the tests in pupil records. (Ed. Code, §§ 60607, subd. (a) & 60641, subd. (a).)

Preparing and mailing reports of the individual results of the STAR Program tests to the pupils' parents or guardians, to the pupils' schools, and to the pupils' teachers. (Ed. Code, § 60641, subds. (b) & (c); Cal. Code Regs., tit. 5, §§ 863 & 892.)

Reporting the results of the STAR Program tests to the school district governing board or county office of education on a districtwide and school-by-school basis. (Ed. Code, § 60641, subd. (d); Cal. Code Regs., tit. 5, §§ 864 & 893.)

Collecting, collating, and submitting to the Superintendent of Public Instruction the information on the STAR Program apportionment information report. (Ed. Code, § 60640, subd. (j); Cal. Code Regs., tit. 5, §§ 862 & 891.)

Submitting to the California Department of Education whatever information the Department deems necessary to permit the Superintendent of Public Instruction to prepare a report analyzing, on a school-by-school basis, the results and test scores of the STAR Program. (Ed. Code, § 60630, subd. (b); Cal. Code Regs., tit. 5, §§ 861 & 890.)

The cost of materials and supplies used for reports (including, paper and envelopes), the cost of postage for mailing reports to parents, and the cost of computer programming used for reporting purposes is reimbursable under this activity.

Federal Law

Some of the assessment requirements under the STAR program raise issues related to federal law, warranting a summary of federal statutes.

Improving America's Schools Act of 1994: The federal government required statewide systems of assessment and accountability for schools and districts participating in the Title I program under the Improving America's Schools Act (IASA) of 1994. Section 1111 (b)(3) of IASA requires all pupils to be assessed "in at least mathematics and reading or language arts" some time during grades 3-5, grades 6-9 and grades 10-12. Section 1111 (a)(1) of the Act states that the requirements apply to states, "desiring to receive a grant under this part." Section 1604 (a) of IASA, under Title I, states, "Nothing in this title shall be construed to authorize... the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content or pupil performance standards and assessments, curriculum, or program of instruction as a condition of eligibility to receive funds under this title." Thus, the IASA requirements were conditions on funding.

No Child Left Behind Act: In 2002, Congress enacted the NCLB Act to replace the IASA. Under NCLB, annual assessments in mathematics, reading and science are required,²¹ and science assessments are required starting in the 2007-2008 school year.²² States are also required, by school year 2002-2003, to “provide for an annual assessment of English proficiency ... of all students with limited English proficiency....”²³ The assessment system is required, among other things, to “be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency.”²⁴ The assessment system, like all the NCLB requirements, is a condition on grant funds.²⁵ The act’s “penalty” for noncompliance is withholding federal funds.²⁶

Individuals with Disabilities Education Act: Administering statewide assessments with accommodations to disabled students, and Individualized Education Plans (IEPs) are provided for under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.), the purposes of which are as follows:

(1)(A) to ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services ... (B) to ensure that the rights of children with disabilities and parents ... are protected; and (C) to assist States, localities, educational services agencies, and Federal agencies to provide for the education of all children with disabilities ...²⁷

²¹ Title 20 United States Code section 6311 (b)(3)(A); 34 Code of Federal Regulations part 200.2 (a) (2002). NCLB requires testing pupils in math and reading or language arts not less than once during grades 3-5, grades 6-9, and grades 10-12 (20 U.S.C. § 6311 (b)(3)(C)(v), and the same for science beginning school year 2007-2008 (*Ibid*). It also requires, beginning 2005-2006, assessing pupils in grades 3-8 “against the challenging State academic content and student academic achievement standards” in math and reading or language arts. (20 U.S.C. § 6311 (b)(3)(C)(vii)).

²² Title 20 United States Code section 6311 (b)(3)(A); 34 Code of Federal Regulations part 200.2 (a) (2002).

²³ Title 20 United States Code section 6311 (b)(7).

²⁴ 34 Code of Federal Regulations part 200.2 (b)(2) (2002).

²⁵ Title 20 United States Code section 6311 (a)(1). 20 United States

²⁶ Title 20 United States Code section 6311 (g)(2). “In addition to these provisions contained in the NCLBA, there are remedies available to the Secretary of Education to take action against a federal funds recipient who fails to comply with legal requirements imposed by a federal education statute, including withholding of funds and conducting proceedings for the recovery of funds and the issuance of cease and desist orders. See 20 U.S.C. §§ 1234(a)-(i).” *Associates of Community Organizations for Reform Now v. New York City Department of Education* (2003) 269 F. Supp. 2d 338, 342.

²⁷ Title 20 United States Code section 1400 (d).

Other purposes of the IDEA include, "early intervention services for infants and toddlers with disabilities ... to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities...and to assess, and ensure the effectiveness of efforts to educate children with disabilities."²⁸ Assistance is available to states²⁹ and local educational agencies³⁰ that meet specified criteria.³¹ IDEA requires that disabled children be "included in general State and district-wide assessment programs, with appropriate accommodations, where necessary"³² IDEA also provides for the IEP, a document with specified contents that includes (1) measurable annual goals to meet the disabled child's needs regarding the curriculum and other educational needs, and (2) the special education and aids and services to be provided to the child.³³ The STAR statutes and regulations generally conform to IDEA's statewide assessment, accommodations, and IEP requirements.³⁴

The predecessor to IDEA is the federal Education of the Handicapped Act, which since its 1975 amendments has,

... required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education. (20 U.S.C. § 1412 (a).) The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states [citations omitted]. ... The Supreme Court has noted that Congress intended the act to establish "a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children." [Citations omitted.]³⁵

In *Hayes v. Commission on State Mandates*, the court held that the Education of the Handicapped Act is a federal mandate.³⁶ *Hayes* also held,

To the extent the state implemented the act [IDEA] by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of

²⁸ *Ibid.*

²⁹ Title 20 United States Code sections 1411 and 1412.

³⁰ Title 20 United States Code section 1413.

³¹ 34 Code of Federal Regulations part 300.110 (1999).

³² Title 20 United States Code section 1412 (a)(17); 34 Code of Federal Regulations part 300.138 (1999).

³³ Title 20 United States Code section 1414 (d).

³⁴ Section 60640, subdivision (e), as originally enacted required reviewing the pupil's IEP to determine if it contains an express exemption from testing. This section was amended in 2002 (Stats. 2002, ch. 492) to include disabled pupils in testing and add a citation to IDEA. According to the legislative history of Statutes 2002, chapter 492, the purpose of the amendment was to conform the STAR program (and other Education Code provisions) to IDEA.

³⁵ *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4th 1564, 1587.

³⁶ *Id.* at page 1592.

such programs or higher levels of service are state mandated and subject to subvention.³⁷

Equal Education Opportunities Act: The Equal Educational Opportunities Act of 1974 (EEOA) (20 U.S.C. § 1701 et seq.) recognizes the state's role in assuring equal educational opportunity for national origin minority students. It states,

No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin by [¶ ... ¶] (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." (20 U.S.C. § 1703 (f)).

This federal statutory scheme (EEOA) is grounded in constitutional principles of equal protection.³⁸ Congress included an obligation to address the problem of language barriers in the EEOA, and granted limited English speaking pupils a private right of action to enforce that obligation in Title 20 United States Code section 1706.³⁹ Federal courts have interpreted section 1703 (f) of the EEOA to require testing students' English-language skills, as well as standardized testing.⁴⁰

State Agency Positions

Department of Finance: The Department of Finance (DOF), in comments submitted in March 2005, argues that STAR is not a new program.⁴¹ According to DOF, the federal Title I program provisions under 1994's IASA required statewide assessment systems and accountability for schools and districts participating in the Title I program. DOF states that IASA's assessment requirements included,

- 1) the testing of all students in each of three grade spans (grades 3 through 5, 6 through 9, and 10 through 12); 2) the provision of reasonable adaptations and accommodations for students with special learning needs; and 3) that individual student assessment results be provided to parents.

DOF states that STAR was not a new program when it was enacted in 1997, and has most recently evolved to fulfill the NCLB mandates.

DOF notes that NCLB replaced IASA in 2002, and that NCLB requires states to develop a system of assessments that meet specific criteria. According to DOF, section 1111 of NCLB

³⁷ *Id.* at page 1594.

³⁸ *Castaneda v. Pickard* (5th Cir. 1981) 648 F. 2d 989, 999, 1001.

³⁹ *Id.* at pages 999 and 1009.

⁴⁰ *Ibid.*; and *Keyes v. School Dist. No. 1* (D. Colo. 1983) 576 F. Supp. 1503.

⁴¹ DOF's March 2005 comments do not include support by "documentary evidence ... authenticated by declarations under penalty of perjury" (Cal. Code Regs., tit. 2, § 1183.02, subd. (c)(1)). Nor are there citations to line-item budget appropriations. DOF's comments, however, are not relied on by the Commission, which reaches conclusions based on evidence in the record.

requires each state to implement a single, statewide accountability system to assess the yearly progress of "all public elementary and secondary school students." DOF states that NCLB requires annual testing specifically in mathematics and reading in grades 3 through 8, and once in grades 9 through 12, and that states must begin to assess students in science beginning in 2005-2006.⁴² DOF asserts that, "Without such a system, a state would jeopardize the receipt of approximately \$4.3 billion *annually* in federal NCLB funds. We therefore believe this program is a federal mandate, as defined in Government Code Section 17513 ... and subsection (c) of Government Code Section 17556." In comments on the draft staff analysis, DOF stated that the state would jeopardize about \$3 billion annually in NCLB funds.

DOF submits amounts from the General Fund and federal funds that have been appropriated to STAR in fiscal years 1998-1999 to 2004-2005. DOF argues that if the Commission disagrees that the program is federally mandated, "state funds provided for the program should first offset against any costs resulting from the activities found by the Commission to be state-mandated in excess of the federal statute."

DOF argues that the Commission's Statement of Decision on the original test claim makes no reference to IASA or NCLB, or how implementation of STAR interacts with federal law, so that "any STAR mandates should be adjusted to reflect federal testing requirements under IASA and NCLB." DOF further argues that IASA's assessment requirement was a mandate on local school districts, "the Title I assessment requirement could be satisfied through a system of local assessments that met federal standards. These local assessments would be developed or purchased by each district." DOF asserts that the state, by enacting STAR, actually reduced districts' costs, "by directly paying for Title I required assessments, achieving economies of scale, and providing apportionments to districts based on the number of students tested. ... [T]he state relieved districts of the cost of purchasing or developing a qualifying local assessment."

DOF again asserts its belief that NCLB is a federal mandate, but if the Commission does not agree, DOF urges recognizing federal Title I funds as "offsetting revenue." According to DOF, "Without the state's action to identify an assessment that meets NCLB, no district in California would be eligible for Title I funds. As a result, we think the Commission has to either find that NCLB is a federal mandate *or* that Title I funds count as an offsetting revenue."

DOF's May 2005 written comments disagree with the findings in the draft staff analysis that (1) STAR is not a federal mandate and imposes reimbursable state-mandated activities;⁴³ (2) Federal funds provided under NCLB should not be counted as offsetting revenues;⁴⁴ and

⁴² Science assessments are actually required starting in 2007-08 (20 U.S.C. § 6311 (b)(3)(A); 34 C.F.R. § 200.2 (a) (2002)), but developing academic standards for science is required by 2005-06 (34 C.F.R. § 200.1(a)(3) & (b)(3)).

⁴³ To clarify, the finding in the draft staff analysis was that there was insufficient evidence in the record to conclude NCLB or IASA are federal mandates.

⁴⁴ To clarify, the finding is that there is no requirement for using federal funds to offset STAR.

(3) the Commission's decision on this reconsideration should be effective July 1, 2004. DOF repeated these arguments at the May 26, 2005 STAR hearing.⁴⁵

DOF submitted comments on June 9, 2005, concluding that Title I funds are provided for school districts to utilize for the STAR program, the central element of the state's assessment and accountability system. According to DOF, without STAR, California would be out of compliance with NCLB and would jeopardize its receipt of federal Title I funds. DOF also argues that funds under Title VI of NCLB (that provides grants for state assessments and standards) are provided for the STAR program. DOF points to language in the 2004 State Budget Act (Stats. 2004, ch. 208), under the appropriation of Title VI funds to "local assistance," that requires school districts to use the money "to reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from these schedules."⁴⁶

DOF's June 2005 comments also include amounts of state budgeted funds for STAR from 1997-2005. Further, DOF submitted information on how the U.S. Department of Education (USDE) had penalized Minnesota and Texas for not complying with provisions of NCLB.

In comments submitted in July 2005 on the revised staff analysis, DOF repeats its belief that the Legislature intended for the Commission's reconsideration decision to be retroactive ("to apply to all district claims, regardless of timing"), as indicated by the fact that no funds were appropriated for STAR. As to Title VI offsets discussed below, DOF suggests that the offsets apply retroactively to all previously submitted claims. According to DOF, apportionment amounts from 1997 to 2005 must be considered as offsetting revenues. Finally, DOF disagrees that designation of a STAR Program district or test site coordinator should remain a reimbursable activity.

Legislative Analyst's Office: The Legislative Analyst's Office (LAO), in its publication *New Mandates: Analysis of Measures Requiring Reimbursement* (December 2003),⁴⁷ reviews 23 Commission mandate decisions, including STAR. LAO asserts that the STAR statewide cost estimate was based on faulty district claims that were not subject to review or audit before developing the cost estimate. LAO states that based on its review, school districts often failed to recognize state apportionments for STAR as offsetting revenue. According to LAO:

In part, this problem may have been caused by the commission's Ps&Gs, which, in our view, inappropriately narrow the activities against which state funds should apply as offsetting revenues. Most glaringly, the guidelines omit the cost of

⁴⁵ Commission on State Mandates, Public Hearing, Transcript of Proceedings, May 26, 2005, pages 32-34.

⁴⁶ Statutes 2004, chapter 208, Item 6110-113-0890, Schedule 2, Provision 11. DOF states that Item 6110-113-0001 of the 2004 budget act, containing the General Fund local assistance appropriations, includes an identical provision that also applies to STAR (Stats. 2004, ch. 208, Item 6110-113-0001, Schedule 3, Provision 8).

⁴⁷ See <http://www.lao.ca.gov/2003/state_mandates/state_mandates_1203.html> as of February 15, 2005.

printing, shipping, and scoring the tests from the list of costs that districts must offset with state funds.⁴⁸

The LAO also states that the STAR program was enacted, in part, to bring California into compliance with the Title I program of the Improving America's Schools Act of 1994 (IASA) in which the federal government requires statewide assessments and systems of accountability for participating schools and districts. The LAO points out that IASA requires tests in language arts and mathematics for all pupils in one grade in each of three grade spans (grades 3-5, 6-9, and 10-12). IASA also requires reasonable accommodations and adaptations for pupils with special learning needs, and special education pupils. Also, some Title I schools are required to provide individual test results to parents. IASA was replaced by the federal NCLB Act in 2002, which according to LAO requires annual testing in mathematics and reading in grades 3 through 8, and once in grades 9 through 12, and science assessments starting in 2005-06.⁴⁹

The LAO asserts that the Commission's STAR decision does not mention the IASA testing requirements. As LAO argues:

Our review suggests the federal assessment mandates contained in IASA and NCLB should render a significant portion of the STAR mandate costs ineligible for reimbursement. Because the three IASA-mandated tests constitute about one-third of the state-mandated STAR tests, mandated costs should fall by at least that proportion. We would expect the proportion to be higher than that, however, because a number of the activities identified as reimbursable must be done by local agencies regardless of the number of grades tested. For instance, each district would need a test coordinator regardless of whether three grades or ten grades were tested. Our review also indicates that some costs identified by the commission as state reimbursable, such as testing procedures for special education students and providing student test results to parents in certain Title I schools, are the result of federal requirements and therefore not state reimbursable. In addition, because NCLB testing mandates more closely mirror the STAR program, the number of reimbursable activities related to STAR mandates would be even fewer.

In its comments on the draft staff analysis, LAO asserts that (1) NCLB is a federal mandate; (2) that federal Title I funds should be used to offset the mandate, should the Commission find that the STAR program does not constitute a mandate under NCLB; and (3) that the effective date of the reconsideration decision should be apply to "past and future district claims on the mandate."⁵⁰

⁴⁸ *Ibid.*

⁴⁹ Science assessments are actually required starting in 2007-08 (20 U.S.C. § 6311 (b)(3)(A); 34 C.F.R. § 200.2 (a) (2002)), but developing academic standards for science is required by 2005-06 (34 C.F.R. § 200.1(a)(3) & (b)(3)).

⁵⁰ LAO's comments do not include support by "documentary evidence ... authenticated by declarations under penalty of perjury" (Cal. Code Regs., tit. 2, § 1183.02, subd. (c)(1).)

California Department of Education: The California Department of Education (CDE), in testimony at the May 26, 2005 hearing, asserted that NCLB and its predecessors (IASA or the Elementary and Secondary Education Act (ESEA)) are federal mandates because CDE does not feel it has a choice in whether or not to meet the NCLB requirements. CDE testified that STAR has evolved from a system that was initially set up to meet the requirements of IASA or ESEA, which had less stringent requirements than NCLB. This means that additional activities and tests have been added. CDE states that it has evolved the STAR system to meet the minimum requirements of NCLB. According to CDE, it operates in an environment of compulsion and coercion from the federal government, as demonstrated by recent discussions between CDE and the USDE over a "fairly minor definitional issue related to categorizing schools as program-improvement schools under NCLB." CDE testified that the USDE told the state, "If you don't change this definition, you will lose, initially, 25 percent – up to 25 percent of your administrative funds under NCLB, and you will be at risk of losing the entire federal grant." CDE further testified that federal grants under NCLB total \$3 billion, or close to eight percent of total state educational funding, which in CDE's opinion represents significant coercion.⁵¹

In follow-up correspondence dated June 9, 2005, CDE submits a declaration that NCLB imposes a federal mandate on California, that the USDE uses sanctions, fines, and penalties (or the threat thereof) to compel and coerce states into full compliance with the requirements of NCLB, including the testing requirements of California's STAR program. CDE states that in order to receive the more than \$3 billion in federal funds under NCLB, California is required to implement a statewide accountability system, of which STAR is the primary component, that is effective in every district and that ensures all public elementary and secondary schools make adequate yearly progress in meeting academic goals as defined by NCLB. CDE states that noncompliance with NCLB leads to fiscal penalties imposed or threatened by the USDE, ranging from fines taken against state administrative funding to the full loss of NCLB grant funding. CDE includes correspondence from USDE to Minnesota and Texas regarding withholding of Title I, Part A state administrative funds (10% for MN, 4% for TX) for failure to implement aspects of NCLB. CDE also includes a report and letter from USDE regarding CDE's implementation of various NCLB programs, that included a statement that USDE reserves its option to withhold funds for failure to comply. CDE further attaches correspondence from CDE to USDE requesting a waiver for testing English-learner pupil's reading and writing skills in kindergarten and first grade, and USDE's denial of the waiver request.

CDE's June 9, 2005 filing also includes a letter from USDE to all Chief State School Officers, stating that if the state's system of standards and assessment is not approved, USDE can choose from any one or more of three remedies: withholding state funds pursuant to section 1111 (g)(2) of NCLB, a compliance agreement, and/or mandatory oversight status. In the same letter, USDE also states, "Further, if a State's standards and assessment system does not have *Full Approval* or *Full Approval with Recommendations* by July 1, 2006, we will place conditions on the receipt of fiscal year 2006 Title I funding. These condition will continue until *Full Approval* or *Full Approval with Recommendation* is attained."

⁵¹ Commission on State Mandates, Public Hearing, Transcript of Proceedings, May 26, 2005, pages 30-32.

As a result of a Commission request for further information, CDE submits the following in a declaration on June 20, 2005:

Of the \$3.012 billion in state level NCLB grants allocated to California for fiscal year 2004-05, \$109 million is allowable for State Administration purposes. These State Administration funds are allowed to ensure that California meets the requirements of NCLB and fully administers the NCLB programs funded by the remaining \$2.9 billion in the state's NCLB grants.

In comments submitted in July 2005 on the revised staff analysis, CDE generally concurs with the determination that NCLB imposes a federal mandate, but asks that clarifying information be included. CDE states that the conclusion in the revised staff analysis "holds both conceptual and technical difficulties" because it separates "the STAR Program by examination and grade level." CDE's accompanying declaration specifies, for the most part, activities for the CAT/6 exam that require no activities beyond what school districts already do for the rest of the STAR Program.

School District Positions

San Diego Unified School District: San Diego Unified School District (SDUSD), the original claimant of 97-TC-23, submitted comments on the reconsideration in February 2005. SDUSD states that school districts have and will incur costs for various activities as listed in the parameters and guidelines above. SDUSD also asserts that while state funds are appropriated for the STAR program, no funds were appropriated by the test claim statute for reimbursement of mandated cost claims in excess of the amount provided by the state. "The state funds currently appropriated fall dramatically short in relation to the costs incurred by school districts throughout the state." SDUSD asserts that the period of reimbursement for the Commission's decision "shall be prospectively from the date of the statement of decision."

In its rebuttal brief, SDUSD argues that California freely chose to impose new programs or higher levels of service upon local districts subjecting those costs to subvention requirements. SDUSD cites the rule in *Hayes v. Commission on State Mandates*⁵² that if the state freely chooses to impose costs as a means of implementing a federal program then the costs are reimbursable. According to SDUSD, the *Hayes* court dismissed the federal mandate argument raised by DOF, stating, "The state could not avoid its subvention responsibility by pleading 'federal mandate' because the federal statute does not require the state to impose the costs of such hearings upon local agencies. Thus, the burden is imposed by a state rather than federal mandate." (Citation omitted.) SDUSD also states that "the fact that NCLB extends to all schools and is not limited to the former IASA Title I sites [demonstrates that it] is a requirement of the state not the local districts." SDUSD calls the General Fund appropriation for STAR "a setoff for districts filing reimbursement claims." SDUSD states there is no basis to the argument that Title I funds be considered as offsetting revenue.

A declaration from SDUSD's Program Manager of the Testing Unit disagrees with the LAO's position that "the three IASA-mandated tests constitute about one-third of the state-mandated STAR test" and that "mandated costs should fall by at least that proportion." SDUSD argues that LAO is only considering the number of grades that must be tested (3 for IASA versus 10 for

⁵² *Hayes v. Commission on State Mandates, supra*, 11 Cal. App. 4th 1564.

STAR), but does not consider the number of tests required for each grade level. According to SDUSD, IASA only required a standardized test in mathematics and reading/language arts. STAR requires CSTs in Science, Writing, and History-Social Science, and the CAT/6. SDUSD asserts that there are 59 grade/subject tests required by the STAR mandate, only one-sixth of which are federally mandated under the IASA. Thus, SDUSD concludes that LAO's estimate of one-third is too high, and should be closer to 10 percent (6/59). SDUSD also notes the requirement of the SABLE/2 test (Spanish language) for all English learners in grades 2 through 11. SDUSD states that in Spring 2004, about 5000 of its 102,000 pupils took the SABLE/2. As to NCLB, SDUSD asserts that of the 59 grade/subject tests required by the STAR mandate, only fourteen are federally mandated under NCLB. Thus, the SDUSD estimate for possible offsets to STAR is only 24 percent (14/59) starting in 2002, and less when the SABLE/2 is factored in.

Commenting on the draft staff analysis, and in testimony at the May 26, 2005 Commission hearing, SDUSD disagrees with the analysis that EEOA is a federal mandate for testing English-learner pupils. These comments are addressed below.

In comments submitted in July 2005 on the revised staff analysis, SDUSD states that documents submitted by CDE are unsuccessful in proving whether NCLB constitutes a federal mandate based on the threat of certain and severe penalties. SDUSD argues that the documents show that only two states (of fifty) received nominal fines for noncompliance, and that CDE's declaration "fails to identify specifically the severe and certain penalties directly related to the USDE's recommendation and findings to the state of California." SDUSD asserts that the fines on Minnesota and Texas are not severe and certain penalties, and that the fines fail to meet the criteria set by the courts of an intent to coerce. SDUSD also points out that CDE staff was complimented by USDE on efforts to implement NCLB, indicating the lack of the threat of severe and certain penalties. Based on these arguments, SDUSD concludes that staff erred in concluding NCLB is a federal mandate.

Grant Joint Union High School District: Grant Joint Union High School District (GJUHSD), in its July 7, 2005 rebuttal to the revised staff analysis, disputes the application of several of CDE's documents. GJUHSD argues that the conclusion regarding implementation of NCLB is irrelevant to the first factor in *City of Sacramento* because the factor only addresses an intent to coerce, not implementation of the federal statute. GJUHSD goes on to argue that the portions of NCLB to which staff cites indicate no intent to coerce. GJUHSD refutes the CDE-submitted letter to the Minnesota Department of Education, arguing that because the penalty was based on failure to use academic assessments as the primary determinants of adequate yearly progress, it is impossible to determine, without further evidence, if the situation faced by Minnesota would be the same in California for failure to administer the STAR test. As to the CDE-submitted letter to Texas, GJUHSD also argues that the penalty on Texas is irrelevant without more evidence, and urges that the documents to Texas and Minnesota not be considered in the reconsideration. As to the report and letter from USDE regarding implementation of NCLB, GJUHSD urges citations to the record to justify the conclusions,⁵³ but argues that any information in the USDE letter and

⁵³ The revised staff analysis noted in the USDE letter the following, "Moreover, ED reserves its option to take further administrative actions, including the withholding of funds." (Exhibit F, p. 1237). The context was CDE's alleged failure to identify a school district for improvement if the district failed to make adequate yearly progress for two consecutive years.

report are irrelevant anyway because CDE's response is not in the record. CDE's response is necessary, according to GJUHS, because the focus is on a tangible, real penalty. GJUHS contends that the USDE report, which indicated 27 findings of California's noncompliance with NCLB and that made recommendations, does not indicate any penalties were applied. GJUHS argues that the state has been given ample opportunity to comply with NCLB and USDE has yet to threaten a single sanction or penalty. As to the CDE-submitted letter in which USDE denied the state a waiver of for testing English-learner pupils' reading and writing skills in kindergarten and first grade, GJUHS asserts that the existence of a waiver process belies the existence of certain and severe penalties. GJUHS also argues that simply having a penalty available does not make imposing the penalty certain and severe.

GJUHS further comments on the January 15, 2005 letter from USDE to all Chief State School Officers, and that the USDE penalty for not assessing pupils amounts to \$109 million of funds for state administration. According to GJUHS, there is no evidence in the record that supports that the financial penalty would be assessed over non-financial penalties, as California has yet to experience penalties. GJUHS contends that California is currently not in compliance with the NCLB and has not been threatened with any sort of penalty from USDE, so a finding of a certain or severe penalty is not supported in the record.

As to the loss of state administrative funds, GJUHS argues that the loss does not rise to the level of severe because at \$109 million, it amounts to only 3.6 percent of federal funds received under Title I, meaning that California would still receive 96.4 percent of its Title I funds, or \$2.9 billion. GJUHS also asserts that placing conditions on receipt of federal NCLB funds is irrelevant as to the certainty and severity of the penalty. And GJUHS states that the fact that the USDE letter states it "may" put conditions on Title I funds makes the conditions far from certain. As to the penalty on Minnesota, GJUHS asserts that there is nothing in the record that the situation that applied in Minnesota applies in California, and that the penalty Minnesota received, 10 percent of its state administrative funds, would amount to only \$10.9 million in California. GJUHS also assaults CDE's declaration and hearing testimony, asserting that it is irrelevant and does not go to the ultimate issue - whether there is a penalty for withdrawal or noncompliance. GJUHS also argues that "other documents and testimony" upon which the staff analysis relies are not specified in the record.

As to the final *City of Sacramento* factor of other consequences for noncompliance, GJUHS requests an affirmative statement as to whether other consequences exist.

As to the analysis of the *Hayes* decision, GJUHS argues that the state has a true choice concerning the imposition of the STAR program on school districts. GJUHS also criticizes the analysis for being incomplete because it only concerns the CAT/6 exam and not the remainder of the STAR program.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution⁵⁴ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁵⁵ “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.”⁵⁶ 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.⁵⁷

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.⁵⁸

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.⁵⁹ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

⁵⁴ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides:

(a) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

⁵⁵ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁵⁶ *County of San Diego v. State of California (County of San Diego)* (1997) 15 Cal.4th 68, 81.

⁵⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁵⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

⁵⁹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

legislation.⁶⁰ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”⁶¹

Finally, the newly required activity or increased level of service must impose costs mandated by the state.⁶²

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 6.⁶³ 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.”⁶⁴

Issue 1: What is the scope of the Commission’s jurisdiction directed by Senate Bill 1108 and Assembly Bill 2855?

Statutes reconsidered

Statutes 2004, chapter 216, section 34 (Sen. Bill No. 1108, eff. Aug. 11, 2004), and Statutes 2004, chapter 895, section 19 (Assem. Bill No. 2855, eff. Jan. 1, 2005), hereafter referred to as “the reconsideration statutes,” require the Commission on State Mandates, “notwithstanding any other provision of law” to “reconsider its decision in 97-TC-23 ... pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes in light of federal statutes enacted and state court decisions rendered since these statutes were enacted: (a) Chapter 975 of the Statutes of 1995. (b) Chapter 828 of the Statutes of 1997. (c) Chapter 576 of the Statutes of 2000. (d) Chapter 722 of the Statutes of 2001.”⁶⁵ [Emphasis added.]

There is only one Commission decision on STAR, 97-TC-23, which is limited to Statutes 1997, chapter 828. The issue, therefore, is whether the reconsideration statutes expand the Commission’s jurisdiction to the other statutes listed (Stats. 1995, ch. 975, Stats. 2000, ch. 576, and Stats. 2001, ch. 722).

Administrative agencies, such as the Commission, are entities of limited jurisdiction that have only the powers that have been conferred on them, expressly or by implication, by statute or constitution.⁶⁶ An administrative agency may not substitute its judgment for that of the

⁶⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

⁶¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

⁶² *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

⁶³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁶⁴ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁶⁵ In Assembly Bill 2855, section 19, the order of subdivisions (c) and (d) are reversed.

⁶⁶ *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.⁶⁷

Government Code section 17559 grants the Commission authority to reconsider its prior final decisions only within 30 days after the Statement of Decision is issued. But in this case, the Commission's jurisdiction is based solely on the reconsideration statutes. Absent those, the Commission would have no jurisdiction to reconsider its decision relating to the STAR program.

The Government Code gives the Commission jurisdiction only over those statutes and/or executive orders pled by the claimant in the test claim.⁶⁸ The Commission does not have the authority to approve or deny a claim for reimbursement on statutes or executive orders that have not been pled by the claimant. The language of the reconsideration statutes, Senate Bill 1108 and Assembly Bill 2855, does not change this.

The reconsideration statutes reference test claim 97-TC-23, the STAR decision. The STAR decision in 97-TC-23 only addresses Statutes 1997, chapter 828 (consisting of the national norm reference test, or CAT/6 and the language test, or SABE/2). The reconsideration statutes cannot be read to expand the STAR test claim because there are no Commission decisions or parameters and guidelines for the other statutes named: Statutes 1995, chapter 975, Statutes 2000, chapter 576, or Statutes 2001, chapter 722. The Commission cannot "reconsider" parameters and guidelines for statutes it has never considered and for which it never issued parameters and guidelines. Therefore, this analysis does not apply to amendments to the STAR test claim statutes before or after Statutes 1997, chapter 828. Rather, the Commission finds that its jurisdiction is limited to Statutes 1997, chapter 828, the original test claim statute. In other words, the Commission's jurisdiction does not go beyond the national norm reference test, or CAT/6 and the language test, or SABE/2, effected by Statutes 1997, chapter 828.

Also, in the original Statement of Decision and parameters and guidelines, the Commission found that Education Code section 60615 contained a reimbursable activity for: "Processing requests for exemption from testing filed by parents and guardians." Section 60615, however, was not added or amended by the test claim statute. Rather, it was added by Statutes 1995, chapter 975. And even though claimant did not plead Statutes 1995, chapter 975 in the test claim, claimant did plead section 60615. Therefore, the Commission finds that it properly took jurisdiction over section 60615.

Regulations reconsidered

⁶⁷ *Ibid.*

⁶⁸ The Commission's powers are statutorily limited. Government Code section 17551 requires the Commission to hear and decide on a claim by a local agency or school district that the local agency or school district is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Section 17521 defines test claim as "the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state."

Although the reconsideration statutes make no mention of the STAR regulations, the original STAR test claim statute, to which this reconsideration is directed, referred to regulations.⁶⁹ Therefore, the Commission finds that it has jurisdiction to reconsider the regulations to the STAR program that were originally included in the STAR decision and parameters and guidelines (97-TC-23).⁷⁰

The Commission does not have jurisdiction over regulations enacted since adoption of the Statement of Decision or parameters and guidelines, or which the Commission never considered, such as: California Code of Regulations, title 5, sections 853.5 (Use of Variations, Accommodations, and Modifications for the Standards-Based Achievement Test and the California Alternative Performance Assessment), 864.5 (Test Order Information), 867.5 (Retrieval of Materials by Publisher), 894 (Test Order Information), and 898 (Retrieval of Materials by Publisher).

Effective date of reconsideration

The parameters and guidelines for the STAR program were adopted in January 2002, with a reimbursement period beginning October 10, 1997 (the effective date of the test claim statute). Neither of the two reconsideration statutes, however, specifies the period of reimbursement for the Commission's decision on reconsideration. Moreover, the two reconsideration statutes have different effective dates. Senate Bill 1108, a budget trailer bill, was effective August 11, 2004, and Assembly Bill 2855 (chaptered Sept. 29, 2004) was effective January 1, 2005. Thus, the first issue is which of these reconsideration statutes takes precedence, since one that prevails controls the effective date of this reconsideration.

The Commission finds that Senate Bill 1108, section 34 takes precedence over Assembly Bill 2855, section 19. Government Code section 9605 states that provisions of an amended statute that are left unchanged, "are to be considered as having been the law from the time when they were enacted." Thus, Senate Bill 1108 is considered to be the law from August 11, 2004 (its effective date) since section 34 of Senate Bill 1108 was left unchanged by Assembly Bill 2855 (chaptered on Sept. 29, 2004). Although Government Code section 9605 also states that, where two statutes are enacted during the same session, the statute with the higher chapter number will prevail, this rule only applies where the statutes are in conflict.⁷¹ Therefore, since the two reconsideration statutes do not conflict, Senate Bill 1108, the urgency statute effective August 11, 2004, prevails over Assembly Bill 2855, the non-urgency statute effective January 1, 2005, even though Assembly Bill 2855 was enacted seven weeks later and had a higher chapter number.

The second issue is whether the Legislature intended to apply the Commission's STAR reconsideration decision retroactively back to the original reimbursement period of

⁶⁹ Education Code sections 60608 and 60605, subdivision (f).

⁷⁰ In addition to the STAR statutes, the Statement of Decision was based on California Code of Regulations, title 5, sections 850-874. In the parameters and guidelines, the Commission found that the regulations for the primary language test were renumbered to sections 880-904, but the change was not substantive. Thus, the regulations reconsidered are sections 850-904.

⁷¹ *In re Thierry S.* (1977) 19 Cal. 3d 727, 745.

October 10, 1997 (i.e., to reimbursement claims that have already been filed and have been paid or audited), or to prospective claims filed in the current and future budget years.

The LAO, in comments on the draft staff analysis, argues that the Legislature intended that changes to the Commission's previous findings on STAR should affect past and future district claims on the mandate. LAO states that the Legislature directed the LAO to evaluate newly completed mandate claims, which culminated in the 2003 report *New Mandates: Analysis of Measures Requiring Reimbursement*. LAO argues that by the Legislature approving LAO's recommendation for the Commission to reconsider the STAR decision, the Legislature, "signaled that it has not formally approved the commission's past work on the STAR mandate and, therefore, does not recognize the validity of the Parameters and Guidelines developed for the mandate."⁷² Thus, LAO believes the Legislature intends that changes to the Commission's previous findings apply prospectively and retroactively. DOF's comments on the draft staff analysis and at the May 26, 2005 hearing echo this assertion.

The Commission disagrees. For the reasons below, the Commission finds the Legislature intended for the Commission's decision on reconsideration to apply prospectively, to the current and future budget years only.

A statute may be applied retroactively only if the statute contains "express language of retroactively [sic] or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application."⁷³ In *McClung v. Employment Development Department*, the California Supreme court explained this rule as follows:

"Generally, statutes operate prospectively only." [Citation omitted.] "[T]he presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly ... For that reason, the principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." [Citation omitted.] "The presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new burdens on persons after the fact." [Citation omitted.]

This is not to say that a statute may never apply retroactively. "A statute's retroactivity is, *in the first instance*, a policy determination for the Legislature and one to which courts defer absent 'some constitutional objection' to retroactivity." [Citation omitted.] But it has long been established that a statute that interferes with antecedent rights will not operate retroactively unless such retroactivity be "the unequivocal and inflexible import of the terms, and the manifest intention of the legislature." [Citation omitted.] "A statute may be applied retroactively only if it contains express language of retroactively [sic] or

⁷² Legislative Analyst's Office, comments submitted May 9, 2005 (Exhibit D).

⁷³ *McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 475.

if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application." [Citation omitted.] [Emphasis added.]⁷⁴

There is nothing in the plain language of the reconsideration statutes or their legislative histories to indicate that the Legislature intended to apply the Commission's reconsideration of the STAR decision retroactively. Section 42 of Senate Bill 1108 states that the act was necessary to implement the Budget Act of 2004. This supports the conclusion that the statute was intended to apply prospectively to the current and future budget years. Similarly, the legislative history contained in the analysis of the Senate Rules Committee supports the conclusion that the statute applies to current and future budget years only. Page one of the analysis states, "This bill makes changes to a variety of education-related statutes *in order to effectuate the changes included as part of the proposed 2004-05 Budget Act.*"⁷⁵ [Emphasis added.]

Based on the *McClung* case cited above, had the Legislature intended to apply the Commission's reconsideration decision retroactively, the Legislature would have included retroactive language in the bill, or indicated such intent in the legislative history or other sources. The Commission finds no support in the record nor in the reconsideration statutes for LAO's and DOF's contention that the Legislature intended the reconsideration decision to apply to past and future district claims.

At the hearing on May 26, 2005, DOF inquired as to whether the fact that the Legislature and the Administration has never provided funding to implement the previous STAR mandate decision has any bearing on whether or not the reimbursement period should be applied retroactively.⁷⁶ LAO also stated that this lack of appropriation for STAR should indicate legislative intent.⁷⁷

Lack of funding, however, is not an indication of legislative intent. SDUSD pointed out at the May 26, 2005 hearing that many mandates have not been funded, but this was not evidence that a reconsideration of them should apply retroactively. Moreover, another reconsideration statute, Statutes 2004, chapter 227, did indicate an effective date for the reconsideration. That statute, which directs the Commission to reconsider Board of Control decisions on regional housing mandates, states "[a]ny changes by the commission shall be deemed effective July 1, 2004."⁷⁸ In contrast, the fact that no effective date was expressed in the reconsideration statutes for STAR means there is no legislative intent for the reconsideration to apply retroactively.⁷⁹ In addition, the California Supreme Court addressed the issue of whether the Legislature, by inaction, approved court decisions invalidating apportioning attorney fees for injured workers between the

⁷⁴ *Ibid.*

⁷⁵ Senate Rules Committee, Office of Senate Floor Analyses, Analysis of Senate Bill 1108 (2003-2004 Reg. Sess.) as amended July 27, 2004, page 1.

⁷⁶ Commission on State Mandates, Public Hearing, Transcript of Proceedings, May 26, 2005, page 54.

⁷⁷ *Id.* at pages 65-66.

⁷⁸ Statutes 2004, chapter 227, section 109.

⁷⁹ Commission on State Mandates, Public Hearing, Transcript of Proceedings, May 26, 2005, pages 67.

worker and the employer. In commenting on the irrelevance of legislative inaction (stating that it presented no obstacles to resolution of the dispute), the court declared that for purposes of determining legislative intent, "[L]egislative inaction is indeed a slim reed upon which to lean."⁸⁰ Like the court, the Commission does not rely on legislative inaction, such as lack of appropriations in this case, as evidence of legislative intent.

Thus, absent evidence of legislative intent, the Commission finds that the period of reimbursement for the STAR reconsideration decision begins July 1, 2004 (i.e., it applies to reimbursement claims filed for the 2004-05 fiscal year).

Issue 2: Is the STAR program subject to article XIII B, section 6 of the California Constitution?

A. Is the STAR national norm-referenced test federally mandated?

The issue, raised by DOF and LAO, is whether IASA⁸¹ or NCLB is a federal mandate. If a program is a federal mandate on school districts, subvention under article XIII B, section 6 is not required because the mandate's costs are exempt from the school district's taxing and spending limitations.⁸² The Commission finds, for the reasons indicated below, that it is not relevant whether IASA or NCLB are federal mandates because even if they were found to be, the CAT/6, (or any national norm-referenced exam) is not required by NCLB. Therefore, finding that NCLB is a federal mandate is unnecessary because the national norm-referenced exam is required only under California law.

As noted above, the original test claim only analyzed the CAT/6 and SABE/2 exams in the STAR program (the SABE/2 is discussed later). As to the CAT/6, starting in the 2004-2005 school year, it is only administered in grades 3 and 7.⁸³ Although California uses other exams that are administered in grades 2-11 to comply with NCLB,⁸⁴ those tests were not part of the original Statement of Decision and therefore are not part of this reconsideration.

NCLB requires a test once during grades 3 through 5, 6 through 9, and 10 through 12, and expands testing starting in the 2005-2006 school year.⁸⁵ The 2005-2006 and future tests must "measure the achievement of students against the challenging State academic content and student academic achievement standards in each of grades 3 through 8 in, at a minimum, mathematics,

⁸⁰ *Quinn v. State of California* (1975) 15 Cal. 3d 162, 175.

⁸¹ This discussion on NCLB also applies to IASA because the statutory schemes are similar. Thus, further reference is primarily to NCLB.

⁸² *Hayes v. Commission on State Mandates, supra*, 11 Cal. App. 4th 1564, 1593.

⁸³ Education Code section 60640, subdivision (b). Formerly, the CAT/6 was administered in grades 2-11, inclusive (see former Ed. Code, § 60640, subd. (b)), but it was amended to grades 3 and 8 by Statutes 2003, chapter 773, and to grades 3 and 7 by Statutes 2004, chapter 233.

⁸⁴ For example, the California Standards Tests (Ed. Code, §§ 60640, subd. (b) & 60642.5), and the California Alternate Performance Assessment.

⁸⁵ Title 20 United States Code section 6311 (b)(3)(C)(v)-(vii).

and reading or language arts.”⁸⁶ NCLB also requires one test in grades 10-12.⁸⁷ Because the tests must be based on state academic content and student academic achievement standards,⁸⁸ the state uses the California Standards Tests to comply with NCLB.

In contrast, the CAT/6⁸⁹ is a national norm-referenced test.⁹⁰ The CAT/6 cannot be used to comply with NCLB because it is not aligned to state standards. Federal NCLB regulations allow (but do not require) states to use “criterion-referenced assessments” and “assessments that yield national norms” so long as they are augmented with items to measure the State’s academic content standards, and express results in terms of the standards.⁹¹ The NCLB and CAT/6 assessment requirements are compared in the chart below:

⁸⁶ Title 20 United States Code section 6311 (b)(3)(C)(v)-(vii), which states, “Such assessments shall – [¶]... [¶] (v)(I) except as otherwise provided for grades 3 through 8 under clause vii, measure the proficiency of students in, at a minimum, mathematics and reading or language arts, and be administered not less than once during—(aa) grades 3 through 5; (bb) grades 6 through 9; and (cc) grades 10 through 12; (II) beginning not later than school year 2007-2008, measure the proficiency of all students in science and be administered not less than one time during – (aa) grades 3 through 5; (bb) grades 6 through 9; and (cc) grades 10 through 12; [¶]... [¶] (vii) beginning not later than school year 2005-2006, measure the achievement of students against the challenging State academic content and student academic achievement standards in each of grades 3 through 8 in, at a minimum, mathematics, and reading or language arts, ...”

⁸⁷ *Ibid.*

⁸⁸ Title 20 United States Code section 6311 (b)(3)(C)(ii). “‘Content standards,’ means the specific academic knowledge, skills, and abilities that all public schools in this state are expected to teach and all pupils expected to learn in each of the core curriculum areas, at each grade level tested.” (Ed. Code, § 60603, subd. (a)(4)).

⁸⁹ The CAT/6 should not be confused with the State National Assessment of Educational Progress (NAEP), a test required under NCLB. There is no indication that the NAEP is related to the CAT/6 because state participation in the NAEP is required only biennially, and the NAEP is given to fourth and eighth graders. (34 C.F.R., § 200.11 (2003)).

⁹⁰ Senate Rules Committee, Office of Senate Floor Analyses, 3d reading analysis of Assembly Bill 1485 (2003-2004 Reg. Sess.) as amended September 8, 2003, page 3.

⁹¹ 34 Code of Federal Regulations, part 200.3 (a)(2) (2002).

	2004-2005 school year	2005-2006 and beyond
NCLB requirement	Requires one test in each of grades 3-5, 6-9 and 10-12 (or 3 tests total) in mathematics, and reading or language arts, that must be aligned to state standards	Requires a test in each of grades 3-8, inclusive, and once in grades 10-12, in math and reading or language arts, that must be aligned to state standards (Science test required starting in 2007-2008 once in each of grades 3-5, 6-9 and 10-12)
State CAT/6 test	Requires testing in grades 3 and 7, not aligned to state standards , in mathematics and reading/language arts.	Requires testing in grades 3 and 7, not aligned to state standards , in mathematics and reading/language arts.

Neither the CAT/6, nor any other national norm-referenced test, is required by NCLB or any federal law. Therefore, the Commission makes no finding as to whether NCLB or IASA are federal mandates. Rather, the Commission finds that the CAT/6 is mandated by the state, and is therefore subject to article XIII B, section 6 of the California Constitution (the SABE/2 exam will be addressed below).

In its July 2005 comments, CDE states that the conclusion (that administering the CAT/6 exam in grades 3 and 7 imposes a reimbursable mandate) "holds both conceptual and technical difficulties because of the attempt to separate the STAR Program by examination and grade level." CDE's attached declaration addresses whether various activities for the CAT/6 impose additional activities beyond those necessary for the rest of the STAR program. CDE also opines that training requirements for administration of the CAT/6 would be minimal.

CDE's comments are not relevant to whether the CAT/6 imposes a mandate, which is the primary issue in this analysis. Although the comments may be helpful in drafting the Ps&Gs they are not instructive to the issue at hand.

As to submitting a STAR report to the Superintendent of Public Instruction, CDE states that as of the 2004-2005 school year, the testing contractor fulfills this activity and not the school district. The law cited by CDE is Education Code section 60640, subdivision (j) and California Code of Regulations, title 5, section 862. The plain language of Education Code section 60640, subdivision (j), however, states that this is a school district requirement, "As a condition of receiving an apportionment pursuant to subdivision (h), a school district shall report to the superintendent all of the following: ..." This requirement on school districts is also in California Code of Regulations, title 5, section 862. Except for its declaration, CDE submits no documentation to the contrary. Therefore, the Commission finds that based on the plain language of the statute and the regulation, this reporting is required of school districts. However, to the extent that school districts do not incur increased costs mandated by the state, reimbursement would not be required.

B. Are STAR activities for disabled or special education pupils federally mandated?

There are three activities required in the STAR Statement of Decision that are targeted toward special education pupils or pupils with disabilities.⁹² These are:

- Exemption from testing for pupils if the pupil's individualized education program has an exemption provision. (Ed. Code, § 60640, subd. (e), and former subd. (j); Cal. Code Regs., tit. 5, § 852, subd. (b) & § 881, subd. (b).)
- Determination of the appropriate grade level test for each pupil in a special education program. (Cal. Code Regs., tit. 5, § 853, subd. (c) & § 882, subd. (c).)
- Provision of appropriate testing adaptation or accommodations to pupils in special education programs. (Cal. Code Regs., tit. 5, § 853, subd. (c) & § 882, subd. (c).)

The issue is whether these activities are federally mandated under the Individuals with Disabilities Education Act (IDEA), or under NCLB.

As stated above, the court in *Hayes* stated that the federal Education of the Handicapped Act (the predecessor to IDEA) is a federal mandate. Since the *Hayes* court concluded that the state had "no true choice" in whether or not to implement the federal statute, the only question is whether California has a choice. The Commission finds that it does not. IDEA requires that pupils with disabilities be included in state-wide and district-wide assessments, "with appropriate accommodations where necessary."⁹³ IDEA also requires school districts to have IEPs in effect for pupils with disabilities.⁹⁴

Education Code section 60640, subdivision (e) (and originally subd. (j)), and the corresponding regulations⁹⁵ (the STAR regulations on IEPs and on testing adaptations and accommodations) merely implement the IDEA (an amendment/successor to the federal Education of the Handicapped Act), and IDEA's regulations.⁹⁶ Therefore, the Commission finds that section 60640, subdivision (e) and its corresponding regulations are not state mandates subject to article XIII B, section 6, because they implement a federal law or regulation.⁹⁷

⁹² Commission on State Mandates, STAR Statement of Decision (Exhibit A, p. 391).

⁹³ Title 20 United States Code section 1412 (a)(17); 34 Code of Federal Regulations part 300.138 (2002).

⁹⁴ Title 20 United States Code section (d)(2)(A).

⁹⁵ The regulations on the IEP are in California Code of Regulations, title 5, sections 852, subdivision (b), and 881, subdivision. (b). The regulations on testing adaptations and accommodations are in California Code of Regulations, title 5, sections 853, subdivision (c), and 882, subdivision (c).

⁹⁶ 34 Code of Federal Regulations part 300.138 provides, "The State must have on file with the Secretary [of Education] information to demonstrate that-- (a) Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary..."

⁹⁷ As an alternative ground for denial, the requirement to review "the IEP of children with disabilities to determine if the IEP contains an express exemption from testing" was repealed by

C. Is the STAR foreign-language test federally mandated?

The STAR Statement of Decision included the following activity:

- o Administration of an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given. Only reimbursable to the extent such tests are available. (Ed. Code, § 60640, subd. (g); Cal. Code Regs., tit. 5, § 851, subd. (a).)⁹⁸

The issue is whether this activity (currently the SABE/2 test in California) is federally mandated under the Equal Education Opportunities Act (EEOA), or under NCLB.

Title VI of the Civil Rights Act (42 U.S.C. § 2000d) prohibits discrimination under any program or activity receiving federal financial assistance. The Equal Educational Opportunities Act of 1974 (EEOA) (20 U.S.C. § 1701 et seq.) recognizes the state's role in assuring equal educational opportunity for national origin minority students. It states:

No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin by [¶ ... ¶] (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.⁹⁹

According to *Castaneda v. Pickard*,¹⁰⁰ a case cited by the California Department of Education as authority for some of its regulations,¹⁰¹ the federal statutory scheme (EEOA) is grounded in constitutional principles of equal protection.¹⁰²

Statutes 2002, chapter 492, and amended so that the statute now includes disabled pupils in testing and cites to IDEA (the state regulation was also amended). Since disabled pupils are now tested, this activity is no longer required and thus, not subject to article XIII B, section 6.

As to determining the appropriate grade level and providing testing adaptations and accommodations, those activities are also no longer required. California Code of Regulations, title 5, section 853, subdivision (c) was amended in February 2004 to allow testing IEP pupils below grade level for the 2003-04 school year only, and to prohibit doing so beginning in the 2004-05 school year. Moreover, there is a now separate test for special education pupils (the CAPA, not covered by the original test claim). This reconsideration decision is effective July 1, 2004, and this activity is no longer required after the 2003-04 school year. Therefore, as an alternative ground for denial, the Commission finds that these activities are no longer required for pupils who take the CAT/6, and therefore is not subject to article XIII B, section 6.

⁹⁸ Commission on State Mandates, STAR Statement of Decision (Exhibit A, p. 391). Additional authority for this is in California Code of Regulations, title 5, section 880, subdivision (a).

⁹⁹ Title 20 United States Code section 1703 (f), hereafter referred to as section 1703 (f).

¹⁰⁰ *Castaneda v. Pickard* (5th Cir. 1981) 648 F. 2d 989.

¹⁰¹ For example, see "authority cited" for California Code of Regulations, title 5, sections 11302, 11304 and 11305.

¹⁰² *Castaneda v. Pickard*, *supra*, 648 F. 2d 989, 999 and 1001.

Congress included an obligation to address the problem of language barriers in the EEOA, and granted limited English speaking pupils a private right of action to enforce that obligation in Title 20 United States Code section 1706.¹⁰³

Federal cases have interpreted section 1703 (f) to require testing students' English-language skills, as well as to require standardized testing. In *Castaneda v. Pickard*, the court stated,

We understand s.1703 (f) [sic] to impose on educational agencies not only an obligation to overcome the direct obstacle to learning which the language barrier itself poses, but also a duty to provide limited English speaking ability students *with assistance in other areas of the curriculum* where their equal participation may be impaired because of deficits incurred during participation in an agency's language remediation program.¹⁰⁴ [Emphasis added.] *Id.* at page 1011.

The *Castaneda* court went on to state the importance of testing,

Valid testing of students' progress in these areas [other than English language literacy skills] is, we believe, essential to measure the adequacy of a language remediation program. The progress of limited English speaking students in these other areas of the curriculum must be measured by means of a *standardized test in their own language* because no other device is adequate to determine their progress vis-à-vis that of their English speaking counterparts. ... Only by measuring the actual progress of students in these areas during the language remediation program can it be determined that such irremediable deficiencies are not being incurred.¹⁰⁵ [Emphasis added.]

In *Keyes v. School Dist. No. 1*,¹⁰⁶ another case cited by the California Department of Education in its regulations,¹⁰⁷ the court found violations by a Denver school district of section 1703 (f) of the EEOA. The court held the school district's bilingual program was "flawed by the failure to adopt adequate tests to measure the results of what the district is doing. ... The lack of an adequate measurement of the effects of such service is a failure to take reasonable action to implement the transitional policy."¹⁰⁸

There is no indication in these or other cases that compliance with section 1703 (f) of the EEOA is limited to testing English or language skills. Rather, section 1703 (f) expressly promotes the broader goal of "equal participation by ... [English-learner] students in ... instructional programs."

¹⁰³ *Id.* at page 999.

¹⁰⁴ *Id.* at page 1011.

¹⁰⁵ *Id.* at page 1014.

¹⁰⁶ *Keyes v. School Dist. No. 1* (D. Colo. 1983) 576 F. Supp. 1503

¹⁰⁷ For example, see "authority cited" for California Code of Regulations, title 5, sections 11302, 11304 and 11305.

¹⁰⁸ *Keyes v. School Dist. No. 1, supra*, 576 F. Supp. 1503, 1518.

In comments on the draft staff analysis, SDUSD disagrees with the reliance on *Castaneda*, concluding that *Castaneda* provides no guidance on whether the EEOA is a federal mandate regarding STAR activities. The Commission agrees that schools are free to determine appropriate programs for English learners under section 1703 (f) and applicable case law. However, SDUSD ignores portions of *Castaneda* that describe the "essential" nature of testing pupils in their own language.¹⁰⁹ SDUSD also ignores other cases that support standardized testing in foreign languages,¹¹⁰ and the California Department of Education's reliance on these cases in support of its regulations.

One of the reasons *Castaneda* is a leading case in interpreting section 1703 (f) is because the court devised a three part test to determine the sufficiency of the "appropriate action" under section 1703 (f). The test is first, whether the program is based on an educational theory recognized as sound or at least as a legitimate experimental strategy by some of the experts in the field. Second, is the program reasonably calculated to implement that theory? And third, after being used for a time sufficient to afford it a legitimate trial, has the program produced satisfactory results?¹¹¹ Thus, school districts must, under section 1703 (f) as interpreted by *Castaneda*, effect standardized testing or assessment to implement at least the third part of this test. Moreover, because Congress granted English-learner pupils a private right of action to enforce the section 1703 (f) obligation in Title 20 United States Code section 1706, California could be forced by litigation to offer the STAR test in Spanish if it did not already do so.

In testimony at the May 26, 2005 hearing, SDUSD asserts that no federal statute requires testing English learners, and reiterated its argument that the *Castaneda* case is not on point. SDUSD also introduced testimony on the activities it performs related to testing English-learner pupils. The Commission disagrees. Although the federal EEOA itself does not require testing English-learner pupils, the *Castaneda* case that interprets the EEOA does require testing these pupils, making the testing activity federally mandated.

Therefore, the Commission finds that section 60640, subdivision (g) and its regulations (Cal. Code Regs., tit. 5, § 880, subd. (a)) do not constitute a state mandate subject to article XIII B, section 6, because they implement a federal law or regulation.

D. Are some STAR activities no longer state mandated?

There are some activities in the STAR Statement of Decision that, although previously required, have been repealed since the original decision was adopted. These concern the school districts' contracts with the test publisher, which is now a state function. The activities in question are bulleted (as designated in the original decision) as follows:

- Contracting with a test publisher selected by the State Board of Education using an agreement approved by the State Board of Education. (Ed. Code, § 60643, subds. (a)(2) and (c); Cal. Code Regs., tit. 5, §§ 860, 873.) This activity is limited to completing the agreement approved by the State Board of Education. Modification of the approved

¹⁰⁹ *Castaneda v. Pickard*, *supra*, 648 F. 2d 989, 1014.

¹¹⁰ *Keyes v. School Dist. No. 1*, *supra*, 576 F. Supp. 1503, 1518.

¹¹¹ *Castaneda v. Pickard*, *supra*, 648 F. 2d 989, 1009-1010.

agreement by school districts to include any additional materials or services pursuant to Education Code section 60643, subdivision (e)(12) is not reimbursable.

The statutory requirement for school districts to contract with a test publisher was repealed by Statutes 1999, chapter 735. The regulations that were the basis for this activity were repealed December 16, 1999.

- Payment of sales tax to the publisher. (Cal. Code Regs., tit. 5, § 856.)

The regulation that required this activity was repealed December 16, 1999.

- Completion of delivery schedule and order form. (Cal. Code Regs., tit. 5, § 874.)

The regulation that required this activity was repealed October 26, 1998.

- Provision to the test publisher of enrollment and test order data by grade level. (Cal. Code Regs., tit. 5, § 874.)

The regulation that required this activity was repealed October 26, 1998.

- Administration of the standard agreement pursuant to the State Department of Education's regulations. (Cal. Code Regs., tit. 5, §§ 856, 869, subd. (b), and 871.)

The regulations that required this activity were repealed December 16, 1999.

LAO criticizes the existing STAR parameters and guidelines for omitting the cost of printing, shipping, and scoring the tests from the list of costs that districts must offset with state funds.¹¹²

The Commission disagrees that this omission is improper. The activities of printing, shipping, and scoring the tests (for the CAT/6 and SABE/2 exams) do not appear to be the responsibility of the school district (except for shipping the test back to the publisher).¹¹³ The current statutes and regulations do not require the school district to print, ship or score tests, or to pay for doing so. Therefore, the Commission finds that this activity is not mandated by the state.

Therefore, as activities that are no longer mandated, the Commission finds that the activities listed above are not subject to article XIII B, section 6.

DOF, in its July 2005 comments on the revised staff analysis, states that it is unclear why the activities of designating STAR program district and test site coordinators were not struck out or amended to replace the "STAR program" with "CAT/6" (to which the remainder of this analysis applies). DOF asserts that these activities are required by NCLB to administer the STAR program and therefore should not be reimbursable.

The Commission disagrees. Designating a "STAR Program District Coordinator" and "STAR Test Site Coordinator" is required of school districts under California's regulations.¹¹⁴ Thus, a reference to a CAT/6 coordinator would not make sense and, as explained above, the CAT/6 is

¹¹² See <http://www.lao.ca.gov/2003/state_mandates/state_mandates_1203.html> as of February 15, 2005.

¹¹³ California Code of Regulations, title 5, section 857, subdivision (c).

¹¹⁴ California Code of Regulations, Title 5, sections 857 and 858.

not required by NCLB. Thus, the conclusion retains the STAR coordinator titles for those activities, which would only be reimbursable to the extent they apply to the CAT/6.

E. Do the remaining STAR statutes and executive orders constitute a program under article XIII B, section 6?

For purposes of this analysis, the STAR activities at issue are all those in the Statement of Decision (see Exhibit A, pages 391-392) except for the following that were discussed above as being federal mandates (nos. 1-4 below), or no longer required (nos. 5-9 below):

1. Exemption from testing for pupils if the pupil's individualized education program has an exemption provision. (Ed. Code, § 60640, subd. (e), and former subd. (j); Cal. Code Regs., tit. 5, § 852, subd. (b) & § 881, subd. (b).)
2. Determination of the appropriate grade level test for each pupil in a special education program. (Cal. Code Regs., tit. 5, § 853, subd. (c) & § 882, subd. (c).)
3. Provision of appropriate testing adaptation or accommodations to pupils in special education programs. (Cal. Code Regs., tit. 5, § 853, subd. (c) & § 882, subd. (c).)
4. Administration of an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given. Only reimbursable to the extent such tests are available. (Ed. Code, § 60640, subd. (g); Cal. Code Regs., tit. 5, § 851, subd. (a).)¹¹⁵
5. Contracting with a test publisher selected by the State Board of Education using an agreement approved by the State Board of Education. (Ed. Code, § 60643, subs. (a)(2) and (c); Cal. Code Regs., tit. 5, §§ 860, 873.) This activity is limited to completing the agreement approved by the State Board of Education. Modification of the approved agreement by school districts to include any additional materials or services pursuant to Education Code section 60643, subdivision (e)(12) is not reimbursable.
6. Payment of sales tax to the publisher. (Cal. Code Regs., tit. 5, § 856.)
7. Completion of delivery schedule and order form. (Cal. Code Regs., tit. 5, § 874.)
8. Provision to the test publisher of enrollment and test order data by grade level. (Cal. Code Regs., tit. 5, § 874.)
9. Administration of the standard agreement pursuant to the State Department of Education's regulations. (Cal. Code Regs., tit. 5, §§ 856, 869, subd. (b), and 871.)

As noted above, the original Statement of Decision only included the SAT/9 (now the CAT/6) exam, and the language exam (the SABE/2, found to be federally mandated above). Therefore, the only exam remaining as a "program" in this analysis is the CAT/6. Since this exam is only a fraction of the STAR program, further reference will be to the CAT/6 rather than the STAR program.

¹¹⁵ Commission on State Mandates, STAR Statement of Decision (Exhibit A, p. 391). Additional authority for the language test is in California Code of Regulations, title 5, section 880, subdivision (a).

In order for the CAT/6 exam to be subject to article XIII B, section 6 of the California Constitution, it must constitute a "program." This means 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.¹¹⁶ Only one of these findings is necessary to trigger article XIII B, section 6.¹¹⁷

The CAT/6 constitutes educational testing as a means to measure pupil achievement or school or district accountability, or national pupil comparison. These activities are within the purview of public education, a program that carries out a governmental function of providing a service to the public.¹¹⁸ Moreover, the CAT/6 exam imposes unique requirements on school districts that do not apply generally to all residents and entities of the state.

Therefore, the CAT/6 exam is a program that carries out the governmental function of educational testing (or more specifically, national norm-referenced testing), and a law which, to implement state policy, imposes unique requirements on school districts and does not apply generally to all residents and entities in the state. As such, the Commission finds that the CAT/6 exam constitutes a program within the meaning of article XIII B, section 6.

Issue 3: Does the CAT/6 exam impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6?

The Commission determined, on August 24, 2000, that the STAR program (which at the time consisted only of the SAT/9 test, precursor to the CAT/6, and the SABE/2 language test) constitutes a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution. There has been no evidence or comments submitted that questions this determination. Thus, absent anything in the record to the contrary, the Commission finds that the activities in the original Statement of Decision (except for the activities that are federal mandates or no longer required, as discussed above) constitute a new program or higher level of service within the meaning of article XIII B, section 6.

Issue 4: Does the CAT/6 exam impose "costs mandated by the state" on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 ?

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, the test claim legislation must impose costs mandated by the state.¹¹⁹ In addition, no statutory exceptions listed in Government Code section 17556 can apply. Government Code section 17514 defines "cost mandated by the state" as follows:

¹¹⁶ *County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, 56.

¹¹⁷ *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

¹¹⁸ "Education in our society is ... a peculiarly governmental function." *Long Beach Unified School District v. State of California, supra*, 225 Cal.App.3d 155, 172.

¹¹⁹ *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17556, (as amended by Stats. 2004, ch. 895, Assem. Bill No. 2855),¹²⁰ provides:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) *The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.*

(f) The statute or executive order imposed duties that were expressly included in a ballot measure approved by the voters in a statewide or local election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction. [Emphasis added.]

¹²⁰ Statutes 2005, chapter 72 (Assem. Bill No. 138) amended subdivision (f) of this section, but that is not relevant to this analysis.

Offsetting state funds: The first issue is whether, pursuant to section 17556, subdivision (e), appropriations of state funds for the STAR Program (of which the CAT/6 exam is the only remaining state-mandated component) precludes reimbursement.

DOF and LAO raise the issue of offsetting revenue for the STAR program. DOF argues that, "state funds provided for the program should first offset against any costs resulting from the activities found by the Commission to be state-mandated in excess of the federal statute."

The Commission's STAR parameters and guidelines provide for offsetting revenue as follows:

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

Specifically, reimbursement for: 1) designating site and district coordinators, 2) exempting pupils from STAR Program tests upon request of parents or guardians, 3) coordinating testing at the test site, and 4) reporting data to the school district governing board or county office of education and the Superintendent of Public Instruction, shall be offset by funding provided in the State Budget for the STAR Program.¹²¹

There is no reason in the record for limiting offsetting revenue to the four activities listed in the parameters and guidelines, as this provision could be interpreted to mean:

In fact, the 2004 State Budget Act contains the following provision after a \$53.8 million appropriation of state funds for the STAR program (in schedule 3):

*Funds provided in Schedules (3), (4), and (5) shall first be used to offset any state-mandated reimbursable costs that otherwise may be claimed through the state mandates reimbursement process for the Standardized Testing and Reporting Program, the California English Language Development Test, and the California High School Exit Exam, respectively. Local education agencies accepting funding from these schedules shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from these schedules. [Emphasis added.]*¹²²

Similar language for the state STAR appropriation appears in the 2005 State Budget Act.¹²³

Therefore, the Commission finds that state funds appropriated for administering the STAR exam must first be used to offset the mandated CAT/6 activities, for years in which the Legislature requires it. In addition, the Commission finds that offsets apply to all CAT/6 activities and are not limited to those listed above (from the Ps&Gs).

¹²¹ Exhibit A, page 750.

¹²² Statutes 2004, chapter 208, Item 6110-113-0001, Schedule 3, Provision 8.

¹²³ Statutes 2005, chapter 38, Item 6110-113-0001, Schedule 2, Provision 8.

Offsetting federal Title I funds: DOF urges recognizing federal Title I funds as offsetting revenue, and repeats this assertion in comments on the draft staff analysis.

The Commission can find no legal requirement for school districts to use Title I funds as offsetting revenue for the STAR mandate. According to the Education Code:

[T]he governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established."¹²⁴

[S]chool districts ... have diverse needs unique to their individual communities and programs. Moreover, in addressing their needs ... school districts ... should have the flexibility to create their own unique solutions.¹²⁵

[I]t is the intent of the Legislature to give school districts ... broad authority to carry on activities and programs, *including the expenditure of funds for programs and activities which, in the determination of the governing board of the school district ... are necessary or desirable in meeting their needs* and are not inconsistent with the purposes for which the funds were appropriated. ...¹²⁶

[Emphasis added.]

Not only is there no requirement to use Title I funds to offset the STAR program costs (for only the CAT/6 test, according to the Statement of Decision and this reconsideration), but the Education Code indicates that school districts should have flexibility and broad authority in spending funds. In the absence of legislative direction, school districts have discretion in how to spend appropriated funds and are not required to spend it on the mandated exam(s) first (CAT/6).

LAO, in comments on the draft staff analysis, argues that the decision in *Kern High School District*¹²⁷ requires the Commission to find that Title I funds should offset the STAR program. In *Kern*, the court found that eight of the nine programs at issue were not state mandates, and made no finding whether the ninth program was a mandate. As to the ninth program, the court found that the costs in complying with the notice and agenda requirements for the Chacon-Moscone Bilingual-Bicultural Education program did not entitle claimants to obtain reimbursement under article XIII B, section 6 because the state had already provided funds that could be used to cover the necessary notice and agenda related expenses.¹²⁸

LAO's assessment is incorrect because *Kern* is distinguishable from the STAR program. First, under *Kern* the costs appeared "rather modest,"¹²⁹ which is not the case here. Second and most importantly, in *Kern*, the Legislature expressly authorized districts to use a portion of funds

¹²⁴ Education Code section 35160.

¹²⁵ Education Code section 35160.1, subdivision (a).

¹²⁶ Education Code section 35160.1, subdivision (b).

¹²⁷ *Kern High School District, supra*, 30 Cal.4th 727.

¹²⁸ *Id.* at pages 746-747.

¹²⁹ *Id.* at page 747.

obtained from the state to pay the notice and agenda costs at issue.¹³⁰ In this case, there is no expressed legislative intent or requirement that school districts use Title I funds on STAR.

In comments at the May 26, 2005 Commission hearing, LAO opined that the districts should be required to use federal funds for requirements that arise under federal law, but not for those that go beyond federal law. At the same hearing, DOF stated that Title I funds are contingent on the state complying with federal NCLB requirements, so that the federal funds, which are dedicated to assessments and cannot be used for other purposes, should be considered as offsets.¹³¹

The Commission disagrees. If the state receives Title I funds earmarked for testing, that would be considered an offset, but there is no evidence in the record of the amount of funds or any legal requirements on the funds. If schools were required to use Title I funds for STAR, as opposed to other uses for Title I funds, there must be legislative direction as to the requirement. DOF stated that it would submit further evidence of federal assessment funds that are available for local use.¹³²

In comments submitted June 9, 2005, DOF quotes the following language from NCLB: "For any State desiring to receive a grant under this part, the State education agency shall submit to the Secretary a plan ... that satisfies the requirements of this section"¹³³ DOF states that this requires states to establish a single statewide assessment and accountability system for all public school pupils, and requires each state accountability system to be based on academic standards and academic assessments, and requires each state to demonstrate what constitutes adequate yearly progress based on the academic assessments.¹³⁴ DOF also points to the section of NCLB that appropriates funds "For the purpose of carrying out part A of this subchapter."¹³⁵ Part A contains the requirements for standards and assessments. DOF concludes that "Title I funds are clearly provided of school districts to utilize for the STAR program, which is the central element of the state's assessment and accountability system used to satisfy the federal requirements under NCLB."

Although the Commission agrees that Title I funds are used for STAR, Title I funds are used by school districts for other purposes also. For example, Title I is used for NCLB's academic standards and accountability provisions,¹³⁶ for programs to build parental involvement,¹³⁷ and for programs to support ongoing training and professional development for teachers.¹³⁸ Again, the

¹³⁰ *Ibid.*

¹³¹ Commission on State Mandates, Public Hearing, Transcript of Proceedings, May 26, 2005, page 59.

¹³² *Ibid.*

¹³³ Title 20 United States Code section 6311 (a)(1).

¹³⁴ Title 20 United States Code section 6311.

¹³⁵ Title 20 United States Code section 6302 (a).

¹³⁶ Title 20 United States Code section 6311.

¹³⁷ Title 20 United States Code section 6318.

¹³⁸ Title 20 United States Code section 6319 (h).

Commission can find no requirement for Title I funds to be spent in academic assessments any more than in any of these other activities for which Title I funds are authorized. Thus, the Commission finds that Title I funds are not required to be used to offset administration of the CAT/6 exam.

Offsetting federal Title VI funds: DOF's June 2005 comments cite Title VI of NCLB, which states in part:

The Secretary shall make grants to States to enable the States – ... (1) to pay the costs of the development of the additional State assessments and standards ... (2) if a State has developed the assessments and standards required ... [under] this title, to administer those assessments or to carry out other activities ... related to ensuring that the State's schools and local educational agencies are held accountable for results, such as ... [enumerated activities].¹³⁹ [Emphasis added]

This language is broad enough (as to "other activities" related to accountability) to encompass the CAT/6 administration and make it eligible for Title VI funding, even though NCLB does not require the CAT/6 exam.

DOF states that this Title VI language supports its assertion that school districts are provided federal Title VI funds for the STAR program. DOF also provides the following language from the 2004 State Budget Act that contains an \$8.5 million appropriation of federal Title VI funds for the STAR program (in schedule 2):

Funds provided in Schedules (2), (3), (5.5), and (7) shall first be used to offset any state mandated reimbursable cost that otherwise may be claimed through the state mandates reimbursement process for the Standardized Testing and Reporting Program, the California High School Exit Exam, the California English Language Development Test, and the California Alternate Performance Assessment, respectively. Local education agencies accepting funding from these schedules shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from these schedules.¹⁴⁰ [Emphasis added.]

Similar language for the Title VI appropriation to STAR appears in the 2005 State Budget Act.¹⁴¹

Based on this language, the Commission finds that federal Title VI funds must be used as offsetting revenue for the CAT/6 exam for years in which the Legislature requires it.¹⁴²

Therefore, the Commission finds that in fiscal years 2004-2005, and 2005-2006 (and any other fiscal year in which they are legally required to do so), school districts are required to "reduce

¹³⁹ Title 20 United States Code section 7301 (2).

¹⁴⁰ Statutes 2004, chapter 208, Item 6110-113-0890, Schedule 2, Provision 11.

¹⁴¹ Statutes 2005, chapter 38, Item 6110-113-0890, Schedules 4, 7 and 10, Provision 10.

¹⁴² Title 20 United States Code section 7301 (2) states that the Title VI grants are "to pay the costs of the development of additional State assessments and standards required by section 6311 (b) of this title ... and (2) ... to administer those assessments... ."

their estimated and actual mandate reimbursement claims by the amount of funding provided to them” from state and federal Title VI funding appropriated in the budget act.

DOF, in its July 2005 comments, argues that this conclusion should be retroactive to all previously submitted claims.

The Commission disagrees, as there is nothing in the record to indicate legislative intent that federal Title VI funds or state funds are required to offset mandated activities for the STAR program from 1997 to 2003, as DOF urges. As indicated from the discussion above of the *McClung* case regarding whether the Commission’s decision should be retroactive, the Commission cannot retroactively apply budget act provisions without indication of legislative intent. As discussed above, lack of an appropriation (i.e., legislative inaction) is not evidence of this intent.¹⁴³ The Legislature would have to expressly intend for federal Title VI funds or state funds to be used for mandated STAR activities prior to July 1, 2004, especially since the annual nature of the budget act affords the regular opportunity to do so.

However, because there is no information in the record as to the cost of administering the CAT/6 exam, the Commission makes no finding as to whether the Budget Act “includes additional revenue that was specifically intended to fund the costs of the state mandate *in an amount sufficient to fund the cost of the state mandate.*”¹⁴⁴ [Emphasis added.]

CONCLUSION

The Commission finds, effective July 1, 2004, that administering the CAT/6 exam in grades 3 and 7 imposes a reimbursable state mandate on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556, for all activities listed in the STAR Statement of Decision (97-TC-23)¹⁴⁵ except for those that are federally-mandated (bullets 4-7) or no longer required (bullets 12-16). The changes to reimbursable activities from the Commission’s original (August 2000) Statement of Decision are noted in ~~strikeout~~ and underline as follows:

1. ~~Administration of the STAR Program tests~~ CAT/6 (or a successor national norm-referenced test) to all pupils in ~~grades 2 through 11, inclusive 3 and 7.~~ (Ed. Code, §§ 60640, subds. (b), (c), 60641, subd. (a); Cal. Code Regs., tit. 5, §§ 851, 852, subd. (b), 853, and 855.) Costs associated with teacher time to administer the test are not reimbursable.
2. Designation of a STAR Program district coordinator. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.) This would only be reimbursable to the extent it applies to the CAT/6.
3. Designation of a STAR Program test site coordinator at each test site. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.) This would only be reimbursable to the extent it applies to the CAT/6.

¹⁴³ *Quinn v. State of California, supra*, 15 Cal. 3d 162, 175.

¹⁴⁴ Government Code section 17556, subdivision (e).

¹⁴⁵ See Exhibit A, page 383.

4. ~~Administration of an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given. Only reimbursable to the extent such tests are available. (Ed. Code, § 60640, subd. (g); Cal. Code Regs., tit. 5, § 851, subd. (a).) Costs associated with teacher time to administer the test are not reimbursable.~~
5. ~~Exemption from testing for pupils if the pupil's individualized education program has an exemption provision. (Ed. Code, § 60640, subds. (e), (j); Cal. Code Regs., tit. 5, § 852, subd. (b).)~~
6. ~~Determination of the appropriate grade level test for each pupil in a special education program. (Cal. Code Regs., tit. 5, § 852, subd. (b).)~~
7. ~~Provision of appropriate testing adaptation or accommodations to pupils in special education programs. (Cal. Code Regs., tit. 5, § 852, subd. (b).)~~
8. ~~Inclusion of STAR Program CAT/6 test results in each pupil's record of accomplishment. (Ed. Code, §§ 60607, subd. (a), 60641, subd. (a).)~~
9. ~~Reporting of individual STAR Program CAT/6 (or successor national norm referenced test) test results in writing to each pupil's parent or guardian and to the pupil's school and teachers. (Ed. Code, § 60641, subds. (b) and (c); Cal. Code Regs., tit. 5, § 863.)¹⁴⁶~~
10. ~~Reporting of district-wide, school-level, and class-level CAT/6 test results to the school district's governing board or county office of education. (Ed. Code, § 60641, subd. (d).¹⁴⁷ Cal. Code Regs., tit. 5, § 864.)~~
11. ~~Submission of a report on the STAR Program CAT/6 test to the Superintendent of Public Instruction. (Ed. Code, § 60640, subd. (j); Cal. Code Regs., tit. 5, § 862.)~~
12. ~~Contracting with a test publisher selected by the State Board of Education using an agreement approved by the State Board of Education. (Ed. Code, § 60643, subds. (a)(2) and (e); Cal. Code Regs., tit. 5, §§ 860, 873.) This activity is limited to completing the agreement approved by the State Board of Education. Modification of the approved agreement by school districts to include any additional materials or services pursuant to Education Code section 60643, subdivision (e)(12) is not reimbursable.~~
13. ~~Payment of sales tax to the publisher. (Cal. Code Regs., tit. 5, § 856.)~~
14. ~~Completion of delivery schedule and order form. (Cal. Code Regs., tit. 5, § 874.)~~
15. ~~Provision to the test publisher of enrollment and test order data by grade level. (Cal. Code Regs., tit. 5, § 874.)~~
16. ~~Administration of the standard agreement pursuant to the State Department of Education's regulations. (Cal. Code Regs., tit. 5, §§ 856, 869, subd. (b), and 871.)~~
17. ~~Exemption of pupils from the STAR Program tests CAT/6 test upon request of their parent or guardian. (Ed. Code, §§ 60615, 60640, subd. (j); Cal. Code Regs., tit. 5, § 852, subd. (a).)~~

¹⁴⁶ Currently in Education Code section 60641, subdivision (a)(2).

¹⁴⁷ Currently in Education Code section 60641, subdivision (a)(3).

18. Submission to the State Department of Education whatever information the Department deems necessary to permit the Superintendent of Public Instruction to prepare a report analyzing, on a school-by-school basis, the results and test scores of the STAR Program CAT/6 test. (Ed. Code, § 60630, subd. (b); Cal. Code Regs., tit. 5, § 861.)
19. Training and review of the STAR Program CAT/6 test requirements as outlined in the test claim legislation and regulations by school district staff.
20. Implementation of procedures relating the administration of the STAR Program CAT/6 test.

The Commission also finds, effective July 1, 2004, the following:

- All state funds appropriated for STAR must be used to offset all activities associated with administration of the CAT/6 exam; and that in any fiscal year in which school districts are legally required to, they must, "reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them"¹⁴⁸ from appropriated state funds; and
- School districts are not required to use Title I funds to offset the activities in the STAR Statement of Decision (i.e., to administer the CAT/6); and
- All federal Title VI funds appropriated for STAR, in any fiscal year in which school districts are legally required to do so, must be used to offset all activities associated with administration of the CAT/6 exam, and that school districts must "reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them"¹⁴⁹ from appropriated federal Title VI funds.

¹⁴⁸ Statutes 2004, chapter 208, Item 6110-113-0001, Schedule 3, Provision 8. Statutes 2005, chapter 38, Item 6110-113-0001, Schedule 2, Provision 8.

¹⁴⁹ Statutes 2004, chapter 208, Item 6110-113-0890, Schedule 2, Provision 11. Statutes 2005, chapter 38, Item 6110-113-0890, Schedules 4, 7 and 10, Provision 10.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE RECONSIDERATION OF PRIOR
PARAMETERS AND GUIDELINES ON:

Education Code Sections 60607, subdivision (a),
60609, 60615, 60630, 60640, and 60641;

Statutes 1997, Chapter 828;

California Code of Regulations, Title 5,
Sections 851, 852, 853, 855, 857, 858, 859, 861,
862, 863, 864, 865, 867, and 868;

Directed by Statutes 2004, Chapter 216,
Section 34 (Sen. Bill No. 1108, eff. 8/11/04) and
Statutes 2004, Chapter 895, Section 19
(Assem. Bill No. 2855, eff. 1/1/05);

Effective July 1, 2004.

Nos. 05-PGA-03 (04-RL-9723-01)

National Norm-Referenced Achievement Test
(formerly *Standardized Testing and Reporting*)

ADOPTION OF PARAMETERS AND
GUIDELINES AMENDMENT PURSUANT TO
GOVERNMENT CODE SECTION 17557 AND
CALIFORNIA CODE OF REGULATIONS,
TITLE 2, SECTION 1183.2.

(Adopted on December 9, 2005)

AMENDED PARAMETERS AND GUIDELINES

On December 9, 2005, the Commission on State Mandates adopted the attached Parameters and Guidelines Amendment for the *National Norm-Referenced Achievement Test* program (formerly *Standardized Testing and Reporting*). The period of reimbursement for the activities in this parameters and guidelines amendment begins on July 1, 2004, as specified.

Date: December 13, 2005

Paula Higashi, Executive Director

PARAMETERS AND GUIDELINES AMENDMENT

Education Code Sections 60607, subdivision (a), 60609,
60615, 60630, 60640, and 60641

Statutes 1997, Chapter 828

California Code of Regulations, Title 5, Sections 851, 852, 853, 855,
857, 858, 859, 861, 862, 863, 864, 865, 867, and 868

National Norm-Referenced Achievement Test, 05-PGA-03
(formerly *Standardized Testing and Reporting (STAR), 04-RL-9723-01*)

I. SUMMARY OF THE MANDATE

On August 24, 2000, the Commission on State Mandates (Commission), adopted a Statement of Decision finding that the test claim legislation and regulations impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution, and costs mandated by the state pursuant to Government Code section 17514. This decision was limited to a national norm-referenced achievement test and foreign language test enacted by Statutes 1997, chapter 828.

Statutes 2004, chapter 216, section 34 (Sen. Bill No. 1108, eff. Aug. 11, 2004) and Statutes 2004, chapter 895, section 19 (Assem. Bill No. 2855, eff. Jan. 1, 2005) directed the Commission to reconsider the prior final decision and parameters and guidelines for the STAR program. On July 28, 2005, the Commission found, effective July 1, 2004, that administering the California Achievement Tests, Sixth Edition Survey (CAT/6)¹ in grades 3 and 7 imposes a reimbursable state mandate on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556. The Commission found that all the other activities were either federally mandated, and thus not reimbursable, or no longer required.

II. ELIGIBLE CLAIMANTS

Any "school district," as defined in Government Code section 17519, except for community colleges, that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this parameters and guidelines amendment begins on July 1, 2004.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

¹ Reference to the CAT/6 herein would apply to any successor national norm-referenced achievement test selected by the California Department of Education.

1. A local agency may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A local agency may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating: "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

A. Training, Policies, and Procedures

1. Reviewing the requirements of the CAT/6 and conducting or attending training sessions. Increased costs for substitute teacher time during the school day or for teacher stipends to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement. However, the time the teacher spends to attend training sessions during that teacher's normal classroom hours is not reimbursable. (One-time activity per employee per test site.)
2. Developing internal policies, procedures, and forms to implement the CAT/6. (One-time activity for school districts created after July 1, 2004.)

The cost of travel for and materials and supplies used or distributed in training sessions is reimbursable under this activity.

B. Pretest and Posttest Coordination

1. Processing requests for exemption from the CAT/6 test filed by parents and guardians. (Ed. Code, §§ 60615, 60640, subd. (j); Cal. Code Regs., tit. 5, § 852, subd. (a).)
2. Designating a school district employee as a STAR program district coordinator. The school district shall notify the publisher of the identity and contact information for the STAR program district coordinator. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, & 868.) *This activity is reimbursable only to the extent that it applies to the CAT/6 test.*
 - o Beginning July 1, 2004, the STAR program district coordinator, or the school district superintendent or his or her designee, shall be available through August 15 to complete school district CAT/6 testing.
3. Designating a school district employee as a STAR program test site coordinator at each test site. (Cal. Code Regs., tit. 5, §§ 858, 859, 867, & 868.) *This activity is reimbursable only to the extent that it applies to the CAT/6.*
 - o Beginning July 1, 2004, the STAR program test site coordinator, or the site principal or his or her designee, shall be available to the STAR program district coordinator by telephone through August 15 for purposes of resolving discrepancies or inconsistencies in materials or errors in reports related to the CAT/6 test.

STAR Program District Coordinator

Reimbursable activities performed by the STAR program district coordinator are limited to (only as applied to the CAT/6):

1. Responding to correspondence and inquiries from the publisher in a timely manner and as provided in the publisher's instructions. (Cal. Code Regs., tit. 5, § 857, subd. (b).)
2. Determining school district and individual CAT/6 and test material needs in conjunction with the test publisher, using California Basic Education Data System (CBEDS) and current enrollment data. (Cal. Code Regs., tit. 5, § 857, subd. (b).)
3. Overseeing the acquisition and distribution of CAT/6 tests and test materials to individual schools and test sites. (Cal. Code Regs., tit. 5, §§ 857, subd. (b).)
4. Providing a signed receipt to the test publisher upon receipt of the CAT/6 testing materials. (Cal. Code Regs., tit. 5, § 865, subd. (a).)

5. Coordinating CAT/6 testing dates and make-up testing dates for the school district. (Cal. Code Regs., tit. 5, § 857, subd. (b).)
6. Maintaining security over CAT/6 test material and test data. (Cal. Code Regs., tit. 5, § 857, subd. (b).)
7. Overseeing the administration of the CAT/6 to eligible students. (Cal. Code Regs., tit. 5, § 857, subd. (b).)
8. Overseeing the collection and return of all CAT/6 test materials and tests to the publisher. (Cal. Code Regs., tit. 5, § 857, subd. (b).)
9. Resolving any discrepancies in the quantity of CAT/6 test and test materials received from and returned to the test publisher. (Cal. Code Regs., tit. 5, § 857, subd. (b), & 868.)
10. Certifying information with respect to the CAT/6 test to the California Department of Education within five (5) working days of completed school district testing. (Cal. Code Regs., tit. 5, § 857, subd. (c).)
11. Preparing, executing, and collecting STAR Test Security Agreements and Affidavits from every person who has access to tests and other test materials. (Cal. Code Regs., tit. 5, § 859.)

STAR Program Test Site Coordinator

Reimbursable activities performed by the STAR test site coordinator are limited to *(only as applied to the CAT/6)*:

1. Determining CAT/6 site test and test material needs. (Cal. Code Regs., tit. 5, § 858, subd. (b).)
2. Overseeing the acquisition and distribution of CAT/6 tests and test materials at the test site. (Cal. Code Regs., tit. 5, § 858, subd. (b).)
3. Cooperating with the STAR program district coordinator to provide the CAT/6 testing and make-up testing days for the site. (Cal. Code Regs., tit. 5, § 858, subd. (b).)
4. Maintaining security over CAT/6 test material and test data. (Cal. Code Regs., tit. 5, § 858, subd. (b).)
5. Overseeing the administration of the CAT/6 to eligible students at the test site. (Cal. Code Regs., tit. 5, § 858, subd. (b).)
6. Overseeing the collection and return of all CAT/6 testing materials and tests to the STAR program district coordinator. (Cal. Code Regs., tit. 5, § 858, subd. (b).)
7. Assisting the STAR program district coordinator and the test publisher in resolving any discrepancies in the CAT/6 test information and materials. (Cal. Code Regs., tit. 5, § 858, subd. (b).)
8. Certifying CAT/6 information to the STAR program district coordinator within three (3) working days of complete site testing. (Cal. Code Regs., tit. 5, § 858, subd. (b).)
9. Preparing, executing, and collecting STAR Test Security Agreements and Affidavits from every person who has access to tests and other test materials. (Cal. Code Regs., tit. 5, § 859.)

C. CAT/6 Test Administration

1. Conducting and monitoring the CAT/6 test to all pupils in grades 3 and 7. (Ed. Code, §§ 60640, subds. (b) & (c), 60641, subd. (a); Cal. Code Regs., tit. 5, §§ 851, 852, subd. (b), 853, & 855.)

Time spent by the classroom teacher during his or her normal classroom hours for test administration is not reimbursable.

D. Reporting and Record Keeping

1. Inclusion of CAT/6 test results in each pupil's record of accomplishment. (Ed. Code, §§ 60607, subd. (a), & 60641, subd. (a).)
2. Preparing and mailing reports of the individual results of the CAT/6 test to the pupils' parents or guardians, to the pupils' schools, and to the pupils' teachers. (Ed. Code, § 60641, subd. (a)(2); Cal. Code Regs., tit. 5, § 863.)
3. Reporting the results of the CAT/6 test to the school district governing board or county office of education on a districtwide and school-by-school basis. (Ed. Code, § 60641, subd. (a)(3); Cal. Code Regs., tit. 5, § 864.)
4. Submitting to the Superintendent of Public Instruction a report on the CAT/6 test. (Ed. Code, § 60640, subd. (j); Cal. Code Regs., tit. 5, § 862.)
5. Submitting to the California Department of Education whatever information the Department deems necessary to permit the Superintendent of Public Instruction to prepare a report analyzing, on a school-by-school basis, the results and test scores of the CAT/6 test. (Ed. Code, § 60630, subd. (b); Cal. Code Regs., tit. 5, § 861.)

The cost of materials and supplies used for reports (including, paper and envelopes), the cost of postage for mailing reports to parents, and the cost of computer programming used for reporting purposes is reimbursable under this activity.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed.

Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

In any fiscal year in which school districts are legally required to, they must reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from state and federal Title VI funds appropriated for STAR administration. School districts are not required to use Title I funds to offset administration of the CAT/6 exam.

VIII. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file

² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

reimbursement claims, based upon the revised parameters and guidelines adopted by the Commission.

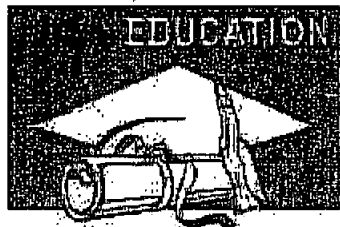
IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.



Legislative Analyst's Office

Analysis of the 2001-02 Budget Bill

School Accountability

The Public Schools Accountability Act (PSAA) (Chapter 3x, Statutes of 1999, [SB 1x, Alpert]) created a statewide school-level accountability system which (1) rewards schools for academic improvement, (2) provides external assistance for lower-performing schools, and (3) potentially sanctions schools which continue to fail after receiving external assistance. The Academic Performance Index (API) is the cornerstone of the PSAA. Its purpose is to measure a school's academic performance and the growth in performance over time.

Recently, the second annual set of API scores was released, allowing the first API growth scores to be calculated. Based on the API growth data, the State Department of Education (SDE) will be distributing \$677 million in rewards to schools, teachers, and other school personnel in the current year. Figure 1 shows the various rewards programs tied to API results.

Figure 1			
Rewards Programs Based On API ^a			
1999-00 Through 2001-02 (Proposition 98 Appropriations, In Millions)			
Program	1999-00	2000-01	2001-02 Proposed
Governor's Performance Awards	\$96 ^b	\$131 ^b	\$350
Teacher Performance Awards	—	350	—
Certificated Staff Performance Incentives	50	100	100
Totals	\$146	\$581	\$450
^a Academic Performance Index.			
^b The Public Schools Accountability Act appropriated \$96 million in the 1999-00 fiscal year. Those funds were carried over and are being used for rewards in 2000-01.			

As shown in Figure 2, the budget also proposes significant resources for various programs targeted at low-performing schools, based upon the API. As Figures 1 and 2 illustrate, the state is allocating a significant amount of money—almost \$1.7 billion in 1999-00 through 2001-02—for programs using this index. The box nearby provides some background information on how the API is calculated and how the measure is used.

Figure 2

Programs Targeted at Low-Performing Schools, Based on the API ^a		
<i>2000-01 and 2001-02 (In Millions)</i>		
Program	2000-01	2001-02
Immediate Intervention/Underperforming Schools Program	\$52.1 ^b	\$139.1 ^b
Teaching as a Priority	118.7	118.7
Governor's Teaching Fellows	3.5	17.5
National Board Certification	10.0	10.0
Cal Grant T	10.0	10.0
Assumption Program of Loans for Education (APLE)	5.6 ^c	14.6 ^c
Totals	\$199.9	\$309.9
^a Academic Performance Index.		
^b Includes both General Fund and federal funds.		
^c The APLE provided 8,500 warrants in 2000-01 with the same number proposed for 2001-02. There is no immediate cost to issuing a warrant, but the state will incur out-year costs of up to \$19,000 each. In the proposed budget, the state would commit to out-year costs of up to \$123.5 million for 8,500 warrants.		

How Does the Academic Performance Index Work?

An API Score

The State Department of Education (SDE) calculates a score ranging from 200 to 1,000 for each school based on its students' standardized test scores (Stanford-9). The calculation is relatively complex and involves combining student scores across the different subject areas. The SDE ranks the schools and provides a decile ranking (one to ten), which is generally used for its ease of understanding. A decile ranking of ten is best.

Subgroup Population API Score

The SDE performs a similar calculation for each "numerically significant" subgroup of students. These subgroups include: African American, American Indian, Asian, Filipino, Pacific Islander, white not Hispanic, Hispanic, and socioeconomic disadvantaged. Numerically significant means either (1) at least 30 pupils and at least 15 percent of a school's enrollment or (2) at least 100 students in a school.

Growth Target

Annually, a school receives a growth target for the next school year along with its API score. The State Board of Education set an interim statewide performance target of 800 points. Schools with API scores below 800 must close the gap between their current score and the state performance target by at least 5 percent to meet their growth target. For example, if a school's 1999 API score was 500, the school's growth target would be $(800 - 500) * 5 \text{ percent} = 15 \text{ points}$. Schools with API scores at the 800 point level or above must increase their scores by 1 point to meet their growth target.

Subgroup Growth Targets

Each numerically significant subgroup at a school has a growth target of 80 percent of the schoolwide growth target. In the example used above, the schoolwide growth target was 15 points. Under that example, each numerically significant subgroup at the school must improve by at least 80 percent of 15 points - thus, by at least 12 points to meet the target.

Reward Programs

Schools are eligible for rewards based on meeting their assigned annual growth targets for their API scores and subgroup API scores. The reward programs are described below.

Governor's Performance Awards	School Site Employee Performance Bonus (One-Time)	Certificated Staff Performance Incentives
Eligibility Requirements?		
<ul style="list-style-type: none"> • Meet school API growth target. • Meet subgroup targets. • Have 95 percent Stanford-9 participation in grades K-8 or 90 percent participation for grades 9-11. 	<ul style="list-style-type: none"> • Same as Governor's Performance Awards 	<ul style="list-style-type: none"> • Low-performing schools (below 50th percentile on API); ranked by highest API-growth rates. • Same subgroup and participation rate requirements as Governor's Performance Awards.
Who Receives the Funding?		
<ul style="list-style-type: none"> • School site councils decide uses. 	<ul style="list-style-type: none"> • Half decided by school site councils; other half distributed among all school site staff. 	<ul style="list-style-type: none"> • Certificated staff only. • 1,000 across state receive \$25,000 each. • 3,750 receive \$10,000 each.

		• 7,500 receive \$5,000 each.
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The API Is a Work in Progress

The state's accountability system is still a work in progress. The API is currently based on only one measure, namely the Stanford-9 test results. The Stanford-9 is an "off the shelf" student assessment produced by Harcourt Brace and administered to California students in grades 2 through 11. The PSAA requires that the API include at least five additional measures: graduation rates, student attendance rate, teacher attendance rate, Standards-Aligned Standardized Testing and Recording (STAR), and the High School Exit Exam (HSEE). The Legislature included this broad set of outcome measures to ensure that increases in the API were based upon real gains in achievement and not temporary fluctuations in a single measure.

The SDE has not included graduation rates, student attendance nor teacher attendance in the API because it is currently not able to collect accurate school-level data on these outcome measures. The SDE has not included Standards-Aligned STAR and HSEE results because the assessments are not yet fully operational. While California's current system is a long way from the full implementation, many efforts are under way to improve the quality of the information used in calculating a school's API (see shaded box on Improving the API).

Improving the API

Since the state rewards schools for their *growth* in academic performance index (API) scores, the State Department of Education (SDE) must be able to collect data on performance measures for two years before it can be included in the API measure. The timetable for possibly including additional measures in the API is as follows:

Measure to Include in API	Potential Availability
Standards-Aligned STAR	2002
High School Exit Exam	2003
Graduation rate	Unknown
Student attendance rate	Unknown
Teacher attendance rate	Unknown

Standards-Aligned Standardized Testing and Recording (STAR). As part of the spring 2001 STAR test, the SDE will administer four subject tests (math, language arts, science, and social science) aligned with California's content standards. Additionally, SDE will provide performance standards for the first time in spring 2001. A performance standard translates the results of a student's test into a scale ranging from mastery of the subject area

to below basic. Assuming there are no problems with the validity of the assessments or performance standards, results from the Standards-Aligned STAR could be included in the API as early as 2002.

High School Exit Exam (HSEE). Based upon the current State Board of Education plan, all 10th grade students will take the HSEE in spring 2002. Potentially, SDE could include the results from the spring 2002 and spring 2003 administrations in the 2003 API.

Graduation Rate, Student and Teacher Attendance Rate. The Public Schools Accountability Act required the Superintendent of Public Instruction (SPI) to report by September 1999 on the accuracy of the measures to be included in the API, and to recommend necessary actions to implement an accurate reporting system for these measures. The SPI's report recommended use of the California School Information Services to collect data on graduation rates and student and teacher attendance rates. The administration rejected the SPI proposal, and \$500,000 was included in the *2000-01 Budget Act* for the Office of the Secretary for Education (OSE) to conduct a study of data collection alternatives for expanding the number of measures in the API. According to OSE, it will release a Request for Proposal some time this spring for this study. The findings of the study will determine the timetable for including these measures in the API.

In addition to the measures described above, the Governor's budget provides \$5 million to create a longitudinal student assessment database. The main policy goal of this proposal is to enable the state to begin to construct "value-added" measures of student performance, the advantages of which we discuss at length in the "K-12 Databases" section of this chapter.

Problems With the Stanford-9

The Stanford-9 provides California schools with a score reflecting how students in California perform relative to a national norm created from the results of administering the same test to a nationally "representative" group of students. We see three major problems with the Stanford-9:

- The Stanford-9 is not aligned to California's academic content standards.
- Experts question whether Stanford-9 test scores for many of the state's English Language Learners (ELLs) are meaningful.
- The test questions do not change from one year to the next.

We discuss each of these problems in more detail below.

Stanford-9 Not Aligned to Standards. The current version of the API is solely dependent on the Stanford-9, an assessment tool that is not aligned to the state's academic content standards. The California Academic Content Standards adopted by the State Board of Education (SBE), define what the state wants students to learn in each grade and subject (see shaded box for actions related to the academic content standards). Since the Stanford-9 tests a different set of information than the content standards, the state is sending conflicting messages about what schools should be teaching. Should teachers and administrators focus instruction on areas covered by the Stanford-9? The state is offering bonuses that can exceed \$25,000 per individual for success measured by that test. Or should they teach what is expected under the academic content standards for which the state has invested \$1 billion for new textbooks, the Governor is proposing \$335 million for staff development, and upon which the

HSEE is based?

State Academic Content Standards

The California Assessment of Academic Achievement Act (Chapter 975, Statutes of 1995 [AB 265, Alpert]), required the State Board of Education (SBE) to adopt academically rigorous content standards in the five core curriculum areas—math, English-language arts, science, social science, and English language development. The standards provide a framework for what a student should learn in five core subject areas in each grade.

Since adoption of the standards, the state has taken several actions to emphasize the importance of the standards to schools and teachers.

- **Instructional Materials.** The Schiff-Bustamante Standards-Based Instructional Materials Program (Chapter 312, Statutes of 1998, AB 2041) is providing school districts with \$1 billion over four years to purchase instructional materials aligned with the academic content standards.
- **The Standardized Testing and Recording (STAR) Augmentation.** In 1998-99, the SBE added an augmentation to the STAR test in math and English-language arts, consisting of questions specifically aligned to state content standards. In the current year, the board will develop student performance standards around the STAR augmentation to determine which students have met basic, proficient, and advanced levels of performance.
- **High School Exit Exam (HSEE).** Chapter 1x, Statutes of 1999 (SB 2x, O'Connell), authorized the HSEE. This legislation requires the test to be aligned to the state academic standards.
- **Teacher Staff Development.** The Governor's budget proposes \$490 million—including a \$335 million expansion—for teacher staff development that trains teachers in using state standards.
- **Other Actions to Emphasize Standards.** The state also has aligned the Golden State Exams, and developed sample curriculum for each subject based on the standards.

How Meaningful Are Stanford-9 Scores for ELLs? The second problem with the Stanford-9 is the validity of Stanford-9 scores for many ELL students. The advisory committee of experts appointed by the SBE for development of the API advised the board to exclude Stanford-9 test scores for ELL students from the API calculation. Their recommendation was based upon analysis of Stanford-9 test results for ELL students. A school may be doing an excellent job of helping a student transition to English fluency, but that student's Stanford-9 score may not reflect the improvements the student has made. The SBE did not follow the recommendation. Although not implemented by the SBE, the advisory committee's recommendation puts into question the comparability of API scores between schools with many ELL students and schools with few or no ELL students.

Test Questions Don't Change From Year to Year. The final problem with the Stanford-9 is that the set of actual questions on the test does not change from year to year. Particularly with a high stakes test, it is

important to vary test questions from year to year in order to minimize possibilities for literal "teaching to the test" and outright cheating. The SDE did not stipulate the rotation of questions from year to year in its contract with the publisher of the Stanford-9. So for the five-year duration of the contract—which expires after the administration of the spring 2002 test—the test given in each grade is exactly the same in each of its administrations. Teachers know the exact questions that their students will be asked and upon which their school will be evaluated. Providing \$677 million in rewards based solely upon this test creates incentives for schools to misuse their knowledge of Stanford-9 test questions.

Reduce Funding for Governor's Performance Awards

We recommend the Legislature reduce the funding proposed for the Governor's Performance Awards by \$219 million until the Academic Performance Index is based upon a broader set of reliable performance indicators. (Reduce Item 6110-123-0001 by \$219 million.)

Funding Too High for Untested Measure. As discussed above, the API is a work in progress and will take several years to develop fully. The administration is making progress on increasing the number of outcome measures used to calculate the API, and is planning to switch to a value-added approach, which will improve the use of the existing achievement measure. Until then, however, there are numerous problems with the Stanford-9 being used as the sole measure for the API as discussed above.

Consequently, we believe it is not only premature to attach such high stakes (and such large funding amounts) to the API but it may be counterproductive to improving learning outcomes for California's public school students by redirecting the focus of teaching from the state's broad content standards to the set of material tested on the Stanford-9. Once the Governor and SDE have been able to develop the data collection systems and assessment tools needed to support a quality accountability system, the Legislature then should determine the appropriate level of funding needed for school incentives. Accordingly, we recommend reducing funding for the Governor's Performance Awards to \$131 million, the same level appropriated in the 2000-01 Budget Act. This recommendation would create an ongoing \$219 million of Proposition 98 savings which the Legislature could direct more effectively to other K-12 education needs.
(Reduce Item 6110-123-0001 by \$219 million.)

Inadequate Funding to Evaluate PSAA

We recommend the Legislature (1) increase funding to the State Department of Education (SDE) to contract for an evaluation of the Public Schools Accountability Act from \$250,000 to \$500,000, and (2) reappropriate \$250,000 included in Item 6110-001-0001 of the 2000-01 Budget Act for the same purpose. We further recommend SDE report at budget hearings on the possibility of using federal funds for this evaluation.

The PSAA requires SDE to contract for an external evaluation of the PSAA—including the Governor's Performance Awards program, Immediate Intervention/Underperforming Schools Program (II/USP), and the impact of these programs on student achievement. The 2000-01 Budget Act provided SDE with \$250,000 for the evaluation. In the summer of 2000, the SDE released a Request for Proposal for the evaluation but did not receive a single qualified bid. As a result, the state has not begun to evaluate this major program. The Governor proposes an additional \$250,000 from the General Fund (non-Proposition 98) for the PSAA evaluation this year.

We believe that the \$500,000 that would be appropriated between the two budgets is still inadequate given the complexity of issues that the evaluation must address. For example, under this evaluation, the

^d Some schools in Cohort 2 may apply to be funded with federal funds.

In their first year in the program, participating schools are provided \$50,000 planning grants to develop a comprehensive school reform plan. As part of the planning phase, the schools must hire qualified external evaluators to assist in developing the reform plans. Once a school's plan is approved by the SBE, the school receives annual implementation grants of up to \$200 per enrolled student. Schools will receive the implementation grants for two years, and may be granted a third year of funding by the SBE if they continue to struggle to meet their API growth targets. The SBE can decide to impose sanctions after either the second or third year of funding for schools that continue to struggle. The first cohort will reach the end of their two-year implementation grant in July 2002 and potentially could face sanctions as early as fall of 2002.

Program Eligibility Has Changed. Any school whose average student score was below the 50th percentile on the Stanford-9 was eligible to participate in the first II/USP cohort in 1999-00. Under the original criteria, over half of the schools in the state were eligible to apply for the program, and 1,419 schools applied for the 430 slots available. Chapter 695, Statutes of 2000 (SB 1552, Alpert), amended the PSAA to change the eligibility criteria to be based upon the API. As revised by Chapter 695, schools in the lower half of the API which did not meet their API growth targets were eligible. Based upon 1999-00 API scores, 938 schools were eligible in 2000. Of the 938 schools, 532 applied for the 430 slots available.

Legislature Should Broaden II/USP Eligibility to Include Lowest-Achieving Schools. The policy change of Chapter 695 to focus on schools not making their growth targets makes sense to ensure that schools that are struggling to improve receive additional resources. However, only focusing on schools not achieving their growth targets may be too narrow. For example, under the eligibility criteria in Chapter 695, the school with the lowest API score in the entire state is not eligible for this immediate assistance program since it reached its annual growth target. Even though such a low-performing school is showing signs of improvement, we believe that its improvement could potentially be expedited by participation in this program. Such a low-performing school is likely to be in greater need of external assistance than a school in the fifth decile (close to the state average) which did not meet its annual API growth target. Accordingly, we recommend the Legislature expand the eligibility for the II/USP program to all schools in the lowest two deciles of API ranking.

Extra Federal Funds Available for II/USP

We recommend the State Department of Education report at budget hearings on the extent that General Fund costs for the Immediate Intervention/Underperforming Schools Program can be reduced by the use of federal funds.

California has received \$92 million in federal funding since 1998-99 which can only be used for II/USP implementation grants (see Figure 5). As mentioned above, 78 schools have received federal funds for II/USP. To date, SDE has provided \$32 million in federal funds to those schools. An additional \$16.3 million is proposed for those schools in the budget year. After funding these 78 schools, SDE will have an additional \$44 million remaining to provide implementation grants to new schools.

Figure 5
Federal Funding for II/USP^a
(In Millions)

	Federal Appropriation	Spending
1998-99	\$16.2	—
1999-00	16.1	\$15.2
2000-01	26.5	16.3
2001-02	32.9	16.3
Totals	\$91.9	\$47.9
^a Immediate Intervention/Underperforming Schools Program.		

The 430 schools in the second cohort will have the option of participating in II/USP using either General Fund monies or the available federal funding. Schools in the second cohort have until May 15, 2001 to apply for federal funds for their II/USP implementation grants. Federal funding has the following trade-offs:

- **Guaranteed Funding Level.** Federally funded schools receive a guaranteed \$200 per student for three years, while state-funded schools have no per student guarantee and only two guaranteed years of funding.
- **More Rigorous Requirements.** Federally funded schools apply on a competitive basis, and must complete a more rigorous planning, reporting, and evaluation process.

The SDE has provided a rough estimate of the number of schools that it expects to receive federal funds. We estimate that \$10 million in federal funds will be used to fund schools selected by SDE to receive federal funds, leaving approximately \$34 million in federal funds available for future II/USP schools. Such low usage of federal funds for II/USP would result in greater demand for state funds for II/USP, which we discuss below. We recommend the SDE report at budget hearings on steps the Legislature can take to increase the usage of available federal funds to pay the costs of II/USP.

General Fund Appropriation for II/USP May Be Low

The amount provided in the Governor's budget for the Immediate Intervention/Underperforming Schools Program is inadequate to maintain the current-year per-pupil grant level.

In 2000-01, schools in the first cohort received \$168 per-pupil implementation grants. The Department of Finance informs us that the Governor did not have a target per-pupil implementation grant for II/USP in developing the 2001-02 budget. The budget provides \$92 million for implementation grants. Based upon our estimate of federal fund usage for II/USP, we estimate that the per-pupil funding level provided in the Governor's budget would result in implementation grants of \$146 per pupil.

Figure 6 shows the options that the Legislature has (based upon our cost estimates) if it wants to (1) maintain the Governor's proposed level, (2) maintain last year's per-pupil grant amount of \$168 per pupil, or (3) provide schools the maximum statutory grant amount of \$200 per pupil. If the Legislature wants to either maintain the current-year's per-pupil funding level or increase the per-pupil funding level to the maximum, it would require additional General Fund support of \$15 million or \$36 million, respectively.

[Return to Education Table of Contents, 2001-02 Budget Analysis](#)



API Description

Overview of the Academic Performance Index (API).

What is the Academic Performance Index?

The Academic Performance Index (API) is the cornerstone of California's Public Schools Accountability Act of 1999 (PSAA). The purpose of the API is to measure the academic performance and growth of schools. It is a numeric index (or scale) that ranges from a low of 200 to a high of 1000. A school's score on the API is an indicator of a school's performance level. The statewide API performance target for all schools is 800. A school's growth is measured by how well it is moving toward or past that goal. A school's API Base is subtracted from its API Growth to determine how much the school improved in a year.

API Reporting Cycle

APIs are reported according to their API reporting cycle. An API reporting cycle consists of two components: (1) base information and (2) growth information. In a reporting cycle, a Base API is compared to a corresponding Growth API in order to determine how much a school's API grew from one year to the next (referred to as API growth). Generally, base reports are provided after the first of the calendar year, and growth reports are provided each August. These reports are based on APIs that are calculated in exactly the same fashion with the same indicators but using test results from two different years.

Performance Indicators

The API score summarizes the results of various indicators (i.e., statewide tests used in calculating the API). The 2006 Base API uses 2006 statewide test results and the 2007 Growth API uses 2007 statewide test results. Indicators used in calculating the 2006-07 API reporting cycle include:

Standardized Testing and Reporting (STAR) Program

- California Standards Tests (CSTs)
 - ◆ English-language arts (ELA), grades two through eleven, including a writing assessment at grades four and seven
 - ◆ Mathematics, grades two through eleven
 - ◆ History-social science, grades eight, ten, and eleven
 - ◆ Science, grades five, eight, and nine through eleven
- California Alternate Performance Assessment (CAPA)
 - ◆ ELA, grades two through eleven
 - ◆ Mathematics, grades two through eleven
- Norm-referenced test (NRT)
 - ◆ California Achievement Test, Sixth Edition Survey (CAT/6 Survey) in reading, language, spelling, and mathematics, grades three and seven

California High School Exit Examination (CAHSEE)

- English-language arts and mathematics, grade ten (and grades eleven and twelve if the student passed the test)

Test Weights

Statewide test results are incorporated into the API calculation according to the amount of weight, or emphasis, given to each test. Each school's content area weights are determined based on test weights established by the State Board of Education (SBE) and on the number of valid test scores in each content area and grade level at a school. API calculations result in content area weights that may be slightly different for each individual school.

The following tables show the test weights used in the 2006 Base API calculations for the California Standards Tests

(CSTs), California Achievement Test, Sixth Edition Survey (CAT/6 Survey), and California High School Exit Examination (CAHSEE). Grades 11 and 12 of the CAHSEE are counted in the API only if the student passed. The test weights shown in these tables do not reflect the content area weights for a school, which will vary based upon these weights and the number of valid test scores in each content area.

**Test Weights
Grade Levels Two Through Eight**

Content Area	2006-07 API Test Weights
CST in English-Language Arts, Grades 2-8	0.48
CST in Mathematics, Grades 2-8	0.32
CST in Science, Grade 5	0.20
CST in History-Social Science, Grade 8	0.20
CAT/6 Survey in Reading, Grades 3 and 7	0.06
CAT/6 Survey in Language, Grades 3 and 7	0.03
CAT/6 Survey in Spelling, Grades 3 and 7	0.03
CAT/6 Survey in Mathematics, Grades 3 and 7	0.08
CST in Science, Grade 8	0.20
Assignment of 200, CST in Mathematics, Grade 8	0.10

Note: The Assignment of 200 weight is assigned as scores for students who did not take the CST in mathematics, grade eight.

**Test Weights
Grade Levels Nine Through Eleven**

Content Area	2006-07 API Test Weights
CST in English-Language Arts, Grades 9-11	0.30
CST in Mathematics, Grades 9-11	0.20
CST in Science, Grades 9-11	0.22
CST in History-Social Science, Grades 10-11	0.23
CAHSEE English-Language Arts, Grades 10-12	0.30
CAHSEE Mathematics, Grades 10-12	0.30
CST in Life Science, Grade 10	0.10
Assignment of 200, CST in Mathematics, Grades 9-11	0.10
Assignment of 200, CST in Science, Grades 9-11	0.05

Note: The Assignment of 200 weights are assigned as scores for students who did not take the CST in mathematics, grades nine through eleven, or the CST in science, grades nine through eleven.

Calculation

The API calculation method determines the API as the weighted average of student scores across content areas and tests results within the school. To calculate the API, individual student scores from each indicator are combined into a single number (the API) to represent the performance of a school. For the CSTs, the standards-based performance level (Advanced, Proficient, Basic, Below Basic, or Far Below Basic) for each student tested is used. Performance levels on the CAPA also are included in the API and treated in the same way as CST performance levels. For the CAT/6 Survey (a norm-referenced test), the national percentile rank (NPR) for each student tested is used to make the calculation. For the CAHSEE, a level of pass or not pass is used. A scale score of at least 350 on the English-language arts part or mathematics part of the CAHSEE is considered passing for the API. Each student's test result is assigned a

performance level weighting factor of 200, 500, 700, 875, or 1000 based upon the level of the test score, as shown in the following table.

API Performance Level Weighting Factors

CST or CAPA Performance Levels	CAT/6 Survey Performance Bands	CAHSEE Score	API Performance Level Weighting Factors
Advanced	80-99th NPR	Pass	1000
Proficient	60-79th NPR	N/A	875
Basic	40-59th NPR	N/A	700
Below Basic	20-39th NPR	N/A	500
Far Below Basic	1-19th NPR	No Pass	200

Each student's performance level weighting factor is multiplied by a test weight and summed for all content areas for the school. This sum is divided by the sum of the test weights for the school to produce a single number between 200 and 1000, which is the API for a school. The API is calculated separately for grades two through six, seven through eight, and nine through eleven.

Statewide Performance Target

The PSAA requires that the SBE adopt a statewide API performance target upon approval of state performance standards. The SBE has adopted a statewide API performance target of 800. This target reflects a level of performance that schools should strive to meet.

Growth Targets

Schools must meet their annual schoolwide API growth target as well as API growth targets for each numerically significant ethnic/racial, socioeconomically disadvantaged, English learner, and students with disabilities subgroup at the school.

If the school's (or subgroup's) Base API is between 200 and 690, the growth target is 5 percent of the difference between the school's (or subgroup's) Base API and the statewide performance target of 800. If the school's (or subgroup's) Base API is between 691 and 795, the growth target is a gain of five points. If the school's (or subgroup's) Base API is between 796 and 799, the growth target is the following:

- API of 796 - a gain of four points
- API of 797 - a gain of three points
- API of 798 - a gain of two points
- API of 799 - a gain of one point

If the school's (or subgroup's) Base API is 800 or more, the school (or subgroup) must maintain an API of at least 800.

Subgroups

A "numerically significant" subgroup is defined as having at least 100 or more students with valid STAR Program scores or 50 or more students with valid STAR Program scores who make up at least 15 percent of the total valid STAR Program scores. Subgroup API information is calculated for the following student categories:

- African American or Black (not of Hispanic origin)
- American Indian or Alaska Native
- Asian
- Filipino
- Hispanic or Latino
- Pacific Islander
- White (not of Hispanic origin)
- Socioeconomically disadvantaged
- English Learners
- Students with Disabilities

These subgroups are defined based upon demographic data from the STAR Program test administration.

- "Socioeconomically disadvantaged" is defined as a student whose parents both have not received a high school diploma OR a student who participates in the free or reduced-price lunch program (also known as the National School Lunch Program).
- "English learner" is defined as an English learner or as a reclassified-fluent-English-proficient (RFEP) student who has not scored at the proficient level or above on the CST in ELA for three years after being reclassified.
- "Student with disabilities" is defined as a student who receives special education services and has a valid disability code.

Statewide and Similar Schools Ranks

API decile ranks are listed on the Base API reports. Schools are ranked in ten categories of equal size, called deciles, from one (lowest) to ten (highest). There are two types of API ranks: statewide rank and similar schools rank. The statewide rank compares a school to other schools of the same type statewide. The similar schools rank compares a school to 100 other schools of the same type and similar demographic characteristics.

To calculate the statewide ranks, schools' API scores are first sorted separately within school type: elementary, middle, and high schools. For each of the three categories, school's API scores are organized from lowest to highest statewide. This list of school APIs is divided into ten groups of equal size and numbered from one (lowest) to ten (highest). A school's statewide rank is the decile where that school's API occurs compared to other schools statewide.

To calculate the similar schools ranks, schools are separated by school type. Next, a School Characteristics Index (SCI) is determined for each school. A comparison group of 100 similar schools is formed based on similar SCIs. The APIs of the comparison group is organized into deciles from one (lowest) to ten (highest). A school's similar schools rank is the decile where that school's API occurs compared to the 100 other schools in the comparison group.

APIs for Local Educational Agencies

The PSAA established the API for school level accountability. However, local educational agencies (LEAs) began receiving an API Report as a result of policies established to meet federal No Child Left Behind (NCLB) requirements. An LEA can be a school district or a county office of education. LEAs do not have state-required growth targets and do not receive ranks.

APIs for Other Types of Schools

Schools in the Alternative Schools Accountability Model (ASAM) receive an API for federal NCLB purposes only. The ASAM provides state accountability for alternative schools serving highly mobile, high risk students. These schools include community day, continuation, opportunity, county community, county court, California Youth Authority, and other alternative schools that meet stringent criteria set by the SBE. The ASAM is a multiple-indicator system that includes performance and pre- and post-assessment indicators approved by the SBE and state assessment results as summarized in the API. ASAM schools select indicators and report data at the end of each school year. ASAM schools do not have growth targets and do not receive ranks.

Small schools are defined as having between 11 and 99 valid STAR scores for API purposes. Small schools receive an API with an asterisk to denote the greater statistical uncertainty of an API based on small numbers of student results. These small schools are not included in calculating ranks for non-small schools but receive asterisked statewide ranks to indicate the decile rank into which their APIs would have fallen if they had been included in the ranking system. Schools with asterisked APIs do not receive similar schools ranks.

Special education schools receive an API but do not receive API ranks.

How the API is Used

API data are used to meet state and federal requirements. Under state PSAA requirements, if a school meets participation and growth awards criteria, it may be eligible to become a California Distinguished School or NCLB-Blue Ribbon School. If a school does not meet its growth targets and is ranked in the lower part of the statewide distribution of the Base API, it may be identified for participation in an intervention program. Under federal NCLB requirements, a school must meet Adequate Yearly Progress (AYP) requirements, which include meeting additional API requirements.

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H

Marcus & Millichap Real Estate Investment
Brokerage Co. v. Woodman Investment Group
Cal.App. 2 Dist., 2005.

Court of Appeal, Second District, Division 7,
California.

MARCUS & MILLICHAP REAL ESTATE
INVESTMENT BROKERAGE CO., et al., Plaintiffs
and Appellants,

v.

WOODMAN INVESTMENT GROUP, et al.,
Defendants and Respondents.

No. B174696.

May 17, 2005.

Background: Real estate brokerage company petitioned for confirmation of arbitration award in its favor in commission dispute with investment group and its managing partner, and group and partner cross-petitioned to vacate award. After trial court granted cross-petition and company did not seek rehearing, group and partner sought attorney fees and costs. The Superior Court, County of Los Angeles, No. BS085380, Soussan G. Bruguera, J., granted request. Company appealed award of fees and costs, and trial court subsequently issued order of clarification that arbitration should be reheard.

Holding: The Court of Appeal, Perluss, P.J., held that investment group and its managing partner were entitled to fees and costs for postarbitration judicial proceedings.

Affirmed.
West Headnotes

[1] Alternative Dispute Resolution 25T  364

25T Alternative Dispute Resolution

25TII Arbitration

25TII(H) Review, Conclusiveness, and
Enforcement of Award

25Tk360 Impeachment or Vacation

25Tk364 k. Costs. Most Cited Cases

(Formerly 33k42 Arbitration)

Investment group and its managing partner were
entitled to attorney fees and costs for successfully

obtaining, in postarbitration judicial proceeding, vacation of arbitration award in favor of real estate brokerage company in commission dispute, where company did not seek rehearing of arbitration, even though trial court belatedly issued order of clarification that arbitration should be reheard; group and partner were "prevailing parties" as they obtained relief they sought, and order vacating award was "final order" in absence of company's request for rehearing or appeal. West's Ann.Cal.C.C.P. § § 1293.2, 1294(c).

See 6 *Witkin, Cal. Procedure (4th ed. 1997) Proceedings Without Trial, § 517; Knight et al., Cal. Practice Guide: Alternative Dispute Resolution (The Rutter Group 2004) ¶ ¶ 5:434.2 (CAADR Ch. 5-I), 5:539 (CAADR Ch. 5-J); Cal. Jur. 3d, Arbitration and Award, § 65; Cal. Civil Practice (Thomson/West 2003) Procedure, § 26:55.*

[2] Alternative Dispute Resolution 25T  364

25T Alternative Dispute Resolution

25TII Arbitration

25TII(H) Review, Conclusiveness, and
Enforcement of Award

25Tk360 Impeachment or Vacation

25Tk364 k. Costs. Most Cited Cases

(Formerly 33k42 Arbitration)

Award of costs, including attorney fees when authorized by contract, is mandatory in judicial proceeding to confirm, correct, or vacate an arbitration award. West's Ann.Cal.C.C.P. § 1293.2.

[3] Alternative Dispute Resolution 25T  368

25T Alternative Dispute Resolution

25TII Arbitration

25TII(H) Review, Conclusiveness, and
Enforcement of Award

25Tk366 Appeal or Other Proceedings for
Review

25Tk368 k. Decisions Reviewable. Most
Cited Cases

(Formerly 33k73.2 Arbitration)

While an order vacating an arbitration award and ordering rehearing is an intermediate ruling, a similar order vacating an award without ordering rehearing is final for purpose of appeal. West's Ann.Cal.C.C.P. § 1294(c).

[4] Alternative Dispute Resolution 25T  364

(Cite as: 129 Cal.App.4th 508)

25T Alternative Dispute Resolution

25TII Arbitration

25TII(H) Review, Conclusiveness, and Enforcement of Award

25Tk360 Impeachment or Vacation

25Tk364 k. Costs. Most Cited Cases

(Formerly 33k42 Arbitration)

Under listing agreement authorizing award of attorney fees in "any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto," investment group and its managing partner, who successfully sought in postarbitration judicial proceedings the vacation of arbitrator's award in favor of real estate brokerage company in commission dispute, were entitled to attorney fees, even though underlying contract claim was not yet resolved. West's Ann.Cal.C.C.P. § 1293.2.

****585** Overland Borenstein Scheper & Kim, Diann H. Kim, Wendy O. Clendening, and Kathryn E. White, Los Angeles, for Plaintiffs and Appellants. Alschuler Grossman Stein & Kahan, Daniel Alberstone, and David B. Dreyfus, Santa Monica, for Defendants and Respondents. PERLUSS, P.J.

*510 The trial court denied a petition to confirm an arbitration award filed by Marcus & Millichap Real Estate Investment Brokerage Company, Tony Azzi and John P. Walsh (collectively Marcus & Millichap) and granted the cross-petition to vacate the award filed by Woodman Investment Group, LLC (Woodman) and Eli Sasson, Woodman's managing partner, on the ground the arbitrator exceeded her authorized powers and the award could not be corrected without affecting the merits of the decision. (Code Civ. Proc., § 1286.2, subd. (a)(4).)^{FN1} The court did not issue an order for rehearing pursuant to section 1287, and no appeal was taken from the order vacating the arbitration award. The trial court then awarded attorney fees and costs pursuant to section 1293.2 to Woodman and Sasson as the prevailing parties in the postarbitration judicial proceedings. Marcus & Millichap appeals the award of fees and costs. We affirm.

FN1. Statutory references are to the Code of Civil Procedure.

1. The Arbitration

Marcus & Millichap filed a demand for arbitration in May 2002 for payment of a commission pursuant to a listing agreement with Woodman dated April 19, 2001 covering a shopping center located on Woodman Avenue in Van Nuys, California. Woodman filed a cross-complaint in the arbitration proceeding for breach of fiduciary duty and constructive fraud.

*511 In August 2003 the arbitrator issued an award (approximately \$300,000, including \$70,000 for attorney fees)^{FN2} in favor of Marcus & Millichap against Woodman and Sasson. The arbitrator found Woodman liable on the parties' agreement and Sasson liable as Woodman's alter ego. Woodman's claims against Marcus & Millichap were denied.

FN2. The parties' agreement provides, "ATTORNEYS' FEES: In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, including Agent, the prevailing party shall be entitled to recover its costs, including costs of arbitration, and reasonable attorneys' fees in addition to any other relief to which such party may be entitled."

2. Postarbitration Judicial Proceedings

Marcus & Millichap initiated a superior court action pursuant to section 1288, petitioning the court for confirmation of the arbitration award. Woodman and Sasson filed a response to the petition, as well as their own cross-petition to vacate the arbitration award on the ground the arbitrator had exceeded her authorized powers and the award could not be corrected without affecting the merits of the decision. Woodman and Sasson argued, because Sasson was not a signatory to the parties' agreement, which included the agreement to arbitrate, the arbitrator lacked jurisdiction over him.

On December 10, 2003 the trial court denied Marcus & Millichap's petition to confirm and granted Woodman and Sasson's ****586** cross-petition to vacate. Marcus & Millichap did not request, and the court's order vacating the arbitration award did not include, an order for rehearing the arbitration pursuant to section 1287. On December 17, 2003 Woodman and Sasson filed a motion to recover attorney fees and costs pursuant to section 1293.2, which authorizes the court to award costs in

postarbitration judicial proceedings. Two days later, on December 19, 2003, Marcus & Millichap filed a motion for clarification of the order vacating the arbitration award, requesting the court to confirm the award as to Woodman only.

On March 29, 2004 the trial court denied Marcus & Millichap's motion for clarification and granted Woodman and Sasson's request for attorney fees and costs, awarding them \$33,492.50 as the prevailing parties in the judicial proceedings. Marcus & Millichap filed a notice of appeal of the fees-and-costs award only; no appeal has been taken from the trial court's orders vacating the arbitration award or denying the motion for clarification.

3. Subsequent Proceedings

On April 15, 2004, the same day it filed its notice of appeal in this proceeding, Marcus & Millichap moved in the trial court for an order to *512 compel arbitration against Sasson.^{FN3} On May 17, 2004 Marcus & Millichap filed a new demand for arbitration before the American Arbitration Association concerning the dispute over its entitlement to a commission for the Woodman Avenue shopping center. On May 27, 2004 the trial court granted the motion to compel Sasson to arbitration.

FN3. On February 23, 2005 we granted in part Marcus & Millichap's request for judicial notice, which includes various filings relating to its efforts to renew the arbitration between the parties.

Woodman and Sasson's challenges to Marcus & Millichap's renewal of the arbitration proceedings and to the trial court's order compelling the second arbitration have to date been unsuccessful.^{FN4} On March 24, 2005, in response to Marcus & Millichap's second motion for clarification, the trial court issued a minute order stating: "[T]he Court clarifies its December 10, 2003 order to reflect its intent that rehearing of the arbitration shall take place between all parties. In its December 10, 2003 order, the Court vacated the entire arbitration award. On May 27, 2004, the Court granted [Marcus & Millichap's] motion to compel arbitration. The Court intended a rehearing of the arbitration between all parties, as reflected in the reporter's transcript of the hearing on the motion to compel arbitration. On three separate

occasions, the Court has rejected [Woodman and Sasson's] argument that the lack of an order of rehearing bars any rehearing."^{FN5}

FN4. On June 18, 2004 Woodman and Sasson filed a motion for judgment on the pleadings and for an order vacating the trial court's order compelling arbitration against Sasson on the ground the trial court lacked subject matter jurisdiction once the time for appeal of the trial court's order vacating the arbitration award had lapsed. The trial court denied that motion on September 9, 2004. We summarily denied Woodman and Sasson's petition for writ of mandate seeking reversal of that order. (*Woodman Investment Group, LLC v. Superior Court* (Sept. 30, 2004; B178196) [summary denial order].)

FN5. On April 5, 2005, a month after we had heard oral argument and ordered the case at bar submitted, we took judicial notice of the trial court's March 24, 2005 order of clarification. In our order issued April 5, 2005 we also vacated submission of this matter and directed the parties to file supplemental letter briefs concerning the meaning and effect of the trial court's "clarification" of its December 10, 2003 order, particularly with respect to the appealability of the trial court's March 29, 2004 order awarding costs and attorney fees to Woodman. In addition, we stayed further proceedings in the trial court.

[1] Marcus & Millichap contends the trial court erred as a matter of law in awarding attorney fees and costs to Woodman and Sasson pursuant to section 1293.2 because the underlying dispute between the parties remains unresolved.

1. Governing Law

Section 1293.2 provides, "The court shall award costs upon any judicial proceeding under this title [governing arbitration] as provided in Chapter 6.

(commencing with Section 1021) ... of this code." Section 1033.5, part of chapter 6 of the Code of Civil Procedure, provides that items recoverable as costs include attorney fees when authorized by contract. (§ 1033.5, subd. (a)(10)(A).) The judicial proceedings covered by this provision include petitions to confirm or vacate an arbitration award. (§ 1285.)

[2] The award of costs pursuant to section 1293.2, including attorney fees when authorized by contract, is mandatory. (*Corona v. Amherst Partners* (2003) 107 Cal.App.4th 701, 707, 132 Cal.Rptr.2d 250 ["A court must award costs in a judicial proceeding to confirm, correct or vacate an arbitration award."]; *Carole Ring & Associates v. Nicastro* (2001) 87 Cal.App.4th 253, 260, 104 Cal.Rptr.2d 519 (*Carole Ring*) ["the superior court was required to award [the prevailing party] reasonable attorney fees and costs for postarbitration judicial proceedings, pursuant to the statutory scheme governing arbitration."].)

In *Carole Ring, supra*, 87 Cal.App.4th 253, 104 Cal.Rptr.2d 519, Division Three of this court considered whether section 1293.2 permitted the award of postarbitration attorney fees and costs to the party prevailing on a claim under a contract that provided for arbitration and authorized attorney fees and costs to the prevailing party even though the arbitrator had directed the parties to bear their own attorney fees and costs. (*Id.* at pp. 254-255, 104 Cal.Rptr.2d 519.) Reversing the trial court's order denying a motion for award of fees, the court held the determination under section 1293.2 which party, if either, is the prevailing party in postarbitration proceedings is a judicial function distinct from the arbitrator's decision to award or not to award fees in the arbitration proceeding itself. (*Id.* at pp. 260-261, 104 Cal.Rptr.2d 519.)

"The arbitrator's earlier refusal to award attorney fees in the arbitration proceeding was not dispositive on the issue of postarbitration attorney fees. The arbitrator obviously did not, and could not, make a determination with respect to which, if either party, would be the prevailing party in subsequent postarbitration proceedings. For these reasons, the arbitrator's refusal to award attorney fees did not dictate a similar result with respect to Nicastro's request for attorney fees in postarbitration judicial proceedings. [¶] Because Nicastro was the prevailing party as a matter of law, the mandatory language *514 of the contractual attorney fees clause and section 1293.2 entitle Nicastro to reasonable attorney fees and costs incurred in postarbitration judicial proceedings." (*Carole Ring, supra*, 87

Cal.App.4th at p. 261, 104 Cal.Rptr.2d 519.)^{FN6}

FN6. Division Three emphasized it was not presented with a situation in which the arbitrator had concluded there was no valid or enforceable attorney fees provision in the parties' contract, a ruling that would have precluded the superior court from awarding attorney fees for postarbitration judicial proceedings. (*Carole Ring, supra*, 87 Cal.App.4th at p. 260, 104 Cal.Rptr.2d 519.)

****588 2. *Woodman and Sasson Were Properly Awarded Fees and Costs***

a. *Woodman and Sasson Were the Prevailing Parties in the Postarbitration Judicial Proceedings*

In the postarbitration judicial proceedings in this case, commenced on August 27, 2003 by Marcus & Millichap after the arbitrator made her award in its favor, the trial court denied Marcus & Millichap's petition to confirm and granted Woodman and Sasson's cross-petition to vacate the award (without ordering a rehearing pursuant to section 1287). Considering the judicial proceedings initiated by Marcus & Millichap pursuant to section 1285 as distinct from the arbitration itself, as did Division Three in *Carole Ring*, Woodman and Sasson were entirely successful: Not only did they defeat Marcus & Millichap's effort to have the arbitration award confirmed but also they persuaded the trial court to vacate the arbitration award as to both Woodman and Sasson. As a matter of law, with respect to the postarbitration judicial proceedings, Woodman and Sasson must be considered the prevailing party within the meaning of section 1032, subdivision (a)(4) ("prevailing party" includes a defendant or other party against whom a complaint has been filed "in whose favor a dismissal is entered," as well as a defendant "as against those plaintiffs who do not recover any relief against that defendant").

b. *The Judicial Proceeding Initiated by Marcus & Millichap To Confirm Its Arbitration Award Is "Final" for Purposes of an Award of Fees*

[3] Whether or not Marcus & Millichap is correct in asserting it may initiate another arbitration proceeding to determine its right to a commission without an express order for rehearing pursuant to section 1287-an issue not presented by Marcus &

Millichap's appeal from the order awarding costs and attorney fees and as to which we express no view—its argument that the judicial proceeding it initiated is not yet "final" is unpersuasive. Section 1294, subdivision (c), expressly provides that an order vacating an arbitration award is appealable "unless a rehearing in arbitration is ordered." Thus, while *515 an order vacating an arbitration award and ordering rehearing is an "intermediate ruling," a similar order vacating an award without ordering rehearing is, of necessity, "final." (*Long Beach Iron Works, Inc. v. International Molders Etc. of North America, Local 374* (1972) 26 Cal.App.3d 657, 659, 103 Cal.Rptr. 200 ["It is quite obvious that the Legislature's philosophy and intent in drafting section 1294 was that there should be no appellate consideration of intermediate rulings in arbitration disputes if the superior court was of the view that there should be initial or further proceedings in arbitration.... [T]he Legislature expressly excepted orders vacating awards but directed rehearings in arbitration from a roster of appealable rulings in section 1294."])^{FN7}

FN7. By permitting an appeal from an order vacating an arbitration award when no rehearing in arbitration has been ordered, section 1294, subdivision (c), eliminates any question that the superior court, when vacating an arbitration award, is not obligated to order such a rehearing in all cases in which it has vacated the original arbitration award.

The trial court's belated, March 24, 2005 order of clarification does not alter our conclusion as to the finality for purposes of a cost and fee award of its earlier order vacating the arbitration award without an order for rehearing. The court's explanation of "its intent that rehearing of the **589 arbitration shall take place between all parties," as emphatic as it may be, is simply a ruling that the absence of an express order for rehearing does not necessarily bar a rehearing—a ruling, as the court itself notes, it had also made on three occasions prior to its March 24, 2005 ruling. Indeed, notwithstanding Marcus & Millichap's argument to the contrary, the trial court appears to have carefully worded its clarification to avoid suggesting it was attempting to correct nunc pro tunc its December 10, 2003 order to include an order for a rehearing. Because no rehearing of the arbitration was ordered by the trial court and Marcus & Millichap did not appeal from the order vacating the arbitration award (or, for that matter, from the

trial court's subsequent denial of its motion for clarification of the order vacating the arbitration award), the trial court's decision to vacate the original arbitration award is now final.

Green v. Mt. Diablo Hospital Dist. (1989) 207 Cal.App.3d 63, 254 Cal.Rptr. 689, upon which Marcus & Millichap relies, does not support a contrary result. In *Green* the Court of Appeal affirmed an order denying a petition to compel arbitration of disputes arising from an employment contract and a buy-out agreement between Green and the Hospital District. The petition had been filed at least partially in response to a complaint for declaratory relief by a taxpayers group alleging that the termination agreement*516 between Green, the Hospital District's chief executive officer, and the Hospital District was void. (*Id.* at pp. 68-69, 254 Cal.Rptr. 689.) Affirmance of the order denying Green's request for arbitration left the taxpayers' action for declaratory relief and Green's breach of contract claim against the Hospital District "subject to judicial determination of whether or not the agreement is illegal." (*Id.* at p. 76, 254 Cal.Rptr. 689.)

In rejecting the Hospital District's cross-appeal arguing that the trial court should have awarded it attorney fees following denial of Green's petition to compel arbitration, the Court of Appeal held an award of fees would be premature because the claims of the parties remained before the court and subject to judicial determination. "[T]he trial court has not reached the merits of the case.... The trial court, therefore, correctly concluded that there has been no final determination of the rights of the parties...." (*Green v. Mt. Diablo Hospital Dist., supra*, 207 Cal.App.3d at p. 76, 254 Cal.Rptr. 689.) Because no rehearing of the arbitration was ordered and Marcus & Millichap did not appeal the order vacating the arbitration award in this case, unlike the situation presented by *Green*, no claim of either party remains before the court or otherwise subject to judicial determination. The trial court's rulings are final. (See *Long Beach Iron Works, Inc. v. International Molders Etc. of North America, Local 374, supra*, 26 Cal.App.3d at p. 659, 103 Cal.Rptr. 200.)

[4] Finally, although not raised in its briefs on appeal, Marcus & Millichap suggested at oral argument that, even if Woodman and Sasson are prevailing parties and entitled to an award of costs under section 1293.2, they are not entitled to attorney fees under the parties' contract until they prevail on the

underlying contract claim. The listing agreement, however, authorizes the award of attorney fees "[i]n any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto." This contractual language, like section 1293.2 itself, **590 requires postarbitration judicial proceedings to be considered a discrete "legal proceeding" for purposes of determining a party's right to an award of attorney fees.

3. *Marcus & Millichap's Motion for Sanctions Is Denied*

All parties agreed to participate in the mediation program administered by the Second District Court of Appeal.^{FN8} Notice of the conference date and location sent by the clerk of the court specifically advised the parties, in boldface type, "It is mandatory that ALL PARTIES and their counsel as well as any other individual whose presence is necessary to effect a settlement of the case be present at the settlement conference.... [F]ailure to either *517 participate in good faith or to attend is likely to result in the imposition of appropriate sanctions."^{FN9}

FN8. Although the court's mediation program is voluntary, once the parties agree to participate, they are advised that compliance with the procedures set forth in the court's scheduling letter is mandatory and that noncompliance risks the imposition of sanctions.

FN9. The form notice sent by the clerk of the court has been slightly revised since the date of the mediation conference in the case at bar. In its current iteration the form provides, "It is MANDATORY that all named parties and their counsel attend all mediation sessions. If a party is not an individual, then a party representative with full authority to settle all appeals and cross-appeals must attend in person. In cases where insurance coverage may apply, a representative of each carrier with full settlement authority must attend in person.... Failure either to attend or to participate in good faith will likely result in the imposition of sanctions."

Marcus & Millichap was represented at the scheduled mediation conference by both outside litigation counsel and the general counsel of Marcus &

Millichap Real Estate Investment Co., who traveled from Northern California to attend the session. Woodman and Sasson were represented only by their outside litigation counsel, who stated he had full authority to settle the issue of attorney fees and costs raised in the instant appeal. Neither appellants Tony Azzi and John P. Walsh nor respondent Eli Sasson attended the conference.

At the outset of the conference counsel disputed whether they had agreed to attempt to mediate only the attorney fee dispute, the issue presented by Marcus & Millichap's appeal (Woodman and Sasson's position), or to discuss settlement of both the appeal and the underlying dispute regarding Marcus & Millichap's claim to a commission under the listing agreement (Marcus & Millichap's position). As a result no productive discussions of any sort occurred.

Following the fruitless mediation conference, Marcus & Millichap moved for sanctions against Woodman and Sasson for Sasson's failure to personally appear at the court-ordered mediation conference. The motion is supported by a declaration from Marcus & Millichap's litigation counsel and related exhibits. Woodman and Sasson filed an opposition at our request, which likewise includes a declaration from counsel who attended the mediation conference, as well as related exhibits.

Because it is impossible for us to determine from the conflicting declarations what, if any, agreement had been reached by counsel to discuss a possible global resolution of the parties' disputes, rather than to address the single issue actually raised in this appeal, we deny the motion for sanctions. What is apparent is that *both* sides to the dispute failed to have all parties to the appeal present at the mediation and, more importantly, that the failure of counsel to communicate with each other clearly and forthrightly about their positions and intentions prior to the mediation **591 conference resulted in a waste of the volunteer mediator's valuable time. We expect more.

The order awarding attorney fees and costs is affirmed. The stay of proceedings in Los Angeles Superior Court case No. BS085380 is terminated. Woodman and Sasson are to recover their costs on appeal.

I concur: JOHNSON, J.

WOODS, J., Dissenting:

I respectfully dissent from that portion of the opinion holding that the arbitration proceedings in the trial court were final thereby entitling Woodman to claim attorney fees. The majority opinion, in my view, is overly technical in its approach to the problem, and sidesteps equitable principles which should lead to a reversal. Of great importance is the fact that the legislature has not revealed its intent when it enacted section 1287 as to the meaning of the word "rehearing." In my view the question is one of first impression and requires the application of two guiding principles which I hereafter discuss. Before applying the guiding principles which I find applicable and determinative of the appeal, it first appears prudent to repeat the content of the statute which is pertinent to the central issue in this case. Section 1287 is entitled "Rehearing before arbitrators" and provides as follows:

"If the award is vacated, the court may order a rehearing before new arbitrators. If the award is vacated on the grounds set forth in subdivision (d) or (e) of Section 1286.2, the court with the consent of the parties to the court proceeding *may* order a rehearing before the original arbitrators." (Italics added.)

When the legislature uses language in a statute which is indicative of discretion, such as the use of "*may*" in 1287, as opposed to more mandatory language such as "*must*" or "*shall*," the parties to litigation and the courts are left in a position of having to speculate as to the proper application of such words, unless the legislature has made it clear how such words are to be applied by a statement in the legislative history. As the majority and this dissenting justice maintain, the legislative history is unavailing in this instance. To put it in the vernacular, the parties and the courts are *at sea* without a rudder on the core issue in this appeal.

The quandary of the parties and the courts in such instances is generally exemplified in 58 Cal.Jur.3d (2004) Other Common Terms, section 152, pages 578-579 as follows: "The distinction between directory and mandatory statutes is not susceptible of exact definition, for it depends on legislative intent, and consequently there is no simple, mechanical test for determining whether a provision should be given directory or mandatory effect. ... The *519 mandatory-directory and obligatory-permissive dichotomies are analytically distinct. ... In order to determine whether a particular statutory provision is mandatory or directory, in the absence of express

language reflecting the legislative intent, the courts must ascertain or gather such intent from the terms of the statute construed as a whole, from the nature and character of the act to be done, and from the consequences which would follow the doing or failure to do the particular act at the required time. ... While the use of particular terms [is] generally indicative of a command rendering the provision mandatory, including terms such as 'must' or 'shall,' which as used in statutes is ordinarily the language of command, the use of the word 'must' in a statute does not necessarily make the provision mandatory, **592 and likewise, the use of the term 'shall' does not necessarily make the provision mandatory. ... Although 'may' is ordinarily permissive, evoking the idea of possibility, this is not a fixed rule of statutory construction. ... Directory provisions ordinarily relate to matters of form. Where consequences are attached to failure to do a required act, the direction to do it will be held mandatory. Statutory time limits are usually deemed to be directory. ..." (Citations omitted.)

What we are left with are two principles: The *first and foremost* is the general proposition that arbitration statutes are remedial in nature and are to be liberally construed with every reasonable intent favoring the validity of arbitration awards. (*Goossen v. Adair* (1960) 185 Cal.App.2d 810, 8 Cal.Rptr. 855.) The policy in this state is to favor arbitration. (*Firestone Tire and Rubber Co. v. United Rubber Workers of America* (1959) 168 Cal.App.2d 444, 335 P.2d 990.) The *second* principle rests on the fact that section 1287 uses discretionary language stating that "the court with the consent of the parties to the court proceeding *may* order a rehearing before the original arbitrators." (Italics added.) Left with these two guiding principles and nothing further, I conclude the trial court erred in awarding fees and costs to Woodman, since the matter was still pending in arbitration and not final, thereby undercutting the attorney fees clause in the contractual arbitration agreement stating: "In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, including Agent, the prevailing party shall be entitled to recover its cost, including costs of arbitration, and reasonable attorneys' fees in addition to any other relief to which such party may be entitled."

I opine that the legislature certainly knew how to utilize the mandatory word "*shall*" or even "*must*" had it chosen to do so. One need only examine section 1293.2 to find evidence of the legislature's

sophistication in the available use of the mandatory word "*shall*," where the legislature has declared "The court *shall* award costs upon any judicial proceeding under this title as provided in Chapter 6 (commencing with section 1021) of the Title 14 of Part 2 of this code." (Italics added.) Often, *520 courts resort to dictionary assistance in determining the meaning of words. For instance, "*shall*" denotes "[d]etermination or promise"; "[i]nvincibility"; "[c]ommand"; "directive or requirement." (American Heritage Dict. (2d college ed.1982) p. 1125, col. 2.) In contrast, "*may*" denotes "[t]o be allowed or permitted to"; "likelihood or possibility"; or "contingency." (American Heritage Dict., *supra*, p. 774, col. 1.)

I recall that the intention of General Douglas MacArthur pertaining to the invasion of the Philippine Islands was expressed in determined language when he declared "I *shall* return." He didn't say "I *may* return." I find the use of *may* by the legislature to be just as permissive, contingent and confusing as had the great general made the mistake of using the word *may* in his declaration of intentions.

Cal.App. 2 Dist., 2005.

Marcus & Millichap Real Estate Investment Brokerage Co. v. Woodman Investment Group
129 Cal.App.4th 508, 28 Cal.Rptr.3d 584, 05 Cal. Daily Op. Serv. 4135, 2005 Daily Journal D.A.R. 5659

END OF DOCUMENT



Funding Terms

Definitions of words used in funding-related documents.

The glossary of funding terms is designed to help California Department of Education (CDE) clients understand terms used in funding-related documents. Whenever possible, the definitions are drawn from guidance published by the CDE, the California Department of Finance, and the U.S. Department of Education.

Apportionment — Synonymous with *allocation*. The term is used primarily in situations in which funding is distributed to local educational agencies (LEAs) based on a statutory formula.

Appropriation — Funds set aside by formal legislative action for a specific use (see also Budget Act).

Assurances — Requirements that applicants agree to observe as a condition of receiving funding.

Available funding (Web term) — Funding for which application procedures and related materials (requests for applications, proposals, data, or submissions) have been issued or posted.

Budget Act — Annual statute appropriating funds to California state departments or agencies for expenditures on specified purposes.

Certification — Statement, signed or endorsed by an authorized representative of the receiving agency as a prerequisite for receiving funds, that the proposed recipient (1) meets or will adhere to certain conditions (i.e., "assurances") or (2) will undertake or not undertake certain actions.

Contract — Legally binding agreement between CDE and another entity, public or private, for the provision of goods or services.

Entitlement — Amount of funds that an applicant should receive under a statutory formula. The actual amount of funding apportioned may be less than the entitlement if insufficient funds are available.

Funding program (Web term) — Grant, contract, or apportionment administered by CDE.

Grant — Award of financial assistance for a specified time frame. Some grants are awarded based on a competition, and others are allocated according to a formula. CDE uses grants to distribute funds if LEAs or other entities (not CDE) are the direct beneficiaries of the funding.

Grant award notification — Official document signed by an authorized official stating the amount, terms, and conditions of the grant award.

Reimbursement — Payment for costs already incurred in the provision of services.

Request for applications, data, proposals, and submissions — Documents setting forth application procedures and related materials for a funding program.

Last modified: Monday, February 28, 2005

[Funding Master Plan](#) | fmp@cde.ca.gov | 916-323-1544

Commission on State Mandates

Original List Date: 7/3/2002
Last Updated: 4/26/2007
List Print Date: 09/21/2007
Claim Number: 01-TC-22
Issue: Academic Performance Index

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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November 9, 2007

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 01-TC-22
San Juan Unified School District
Chapter 887, Statutes of 2001, et al
Academic Performance Index

Dear Ms. Higashi:

I have received a copy of the Draft Staff Analysis (DSA) dated October 19, 2007, for the above referenced test claim, to which I respond on behalf of the test claimant.

The test claimant disagrees with the Commission findings which propose to reject the several funded incentive programs. However, since the DSA recommends disallowing the funded incentive programs for reasons which have been adopted by the Commission in previous test claims, and for which all rebuttal has been futile, the arguments will not be repeated here. The claimant's response addresses those areas of the DSA which misconstrue the law or misapply the usual exceptions to reimbursement.

1. Academic Performance Index (API)

The test claim alleges generally the duty to establish, periodically update, and maintain data gathering procedures to collect and report data as may be required by the Superintendent of Public Instruction for computation of the API, pursuant to Education Code section 52052, and specifically, pursuant to Title 5, California Code of Regulations, Section 1032, subdivision (d), notifying the Department of Education when circumstances may exist which would invalidate a school's API. The statute requires the school districts to report this information and requires districts to "satisfy" a Department of Education investigation.

The DSA (page17) determined that there was no express duty for school districts to report this noncompliance. The DSA (18) also determined there was no "practical compulsion" for the state to certify the API information. If the school district API information is invalidated, the school district is not eligible for participation in the cash award programs. The DSA incorrectly utilizes *Kern High* regarding voluntary participation in programs in order to obtain funding. The facts here are different. If the school district reports that its data as invalid, the district potentially removes itself from participation in the awards programs. The districts would not be complying with Section 1032, subdivision (d), to establish eligibility for the cash awards. Therefore, Commission staff must find another reason to exclude reimbursement for this activity.

2. Immediate Intervention/Underperforming Schools Program

Section 52053, subdivision (a), authorizes the Department of Education to "invite" school districts to participate in this program. Subdivision (j) also allows the Department of Education to randomly select other districts for participation. The test claim alleges unfunded costs for those districts which are required, pursuant to Education Code Sections 52053(j) and 52056.5, to participate in the Immediate Intervention/Underperforming School Program.

The program specifies several levels of remediation. Grant money would be provided, but the districts would have to provide matching funds for some components. The DSA (24) concludes that the Section imposes a state mandate when the Department of Education selects a school district for participation. However, based on information from the Department of Education that all past participation has been "voluntary," the DSA (24) concludes that no reimbursable costs are imposed. This is a misconstruction of the purpose of the test claim adjudication. The alleged fact that no districts participated involuntarily does not prevent a finding of reimbursable costs mandated by the state. The fact that no districts may claim these costs on their annual reimbursement claims does not relieve the Commission on the duty to determine whether the costs are reimbursable. The Commission should reconsider this conclusion and report findings on the specific reimbursable activities potentially claimable for those districts which involuntarily participate, should that occur.

3. Effect of Funding

Government Code section 17556, subdivision (e), provides an exception to reimbursement if the mandate statute or a Budget Act appropriation provides for offsetting savings that result *in no net costs*, or provides *new funding in the amount sufficient to fund the cost* of the mandate. The DSA (32) concludes that Title 5, section 1032, subdivision (j) imposes a duty for school districts to notify the publisher regarding STAR testing errors. The DSA (38) also concludes that for Fiscal Years 2001-02 through 2003-04, there is no evidence that the STAR testing apportionments were sufficient either in terms of offsetting savings or sufficient funds.

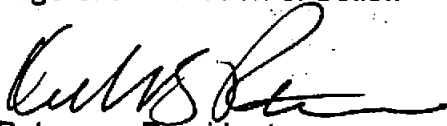
However, the DSA (39) concludes that for subsequent fiscal years, with specific Budget Act appropriations, that there "is no evidence in the record that these budget appropriations are insufficient to fund the mandate in section 1032, subdivision (j)." The DSA does not state, nor cite evidence, that the funds are *sufficient*, which is the Section 17556 (e) requirement, to offset the mandate (no net costs as a matter of law) or whether they are sufficient to fund the cost each year as a finding of fact, just that there is no evidence that they are *not insufficient*. Further, the test claimant did not allege that funds were sufficient, so the test claimant has no evidentiary burden on this point.

The finding is an error of law for several reasons. The Title 5, Section 1032 (j), mandate is not a STAR testing mandate, it is a separate mandate which utilizes STAR testing data. Section 1032 (j) is not a STAR testing regulation, and it will persist as a mandate regardless of STAR funding. The purpose of the STAR funding is to meet the requirements of the STAR mandate, not the API regulations. The Commission has evidence, in the form of its own record for the statewide cost estimate for the STAR program, that the STAR funding, which reduces claimed STAR program costs, is insufficient to meet the STAR mandate. There is no foundation to apply already insufficient funding to the Section 1032 (j) mandate when the Budget Act appropriation is provided for the STAR testing process, not the API reporting requirements, which are separate and distinct of the STAR testing program.

It is inappropriate to exclude reimbursement for this activity as a matter of law when the funding depends on future Budget Acts. The determination of whether the STAR funds are sufficient to fund the STAR mandate as well as the Section 1032 (j) mandate is a question of fact each fiscal year. The Legislature may fail to fund the STAR program in the future, in which case all mandated costs would be reimbursable. If the Legislature continues to fund the program each year, the funds will reduce the reimbursable costs each year. The amount of the reduction will depend on the amount of funding. Because funding is a question of fact each fiscal year, the funding is a matter for the parameters and guidelines and not a test claim threshold finding of no claimable activity costs. This can be facilitated by amending Section 1032 (j) into the current NRAT mandate program parameters and guidelines in future fiscal years.

CERTIFICATION

I hereby declare, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own knowledge or information or belief.



Keith Petersen, President
SixTen and Associates

C: Commission mailing list last updated 04/26/07

1 **DECLARATION OF SERVICE**

2
3 Re: Test Claim 01-TC-22 San Juan Unified School District
4 Chapter 887, Statutes of 2001, et al
5 Academic Performance Index
6

7 I declare:

8
9 I am employed in the office of SixTen and Associates, which is the
10 appointed representative of the above named claimants. I am 18 years of
11 age or older and not a party to the entitled matter. My business address is
12 3841 North Freeway Blvd, Suite 170, Sacramento, CA 95834.
13

14 On the date indicated below, I served the attached letter dated November
15 9, 2007, to Paula Higashi, Executive Director, Commission on State
16 Mandates, to the Commission mailing list updated 4/26/07 for this test
17 claim, and to:
18

19 Paula Higashi, Executive Director
20 Commission on State Mandates
21 980 Ninth Street, Suite 300
22 Sacramento, CA 95814
23

24 **U.S. MAIL:** I am familiar with the business
25 practice at SixTen and Associates for the
26 collection and processing of
27 correspondence for mailing with the
28 United States Postal Service. In
29 accordance with that practice,
30 correspondence placed in the internal mail
31 collection system at SixTen and
32 Associates is deposited with the United
33 States Postal Service that same day in the
34 ordinary course of business.
35

36 **OTHER SERVICE:** I caused such
37 envelope(s) to be delivered to the office of
38 the addressee(s) listed above by:

39 _____
40 (Describe)
41
42

43 **FACSIMILE TRANSMISSION:** On the
44 date below from facsimile machine
45 number (858) 514-8645, I personally
46 transmitted to the above-named person(s)
47 to the facsimile number(s) shown above,
48 pursuant to California Rules of Court
2003-2008. A true copy of the above-
described document(s) was(were)
transmitted by facsimile transmission and
the transmission was reported as
complete and without error.

A copy of the transmission report issued
by the transmitting machine is attached to
this proof of service.

PERSONAL SERVICE: By causing a true
copy of the above-described document(s)
to be hand delivered to the office(s) of the
addressee(s).

43 I declare under penalty of perjury under the laws of the State of California that the
44 foregoing is true and correct and that this declaration was executed on November 9, 2007,
45 at Sacramento, California.
46

47 
48 Jason R. Cale

Commission on State Mandates

Original List Date: 7/3/2002
Last Updated: 4/26/2007
List Print Date: 09/21/2007
Claim Number: 01-TC-22
Issue: Academic Performance Index

Mailing Information: Other

Mailing List

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Fiscal Policy Division
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Fax: (951) 303-6607

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Fax: (916) 922-2719

Mr. Joe Rombold
School Innovations & Advocacy
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Tel: (916) 669-5116

Fax: (888) 487-6441

Mr. David Cichella
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1111 E Street
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Tel: (209) 834-0556

Fax: (209) 834-0087

Ms. Ginny Brummels
State Controller's Office (B-08)
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Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
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Claimant Representative
Tel: (916) 565-6104
Fax: (916) 564-6103



**DEPARTMENT OF
FINANCE**
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1148 ■ SACRAMENTO CA ■ 95814-4098 ■ WWW.DOF.CA.GOV

EXHIBIT H

November 9, 2007

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RECEIVED

NOV 15 2007

**COMMISSION ON
STATE MANDATES**

Dear Ms. Higashi:

As requested in your letter of October 19, 2007, the Department of Finance has reviewed the draft staff analysis of the test claim submitted by the San Juan Unified School District (claimant) asking the Commission to determine whether specified costs incurred under the Public Schools Accountability Act and related regulations are reimbursable state-mandated costs (Claim No. CSM-01-TC-22 "Academic Performance Index"). Finance concurs with Commission staff conclusions on the test claim items determined not to constitute reimbursable state-mandated programs. However, Finance has the following comments on those activities identified by Commission staff as mandated programs:

Finance disagrees with the conclusion that a discussion of Academic Performance Index (API) annual rankings at the next available school board meeting, per Education Code Section 52056(c), is a reimbursable state mandate. Although the requirement for discussion of API annual rankings at the next available school board meeting may result in additional costs to school districts for developing and providing agenda items, minutes, and other materials, and for making staff available at the meeting to present API information and answer questions, those costs are not reimbursable because those activities are required under Proposition 59. We note that Section 17556(f) of the Government Code provides that the Commission shall not find a reimbursable mandate in a statute or executive order if, after a hearing, the Commission finds that the statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters. Proposition 59, approved by the voters at the November 2, 2004 election, provides that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

Finally, Finance disagrees with the conclusion that Title 5, California Code of Regulations, Section 1032 (j) constitutes a reimbursable state mandate for the following school district activities: (1) notification of the California Department of Education (CDE) and the test publisher of errors in STAR testing or demographic data within 30 days of publication and (2) submission of data corrections within 45 days of publication. We note that the annual Budget Act provides apportionment funding per test to each district to ensure quality data collection and reporting (see Items 6110-113-0001 and 6110-113-0890 of Section 2.0, Budget Act of 2007).

- 2 -

If a district provided erroneous data, they are responsible for correcting the data because they receive apportionment payments to do so. If an error occurs on the part of a test publisher, the publisher is to bear the cost of that data correction, not the school district nor the state. Therefore, a school district will not incur new mandated costs because those costs are already covered by an apportionment provided annually through the Budget Act.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 19, 2007 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Ryan Storm, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,



Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF RYAN STORM
DEPARTMENT OF FINANCE
CLAIM NO. CSM-07-TC-04

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter 413, Statutes of 2006, (AB 1433, Emmerson and Laird) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

November 9, 2007

at Sacramento, CA



Ryan Storm

PROOF OF SERVICE

Test Claim Name: Academic Performance Index
Test Claim Number: CSM-01-TC-22

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On November 9, 2007, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

E-8
Department of Education
School Business Services
Attention: Marie Johnson
560 J Street, Suite 170
Sacramento, CA 95814

Mandated Cost Systems, Inc.
Attention: Steve Smith
2275 Watt Avenue, Suite C
Sacramento, CA 95825

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3169
San Diego, CA 92103-2682

E-8
State Board of Education
Attention: Bill Lucia, Executive Director
721 Capitol Mall, Room 532
Sacramento, CA 95814

California Teachers Association
Attention: Steve DePue
2921 Greenwood Road
Greenwood, CA 95635

Girard & Vinson
Attention: Paul Minney
1676 N. California Blvd., Suite 450
Walnut Creek, CA 95496

B-08
State Controller's Office
Attention: Jim Spano
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Mr. Steve Smith
Steve Smith Enterprises, Inc.
3323 Watt Avenue #291
Sacramento, CA 95821

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Ms. Harmset Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Mr. Robert Miyashiro
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Mr. David E. Scribner
Scribner Consulting Group, Inc.
3840 Rosin Court, Suite 190
Sacramento, CA 95834

Mr. David Cichella
California School Management Group
1111 E Street
Tracy, CA 95376

A-15
Ms. Jeannie Oropeza
Department of Finance
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

A-15
Ms. Susan Geanacou
Department of Finance
915 L Street, Suite 1190
Sacramento, CA 95814

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

E-08
Ms. Carol Bingham
California Department of Education
Fiscal Policy Division
1430 N Street, Suite 5602
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Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 894059
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Mr. Joe Rombold
School Innovations & Advocacy
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B-08
Ms. Ginny Brummels
State Controller's Office
Division of Accounting & Reporting
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Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

Ms. Juliana F. Gmur
MAXIMUS
2380 Houston Avenue
Clovis, CA 93611

B-29

Legislative Analyst's Office
Attention: Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 9, 2007 at Sacramento, California.



Annette Waite

ICC: OROPEZA, SCHWEIZER, STORM, LEGARRA, FEREBEE, GEANACOU, FILE

I:\Wp\Mandate.0701-TC-22 Academic Performance Index.doc

Education Systems Unit
915 L Street, Capitol Plaza, 7th Floor
Sacramento, CA 95814-4888
Phone: (916) 445-0328
FAX: (916) 323-0530

Department of Finance



Fax

To: *Ms. Paula Higashi*

From: *Annette White*

Fax: *445-0278*

Pages: (including cover) *8*

Phone:

Date: *11/15/07*

Re:

cc:

- Urgent
- For Review
- Please Comment
- Please Reply
- Please Recycle

• **Comments:**

**San Diego Unified School District****Financial Operations Division**

EUGENE BRUCKER EDUCATION CENTER

4100 Normal Street, Room 3209 San Diego, CA 92103-2682

EXHIBIT I

OFFICE OF RESOURCE DEVELOPMENT

Arthur M. Palkowitz

Director

November 15, 2007

RECEIVED

NOV 15 2007

**COMMISSION ON
STATE MANDATES**

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: **TEST CLAIM DRAFT STAFF ANALYSIS (10/19/07)
ACADEMIC PERFORMANCE INDEX, 01-TC-22**

Dear Ms. Higashi:

San Diego Unified School District (District) respectfully requests that the Commission's staff reconsider its recommendation to deny costs for a school district to notify CDE when circumstances may exist which would invalidate a school's Academic Performance Index (API) pursuant to Cal. Code Reg., tit. 5, sec. 1032, subd. (d). The Commission's staff argued that there were no legal or practical compulsions to notify the California Department of Education (CDE) of errors in the API.

However, the Commission has stated in its analysis that the District's governing board is to "discuss the results of the annual ranking... following the annual publication of the API and SPI school rankings," per Ed. Code sec. 52056, subd. (c), and that this is a valid reimbursable state mandated program. It appears the intent is to have the governing board make decisions and utilize the information in a way that ultimately improves student performance. The District argues there is a compulsion to notify the governing board of validation errors in the API, so that they shall discuss why the API annual ranking may be inaccurate.

Additionally, the District has noted in Ed. Code sec. 52056, subd. (b), that "All schools shall report their ranking, including a description of the components of the API, in their annual school accountability report card pursuant to Sections 33126 and 35256." We have further realized that Ed. Code sec. 33126, subd. (a) states that the "school accountability report card shall provide data by which a parent can make meaningful comparisons between public schools that will enable him or her to make informed decisions on which school to enroll his or her children." It appears the intent is to have the API and its component information be used by parents to make decisions about school choice. The District argues there is a compulsion to provide parents with meaningful data, which would include a correct API figure.

In light of these arguments, the District contends there are state-mandated compulsions in providing the governing board and parents accurate information. Therefore, we urge the staff to reconsider its original recommendation and encourage schools to notify the CDE when circumstances may exist which would invalidate a school's API.

Sincerely,

Arthur M. Palkowitz
Director, Office of Resource Development

PROOF OF SERVICE

**Re: Test Claim Draft Staff Analysis (10/19/07)
Academic Performance Index, 01-TC-22**

I am employed in the County of San Diego, State of California. I am over 18 years of age and not a party to the within entitled action; my business address is 4100 Normal Street, Room 3209, San Diego, California 92103.

On November 15, 2007, I served the foregoing document(s) described as: **Comments to Test Claim Draft Staff Analysis.**

On the person/parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope(s) with postage thereon fully prepaid in the United States Mail at San Diego, California, with first-class postage thereon fully prepaid.

Mr. Steve Smith
Steve Smith Enterprises, Inc.
3323 Watt Avenue # 291
Sacramento, CA 95821

Mr. Steve Shields
Shields Consulting Group, Inc
1536 36th Street
Sacramento, CA 95816

Mr. Robert Miyashiro
Education Mandated Cost Network
1121 L Street, Suite 1060
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Mr. Joe Rombold
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Ms. Jeannie Oropeza
Department of Finance (A-15)
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Ms. Juliana F. Gmur
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Mr. Jim Spano
State Controller's Office (B-08)
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Mr. Keith B. Petersen
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Ms. Beth Hunter
Centration, Inc.
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California Department of Education (E-08)
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Ms. Ginny Brummels
State Controller's Office (B-08)
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3301 C Street, Suite 500
Sacramento, CA 95816

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

I declare, under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 15, 2007 in San Diego, California.


Tyinsha Calhoun



San Diego Unified School District

EUGENE BRUCKER EDUCATION CENTER
4100 Normal Street, San Diego, CA 92103-2682

(619) 725-7567
Fax: (619) 725-7569

FINANCIAL OPERATIONS DIVISION
Brian Bailey
Legislative Financial Accountant

Fax

To: Ms. Paula Higashi **From:** Brian Bailey

Commission on State Mandates SDUSD

Fax: 916-445-0278 **Pages:** 3 (including cover page)

Phone: **Date:** 11/15/07

Re: Test Claim 01-TC-22 Response **CC:**

- Urgent For Review Please Comment Please Reply Please Recycle

Dear Ms. Higashi:

We previously sent you a fax that included a written comment on the draft staff analysis of the Academic Performance Index test claim. However, we did not include the proof of service form. So we are including both the written comment and the proof of service in this fax.

Regards,

Brian Bailey
Legislative Financial Accountant

BECOMING AMERICA'S BEST

The pages comprising this Facsimile transmission contain confidential information from the San Diego Unified School District. This information is intended solely for use by the individual(s) or entity named as the recipient hereof. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this transmission is prohibited. If you have received this transmission in error, please notify us by telephone immediately so that we may arrange to retrieve this transmission at no cost to you. Thank you.

EXHIBIT J

SB 1 X1
Page 1

Date of Hearing: March 10, 1999

ASSEMBLY COMMITTEE ON EDUCATION
Kerry Mazzone, Chair
SB 1 X1 (Alpert) - As Amended: March 4, 1999

SENATE VOTE : 33-4

SUBJECT : The Public Schools Accountability Act of 1999.

SUMMARY : This bill establishes the Public School Performance Accountability Program that would apply to all schools, including charter schools, consisting of a state Academic Performance Index (API), an Immediate Intervention/Underperforming Schools Program, and a High Achieving /Improving Schools Program. Specifically, this bill :

Academic Performance Index (API)

- 1) The bill requires that by July 1, 1999, the Superintendent of Public Instruction (SPI) develop and the State Board of Education (SBE), with the help of an advisory committee, approve an API index to be used to measure performance of schools, especially the academic performance of pupils, and demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools. The index shall consist of a variety of indicators currently reported to the SDE including, but not limited to, the results of the STAR achievement test, attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools. At least 60 percent of the value of the index shall be from tests including STAR, the new high school exit exam if enacted by SB2x (O'Connell), and the yet to be developed matrix exam. The data would be disaggregated by special education status, English language learners (ELL), socioeconomic status, and ethnic groups. The API shall be developed for comprehensive high schools, middle schools, and elementary schools. The accountability system for schools with less than 100 students and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools, will be deferred until July 1, 2000

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so that the SBE may develop an alternative approach.

- 2) The SPI and the SBE must identify growth targets for all schools based on their API baseline score as measured in July 1999. The growth targets 1) must have a minimum of 5 percent growth annually; 2) must have differential growth based on grade level; and 3) may be higher for the lowest performing schools because they have the greatest room for improvement. In addition, the API performance subgroups must demonstrate comparable improvements in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools, as defined.
- 3) An API performance target that represents the proficiency level required to meet state academic content standards must be adopted by the SPI and the SBE once the State Performance Standards have been identified. Schools may either meet the state standards or meet their growth targets to be eligible for a Governor's Performance Award.
- 4) By June 2000 every school shall be ranked by grade level (elementary, middle, and high school) and, by June 2001, the rankings will indicate the target annual growth rates along with the actual growth rates attained by the schools. These will be published by the SPI on the Internet. Schools will be required to report their rankings in their School Accountability Report Card (as provided for under Proposition 98) and the school board of each district will be required to hold a public hearing to discuss the results of the annual ranking of its schools. The API will also be used to identify underperforming schools; those which fail to meet their annual growth target.
- 5) The SPI shall establish a broadly representative and diverse advisory committee to advise on all appropriate matters relative to the creation of the API and the implementation of the Immediate Intervention/Underperforming Schools Program and the High Achieving/Improving Schools Program. Members of the advisory committee shall serve without compensation for terms not to exceed two years. The SDE shall provide staff to the advisory committee.

Immediate Intervention/Underperforming School Program

The Immediate Intervention/Underperforming School Program is to

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SB 1 X1
Page 3

begin by August 15, 1999 when schools that performed below the 50th percentile on the STAR testing program, both in the spring of 1998 and 1999, will be invited to participate in the program.

By September 1, 1999, the SPI will notify 430 selected participants. Schools will be selected by decile rank (e.g., 10 percent ranges up to 50 percent) not to exceed 86 per decile. Of the 430 schools, there would be no more than 301 elementary, 78 middle, and 52 high schools that represent statewide proportionate geographic representation of urban and rural schools.

If the total number of voluntary participants does not reach 430, schools will be selected by the SPI to fill out the 430th number in a random selection process approved by the SBE. A school required to participate may take any action to improve pupil performance at that school if the action is not otherwise prohibited by state or federal law and does not require reimbursement by the Commission on State Mandates.

Each of the 430 schools selected before September 1, 1999, will be awarded a planning grant ranging from \$25,000 to \$50,000 as determined by criteria to be developed by the SPI and approved by the SBE. Each selected participant must by October 1, contract with an external evaluator and form a broad-based school site and community team for development of an action plan by the following March 15th. The evaluators will come from an approved list developed by the SPI and approved by the SBE. The list may include the private sector experts as well as institutions of higher education, county offices of education and educational consortia, and must meet certain criteria as specified in the bill. By April 15th, the governing board must submit the plan to the SPI with a request for funding. By May 15th, the SPI must recommend and the SBE must act on the local funding requests.

The bill provides that the SBE may waive all code sections or any part of code sections, or any regulations controlling specified education programs (see comments).

Implementation is phased in over two years beginning in the year 2000. In the first phase, the year 2000-01, grants of up to \$150 per pupil enrolled in the school (with a minimum of \$25,000 per school site) are provided if the school's application is approved before June 15. The district must match this amount of funding from existing resources and is allowed maximum

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flexibility in the expenditure of any new or existing categorical funds not otherwise prohibited by state or federal law and shall redirect for the purposes of their academic improvement plan new or existing categorical or general purpose funds. At the end of the first year, if the school fails to meet its short-term growth, the local school board, upon consultation, can impose consequences, including reassignment of school personnel, negotiation of site-specific amendments to collective bargaining agreements, or other changes deemed appropriate, in order to continue implementing the action plan, and to make progress toward meeting the school's growth targets.

At the end of the second year of implementation (2001-02) the program provides rewards for a school that meets or exceeds its growth target each year for the two years. Funds received from this program shall be used at the school's discretion. A school that has not met its performance goals but demonstrates significant growth is allowed to continue to participate in the program for an additional year and to receive funding.

A school that does not meet its performance goals and has failed to show significant growth after two years in the program will be deemed an educationally deficient school and the SPI will then assume all of the legal rights, duties, and powers of the local school board with respect to that school. The principal will be reassigned, subject to a specified process, and the SPI must do at least one of the following:

- 1) Revise attendance options for pupils to allow them to attend any public school.
- 2) Allow the creation of a charter school by parents at the existing school site.
- 3) Reassign other certificated employees of the school.
- 4) Renegotiate a new collective bargaining agreement at the expiration of the existing agreement.
- 5) Reorganize the school.
- 6) Close the school.
- 7) Under the supervision of the SPI, assign the management of the school to a college, university, county office of education,

□

or other appropriate educational institution. However, the SPI may not assume the management of the school.

In addition, the SPI, in consultation with the SBE, may take other actions against the school district and district governing board including appointment of a new superintendent or suspension of the authority of the governing board.

A total of \$96.15 million is appropriated (State funding of \$63.85 million and \$32.3 million in federal funds) for planning and implementation grants for this program.

The High Achieving/Improving Schools Program

Under the High-Achieving/Improving School Program, monetary and non-monetary awards will be granted pursuant to a Governor's Performance Award Program to schools that meet or exceed API performance growth targets, and demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools. Commencing in June 2000, and every June thereafter, the SPI, with approval of the SBE, shall rank all public schools based on the API. The schools shall be ranked by grade level of instruction provided and shall include three categories: elementary, middle, and high school. Commencing in June 2001, the rankings shall indicate the target annual growth rates of schools, the actual growth rates attained by the schools, and how growth rates compare schools that have similar characteristics. Similar characteristics include, but are not limited to, the following characteristics, insofar as data is available from SDE data: pupil mobility, pupil ethnicity, pupil socioeconomic status, percentage of teachers who are fully credentialed, percentage of teachers who hold emergency credentials, percentage of pupils who are English language learners, average class size per grade level, and whether the schools operate multitrack year round educational programs. The SPI is to annually publish these rankings on the Internet.

The criteria for the disbursement of the monetary awards will be developed by the SPI and approved by the SBE. The monetary awards will be available on a per-pupil or per-school basis and will not exceed \$150 per pupil enrolled subject to funds appropriated in the annual budget act. All schools, including schools participating in the Immediate Intervention/Underperforming Schools Program, are eligible to

□

participate in the Governor's Performance Award Program.

In addition, there would be a range of non-monetary awards. Schools that are eligible for performance awards may request that the SBE waive all code sections or any part of code sections, or any regulations controlling specified education programs (see comments).

\$96.15 million is appropriated from the General Fund for this purpose.

Program Evaluation

The bill provides that:

- 1) By January 31, 2002, each school district with schools participating in the Immediate Intervention/Underperforming Schools Program shall submit to the SPI an evaluation of the impact, costs, and benefits of the program as it relates to the school district and the schools under its jurisdiction that are participating in the program and whether or not the schools met their growth targets, with an analysis of the reasons why the schools have or have not met those growth targets.
- 2) By January 15, 2000, the SPI shall develop, and the SBE shall approve, the guidelines for a request for proposal for an independent evaluation. By March 15, 2000, the SPI shall contract with an independent evaluator to prepare a comprehensive evaluation of the implementation, impact, costs, and benefits of the Immediate Intervention/Underperforming Schools Program and the High Achieving/Improving Schools Program.
- 3) The evaluations shall consider all of the following:
 - Pupil performance data, including, but not limited to, results of assessments used to determine whether or not schools have made significant progress towards meeting their growth targets.
 - Program implementation data, including, but not limited to, a review of startup activities, community support, parental participation, and staff development activities associated with implementation of the program, percentage of fully

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credentialed teachers, percentage of teachers who hold emergency credentials, percentage of teachers assigned outside their subject area of competence, average class size per grade level, and the number of pupils in a multitrack year round educational program. Pupil performance data, and its impact on the API, for each of the following subgroups: (i) English language learners. (ii) Pupils with exceptional needs. (iii) Pupils that qualify for free or reduced price meals.

EXISTING LAW

Under prior law, which was never implemented because funding for it was never appropriated, the SPI was to designate the schools with the lowest performing pupils as "focus schools" (SB 171, Watson - Chapter 1335, Statutes of 1992). Focus schools were to develop a school action plan to improve pupil achievement and were entitled to expert assistance and additional resources to implement the plan. The SPI was to appoint an outside management consultant to assist and, in some circumstances, intervene in the management of schools that fail to improve performance. The Focus Schools statute became inoperative on July 1,

SB 1570 (Greene), Chapter 496, Statutes of 1996, authorized the creation of an advisory committee to assist the SPI in developing a plan and recommendations "for the establishment of incentives for the improvement of pupil academic achievement." In December 1997, a report was published, Steering by Results, proposing the implementation of a statewide school accountability system and a comprehensive program of rewards and interventions for California schools and students.

The State Board of Education (SBE) is in the process of setting academic content and performance standards - statements of what students should be able to know and do at various grade levels. Content standards have been approved by the SBE for language arts, mathematics, science and social science/history. However, performance standards in any subject have yet to be developed.

The SBE is in the process of developing a testing system that is aligned with the standards. It would consist of the recent enactment and first-time administration in spring 1998 of the Standardized Testing and Reporting Program (STAR), a nationally normed examination for determining individual student performance in grades 2-11, and the yet to be developed

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statewide matrix testing program aligned with the state's new standards in grades 4, 5, 8, and 10.

Under the Classroom Instructional Improvement and Accountability Act (Proposition 98), the governing board of each school district is required to implement a school accountability report card for each school in the district, to issue the card annually, and to provide a copy to parents upon request. Existing law requires the school accountability report card to provide data by which parents can make meaningful decisions about which school to enroll their children.

FISCAL EFFECT : Appropriations of \$160.0 million from the General Fund and \$32.3 million from the Federal Trust Fund.

COMMENTS :

Governor's Education Reform Proposal . This bill is one of four bills sponsored by the Governor as part of his call for an extraordinary session of the legislature dedicated to education reform issues. The other three bills address a high school exit exam (SB 2X O'Connell), peer assistance and review for teachers (AB 1X Villaraigosa), and reading reform (AB 2X Mazzone).

When would state rewards or sanction go into effect ? The bill provides rewards and sanctions " After two years of participating in the program." Since 1999-2000 is an identification, evaluation, and planning year, with plans not being funded until May 15, 2000, the state rewards and sanctions would not apply until 2002, nearly three years after enactment of this program.

State to administer local schools . This program constitutes a significant role for the state. It provides that for all " educationally deficient" schools, the Superintendent of Public Instruction shall assume all the legal rights, duties, and powers of the governing board with respect to that school." This could lead to significant state administrative costs beginning in 2002.

Waivers for existing accountability systems ? No provision is made in the bill to allow for exceptions from certain requirements (and consequences) for school districts that have accountability systems in place. A number of school districts in California have or are developing sophisticated

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accountability plans that may even be more rigorous than that

envisioned in this bill and they would like to be waived from this state program.

Costs for administration and evaluation . The bill does not provide funds for the SDE administrative costs or the evaluation, which as specified in this bill could be quite expensive. SDE has requested an augmentation to state operations funding of approximately \$3 million in the budget year to support the work required by this bill.

English learner concerns. Various civil rights groups have requested that there be an exemption for ELL students from taking the STAR test for thirty months, thereby not including those students in the API. Alternatively, they request requiring results of the yet-to-be developed English Language Development test to be included in the API for these students and requiring students to be tested in their primary language.

More weight to lowest performing schools ? As currently written, the bill gives equal weight to helping schools in the lowest 10% as it does schools in the lowest 40%. Concern has been raised that perhaps more weight should go towards helping more of the very lowest performing schools.

Categorical aid flexibility . The programs that could receive regulatory relief in either the Immediate Intervention/Underperforming School Program or the High Achieving/Improving Schools Program would include: School Improvement Program; Vocational education pupil organizations; Specialized secondary schools; Foster youth services; Opportunity classes and programs; Pupil dropout prevention; Economic Impact Aid; Gifted and talented education; Miller-Unruh reading program; Intergenerational education; Native American Indian education; Demonstration programs in reading and mathematics; Partnership academies; Agricultural vocational education; Environmental education; Instructional materials for kindergarten and grades 1 to 8, inclusive; Instructional materials for grades 9 to 12, inclusive; Mentor teacher program; Beginning teacher support and assessment; Reader services for blind teachers; Child nutrition; School/law enforcement partnership; Educational technology program; and Small school district bus replacement.

Technical amendment . The bill calls for 430 schools in the

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program consisting of "no more than" 301 elementary, 78 middle and 52 high schools; this totals 431 schools. This can be

corrected by specifying 300 elementary schools.

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SB 1 X1
Page 11

Related legislation . AB 26X (Pescetti) proposes the Public Schools Accountability Act of 1999.

REGISTERED SUPPORT / OPPOSITION : (3/5/99)

Support

None on file.

Opposition

None on file.

Analysis Prepared by : Hal Geiogue / ED. / (916) 319-2087

April 2009

Parent and Guardian Guide to California's 2008-09 Accountability Progress Reporting System

The primary goal of California's Accountability Progress Reporting (APR) system is to measure and report the academic achievement of California's 6.3 million public school students enrolled in nearly 10,000 schools in over 1,000 school districts and county offices of education. The system includes three major components:

- The Academic Performance Index (API) Report
- The Adequate Yearly Progress (AYP) Report
- The Program Improvement (PI) Report

The California Department of Education (CDE) prepares these reports on each school, school district, and county office of education. The reports are available on the CDE APR Web page at <http://www.cde.ca.gov/apr/>

API Report

The API Report is required by the state's Public Schools Accountability Act (PSAA) of 1999. This report shows how much a school is improving from year to year based on its API. A school's API is a number that ranges from 200 to 1000 and is calculated from the results for each school's students on statewide tests. The state has set 800 as the API target for all schools to meet. Schools that fall short of 800 are required to meet annual growth targets until that goal is achieved. API targets vary for each school.

The annual API growth target for a school is 5 percent of the difference between the school's API and the statewide performance target of 800 with a 5 point minimum. Schools that meet or exceed an 800 API are expected to maintain that level of achievement and to continue working to improve the academic performance of all students.

There are two API reports: (1) the Base API that is released to schools in the spring and (2) the Growth API that is released in August. These two reports show results from two different school years.

The Growth API is compared to the prior year Base API to show how much a school improved from one year to the next.

Schools must meet API growth targets for the whole school as well as for all "numerically significant" groups of students in the school (see explanation on page 2). Each Base API and Growth API Report includes the schoolwide API and the APIs for each numerically significant group of students. The Growth API Report determines whether schools met their targets.

If a school meets certain API participation and growth criteria, it may be eligible to become a California Distinguished School, National Blue Ribbon School, or Title I Academic Achievement Award School. If a school does not meet or exceed its growth targets and is ranked in the lower part of the statewide distribution of the Base API, it may be identified to participate in state intervention programs. These programs are designed to help the school improve its academic performance.

AYP Report

The AYP Report is required by the federal No Child Left Behind (NCLB) Act of 2001. This report shows how well schools and school districts are meeting common standards of academic performance, as measured by whether the school or school district makes AYP. Required AYP targets increase yearly until 2013-14 when all schools must have 100 percent of their students performing at or above the proficient level on statewide tests. By law, all California schools and school districts receive annual AYP results.

Each year, schools and school districts must meet four sets of requirements to make AYP. The requirements reflect statewide performance levels and are the same for all schools and school districts of the same type (see table on next page).

The requirements include: (1) student participation rate on statewide tests; (2) percentage of students scoring at the proficient level or above in English-language arts and mathematics on statewide tests; (3) API Growth; and (4) graduation rate (if high school students are enrolled). Numerically significant groups of students at a school or school district also must meet participation rate and percent proficient requirements.

Statewide AYP Requirements for 2008-09 School Year

Type of School or LEA	Participation Rate	Percent Proficient in English-Language Arts	Percent Proficient in Mathematics	API Growth	Graduation Rate (if high school students enrolled)
Elementary Schools, Middle Schools, and Elementary School Districts	95%	46.0%	47.5%	650 or 1 point growth	N/A
High Schools and High School Districts (with grades 9-12)		44.5%	43.5%		83.1% or +0.1% one-year change
Unified School Districts, High School Districts, and County Offices of Education (with grades 2-8 and 9-12)		45.0%	45.5%		+0.2% two-year change

These 2008-09 AYP requirements reflect increases from the prior year. AYP targets will continue to increase annually until 2013-14.

Numerically Significant Student Groups

To be considered numerically significant (large enough) for the API or AYP, a student group must include at least 100 students or at least 50 students who make up 15 percent or more of the school's total population. Results of numerically significant groups of students for the API and AYP are calculated for the following categories:

- African American (not of Hispanic origin)
- American Indian or Alaska Native
- Asian
- Filipino
- Hispanic or Latino
- Pacific Islander

- White (not of Hispanic origin)
- Socioeconomically Disadvantaged
- English Learners
- Students with Disabilities

PI Report

The PI Report supplements the AYP Report by providing information on the PI status of schools and school districts. A school or school district that receives federal Title I, Part A, Basic, funds is subject to identification for PI if it does not make AYP for two years in a row. A school identified for PI must notify its parents and guardians about its PI status and offer certain types of required services during each year that it is a PI school. A school is eligible to exit PI if it makes AYP for two years in a row. Information about PI reports and identification is located on the CDE AYP Web page at <http://www.cde.ca.gov/ayp/>. Information about PI required services and/or interventions is located on the CDE PI Web page at <http://www.cde.ca.gov/ta/ac/ti/programimprov.asp>.

Frequently Asked Questions

Do API or AYP calculations affect a student's Standardized Testing and Reporting (STAR) Program or California High School Exit Examination (CAHSEE) score report?
 No. API and AYP results are calculated for state, school district, and school level reports only.

How can parents or guardians help to improve a school's accountability results?

The best way to improve a school's accountability results is for student achievement on statewide tests to improve. Parents can help by supporting their school's efforts in providing classroom instruction and assessments that are aligned to the California content standards and by ensuring students are well-rested and nourished on statewide testing days.

More Information

To obtain information about state and federal accountability requirements and the API, AYP, and PI reports, parents and guardians should contact their school or school district office during regular hours. Additional information is available on the CDE APR Web page at <http://www.cde.ca.gov/apr/>



**2006–07 Accountability
Progress Reporting System**

**2007 Growth
Academic Performance
Index Report**

Information Guide

August 2007

**Prepared by the
California Department of Education**

Available online at <http://www.cde.ca.gov/api/>

Glossary of Terms and Acronyms

Additional Indicator	The federal NCLB Act of 2001 requires that each state adopt an additional indicator for AYP that is in addition to the mandatory indicators of percent proficient (AMOs), participation rates, and graduation rates for schools that enroll high school students. California has chosen to use the API as the additional indicator. The API criteria for federal AYP requirements are different from the API criteria for state requirements. (Also see "API.")
AMAOs	Annual Measurable Achievement Objectives (AMAOs) are performance objectives, or targets, that LEAs receiving NCLB Act Title III subgrants must meet each year for its English learners. All LEAs receiving a Title III subgrant are required to meet two English language proficiency AMAOs and a third academic achievement AMAO based on AYP information. Both English language proficiency AMAOs are calculated based on data from the California English Language Development Test (CELDT).
AMOs	The Annual Measurable Objectives (AMOs) are the minimum percentages of students who are required to meet or exceed the proficient level on the state assessments in ELA and mathematics used for calculating AYP under Title I requirements of the federal NCLB Act. The AMOs increase so that by 2014, 100 percent of students in all schools, LEAs, and numerically significant subgroups must score at the proficient level or above.
API	The Academic Performance Index (API), required by the state Public Schools Accountability Act (PSAA) of 1999, is a measure of the academic performance and growth of public schools. The API also functions as an additional indicator for AYP, but the federal AYP target requirements for the API are different from the state target requirements.
APR	The CDE reports both state API and federal AYP results under the general heading of "Accountability Progress Reporting" (APR). The 2006–07 APR includes the 2006 Base API Report, released in March 2007, and the 2006 Growth API Report, 2007 AYP Report, and 2007–08 Program Improvement (PI) Report, all of which are released in August 2007.
ASAM	Schools in the Alternative Schools Accountability Model (ASAM) include community day, continuation, opportunity, county community, county court, California Youth Authority, and other alternative schools that meet stringent criteria set by the State Board of Education (SBE). ASAM schools must apply for ASAM status. The ASAM is a state-only alternative to the API and is not used in meeting federal AYP requirements.

AYP	Under NCLB, all states are required to develop and implement a single, statewide accountability system that will ensure all public schools make their Adequate Yearly Progress (AYP) toward the federal goal that all students perform at the proficient or above level in English-language arts (ELA) and mathematics by 2014. Under AYP requirements, schools and LEAs are required to meet criteria in four areas: participation rate, percent proficient (also known as Annual Measurable Objectives or AMOs), API as an additional indicator, and graduation rate (if applicable).
CAHSEE	Students in California public schools must pass the California High School Exit Examination (CAHSEE) to receive a high school diploma. There are two parts to the CAHSEE: ELA and mathematics. The CAHSEE is included in API and AYP calculations.
CAPA	The California Alternate Performance Assessment (CAPA), part of the STAR Program, is an alternate assessment for students with significant cognitive disabilities who cannot participate in the CSTs, even with accommodations or modifications. A student's individualized education program (IEP) specifies whether the student should take the CAPA. The CAPA in ELA and mathematics is included in API and AYP calculations.
CAT/6 Survey	As part of the STAR Program, all California public school students in grades three and seven take a nationally norm-referenced test (NRT) each spring to measure achievement in basic academic skills. The NRT designated by the SBE is the California Achievement Test, Sixth Edition Survey (CAT/6 Survey). The CAT/6 Survey for these grade levels covers reading, language, spelling, and mathematics and is not aligned with California content standards. The CAT/6 Survey is included in API calculations.
CBEDS	The California Basic Educational Data System (CBEDS) is a system for collecting and sharing demographic data about students, schools, school districts, and education staff in the California public school system in kindergarten through grade twelve. The data are collected once a year on a Wednesday in early October that is designated as "Information Day."
CDE	The California Department of Education (CDE) is the state agency that oversees California's public school system.
CSR Program	The Comprehensive School Reform (CSR) Program is a federally funded school reform initiative that offers schools and school districts the opportunity to implement schoolwide research-based reform strategies to increase student achievement. The purpose of the CSR Program is to improve student achievement by supporting the implementation of comprehensive school reforms based on scientific research and effective practices.



California State Board of Education Policy

POLICY #
04-02
DATE
MAY 2004

WAIVER GUIDELINES
Immediate Intervention/Underperforming Schools Program (II/USP): Higher-performing II/USP schools that do not make significant growth and are subject to state intervention

REFERENCES: Authority: Authority: <i>Education Code (EC) Section 33050</i> Purpose: <i>To waive provisions of EC sections 52055.5 (b) and (h)</i>
HISTORICAL NOTES None

Education Code (EC) Section(s) involved:

EC Section 52055.5 (b) Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that has not met its growth targets each year and has failed to show significant growth, as determined by the State Board of Education, shall be deemed a state-monitored school.

EC Section 52055.5 (h) A school that has not met its growth targets within 36 months of receiving funding pursuant to Section 52054.5, but has shown significant growth, as determined by the State Board of Education, shall continue to be monitored by the Superintendent of Public Instruction until it meets its annual growth target or the statewide performance target. If, in any year between the third year of implementation funding and the first year the school meets its growth target, the school fails to make "significant growth," as determined by the State Board of Education, that school shall be deemed a state-monitored school and subject to the provisions of paragraphs (1) to (10), inclusive, of subdivision (b).

Background:

In 1999, the State Legislature enacted II/USP. This program provides schools in decile ranks 1-5, an opportunity to apply for funding to improve student achievement in exchange for greater accountability. Schools participating in the program received \$50,000 in the first year to develop an improvement plan and \$200 per student annually to implement the plan for two to three years. In return for the funding, schools agreed to be held accountable for steadily increasing student achievement. According to the law, schools that do not demonstrate significant growth as defined by the State Board of Education become subject to state sanctions/intervention at the end of the two or three year period. Based on the recommendation of the Public Schools Accountability Act (PSAA) Advisory Committee, the State Board has defined significant growth as making at least one point of growth on the schoolwide API.

There have been a few occasions where higher-performing schools have become subject to state sanctions. For instance, a school may have made substantial growth in its first and second year of participation in the II/USP, but not made its growth targets,

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**WAIVER GUIDELINES**

Immediate Intervention/Underperforming Schools Program (II/USP): Higher-performing II/USP schools that do not make significant growth and are subject to state intervention

POLICY # 04-02

DATE May 2004

and then dropped down a few points on its API in its third year of participation. Even though the school has an API decile rank of 6 or higher, the school would be subject to state sanctions because it did not meet the significant growth criterion in its third year, or in subsequent years while "on watch."

Waiver Guidelines/Criteria:

In order to evaluate a waiver request to release higher-performing II/USP schools from the state sanctions/intervention process and be placed "on watch," the State Board of Education (SBE) requests that those Local Educational Agencies (LEAs) applying for a waiver provide documentation that the California Department of Education (CDE) professional staff will then use to review and make recommendations about the waiver request. The waiver request should include the following:

1. Verification that the school has a statewide API decile rank of 6 or higher
2. Verification that the school exceeded its API growth target in the prior year to the extent that the growth covered the total growth expectation for both years. (For example, the growth target was 6 points the current year and 5 points the prior year. Therefore, in the prior year the school must have grown at least 11 points accounting for the current year's schoolwide API point deficit on its schoolwide API to cover the growth expectation for the current year.)
3. Verification that all student groups have an API score that would place them in the decile rank 5.

CLUSARDI CONSTRUCTION COMPANY, Plaintiff and Appellant,

v.

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD, Defendant and Appellant; DEPARTMENT OF INDUSTRIAL RELATIONS, DIVISION OF OCCUPATIONAL SAFETY AND HEALTH, Real Party in Interest and Respondent.

No. C008399.

Court of Appeal, Third District, California.
Dec 5, 1991.

SUMMARY

A construction company petitioned the superior court for a writ of mandate to set aside the decision of the Occupational Safety and Health Appeals Board (board) affirming a citation for a serious violation of a safety order. A carpenter working for the company had died in a 24-foot fall from a skeleton steel structure while setting wooden trusses on the second story. The carpenter, who was not wearing a safety belt, set one truss, arose to get another truss, turned on the beam, and fell. The Department of Industrial Relations, Division of Occupational Safety and Health investigated the accident, issued a citation to the company for a serious violation of Cal. Code Regs., tit. 8, § 1670, for working at a height of 15 feet without a safety belt, and imposed a \$700 fine. In affirming the citation, the board determined that Cal. Code Regs., tit. 8, § 1710, which sets forth tie-off requirements for skeleton steel structures and which permits traveling on a skeleton steel structure without a safety belt up to a height of 30 feet, did not control, since it applies only to ironworkers, and the board further determined that the carpenter was not traveling within the meaning of § 1710. The trial court found that § 1710 did apply as the more specific safety order, but that the traveling exception did not apply. It also found that the recitation of § 1670 rather than § 1710 did not prejudice the company. It thus entered judgment denying the petition. (Superior Court of Sacramento County, No. 361969, Ronald W. Tochtermann, Judge.)

The Court of Appeal affirmed. It held that nothing in

Cal. Code Regs., tit. 8, § 1710, restricts its application to ironworkers, and thus § 1710 controlled. It also held that the board's interpretation that the carpenter was not "traveling" was not clearly erroneous, and thus substantial evidence supported the finding of a violation of a safety order. (Opinion by Marler, J., with Sparks, P. J., concurring. Separate concurring and dissenting opinion by Scotland, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Employer and Employee § 25--Occupational Health and Safety--Actions-- Appeal of Denial of Petition to Set Aside Order of Occupational Safety and Health Appeals Board.

On appeal of the denial of a petition to set aside an order of the Occupational Safety and Health Appeals Board, the function of the appellate court is the same as that of the trial court in ruling on the petition for the writ. It must determine whether, based on the entire record, the board's decision is supported by substantial evidence and whether it is reasonable. Where the decision involves the interpretation and application of existing regulations, the appellate court must determine whether the administrative agency applied the proper legal standard. Since the interpretation of a regulation is a question of law, while the administrative agency's interpretation is entitled to great weight, the ultimate resolution of the legal question rests with the courts.

(2a, 2b, 2c) Employer and Employee § 14--Injuries to Employees; Occupational Health and Safety--Carpenter Working on Skeleton Steel Structure Without Safety Belt--Applicable Regulation.

There was substantial evidence to support the finding of the Occupational Safety and Health Appeals Board that a company had violated a safety order as to a carpenter who died in a 24-foot fall from a skeleton steel structure while setting wooden trusses. The carpenter, who was not wearing a safety belt, set one truss, arose to get another truss, turned on the beam, and fell. The board affirmed the issuance of a citation to the company for a serious violation of Cal. Code Regs., tit. 8, § 1670, for working at a height of 15 feet without a safety belt. The board also determined that

even if the more specific Cal. Code Regs., tit. 8, § 1710, which sets forth tie-off requirements for skeleton steel structures and permits traveling on a skeleton steel structure without a safety belt up to a height of 30 feet, controlled, the carpenter was not traveling within the meaning of § 1710. This interpretation was not clearly erroneous and furthered the law's purpose of promoting safety. Moreover, since the carpenter was not traveling, the requirements of § 1670 and § 1710 were identical, and the company was on notice of the safety belt requirement.

[See Cal.Jur.3d, Labor, § 53; 2 Witkin, Summary of Cal. Law (9th ed. 1987) Agency and Employment, § 319.]

(3) Administrative Law § 10--Administrative Construction and Interpretation of Laws.

An administrative agency's expertise with regard to a statute or regulation it is charged with enforcing entitles its interpretation of the statute or regulation to be given great weight unless it is clearly erroneous or unauthorized.

(4) Employer and Employee § 13--Interpretation of Regulations by Occupational Safety and Health Appeals Board--Effect of Contrary Common Practice.

Contrary common practice does not render clearly erroneous the Occupational Safety and Health Appeals Board's interpretation of regulations.

(5) Employer and Employee § 13--Occupational Health and Safety--"Serious" Violation of Safety Order--Violation of Safety Belt Requirements.

The Department of Industrial Relations, Division of Occupational Safety and Health did not err in characterizing a company's violation of a safety order as serious. A carpenter working for the company had died in a fall while setting trusses at 24 feet without a safety belt. Lab. Code, § 6432, provides that a "serious violation" shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a serious exposure exceeding an established permissible exposure limit. Not only was there a substantial probability of resulting death or serious physical harm, the company had adequate notice the practice violated a safety order. Cal. Code Regs., tit. 8, §§ 1670, 1710, require safety belts for certain activities performed at a height of more than 15 feet. There was evidence that the company knew the work was being performed at heights above 15 feet without a safety belt, and the company should have known the prac-

tice was a violation.

(6a, 6b, 6c) Employer and Employee § 14--Occupational Health and Safety--Regulation Concerning Working and Traveling on Skeleton Steel of Multistory Buildings or Structures--Workers Covered.

Nothing in Cal. Code Regs., tit. 8, § 1710, subd. (g), which sets forth tie-off requirements for skeleton steel structures, restricts its application to ironworkers. Thus, in a proceeding to affirm a company's citation for serious violation of a safety order, arising from a carpenter's fall from a skeleton steel structure, the Occupational Safety and Health Appeals Board erred in determining § 1710 did not apply. There was no need to engage in the rules of statutory construction, since the words of § 1710 are unambiguous. The section applies to all employees involved in the erection of structures, since the term "employees" is used throughout the section.

(7a, 7b) Administrative Law § 10--Administrative Construction and Interpretation of Laws--Rules of Construction.

The same rules of construction apply in the interpretation or regulations as apply in the interpretation of statutes. The first rule is that when statutory language is clear and unambiguous there is no need for construction, and courts should not indulge in it. Also, when there is conflict between a specific regulation and a general one, the specific one controls.

COUNSEL

Robert D. Peterson for Plaintiff and Appellant.

Patrick S. Berdge for Defendant and Appellant.

Michael D. Mason for Real Party in Interest and Respondent.

MARLER, J.

Lusardi Construction Company appeals from a judgment denying its petition for a writ of mandate to set aside the decision of the Occupational Safety and Health Appeals Board (the Board) affirming a citation for a serious violation of a safety order. The Board cross-appeals from the trial court's memorandum and order, seeking to overturn the trial court's

interpretation of a safety order, section 1710 of title 8 of the California Administrative Code (all further references to this code are under its new designation adopted by the Legislature to be effective January 1, 1988, i.e., the California Code of Regulations). We affirm the judgment.

Factual and Procedural Background

The facts of this case are undisputed. On September 11, 1986, a carpenter working for Lusardi on a skeleton steel structure fell 24 feet to his death while setting wooden trusses (also called joists) on the second story. After setting a truss he had stood up to go get another truss, turned on a four-inch beam and fallen. He had not been wearing a safety belt. The Department of Industrial Relations, Division of Occupational Safety and Health investigated the accident, issued a citation to Lusardi for a serious violation of California Code of Regulations, title 8, section 1670, for working at a height of 15 feet without a safety belt, and imposed a \$700 fine.

Lusardi contested the citation and the fine. It argued that section 1670 did not apply; instead, the applicable safety order was section 1710 of title 8 of *643 the California Code of Regulations, which set forth the tie-off requirements for skeleton steel structures, and the controlling provision was subdivision (g)(3)(A) of section 1710, which permitted traveling on skeleton steel structures without a safety belt up to a height of 30 feet. Lusardi petitioned for reconsideration. The Board denied the petition. It reasoned that section 1710 applied only to ironworkers. Further, even if section 1710 did apply, it could not be said a worker was traveling while performing work, so the traveling exception of subdivision (g)(3)(A) did not apply.

Lusardi then petitioned the Superior Court in Sacramento for a writ of mandamus to overturn the decision. The court denied the writ. It found section 1710 did apply as the more specific safety order, but that the traveling exception did not. The court further found the recitation of section 1670 rather than section 1710 in the citation did not prejudice Lusardi.

Lusardi appealed; the Board also appealed, contesting the trial court's finding that section 1710 applied.

Discussion

(1) Our function on appeal is the same as that of the trial court in ruling on the petition for the writ. We must determine whether based on the entire record the Board's decision is supported by substantial evidence and whether it is reasonable. (Lab. Code, § 6629; *Davey Tree Surgery Co. v. Occupational Safety & Health Appeals Bd.* (1985) 167 Cal.App.3d 1232, 1240 [213 Cal.Rptr. 806].) Where the decision involves the interpretation and application of existing regulations, we must determine whether the administrative agency applied the proper legal standard. (*Carmona v. Division of Industrial Safety* (1975) 13 Cal.3d 303, 310 [118 Cal.Rptr. 473, 530 P.2d 161].) Since the interpretation of a regulation is a question of law, while the administrative agency's interpretation is entitled to great weight, the ultimate resolution of the legal question rests with the courts. (*Ibid.*)

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(2a) Lusardi was cited with a serious violation of section 1670, subdivision (a). At that time the safety order read in part: "Approved safety belts and lifelines shall be worn by those employees whose work exposes them to falling in excess of 15 feet from the perimeter of a structure or through shaftways and openings not otherwise adequately protected under the foregoing provisions of the Article." Lusardi contends there was no violation of a safety order because the activity of the fatally injured employee was controlled by the tie-off requirements of section 1710 and specifically the traveling exception of section 1710, subdivision (g)(3)(A). *644

Subdivision (g) of section 1710 provides: "Working and Traveling on the Skeleton Steel of Multistory Buildings or Structures. [¶] (1) Connecting. [¶] When connecting beams at the periphery or interior of a building or structure where the fall distance is greater than 30 feet, employees shall be tied-off by approved safety belts and lifelines to either columns, pendant lines secured at the tops of columns, catenary lines, or other secure anchorage points. [¶] (2) Work Other Than Connecting. [¶] When performing any other work at a work point, employees shall be protected by approved safety belts and lifelines where the fall distance is greater than 15 feet. [¶] (3) Traveling at Periphery or Interior of Building. [¶] (A) When moving from work point to work point or releasing slings, employees shall be permitted to walk the top flange

of a beam when the fall distance is 30 feet or less. [¶] (B) When the fall distance is greater than 30 feet, employees: [¶] 1. Shall coon or walk the bottom flange (inside flange or peripheral beams), or [¶] 2. May walk the top flange if they are tied-off to catenary lines. [¶] (4) Pendant lines, catenary lines and other lines used to secure workers shall be capable of supporting a minimum weight of 5400 pounds. [¶] (5) If the procedure specified in (1) above is impractical, perimeter safety nets shall be installed at a distance of no more than 25 feet below the work surface and extend at least 8 feet beyond the perimeter of the building or structure. Nets shall meet the requirements set forth in accordance with Sections 1671 and 1672."

It is undisputed that Lusardi's employees were placing trusses at a height of 24 feet without safety belts or lifelines. Lusardi contends the employee who fell was traveling at the time he fell. He had just placed a truss and was returning to pick up another. Nothing in section 1710, subdivision (g)(3)(A) prevents an employee from picking up material while moving from work point to work point. Since the employee was less than 30 feet above the ground, the activity at the time of the accident met the requirements of the safety order. Accordingly, Lusardi concludes there was no violation.

In making this argument Lusardi relies in part on an unpublished opinion of the Sacramento Superior Court, which it attaches as an exhibit to its opening brief. Such a case may not be cited as precedent under rule 977(a) of the California Rules of Court, and we decline to consider it.

The Board found the traveling exception did not apply. First, it found that section 1710 applied only to ironworkers and thus was inapplicable to the work of carpenters. Further, the Board found that even if section 1710 applied, the traveling exception did not because the employees setting trusses were not "traveling." The Board found that an employee does not "travel" while performing work even if some motion is required. An employee must be tied-off when performing any work at a height of 15 feet or *645 more, with the specific exception set forth in section 1710, subdivision (g)(2) for those performing connecting work. The Board recognized that safety orders are to be liberally construed to promote safety. (*Carmona v. Division of Industrial Safety, supra*, 13

Cal.3d at p. 313.) The Board's construction of the traveling exception met this goal. The Board rejected Lusardi's claim that work performed while moving on a beam falls within the traveling exception, noting that expanding the exception would involve increased exposure to hazards.

(3) An agency's expertise with regard to a statute or regulation it is charged with enforcing entitles its interpretation of the statute or regulation to be given great weight unless it is clearly erroneous or unauthorized. (*Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 111 [172 Cal.Rptr. 194, 624 P.2d 244]; *Judson Steel Corp. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 658, 668 [150 Cal.Rptr. 250, 586 P.2d 564]; *Jones v. California Interscholastic Federation* (1988) 197 Cal.App.3d 751, 759 [243 Cal.Rptr. 271]; *Davey Tree Surgery Co. v. Occupational Safety & Health Appeals Bd., supra*, 167 Cal.App.3d at p. 1243.) The Board is one of those agencies whose expertise we must respect. (*Davey Tree Surgery Co., supra*, at p. 1244.)

(2b) Giving deference to the Board's interpretation of "traveling" to promote safety, we cannot say such interpretation is clearly erroneous. Indeed, the Board's interpretation is more logical than that proposed by Lusardi. Lusardi's narrow interpretation would relax the tie-off requirements whenever a worker moved; as the Board noted that is when he needs the protection most. ^{FN1} There is substantial evidence to support the finding of a violation of a safety order. ^{FN2}

FN1 In deciding this issue we rely on the Board's interpretation of the traveling exception of section 1710, subdivision (g)(3)(A). The applicability of section 1710, subdivision (g) to employees other than ironworkers is discussed in part IV below.

FN2 The citation indicated a violation of section 1670. The trial court found the applicable safety order to be section 1710, and we agree as discussed in part IV below. The court found there was no prejudice to Lusardi in citing section 1670 rather than section 1710. Lusardi does not raise this point on appeal so we do not address whether the failure to cite the more specific safety order

has any effect on the citation.

Furthermore, even if we accepted Lusardi's interpretation of "traveling," we would still find substantial evidence of a violation. Lusardi concedes its employees were "working" when they placed trusses at 24 feet without a safety belt. This activity establishes a clear violation of the safety order. Lusardi urges that the Board is limited to the activity at the time of the fall (moving on the beam to pick up another truss) because that was all that was *646 litigated. The hearing, however, produced evidence of the work involved in setting the trusses in general and that such work occurred at a height of 24 feet without the use of safety belts. We find nothing in the record to restrict the citation to the activity at the precise moment of the accident.

II

Lusardi contends that due process was violated because arguably two safety orders, sections 1670 and 1710, applied and it had no notice as to which safety order controlled. This argument is of assistance to Lusardi only if we adopt its interpretation of "traveling." Other than the exceptions for traveling and connecting work, section 1710, subdivision (g) required employees to be tied-off when working at heights of 15 feet or more. That was the same requirement of section 1670 in 1986. Lusardi contends the Board's interpretation of "traveling" is unreasonable because it is counter to the industry practice. (4) However, contrary common practice does not render the Board's interpretation of a regulation clearly erroneous. (*Bendix Forest Products Corp. v. Division of Occupational Safety & Health* (1979) 25 Cal.3d 465, 471-472 [158 Cal.Rptr. 882, 600 P.2d 1339]; *C. E. Buggy, Inc. v. Occupational Safety & Health Appeals Bd.* (1989) 213 Cal.App.3d 1150, 1156-1157 [261 Cal.Rptr. 915].) (2c) We have found the Board's interpretation more logical and more consistent with the purpose of promoting safety. Since we have adopted the Board's interpretation of "traveling," the argument that two safety orders could have applied is easily answered: the requirements of both were the same. In short, persons of common intelligence would have understood the need to be tied-off when performing work above 15 feet, so there was no due process violation. (*C. E. Buggy, Inc. v. Occupational Safety & Health Appeals Bd.*, *supra*, 213 Cal.App.3d at p. 1155.)

III

(5) Lusardi contends the citation was improperly characterized as serious. Labor Code section 6432 defines a serious violation as follows: "As used in this part, a 'serious violation' shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a serious exposure exceeding an established permissible exposure limit or a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in the place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation." Lusardi does not dispute that the practice of *647 setting trusses at 24 feet without a safety belt had a substantial probability of resulting in death or serious physical harm, but argues it did not have adequate notice the practice violated a safety order. There was evidence that Lusardi knew the work was being performed at heights above 15 feet without a safety belt. As discussed above, the Board's interpretation of the safety order was not unreasonable, and Lusardi should have known the practice was a violation.

IV

(6a) In its appeal, the Board challenges the trial court's finding that section 1710 applies to all workers, not just ironworkers. The court found: "By its express language, section 1710 applies whenever 'employees' are engaged in the 'erection of structures.' Petitioner's employees clearly were so engaged. There is nothing in the language of the regulation to suggest it is limited to ironworkers. The Division and Board contend the Board correctly interpreted section 1710 as applying only to ironworkers. They make various arguments based on rules of construction of administrative regulations. [¶] The Board and Division's arguments are unpersuasive. (7a) The same rules of construction apply in the interpretation or regulations as apply in the interpretation of statutes. The first rule is that '[w]hen statutory language is ... clear and unambiguous there is no need for construction, and courts should not indulge in it.' (*California Interscholastic Federation v. Jones* (1988) 197 Cal.App.3d 733, 798 [sic], ...) (6b) None of the rules of construction relied on by the Board and Division

apply here because the plain meaning of the regulation is clear. [¶] Section 1710 is not ambiguous. It applies to all employees involved in the erection of structures. Nothing in it suggests that it is limited to ironworkers. It refers to 'employees' throughout (e.g., Section 1710(h)). It addresses not only structural steel erection (Section 1710(c)), but also the installation of flooring (Section 1710(d)(e))."

Recognizing that resolution of this issue is not necessary to this particular case, the Board asks us to decide the issue because it is one of continuing public interest that is likely to recur. (*Fagerquist v. Western Sun Aviation, Inc.* (1987) 191 Cal.App.3d 709, 715 [236 Cal.Rptr. 633]; *Filipino Accountants' Assn. v. State Bd. of Accountancy* (1984) 155 Cal.App.3d 1023, 1030 [204 Cal.Rptr. 913].) Section 1670, subdivision (a) now requires safety belts for employees exposed to falling from seven and one-half feet and is more restrictive than section 1710, subdivision (g), which remains at fifteen feet; therefore the likelihood of a conflict between the two safety orders is now greater. Since the parties have briefed the issue, it is a question of law, and the failure to *648 consider it will probably result in future litigation, we consider it. (*Sokol v. Public Utilities Commission* (1966) 65 Cal.2d 247, 256-257 [53 Cal.Rptr. 673, 418 P.2d 265].)

In denying the petition for reconsideration the Board found the tie-off provisions of section 1710 apply only to "ironworkers engaged in multistory skeleton steel construction," and since Lusardi's employees were not engaged in ironwork, but in "other aspects of multi-story steel skeleton construction," the provisions of section 1710 did not apply.

It is not clear whether the Board now seeks the same interpretation that section 1710 applies only to ironworkers. The Board argues section 1710 applies only to members of the skeleton steel erection trade and asks for a finding that section 1710 applies only to the erection of skeleton steel structures. It is unclear whether members of the skeleton steel erection trade are only ironworkers or if the term includes others who work on skeleton steel erection, such as carpenters. It is readily apparent section 1710, subdivision (g), which is entitled "Working and Traveling on the Skeleton Steel of Multistory Buildings or Structures," applies only when the place of work is on the skeleton steel of a multistory structure, and although it

appears likely that the job of connecting beams at the periphery or interior of a building as referred to in section 1710, subdivision (g)(1), would be that of an ironworker, we need not decide that here. It is section 1710, subdivision (g)(2), referring to "performing any other work at a work point ..." that we are concerned with here. We must decide whether such work is restricted in application to ironworkers.^{FN3}

FN3 We determine only the application of subdivision (g) of section 1710, as that is the only subdivision at issue in this case. However, in arguing that section 1710 applies only to skeleton steel construction and in refuting the trial court's contention that the section also applies to flooring, the Board cites many subdivisions of the regulation, such as (d) and (e) which refer to permanent and temporary flooring in skeleton steel construction. The Board, however, skips subdivision (f) whose title, "Flooring-Other Construction," certainly suggests an application to places of work other than skeleton steel structures.

The Board relies on the history of the regulation in arguing section 1710 applies only to ironworkers. Specifically, the Board relies on the final statement of reasons, title 8, chapter 4, subchapter 4, article 29 (Erection and Construction, §§ 1709-1720 and appendix C-14), prepared in response to Government Code section 11349.7 requiring state agencies to review and revise their regulations. Although the term "ironworkers" is used in this document, its use is not necessarily indicative that the drafters intended to limit section 1170, subdivision (g) to only such workers. In the summary of changes made to subdivision (g) of section 1710, this document *649 refers to "workers" not "ironworkers." The term "ironworkers" is used in the summary of the comments to the proposed changes in the regulation and the responses to those comments. However, it is not clear where the term originated; it could have been used in the comment, which would have no bearing on the intent of the drafters, and therefore the same terminology was also used in the response.

The Board relies particularly on a response to a comment by the Division of Occupational Safety and Health, which begins, "The proposed revisions were developed with the combined input from both man-

agement and labor organizations directly affected by the regulation, i.e., the structural steel erection industry." This comment, however, does not shed light on the intended scope of the regulation: whether it was limited to a particular workplace (skeleton steel structures) or also by type of work (ironwork). It is unclear whether ironworkers are the only workers affected by the regulation or simply the most affected group.

Countering the Board's position of limiting application of the regulation to certain types of workers, i.e., ironworkers, are rules of statutory construction. Generally, the same rules of construction apply to regulations of administrative agencies as apply to statutes. (*Forrest v. Trustees of Cal. State University & Colleges* (1984) 160 Cal.App.3d 357, 362 [206 Cal.Rptr. 595].)

(7b) When there is a conflict between a specific regulation and a general one, the specific one controls. (*Skylines Homes, Inc. v. Occupational Safety & Health Appeals Bd.* (1981) 120 Cal.App.3d 663, 669 [174 Cal.Rptr. 665].) (6c) While both sections 1670 and 1710 are construction safety orders, subdivision (g) of section 1710 is more specific because it has a workplace limitation. When the language is clear and unambiguous there is no need for construction and courts should follow the clear language and give to it its plain meaning. (*People v. Weidert* (1985) 39 Cal.3d 836, 843 [218 Cal.Rptr. 57, 705 P.2d 380].)

Here, the plain language is "employees" working on skeleton steel structures. There is nothing in the language to suggest it is limited to certain types of workers. Subdivision (g)(1) of section 1710 refers to connecting, a certain type of work. Subdivision (g)(2) refers to "any other work." We cannot read this phrase to be limited to ironwork. The clear language of section 1710, subdivision (g) indicates the tie-off requirements apply to any worker on the skeleton steel of a multistory building, with special rules for those performing connecting work and those traveling from work point to work point. *650

Disposition

The judgment is affirmed.

Sparks, Acting P. J., concurred. SCOTLAND, J.,

Concurring and Dissenting.

I disagree with the majority opinion because I conclude the California Occupational Safety and Health Appeals Board (the Board) properly determined that the decedent's failure to wear a safety belt and lifeline while setting a wooden truss during construction of a multistory steel and wood structure is governed by section 1670, subdivision (a), of the California Code of Regulations rather than section 1710, subdivision (g), of that code. ^{FN1}At the time he fell, the decedent, a carpenter, was one of several employees who "were walking the wood-covered steel 'I' beams in the interior of the structure, carrying wood trusses and placing [them] in previously prepared metal hangers."

FN1 Further references to sections 1670 and 1710 are to the California Code of Regulations. References to subdivisions (g), (g)(1), (g)(2) and (g)(3) are to section 1710.

Section 1670, subdivision (a), is a general regulation governing employees whose work exposes them to falling from the perimeter of a structure, through shaftways and openings, or from certain sloped surfaces. At the time of decedent's fall, this section required such employees to use approved safety belts and lanyards when exposed to falling in excess of 15 feet. It since has been amended to apply to exposure to a fall in excess of seven and one-half feet.

Section 1710, subdivision (g), is a more specific regulation which governs "Working and Traveling on the Skeleton Steel of Multistory Buildings or Structures." Subdivision (g) applies to employees who "travel" the periphery or interior of the structure by walking on the top flange of a beam while releasing slings or moving from work point to work point (subd. (g)(3)); to workers who are connecting beams at the periphery or interior of the structure (subd. (g)(1)); and to employees doing "Work Other Than Connecting" (subd. (g)(2)). The traveling and connecting provisions of subdivisions (g)(1) and (g)(3) require tie-off where the fall distance is greater than 30 feet. Subdivision (g)(2) provides: "When performing any other work at a work point, employees shall be protected by approved safety belts and lifelines where the fall distance is greater than 15 feet."

The Board concluded the tie-off requirements of sec-

tion 1710, subdivision (g), including subdivision (g)(2), are inapplicable to the facts of this case *651 because they apply only to "ironworkers engaged in multistory skeleton steel construction." According to the Board, "employees engaged in other aspects of the construction of wood frame or steel frame structures," such as the decedent who was a carpenter setting wood trusses, are governed by the safety belt and lanyard requirement of section 1670, subdivision (a).

The trial court and majority disagree. In the majority's view: "There is nothing in the language [of section 1710, subdivision (g)(2)] to suggest it is limited to certain types of workers." (Maj. opn., *ante*, at p. 649.) Rather, the regulation's "clear language ... indicates the tie-off requirements apply to *any* worker on the skeleton steel of a multistory building," presumably including carpenters such as the decedent, plumbers, electricians, et cetera. (Maj. opn., *ante*, at p. 649, italics added.) This conclusion does not give due deference to the expertise of the Board and to the Board's construction of the regulation it enforces.

While the ultimate interpretation of a regulation enforced by an administrative agency is an exercise of judicial power, it is well settled that, because of the agency's expertise, its interpretation of the regulation is entitled to great weight and will be followed unless clearly erroneous. (*Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 111 [172 Cal.Rptr. 194, 624 P.2d 244]; *Judson Steel Corp. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 658, 668 [150 Cal.Rptr. 250, 586 P.2d 564].)

I cannot say the Board's construction of subdivision (g)(2) is clearly erroneous. Considering its wording and history, the regulation reasonably can be construed to apply only to ironworkers. For starters, subdivision (g)(2) is contained within subdivision (g), which is entitled in pertinent part: "Working ... on the *Skeleton Steel* of Multistory Buildings or Structures." (Italics added.) The fact the drafters did not designate subdivision (g) and its subparts as relating to working on the skeleton steel, or on the wood subflooring, or on the electricity, or on the plumbing, et cetera, reasonably can be viewed as an indication the drafters intended the regulations to apply only to *ironworkers working on the skeleton steel itself* of the structure.

As previously noted, the safety belt and lifeline requirements of subdivision (g) apply to "connecting"

(subd. (g)(1)), "work other than connecting" (subd. (g)(2)), and "traveling" (subd. (g)(3)) on the skeleton steel. Contrary to the majority's analysis, the fact subdivision (g)(2) refers to "any" work other than connecting does not compel a conclusion that the tie-off requirement of this subdivision applies to all employees other than connectors working on the construction of a multistory skeleton steel structure. What *652 the majority overlooks is that *ironworkers* perform work other than simply connecting the skeleton steel.

In its written decision upholding the civil penalty imposed on Lusardi for violation of a safety regulation which led to the decedent's death, the Board noted the separate categories of work performed by ironworkers on skeleton steel structures. The first is connecting, in which ironworkers "connect both ends of a new and unsecured structural steel beam or column to the previously assembled structure." In the Board's words: "This connecting work must be of short duration, performed from a stationary position and present[s] no greater hazard of falling than would generally be contemplated in the routine assembly of structural steel beams. Because this work of connecting presents relatively fewer hazards of falling and is at least arguably best performed without restriction (in comparison with other work in the ironworkers trade), the [Occupation Safety and Health] Standards Board has permitted employers the discretion of having connectors perform such work without the protection afforded by tying-off so long as such work does not expose an employee to a fall greater than 30 feet." (Citing § 1710, subd. (g)(1).)

After the connector is finished, an ironworker known as a "bolter" takes over. In the Board's words: "When the connected beams are being permanently fastened to the columns, work known as "bolting", done by a worker called a "bolter" (who may be the same person who did the connecting), the safety order [of section 1710, subdivision (g)(1)] does not apply ... because bolting is not work of short duration. A bolter puts in place and tightens four or five bolts. He works with a heavy wrench. Much physical strength is required. Some cutting of metal and welding may need to be done. This work calls for tying-off if the fall distance is greater than 15 feet [section 1710, subdivision (g)(2).]" (Quoting *Valley Steel Construction*, OSHSB 78-1419 (Dec. 17, 1984).)

In view of the title of subdivision (g), and because ironworkers other than connectors perform work on the skeleton steel of multistory structures and, by the nature of their work, have safety needs different than those of connectors, the Board's interpretation that subdivisions (g)(1), (g)(2) and (g)(3) apply only to ironworkers is not clearly erroneous.

Moreover, the Board's construction is supported by section 7265 of the Labor Code and by the history of section 1710, subdivision (g). Labor Code section 7265 applies to structural steel framed buildings. (Lab. Code, div. 5, pt. 1, art. 4, § 7250 et seq.) It provides: "Safety belts and nets shall be *653 required in accordance with Article 24 (commencing with Section 1669) of subchapter 4 of Chapter 4 of Part 1 of Title 8 of the California Administrative Code [now California Code of Regulations], Construction Safety Orders of the Division of Occupational Safety and Health." The general safety belt and lanyard requirement of section 1670, subdivision (a), is contained within the aforesaid article of the California Code of Regulations. The tie-off requirements of section 1710, subdivision (g), are in a separate article. Thus, it appears the Legislature intended employees working on structural steel framed buildings to be governed by the tie-off requirement of section 1670, subdivision (a).

Section 1710, subdivision (g), apparently was promulgated in response to safety concerns expressed by the ironworkers who assemble the steel beams and columns of skeleton steel structures. In its "Final Statement of Reasons" for the tie-off requirements of subdivision (g), the Occupational Safety and Health Standards Board (OSHSB) responded to written comments from those affected by the requirements. In one response, OSHSB characterized the provisions of subdivision (g) as "safety belt protection ... required to be worn by structural *ironworkers* in the process of erecting structural steel in building construction." (Italics added.) In another response, OSHSB stated that the revisions to subdivision (g) "were developed with the input from [sic] both [sic] management and labor organizations directly affected by the regulation, i.e., the structural steel erection industry. The purpose for this development was a concerted effort by this industry to provide clear and workable regulations directed toward that phase of the steel erection procedure where beams

and columns are temporarily positioned and connected by a special group of ironworkers known in the trade as 'connectors.' These workers land and position the steel as it is hoisted by crane or derrick using bolts as a connection means. After one steel member has connected (bolted), the process is repeated over-and-over until the structure has been completely erected. Following closely behind the 'connectors' is a group of ironworkers who make the final beam and column connections (after the steel has been properly plumbed) by the use of either bolts, rivets or [sic] welding means. Other safety orders (Sections 1670, 1649 and 1671 [of the California Code of Regulations]) apply to this latter group with respect to fall protection. The regulation as proposed, therefore, will eliminate confusion as to how, and under what circumstances, fall protection is to be afforded to 'connectors' as well as other ironworkers on the job. [¶] 'Connectors' have long been adamant in their insistence that they should *not* be required to wear safety belts and lifelines (lanyards) when performing their work at elevations above 15 feet. This conviction is based on the fact that they must move rapidly from one work location to another. In doing so, there is the substantial *654 possibility that their lifeline will catch upon the protrusion, such as clip angle or bolt, and cause them to lose their balance and fall. The safety device (i.e., safety belt and lifeline) therefore becomes a safety hazard. To reinforce their position, they point to Section 1669(c) which states that for work of short duration (i.e., connecting) the provisions of Article 24 may be temporarily suspended. [¶] ... Ironworkers, other than 'connectors', would, therefore, be bound by, and not in conflict with, the provisions of Article 24 as well as proposed new Section 1710(g)(2)."

Considering this regulatory history which focuses on special safety needs of *ironworkers* inconsistent with the tie-off requirements of section 1670, subdivision (a), and in view of the other factors noted above, it is not clearly erroneous to conclude that subdivision (g) is intended to apply only to ironworkers and that all other workers on multistory skeleton steel buildings and structures are governed by the general safety belt and lanyard requirements of section 1670, subdivision (a), in accordance with Labor Code section 7265.

In fact, since the tie-off requirement of section 1670, subdivision (a), is now more restrictive than that of

section 1710, subdivision (g)(2), the Board's determination that subdivision (g) applies only to ironworkers is consistent with the rule of law that safety regulations are to be interpreted liberally for the purpose of achieving a safe working environment. (*Carmona v. Division of Industrial Safety* (1975) 13 Cal.3d 303, 313 [118 Cal.Rptr. 473, 530 P.2d 161].)

The bottom line is this. We judges are not schooled in skeleton steel construction. I candidly admit I could not begin to describe the difference between a bar joist (§ 1710, subd. (c)(3)) and an open web steel joist. (§ 1710, subd. (c)(5).) It is the Board which has expertise dealing with the safety needs of this specialized industry. Thus, the Board is in the best position to interpret the intent and scope of safety regulations governing skeleton steel construction. Judges must give great deference to the Board's expertise. This does not mean that we should abdicate our role of independently construing the meaning of safety regulations. But we should not force upon the Board, and the industry it oversees, an unwanted construction of section 1710, subdivision (g), when the Board's interpretation otherwise is not clearly erroneous. (*Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.*, *supra*, 29 Cal.3d at p. 111; *Judson Steel Corp. v. Workers' Comp. Appeals Bd.*, *supra*, 22 Cal.3d at p. 668.) Such is the case here, particularly since the majority's interpretation results in a less safe working environment for those, other than ironworkers, who work on multistory skeleton steel structures.
*655

For the reasons stated above, I conclude the Board properly held that section 1710, subdivisions (g)(1), (g)(2) and (g)(3), apply only to ironworkers working on the skeleton steel of multistory structures, thus decedent's failure to use a safety belt and lanyard while working as a carpenter setting a wooden truss violated the general tie-off requirement of section 1670, subdivision (a).^{FN2} Accordingly, I would affirm the superior court's denial of Lusardi's petition for writ of mandate, albeit for reasons different than those stated by the superior court. (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 413-414 [15 Cal.Rptr. 119, 364 P.2d 295]; *People v. Ainsworth* (1990) 217 Cal.App.3d 247, 250, fn. 4 [266 Cal.Rptr. 175] [since an appellate court is concerned with the correctness of the trial court's ruling, and not its reasons, the ruling may be affirmed even if the basis for the trial court's order is incorrect].)

FN2 This should not be construed to express a belief that all the other subdivisions of section 1710 are limited to ironworkers. That is a question I need not, and do not, decide.

Nevertheless, since the majority upholds the trial court's decision on other grounds, I concur in the judgment. *656

Cal.App.3.Dist.
Lusardi Construction Co. v. California Occupational Safety & Health Appeals Bd.
1 Cal.App.4th 639, 2 Cal.Rptr.2d 297, 1992 O.S.H.D. (CCH) P 29,560

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H

Court of Appeal, Second District, Division 7, California.

MARCUS & MILLICHAP REAL ESTATE INVESTMENT BROKERAGE CO., et al., Plaintiffs and Appellants,

v.

WOODMAN INVESTMENT GROUP, et al., Defendants and Respondents.

No. B174696.

May 17, 2005.

Background: Real estate brokerage company petitioned for confirmation of arbitration award in its favor in commission dispute with investment group and its managing partner, and group and partner cross-petitioned to vacate award. After trial court granted cross-petition and company did not seek rehearing, group and partner sought attorney fees and costs. The Superior Court, County of Los Angeles, No. BS085380, Soussan G. Bruguera, J., granted request. Company appealed award of fees and costs, and trial court subsequently issued order of clarification that arbitration should be reheard.

Holding: The Court of Appeal, Perluss, P.J., held that investment group and its managing partner were entitled to fees and costs for postarbitration judicial proceedings.

Affirmed.

West Headnotes

[1] Alternative Dispute Resolution 25T  364

25T Alternative Dispute Resolution

25TII Arbitration

25TII(H) Review, Conclusiveness, and Enforcement of Award

25Tk360 Impeachment or Vacation

25Tk364 k. Costs. Most Cited Cases

(Formerly 33k42 Arbitration)

Investment group and its managing partner were entitled to attorney fees and costs for successfully obtaining, in postarbitration judicial proceeding, vacation of

arbitration award in favor of real estate brokerage company in commission dispute, where company did not seek rehearing of arbitration, even though trial court belatedly issued order of clarification that arbitration should be reheard; group and partner were "prevailing parties" as they obtained relief they sought, and order vacating award was "final order" in absence of company's request for rehearing or appeal. West's Ann.Cal.C.C.P. §§ 1293.2, 1294(c).

See 6 Witkin, *Cal. Procedure* (4th ed. 1997) *Proceedings Without Trial*, § 517; Knight et al., *Cal. Practice Guide: Alternative Dispute Resolution* (The Rutter Group 2004) ¶¶ 5:434.2 (CAADR Ch. 5-I), 5:539 (CAADR Ch. 5-J); *Cal. Jur. 3d, Arbitration and Award*, § 65; *Cal. Civil Practice* (Thomson/West 2003) *Procedure*, § 26:55.

[2] Alternative Dispute Resolution 25T  364

25T Alternative Dispute Resolution

25TII Arbitration

25TII(H) Review, Conclusiveness, and Enforcement of Award

25Tk360 Impeachment or Vacation

25Tk364 k. Costs. Most Cited Cases

(Formerly 33k42 Arbitration)

Award of costs, including attorney fees when authorized by contract, is mandatory in judicial proceeding to confirm, correct, or vacate an arbitration award. West's Ann.Cal.C.C.P. § 1293.2.

[3] Alternative Dispute Resolution 25T  368

25T Alternative Dispute Resolution

25TII Arbitration

25TII(H) Review, Conclusiveness, and Enforcement of Award

25Tk366 Appeal or Other Proceedings for Review

25Tk368 k. Decisions Reviewable. Most Cited Cases

(Formerly 33k73.2 Arbitration)

While an order vacating an arbitration award and ordering rehearing is an intermediate ruling, a similar order vacating an award without ordering rehearing is final for purpose of appeal. West's Ann.Cal.C.C.P. § 1294(c).

[4] Alternative Dispute Resolution 25T 364**25T Alternative Dispute Resolution****25TII Arbitration****25TII(H) Review, Conclusiveness, and Enforcement of Award****25Tk360 Impeachment or Vacation****25Tk364 k. Costs. Most Cited Cases****(Formerly 33k42 Arbitration)**

Under listing agreement authorizing award of attorney fees in "any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto," investment group and its managing partner, who successfully sought in postarbitration judicial proceedings the vacation of arbitrator's award in favor of real estate brokerage company in commission dispute, were entitled to attorney fees, even though underlying contract claim was not yet resolved. West's Ann.Cal.C.C.P. § 1293.2.

****585** Overland Borenstein Scheper & Kim, Diann H. Kim, Wendy O. Clendening, and Kathryn E. White, Los Angeles, for Plaintiffs and Appellants.

Alschuler Grossman Stein & Kaban, Daniel Albestone, and David B. Dreyfus, Santa Monica, for Defendants and Respondents.

PERLUSS, P.J.

***510** The trial court denied a petition to confirm an arbitration award filed by Marcus & Millichap Real Estate Investment Brokerage Company, Tony Azzi and John P. Walsh (collectively Marcus & Millichap) and granted the cross-petition to vacate the award filed by Woodman Investment Group, LLC (Woodman) and Eli Sasson, Woodman's managing partner, on the ground the arbitrator exceeded her authorized powers and the award could not be corrected without affecting the merits of the decision. (Code Civ. Proc., § 1286.2, subd. (a)(4).) ^{FN1} The court did not issue an order for rehearing pursuant to section 1287, and no appeal was taken from the order vacating the arbitration award. The trial court then awarded attorney fees and costs pursuant to section 1293.2 to Woodman and Sasson as the prevailing parties in the postarbitration judicial proceedings. Marcus & Millichap appeals the award of fees and costs. We affirm.

FN1. Statutory references are to the Code of Civil Procedure.

FACTUAL AND PROCEDURAL BACKGROUND**1. The Arbitration**

Marcus & Millichap filed a demand for arbitration in May 2002 for payment of a commission pursuant to a listing agreement with Woodman dated April 19, 2001 covering a shopping center located on Woodman Avenue in Van Nuys, California. Woodman filed a cross-complaint in the arbitration proceeding for breach of fiduciary duty and constructive fraud.

***511** In August 2003 the arbitrator issued an award (approximately \$300,000, including \$70,000 for attorney fees) ^{FN2} in favor of Marcus & Millichap against Woodman and Sasson. The arbitrator found Woodman liable on the parties' agreement and Sasson liable as Woodman's alter ego. Woodman's claims against Marcus & Millichap were denied.

FN2. The parties' agreement provides, "ATTORNEYS' FEES: In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, including Agent, the prevailing party shall be entitled to recover its costs, including costs of arbitration, and reasonable attorneys' fees in addition to any other relief to which such party may be entitled."

2. Postarbitration Judicial Proceedings

Marcus & Millichap initiated a superior court action pursuant to section 1288, petitioning the court for confirmation of the arbitration award. Woodman and Sasson filed a response to the petition, as well as their own cross-petition to vacate the arbitration award on the ground the arbitrator had exceeded her authorized powers and the award could not be corrected without affecting the merits of the decision. Woodman and Sasson argued, because Sasson was not a signatory to the parties' agreement, which included the agreement to arbitrate, the arbitrator lacked jurisdiction over him.

On December 10, 2003 the trial court denied Marcus & Millichap's petition to confirm and granted Woodman and Sasson's ****586** cross-petition to vacate. Marcus & Millichap did not request, and the

court's order vacating the arbitration award did not include, an order for rehearing the arbitration pursuant to section 1287. On December 17, 2003 Woodman and Sasson filed a motion to recover attorney fees and costs pursuant to section 1293.2, which authorizes the court to award costs in postarbitration judicial proceedings. Two days later, on December 19, 2003, Marcus & Millichap filed a motion for clarification of the order vacating the arbitration award, requesting the court to confirm the award as to Woodman only.

On March 29, 2004 the trial court denied Marcus & Millichap's motion for clarification and granted Woodman and Sasson's request for attorney fees and costs, awarding them \$33,492.50 as the prevailing parties in the judicial proceedings. Marcus & Millichap filed a notice of appeal of the fees-and-costs award only; no appeal has been taken from the trial court's orders vacating the arbitration award or denying the motion for clarification.

3. Subsequent Proceedings

On April 15, 2004, the same day it filed its notice of appeal in this proceeding, Marcus & Millichap moved in the trial court for an order to *512 compel arbitration against Sasson.^{FN3} On May 17, 2004 Marcus & Millichap filed a new demand for arbitration before the American Arbitration Association concerning the dispute over its entitlement to a commission for the Woodman Avenue shopping center. On May 27, 2004 the trial court granted the motion to compel Sasson to arbitration.

FN3. On February 23, 2005 we granted in part Marcus & Millichap's request for judicial notice, which includes various filings relating to its efforts to renew the arbitration between the parties.

Woodman and Sasson's challenges to Marcus & Millichap's renewal of the arbitration proceedings and to the trial court's order compelling the second arbitration have to date been unsuccessful.^{FN4} On March 24, 2005, in response to Marcus & Millichap's second motion for clarification, the trial court issued a minute order stating: "[T]he Court clarifies its December 10, 2003 order to reflect its intent that rehearing of the arbitration shall take place between all parties. In its December 10, 2003 order, the Court va-

cated the entire arbitration award. On May 27, 2004, the Court granted [Marcus & Millichap's] motion to compel arbitration. The Court intended a rehearing of the arbitration between all parties, as reflected in the reporter's transcript of the hearing on the motion to compel arbitration. On three separate occasions, the Court has rejected [Woodman and Sasson's] argument that the lack of an order of rehearing bars any rehearing."^{FN5}

FN4. On June 18, 2004 Woodman and Sasson filed a motion for judgment on the pleadings and for an order vacating the trial court's order compelling arbitration against Sasson on the ground the trial court lacked subject matter jurisdiction once the time for appeal of the trial court's order vacating the arbitration award had lapsed. The trial court denied that motion on September 9, 2004. We summarily denied Woodman and Sasson's petition for writ of mandate seeking reversal of that order. (*Woodman Investment Group, LLC v. Superior Court* (Sept. 30, 2004, B178196) [summary denial order].)

FN5. On April 5, 2005, a month after we had heard oral argument and ordered the case at bar submitted, we took judicial notice of the trial court's March 24, 2005 order of clarification. In our order issued April 5, 2005 we also vacated submission of this matter and directed the parties to file supplemental letter briefs concerning the meaning and effect of the trial court's "clarification" of its December 10, 2003 order, particularly with respect to the appealability of the trial court's March 29, 2004 order awarding costs and attorney fees to Woodman. In addition, we stayed further proceedings in the trial court.

**587 CONTENTION

[1] Marcus & Millichap contends the trial court erred as a matter of law in awarding attorney fees and costs to Woodman and Sasson pursuant to section 1293.2 because the underlying dispute between the parties remains unresolved.

*513 DISCUSSION

1. Governing Law

Section 1293.2 provides, "The court shall award costs upon any judicial proceeding under this title [governing arbitration] as provided in Chapter 6 (commencing with Section 1021) ... of this code." Section 1033.5, part of chapter 6 of the Code of Civil Procedure, provides that items recoverable as costs include attorney fees when authorized by contract. (§ 1033.5, subd. (a)(10)(A).) The judicial proceedings covered by this provision include petitions to confirm or vacate an arbitration award. (§ 1285.)

[2] The award of costs pursuant to section 1293.2, including attorney fees when authorized by contract, is mandatory. (*Corona v. Amherst Partners* (2003) 107 Cal.App.4th 701, 707, 132 Cal.Rptr.2d 250 ["A court must award costs in a judicial proceeding to confirm, correct or vacate an arbitration award."]; *Carole Ring & Associates v. Nicastro* (2001) 87 Cal.App.4th 253, 260, 104 Cal.Rptr.2d 519 (*Carole Ring*) ["the superior court was required to award [the prevailing party] reasonable attorney fees and costs for postarbitration judicial proceedings, pursuant to the statutory scheme governing arbitration."].)

In *Carole Ring, supra*, 87 Cal.App.4th 253, 104 Cal.Rptr.2d 519, Division Three of this court considered whether section 1293.2 permitted the award of postarbitration attorney fees and costs to the party prevailing on a claim under a contract that provided for arbitration and authorized attorney fees and costs to the prevailing party even though the arbitrator had directed the parties to bear their own attorney fees and costs. (*Id.* at pp. 254-255, 104 Cal.Rptr.2d 519.) Reversing the trial court's order denying a motion for award of fees, the court held the determination under section 1293.2 which party, if either, is the prevailing party in postarbitration proceedings is a judicial function distinct from the arbitrator's decision to award or not to award fees in the arbitration proceeding itself. (*Id.* at pp. 260-261, 104 Cal.Rptr.2d 519.)

"The arbitrator's earlier refusal to award attorney fees in the arbitration proceeding was not dispositive on the issue of postarbitration attorney fees. The arbitrator obviously did not, and could not, make a determination with respect to which, if either party, would be the prevailing party in subsequent postarbitration proceedings. For these reasons, the arbitrator's refusal to award attorney fees did not dictate a similar result

with respect to Nicastro's request for attorney fees in postarbitration judicial proceedings. [¶] Because Nicastro was the prevailing party as a matter of law, the mandatory language *514 of the contractual attorney fees clause and section 1293.2 entitle Nicastro to reasonable attorney fees and costs incurred in postarbitration judicial proceedings." (*Carole Ring, supra*, 87 Cal.App.4th at p. 261, 104 Cal.Rptr.2d 519.)^{FN6}

FN6. Division Three emphasized it was not presented with a situation in which the arbitrator had concluded there was no valid or enforceable attorney fees provision in the parties' contract, a ruling that would have precluded the superior court from awarding attorney fees for postarbitration judicial proceedings. (*Carole Ring, supra*, 87 Cal.App.4th at p. 260, 104 Cal.Rptr.2d 519.)

**588 2. *Woodman and Sasson Were Properly Awarded Fees and Costs*

a. *Woodman and Sasson Were the Prevailing Parties in the Postarbitration Judicial Proceedings*

In the postarbitration judicial proceedings in this case, commenced on August 27, 2003 by Marcus & Millichap after the arbitrator made her award in its favor, the trial court denied Marcus & Millichap's petition to confirm and granted Woodman and Sasson's cross-petition to vacate the award (without ordering a rehearing pursuant to section 1287). Considering the judicial proceedings initiated by Marcus & Millichap pursuant to section 1285 as distinct from the arbitration itself, as did Division Three in *Carole Ring*, Woodman and Sasson were entirely successful: Not only did they defeat Marcus & Millichap's effort to have the arbitration award confirmed but also they persuaded the trial court to vacate the arbitration award as to both Woodman and Sasson. As a matter of law, with respect to the postarbitration judicial proceedings, Woodman and Sasson must be considered the prevailing party within the meaning of section 1032, subdivision (a)(4) (" 'prevailing party' " includes a defendant or other party against whom a complaint has been filed "in whose favor a dismissal is entered," as well as a defendant "as against those plaintiffs who do not recover any relief against that defendant").

b. *The Judicial Proceeding Initiated by Marcus &*

Millichap To Confirm Its Arbitration Award Is "Final" for Purposes of an Award of Fees

[3] Whether or not Marcus & Millichap is correct in asserting it may initiate another arbitration proceeding to determine its right to a commission without an express order for rehearing pursuant to section 1287—an issue not presented by Marcus & Millichap's appeal from the order awarding costs and attorney fees and as to which we express no view—its argument that the judicial proceeding it initiated is not yet "final" is unpersuasive. Section 1294, subdivision (c), expressly provides that an order vacating an arbitration award is appealable "unless a rehearing in arbitration is ordered." Thus, while *515 an order vacating an arbitration award and ordering rehearing is an "intermediate ruling," a similar order vacating an award without ordering rehearing is, of necessity, "final." (*Long Beach Iron Works, Inc. v. International Molders Etc. of North America, Local 374* (1972) 26 Cal.App.3d 657, 659, 103 Cal.Rptr. 200 ["It is quite obvious that the Legislature's philosophy and intent in drafting section 1294 was that there should be no appellate consideration of intermediate rulings in arbitration disputes if the superior court was of the view that there should be initial or further proceedings in arbitration.... [T]he Legislature expressly accepted orders vacating awards but directed rehearings in arbitration from a roster of appealable rulings in section 1294."])^{FN7}

FN7. By permitting an appeal from an order vacating an arbitration award when no rehearing in arbitration has been ordered, section 1294, subdivision (c), eliminates any question that the superior court, when vacating an arbitration award, is not obligated to order such a rehearing in all cases in which it has vacated the original arbitration award.

The trial court's belated, March 24, 2005 order of clarification does not alter our conclusion as to the finality for purposes of a cost and fee award of its earlier order vacating the arbitration award without an order for rehearing. The court's explanation of "its intent that rehearing of the **589 arbitration shall take place between all parties," as emphatic as it may be, is simply a ruling that the absence of an express order for rehearing does not necessarily bar a rehearing—a ruling, as the court itself notes, it had also made on three occasions prior to its March 24, 2005 ruling.

Indeed, notwithstanding Marcus & Millichap's argument to the contrary, the trial court appears to have carefully worded its clarification to avoid suggesting it was attempting to correct nunc pro tunc its December 10, 2003 order to include an order for a rehearing. Because no rehearing of the arbitration was ordered by the trial court and Marcus & Millichap did not appeal from the order vacating the arbitration award (or, for that matter, from the trial court's subsequent denial of its motion for clarification of the order vacating the arbitration award), the trial court's decision to vacate the original arbitration award is now final.

Green v. Mt. Diablo Hospital Dist. (1989) 207 Cal.App.3d 63, 254 Cal.Rptr. 689, upon which Marcus & Millichap relies, does not support a contrary result. In *Green* the Court of Appeal affirmed an order denying a petition to compel arbitration of disputes arising from an employment contract and a buy-out agreement between Green and the Hospital District. The petition had been filed at least partially in response to a complaint for declaratory relief by a taxpayers group alleging that the termination agreement*516 between Green, the Hospital District's chief executive officer, and the Hospital District was void. (*Id.* at pp. 68-69, 254 Cal.Rptr. 689.) Affirmance of the order denying Green's request for arbitration left the taxpayers' action for declaratory relief and Green's breach of contract claim against the Hospital District "subject to judicial determination of whether or not the agreement is illegal." (*Id.* at p. 76, 254 Cal.Rptr. 689.)

In rejecting the Hospital District's cross-appeal arguing that the trial court should have awarded it attorney fees following denial of Green's petition to compel arbitration, the Court of Appeal held an award of fees would be premature because the claims of the parties remained before the court and subject to judicial determination. "[T]he trial court has not reached the merits of the case.... The trial court, therefore, correctly concluded that there has been no final determination of the rights of the parties...." (*Green v. Mt. Diablo Hospital Dist., supra*, 207 Cal.App.3d at p. 76, 254 Cal.Rptr. 689.) Because no rehearing of the arbitration was ordered and Marcus & Millichap did not appeal the order vacating the arbitration award in this case, unlike the situation presented by *Green*, no claim of either party remains before the court or otherwise subject to judicial determination: The trial court's rulings are final. (See *Long Beach*

Iron Works, Inc. v. International Molders Etc. of North America, Local 374, supra, 26 Cal.App.3d at p. 659, 103 Cal.Rptr. 200.)

[4] Finally, although not raised in its briefs on appeal, Marcus & Millichap suggested at oral argument that, even if Woodman and Sasson are prevailing parties and entitled to an award of costs under section 1293.2, they are not entitled to attorney fees under the parties' contract until they prevail on the underlying contract claim. The listing agreement, however, authorizes the award of attorney fees "[i]n any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto." This contractual language, like section 1293.2 itself, **590 requires postarbitration judicial proceedings to be considered a discrete "legal proceeding" for purposes of determining a party's right to an award of attorney fees.

3. Marcus & Millichap's Motion for Sanctions Is Denied

All parties agreed to participate in the mediation program administered by the Second District Court of Appeal.^{FN8} Notice of the conference date and location sent by the clerk of the court specifically advised the parties, in boldface type, "It is mandatory that ALL PARTIES and their counsel as well as any other individual whose presence is necessary to effect a settlement of the case be present at the settlement conference.... [F]ailure to either *517 participate in good faith or to attend is likely to result in the imposition of appropriate sanctions."^{FN9}

FN8. Although the court's mediation program is voluntary, once the parties agree to participate, they are advised that compliance with the procedures set forth in the court's scheduling letter is mandatory and that non-compliance risks the imposition of sanctions.

FN9. The form notice sent by the clerk of the court has been slightly revised since the date of the mediation conference in the case at bar. In its current iteration the form provides, "It is MANDATORY that all named parties and their counsel attend all mediation sessions. If a party is not an individual, then a party representative with full authority to

settle all appeals and cross-appeals must attend in person. In cases where insurance coverage may apply, a representative of each carrier with full settlement authority must attend in person.... Failure either to attend or to participate in good faith will likely result in the imposition of sanctions."

Marcus & Millichap was represented at the scheduled mediation conference by both outside litigation counsel and the general counsel of Marcus & Millichap Real Estate Investment Co., who traveled from Northern California to attend the session. Woodman and Sasson were represented only by their outside litigation counsel, who stated he had full authority to settle the issue of attorney fees and costs raised in the instant appeal. Neither appellants Tony Azzi and John P. Walsh nor respondent Eli Sasson attended the conference.

At the outset of the conference counsel disputed whether they had agreed to attempt to mediate only the attorney fee dispute, the issue presented by Marcus & Millichap's appeal (Woodman and Sasson's position), or to discuss settlement of both the appeal and the underlying dispute regarding Marcus & Millichap's claim to a commission under the listing agreement (Marcus & Millichap's position). As a result no productive discussions of any sort occurred.

Following the fruitless mediation conference, Marcus & Millichap moved for sanctions against Woodman and Sasson for Sasson's failure to personally appear at the court-ordered mediation conference. The motion is supported by a declaration from Marcus & Millichap's litigation counsel and related exhibits. Woodman and Sasson filed an opposition at our request, which likewise includes a declaration from counsel who attended the mediation conference, as well as related exhibits.

Because it is impossible for us to determine from the conflicting declarations what, if any, agreement had been reached by counsel to discuss a possible global resolution of the parties' disputes, rather than to address the single issue actually raised in this appeal, we deny the motion for sanctions. What is apparent is that *both* sides to the dispute failed to have all parties to the appeal present at the mediation and, more importantly, that the failure of counsel to communicate with each other clearly and forthrightly about their

positions and intentions prior to the mediation **591 conference resulted in a waste of the volunteer mediator's valuable time. We expect more.

*518 DISPOSITION

The order awarding attorney fees and costs is affirmed. The stay of proceedings in Los Angeles Superior Court case No. BS085380 is terminated. Woodman and Sasson are to recover their costs on appeal.

I concur: JOHNSON, J.

WOODS, J., Dissenting:

I respectfully dissent from that portion of the opinion holding that the arbitration proceedings in the trial court were final thereby entitling Woodman to claim attorney fees. The majority opinion, in my view, is overly technical in its approach to the problem, and sidesteps equitable principles which should lead to a reversal. Of great importance is the fact that the legislature has not revealed its intent when it enacted section 1287 as to the meaning of the word "*rehearing*." In my view the question is one of first impression and requires the application of two guiding principles which I hereafter discuss. Before applying the guiding principles which I find applicable and determinative of the appeal, it first appears prudent to repeat the content of the statute which is pertinent to the central issue in this case. Section 1287 is entitled "Rehearing before arbitrators" and provides as follows:

"If the award is vacated, the court may order a rehearing before new arbitrators. If the award is vacated on the grounds set forth in subdivision (d) or (e) of Section 1286.2, the court with the consent of the parties to the court proceeding *may* order a rehearing before the original arbitrators." (Italics added.)

When the legislature uses language in a statute which is indicative of discretion, such as the use of "*may*" in 1287, as opposed to more mandatory language such as "*must*" or "*shall*," the parties to litigation and the courts are left in a position of having to speculate as to the proper application of such words, unless the legislature has made it clear how such words are to be applied by a statement in the legislative history. As the majority and this dissenting justice maintain, the legislative history is unavailing in this instance.

To put it in the vernacular, the parties and the courts are *at sea* without a rudder on the core issue in this appeal.

The quandary of the parties and the courts in such instances is generally exemplified in 58 Cal.Jur.3d (2004) Other Common Terms, section 152, pages 578-579 as follows: "The distinction between directory and mandatory statutes is not susceptible of exact definition, for it depends on legislative intent, and consequently there is no simple, mechanical test for determining whether a provision should be given directory or mandatory effect. ... The *519 mandatory-directory and obligatory-permissive dichotomies are analytically distinct. ... In order to determine whether a particular statutory provision is mandatory or directory, in the absence of express language reflecting the legislative intent, the courts must ascertain or gather such intent from the terms of the statute construed as a whole, from the nature and character of the act to be done, and from the consequences which would follow the doing or fail[]ure to do the particular act at the required time. ... While the use of particular terms [is] generally indicative of a command rendering the provision mandatory, including terms such as 'must' or 'shall,' which as used in statutes is ordinarily the language of command, the use of the word 'must' in a statute does not necessarily make the provision mandatory, **592 and likewise, the use of the term 'shall' does not necessarily make the provision mandatory. ... Al[]though 'may' is ordinarily permissive, evoking the idea of possibility, this is not a fixed rule of statutory construction. ... Directory provisions ordinarily relate to matters of form. Where consequences are attached to failure to do a required act, the direction to do it will be held manda[]tory. Statutory time limits are usually deemed to be directory. ..." (Citations omitted.)

What we are left with are two principles. The *first and foremost* is the general proposition that arbitration statutes are remedial in nature and are to be liberally construed with every reasonable intent favoring the validity of arbitration awards. (*Goossen v. Adair* (1960) 185 Cal.App.2d 810, 8 Cal.Rptr. 855.) The policy in this state is to favor arbitration. (*Firestone Tire and Rubber Co. v. United Rubber Workers of America* (1959) 168 Cal.App.2d 444, 335 P.2d 990.) The *second* principle rests on the fact that section 1287 uses discretionary language stating that "the court with the consent of the parties to the court

proceeding *may* order a rehearing before the original arbitrators." (Italics added.) Left with these two guiding principles and nothing further, I conclude the trial court erred in awarding fees and costs to Woodman, since the matter was still pending in arbitration and not final, thereby undercutting the attorney fees clause in the contractual arbitration agreement stating: "In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, including Agent, the prevailing party shall be entitled to recover its cost, including costs of arbitration, and reasonable attorneys' fees in addition to any other relief to which such party may be entitled."

I opine that the legislature certainly knew how to utilize the mandatory word "*shall*" or even "*must*" had it chosen to do so. One need only examine section 1293.2 to find evidence of the legislature's sophistication in the available use of the mandatory word "*shall*," where the legislature has declared "The court *shall* award costs upon any judicial proceeding under this title as provided in Chapter 6 (commencing with section 1021) of the Title 14 of Part 2 of this code." (Italics added.) Often, *520 courts resort to dictionary assistance in determining the meaning of words. For instance, "*shall*" denotes "[d]etermination or promise"; "[i]nvincibility"; "[c]ommand"; "directive or requirement." (American Heritage Dict. (2d college ed.1982) p. 1125, col. 2.) In contrast, "*may*" denotes "[t]o be allowed or permitted to"; "likelihood or possibility"; or "contingency." (American Heritage Dict., *supra*, p. 774, col. 1.)

I recall that the intention of General Douglas MacArthur pertaining to the invasion of the Philippine Islands was expressed in determined language when he declared "I *shall* return." He didn't say "I *may* return." I find the use of *may* by the legislature to be just as permissive, contingent and confusing as had the great general made the mistake of using the word *may* in his declaration of intentions.

Cal.App. 2 Dist., 2005.

Marcus & Millichap Real Estate Investment Brokerage Co. v. Woodman Investment Group
129 Cal.App.4th 508, 28 Cal.Rptr.3d 584, 05 Cal. Daily Op. Serv. 4135, 2005 Daily Journal D.A.R. 5659

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H
 Court of Appeal, First District, Division 5, California.
 MEDICAL BOARD OF CALIFORNIA, Petitioner,
 v.
 SUPERIOR COURT for the City and County of San
 Francisco, Defendant and Respondent;
 Lee Roy Liskey, M.D., Real Party in Interest.
 No. A101128.

July 25, 2003.

As Modified Aug. 14, 2003.

Background: Physician filed petition for administrative mandate seeking review of decision of the Medical Board revoking his license for failure to complete successfully a substance abuse diversion program. The Superior Court, San Francisco County, No. 500882, A. James Robertson, II, J., granted petition. Board filed petition for writ of mandate.

Holding: The Court of Appeal, Gemello, J., held that physician's mere failure to complete successfully diversion program was not a basis for discipline.

Petition denied.

West Headnotes

[1] Health 198H ↪208

198H Health

198HI Regulation in General

198HI(B) Professionals

198Hk201 Discipline, Revocation, and Suspension

198Hk208 k. Drug or Alcohol Abuse.

Most Cited Cases

Business and Professions Code provision governing a physician's participation in diversion program did not permit disciplinary action against physician's license to practice medicine based solely on physician's failure to complete successfully a substance abuse diversion program; statute did not provide some reasonable indication that failure to complete diversion successfully constituted unprofessional conduct, statute was included in Code chapter that contained no substantive discipline provisions, and there was no evi-

dence that discipline was needed to protect the public or rehabilitate physician for his failure to complete program. West's Ann.Cal.Bus. & Prof.Code § 2354 (2000).

See Cal. Jur. 3d, *Healing Arts and Institutions*, § 94 et seq.

[2] Constitutional Law 92 ↪990

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(C) Determination of Constitutional Questions

92VI(C)3 Presumptions and Construction as to Constitutionality

92k990 k. In General. Most Cited Cases

(Formerly 92k48(1))

Whenever possible, a legislative enactment must be construed in such a way as to preserve its constitutionality.

[3] Health 198H ↪215

198H Health

198HI Regulation in General

198HI(B) Professionals

198Hk214 Disciplinary Proceedings

198Hk215 k. In General. Most Cited

Cases

State Medical Board's disciplinary proceedings are intended to protect the public and are not penal in nature.

[4] Constitutional Law 92 ↪4262

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)12 Trade or Business

92k4262 k. Licenses, Permits, and Certifications in General. Most Cited Cases

(Formerly 92k287.2(5))

Due process considerations do not require that statutes and administrative proceedings for imposing discipline on a professional license be measured by standards developed in criminal law. U.S.C.A. Const.Amend. 14.

[5] Administrative Law and Procedure 15A
↳ 390.1

15A Administrative Law and Procedure
 15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
 15AIV(C) Rules and Regulations
 15Ak390 Validity
 15Ak390.1 k. In General. Most Cited

Cases

When an administrative regulation is challenged for vagueness, the standard of constitutional vagueness is less strict than when a criminal law is attacked.

[6] Health 198H
↳ 204

198H Health

198HI Regulation in General
 198HI(B) Professionals
 198Hk201 Discipline, Revocation, and Suspension
 198Hk204 k. Grounds in General. Most

Cited Cases

To justify the imposition of discipline, there must be some nexus between an act or omission and the professional's fitness or competence to practice.

[7] Statutes 361
↳ 211

361 Statutes

361VI Construction and Operation
 361VI(A) General Rules of Construction
 361k204 Statute as a Whole, and Intrinsic Aids to Construction
 361k211 k. Title, Headings, and Marginal Notes. Most Cited Cases

The organization of the division, chapters, and articles is an aid to understanding a statute's purpose.

[8] Statutes 361
↳ 223.2(.5)

361 Statutes

361VI Construction and Operation
 361VI(A) General Rules of Construction
 361k223 Construction with Reference to Other Statutes
 361k223.2 Statutes Relating to the Same Subject Matter in General
 361k223.2(.5) k. In General. Most

Cited Cases

To the extent possible, contextual analysis requires harmonizing statutory sections relating to the same subject.

[9] Statutes 361
↳ 184

361 Statutes

361VI Construction and Operation
 361VI(A) General Rules of Construction
 361k180 Intention of Legislature
 361k184 k. Policy and Purpose of Act.

Most Cited Cases

When construing an ambiguous statute, a court may consider its apparent purpose.

[10] Health 198H
↳ 218

198H Health

198HI Regulation in General
 198HI(B) Professionals
 198Hk214 Disciplinary Proceedings
 198Hk218 k. Evidence. Most Cited

Cases

To take disciplinary action against a medical license, the State Medical Board is obligated to base its decision on clear and convincing proof to a reasonable certainty and not a mere preponderance of the evidence.

[11] Health 198H
↳ 218

198H Health

198HI Regulation in General
 198HI(B) Professionals
 198Hk214 Disciplinary Proceedings
 198Hk218 k. Evidence. Most Cited

Cases

Business and Professions Code provision governing a physician's participation in diversion program cannot be read to authorize the State Medical Board to revoke a physician's license on the basis of the program manager's summary notice, without investigation into the reasons for termination, and with no finding of impairment or unprofessional conduct by clear and convincing evidence. West's Ann.Cal.Bus. & Prof.Code § 2354 (2000).

[12] Health 198H
↳ 204

198H Health

198HI Regulation in General

198HI(B) Professionals

198Hk201 Discipline, Revocation, and Suspension

198Hk204 k. Grounds in General. Most

Cited Cases

The protection of the public, as a preventative function of medical license discipline, includes the prevention of future harm.

[13] Statutes 361 ↪ 217.4

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k213 Extrinsic Aids to Construction

361k217.4 k. Legislative History in

General. Most Cited Cases

The Court of Appeal relies on the legislative history of an ambiguous statute as dispositive only when that history is itself unambiguous; only a clear statement of intent allows a court to reasonably indulge the inference that the individual members of the Legislature may have given at least a little thought to that statement before voting on the bill.

[14] Statutes 361 ↪ 217.4

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k213 Extrinsic Aids to Construction

361k217.4 k. Legislative History in

General. Most Cited Cases

Comments by an individual legislator or sponsor have little value in interpreting a statute when they merely express the individual's personal understanding or opinion; the authority of such material derives from whether the material reliably reflects the collective intent of the legislature.

[15] Statutes 361 ↪ 217.4

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k213 Extrinsic Aids to Construction

361k217.4 k. Legislative History in

General. Most Cited Cases

Prior unpassed bills generally have little value in showing legislative intent.

[16] Statutes 361 ↪ 217.4

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k213 Extrinsic Aids to Construction

361k217.4 k. Legislative History in

General. Most Cited Cases

Where a predecessor bill is passed by both houses and contains provisions virtually identical to those enacted in the successor bill, the history of that predecessor bill may reliably indicate legislative intent.

[17] Statutes 361 ↪ 219(1)

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k213 Extrinsic Aids to Construction

361k219 Executive Construction

361k219(1) k. In General. Most

Cited Cases

Interpretations of a statute by the agency charged with its administration and enforcement, while not controlling, are entitled to great weight unless clearly erroneous.

****404 *168** Bill Lockyer, Atty. Gen., Carols Ramirez, Senior Asst. Atty. Gen., Vivian H. Hara, Alfredo Terrazas, and Thomas P. Reilly, Deputy Attys. General, CA, for petitioner.

No appearance for respondents.

Mortimer H. Herzstein, San Francisco, N. Lee Ormasa, for real party in interest.

***169 GEMELLO, J.**

Does Business and Professions Code section 2354 permit disciplinary action against a physician's license to practice medicine based solely on the physician's failure to complete successfully a substance abuse diversion program? We conclude it does not.

When a physician "flunks out" of a diversion program, the Medical Board of California (Board) is

authorized by statute to file an accusation charging any acts committed before, during, or after the physician's**405 agreed-upon participation in the diversion program. It must then prove impairment or unprofessional conduct by clear and convincing evidence. Where the circumstances of the physician's termination from the diversion program do not otherwise evidence unprofessional conduct or impairment by this standard, we hold that the Board does not have authority to revoke or suspend a license based on the failure to complete the diversion program.

We affirm the trial court judgment vacating the administrative decision imposing discipline on Lee Roy Liskey's medical license for failure to complete diversion under circumstances not otherwise sufficient to establish unprofessional conduct.

FACTUAL AND PROCEDURAL BACKGROUND

The Board began an investigation of real party Dr. Lee Roy Liskey (Liskey) in 1996, after receiving an anonymous complaint from a patient. Liskey agreed to an evaluation as provided in Business and Professions Code section 820.^{FN1} The evaluating psychiatrist concluded Liskey was impaired and recommended he enter the Board's diversion program for alcohol and substance abuse. Liskey signed an agreement to enter the diversion program on January 14, 1997. The pending investigation was closed. In an initial phase of the program, Liskey underwent a four-day assessment. He was diagnosed as suffering from substance abuse but was determined to be "safe to return to work." The assessment report recommended that he participate in outpatient treatment focusing on prevention and education, and that he be monitored for two years with random drug screens and scheduled therapy. Liskey successfully completed a six-month outpatient treatment program from June through October 1997.

FN1. All further references are to the Business and Professions Code unless otherwise indicated.

During continued monitoring in June and October of 1998, Liskey tested positive for cocaine use on two occasions. Liskey consistently and adamantly denied cocaine use and argued that the results were false positives. On both *170 occasions, Liskey had him-

self retested by different laboratories, and both times the results were negative for cocaine. Nevertheless, the Board's diversion committee insisted that Liskey undergo a 28-day course of inpatient treatment because of the two positive test results. When Liskey refused to enter the treatment, program administrators terminated him from the diversion program "for reasons other than successful completion" of the program.

The Board thereupon reopened its investigation of Liskey. Initially, Liskey agreed to reenter the diversion program and signed a second agreement. However, he withdrew his agreement and requested that he be reevaluated. James Reich, M.D., one of the evaluators, recommended that Liskey participate in a strict chemical dependency program and that the Board monitor his practice.

On the basis of the Reich report, the Board filed an accusation on February 9, 2000, seeking the revocation or suspension of Liskey's physician and surgeon's certification. The accusation charged as grounds for discipline that: (1) Liskey's ability to practice competently was impaired due to mental and/or physical illness pursuant to section 822;^{FN2} and (2) he **406 had failed to complete successfully the diversion program in which he had agreed to participate pursuant to section 2354.

FN2. Section 822 provides: "If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods: [¶] (a) Revoking the licentiate's certificate or license. [¶] (b) Suspending the licentiate's right to practice. [¶] (c) Placing the licentiate on probation. [¶] (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper. [¶] The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated."

An administrative law judge heard the matter and concluded that the Board failed to prove by clear and convincing evidence that Liskey's ability to practice medicine competently was impaired due to mental or physical illness, either because of alcohol or drug abuse or for any other reason; therefore, he found that Liskey was *not* subject to discipline under section 822. Further, the administrative law judge concluded that Liskey was not subject to discipline under section 2354 because failure to complete the diversion program was not by itself a sufficient basis for discipline.

The Board declined to adopt the decision and remanded the matter with directions to the administrative law judge to take further evidence relating to the legislative history of section 2354. (Gov.Code, § 11517, subd. (c)(2)(D).) *171 The administrative law judge again determined that the evidence was insufficient to conclude Liskey was subject to discipline under section 822. However, in light of the legislative history materials, he reversed his interpretation of section 2354 and concluded that section 2354 *did* provide an independent basis for discipline for failure to complete diversion successfully. Nevertheless, he concluded that "no public need or interest would be served by actually disciplining [Liskey's] license" for violation of section 2354.

Again, the Board declined to adopt the administrative law judge's decision. In its Decision After Nonadoption, the Board interpreted section 2354 to require revocation of Liskey's license for his failure to complete diversion, notwithstanding the fact that the Board adopted the administrative law judge's finding that there was no cause for discipline under section 822.

Based on its interpretation of section 2354, on March 4, 2002, the Board revoked Liskey's license and stayed revocation pending his satisfactory completion of two years' probation, conditioned on his abstaining from the use of drugs and alcohol, submitting to random drug testing, participating in the diversion program, and having his practice monitored by an approved physician.

Liskey filed a petition for administrative mandate in the trial court, seeking review of the Board's decision. (See § 2337 [authorizing superior court review of any

decision revoking, suspending or restricting a medical license].) The trial court granted Liskey's petition, finding that there was no cause for disciplinary action under section 822 and that the Board "lacked any authority to impose discipline against [Liskey] for the mere failure to complete the medical board's own diversion program." The court directed the Board to set aside its decision. Judgment was entered November 14, 2002.

The Board then filed a petition for writ of mandate and request for stay in this court. (§ 2337 [authorizing review of superior court decision by petition for extraordinary writ]; *Leone v. Medical Board* (2000) 22 Cal.4th 660, 663, 664, 670, 94 Cal.Rptr.2d 61, 995 P.2d 191.) This court issued a temporary stay and an order to show cause directing the parties to appear **407 in court to show cause why the relief requested in the petition should not be granted.

DISCUSSION

I. Standard of Review

We are called upon to construe section 2354. The interpretation of section 2354 is a question of law, which this court examines independently. We are not bound by the trial court's construction. *172 (*People ex. rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432, 101 Cal.Rptr.2d 200, 11 P.3d 956; *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768, 117 Cal.Rptr.2d 445.)

Our primary objective in interpreting a statute is to determine and give effect to the underlying legislative intent. (Code Civ. Proc., § 1859.) Intent is determined foremost by the plain meaning of the statute's language. If the language is clear and unambiguous, there is no need for judicial construction. When the language is reasonably susceptible of more than one meaning, it is proper to examine a variety of extrinsic aids in an effort to discern the intended meaning. (See *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 775-776, 72 Cal.Rptr.2d 624, 952 P.2d 641; *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.* (1979) 88 Cal.App.3d 43, 53, 152 Cal.Rptr. 153.)

II. Interpretation of Section 2354

[1] At the time the accusation was filed against Liskey, section 2354 provided: "Each physician and surgeon who requests participation in a diversion program shall agree to cooperate with the treatment program designed by a committee. Any failure to complete successfully a treatment program or an acceptable substitute program may result in the filing of an accusation for discipline which may include any acts giving rise to the original diversion." (Stats.1990, ch. 1597, § 29, p. 7697.)

The Board construes section 2354, in particular the second sentence, as authorizing the Board to discipline a physician who, after voluntarily agreeing to participate in a diversion program in lieu of administrative disciplinary proceedings, is dismissed for failing to complete successfully the diversion program. The Board urges that the legislative history of section 2354 together with the history of a predecessor bill, Senate Bill No. 1434, overwhelmingly support its interpretation.

Liskey contends that the statute does not allow for physician discipline for the mere failure to complete a diversion program. Liskey construes the statute as authorizing the Board to file an accusation which may include the acts that gave rise to the original diversion, but not as authorizing termination from the program as an independent ground for discipline. He maintains that the statute is clear and unambiguous.

Though we disagree with Liskey's contention that section 2354's interpretation is apparent from the face of the statute, we agree with his ultimate conclusion: section 2354 does not create an independent basis for discipline and does not authorize the Board to impose discipline based solely *173 on a physician's failure to complete a diversion program. We reach this conclusion after careful consideration of the due process concerns this case presents, the statutory scheme surrounding section 2354, the apparent purposes underlying the statute, the presence (or absence) of instructive legislative history, and the Board's own regulations. (See *Hughes v. Board of Architectural Examiners*, *supra*, 17 Cal.4th 763, 775-776, 72 Cal.Rptr.2d 624, 952 P.2d 641; *State Compensation **408 Ins. Fund v. Workers' Comp. Appeals Bd.*, *supra*, 88 Cal.App.3d 43, 53, 152 Cal.Rptr. 153.)

A. Due Process

[2] Whenever possible, a legislative enactment must be construed in such a way as to preserve its constitutionality. (*Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 129, 96 Cal.Rptr.2d 485, 999 P.2d 718.) "[T]he presumption is that the Legislature intended, not to violate the Constitution, but to enact a valid statute within the scope of its constitutional powers." (*Shealar v. City of Lodi* (1944) 23 Cal.2d 647, 653, 145 P.2d 574.) We must construe section 2354 if at all possible in a manner that avoids any potential due process problems.

Liskey argues that neither section 2354 nor the agreements of understanding he signed before entering the diversion program provided him with sufficient notice that he could be disciplined solely for failure to complete the diversion program successfully. In his view, which the trial court adopted in its statement of decision, the Board's disciplinary action against his license is penal in nature. By analogy to the void-for-vagueness doctrine applied to criminal statutes, Liskey contends that section 2354 should not be construed to permit discipline solely for failure to complete diversion successfully, because the statute does not state with sufficient definiteness that such a failure constitutes unprofessional conduct and a basis for imposing discipline. (Cf. *Kolender v. Lawson* (1983) 461 U.S. 352, 357, 103 S.Ct. 1855, 75 L.Ed.2d 903; *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1106, 40 Cal.Rptr.2d 402, 892 P.2d 1145.)

[3][4][5] The Board argues, correctly, that its disciplinary proceedings are intended to protect the public and are not penal in nature. (*Hughes v. Board of Architectural Examiners*, *supra*, 17 Cal.4th at pp. 785-786, 72 Cal.Rptr.2d 624, 952 P.2d 641; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476, 229 Cal.Rptr. 483.) Due process considerations do not require that statutes and administrative proceedings for imposing discipline on a professional license be measured by standards developed in criminal law. (See *Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 367, fn. 12, 185 Cal.Rptr. 453, 650 P.2d 328.) When an administrative regulation such as section 2354 is challenged for vagueness, "the standard of constitutional vagueness is less strict than when a criminal law is attacked." (*Ford Dealers* at p. 366, 185 Cal.Rptr. 453, 650 P.2d 328.)

*174 The fact remains, however, that section 2354 does not state clearly that failure to complete diversion successfully is, by itself, unprofessional conduct for which discipline may be imposed. Furthermore, the Board's printed forms of agreement signed by Liskey also fail to give the physician notice that if he fails to complete the program, that failure is an independent ground for discipline. In the Statements of Understanding, Liskey agreed only that "if ... terminated by [] the Diversion Program for failure to comply with the Diversion Program requirements... I may be prosecuted administratively for *violations identified above.*" (Italics added.) The first paragraph of these agreements sets out four specific violations, and the applicant for diversion is instructed to admit, for the limited purpose of acceptance into diversion, one or more of them by circling those applicable in his or her case. For example, in the agreements signed by Liskey, the violation circled is "[s]elf-administration of alcohol or drugs per B & P Code section 2239." By his signature on the agreement, the physician acknowledges that the Board retains the authority to investigate or continue to investigate **409 any unprofessional conduct committed before, during, or after participation in the diversion program. (See § 2350, subd. (c).) These agreements not only fail to notify the physician that failure to complete diversion successfully is an independent ground for discipline, they suggest that the *only* consequences of failure to complete diversion successfully are those identified in the agreement.

A vagueness standard less strict than that applied to criminal statutes is not the same as no standard at all. A statute authorizing the Board to impose discipline against a medical license must include *some* reasonably clear identification of the basis for imposing that discipline.

[6] In addition, to justify the imposition of discipline, there must be some nexus between an act or omission and the professional's fitness or competence to practice. (*Bryce v. Board of Medical Quality Assurance, supra*, 184 Cal.App.3d at p. 1476, 229 Cal.Rptr. 483.) The Legislature has established such a nexus with respect to certain acts or omissions even where the acts or omissions do not actually impair a physician's ability to practice medicine. (E.g., §§ 2237, 2238, 2239, subd. (a); see *Griffiths v. Superior Court, supra*, 96 Cal.App.4th at p. 774, 117 Cal.Rptr.2d 445.) In each such instance, it has done so by ex-

pressly identifying the act or omission as an instance of "unprofessional conduct." (See §§ 2237 [conviction for violating statutes regarding dangerous drugs], 2238 [violation of statutes regarding dangerous drugs], 2239, subd. (a) [misuse of controlled substances].)

To satisfy the due process considerations that attach in disciplinary actions against a professional license, we conclude that section 2354 must provide some reasonable indication that a failure to complete diversion *175 successfully constitutes unprofessional conduct before it may be applied to impose discipline solely on that ground. The fact that it does not, and the fact that the Board's printed agreements of understanding also fail to do so, strongly militate against interpreting section 2354 as creating an independent basis for discipline.

B. Statutory Scheme

[7] "A statute must be construed 'in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts.' [Citation.]" (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1009, 239 Cal.Rptr. 656, 741 P.2d 154.) A court may consider the overall scheme in which an ambiguous statute is included in order to ascertain its intended meaning. (*Hughes v. Board of Architectural Examiners, supra*, 17 Cal.4th at p. 776, 72 Cal.Rptr.2d 624, 952 P.2d 641.) The organization of the division, chapters, and articles is an aid to understanding its purpose. (See *People v. Hull* (1991) 1 Cal.4th 266, 272, 2 Cal.Rptr.2d 526, 820 P.2d 1036 [division, chapter, article, and section headings may properly be considered in determining intent and are entitled to considerable weight].)

Chapter Five, the chapter most relevant here, contains separate articles regulating "Enforcement" (article 12, § 2220 et seq.) and "Diversion Evaluation Committees" (article 14, § 2340 et seq.). The enforcement sections of article 12 set out provisions for taking disciplinary action against a physician for acts of unprofessional conduct. They spell out the substantive bases for imposing discipline, defining specific instances of unprofessional conduct (see, e.g., §§ 2234-2305). For example, section 2239, subdivision (a) defines as unprofessional conduct a physician's self-administration of controlled substances, dangerous drugs, or alcohol, to an extent that impairs **410

his or her ability to practice medicine safely.

Section 2354 is part of article 14, not article 12. The express purpose of article 14 is to implement a diversion program to rehabilitate physicians "with impairment due to abuse of dangerous drugs or alcohol, or due to mental illness or physical illness, affecting competency" so that they may be "returned to the practice of medicine in a manner which will not endanger the public health and safety." ^{FN3}(§ 2340.) In marked contrast to article 12, article 14 contained no substantive discipline provisions during the time period *176 relevant to this case. The placement of section 2354 in article 14 supports the conclusion that it was not intended to define the mere act of failure to complete diversion successfully as a substantive basis for discipline.

FN3. Section 2340 provides: "It is the intent of the Legislature that the Medical Board of California seek ways and means to identify and rehabilitate physicians and surgeons with impairment due to abuse of dangerous drugs or alcohol, or due to mental illness or physical illness, affecting competency so that physicians and surgeons so afflicted may be treated and returned to the practice of medicine in a manner which will not endanger the public health and safety."

Instead, section 2354 was intended to clarify the procedural interplay between participation in a diversion program and immunity from discipline for the conduct that led to diversion. A physician who is accepted into and participates in a diversion program may not be disciplined for "conduct that resulted in the physician and surgeon's referral to the diversion program." (§ 2350, subd. (d).) Section 2354 makes clear that this immunity is conditional: a physician who agrees to diversion may avoid discipline for the acts giving rise to the diversion only insofar as he successfully *completes* the diversion program. Failure to complete the program will waive the immunity and allow the Board to renew its accusation and seek discipline for the conduct that resulted in diversion.

[8] We find further support for this interpretation elsewhere in section 2350. To the extent possible, contextual analysis requires harmonizing sections relating to the same subject. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d

1379, 1387, 241 Cal.Rptr. 67, 743 P.2d 1323; *Rodarte v. Orange County Fire Authority* (2002) 101 Cal.App.4th 19, 22, 123 Cal.Rptr.2d 475.) Section 2350 provides for the establishment of criteria for acceptance into and termination from the diversion program. (§ 2350, subd. (a), as added by Stats.1980, ch. 1313, § 2, p. 4490.) Section 2350 was amended in 1995 ^{FN4} to add subdivision (e) and other provisions detailing the circumstances under which disciplinary proceedings could be maintained**411 against a physician who was participating in the diversion program. (Stats.1995, ch. 252, § 1, pp. 872-873 (Sen. Bill No. 779); § 2350, subds. (b)-(g).) ^{FN5} In 2002, section 2350 was amended further to add a provision that *177 the failure of a physician to comply with an order to be examined "shall constitute grounds for suspension or revocation of his or her certificate." (§ 2350, subd. (j), second undesignated paragraph, as amended by Stats.2002, ch. 1085, § 24 (Sen. Bill No.1950).) This amendment illustrates that the Legislature knows how to specify clearly when conduct is a substantive basis for discipline. It did not do so when adopting section 2354.

FN4. The 1995 amendment was sponsored by the California Medical Association (CMA) to remedy the specific problem created by a 1992 decision, which had implied that formal participation in the diversion program might prevent the Board from taking *any* disciplinary action against the physician. (See *Kees v. Medical Bd. of California* (1992) 7 Cal.App.4th 1801, 10 Cal.Rptr.2d 112.) In response, the Board established a policy that a physician was never referred for formal entry into diversion until the completion of any disciplinary investigation and decision. The amendment to section 2350 was designed to eliminate this policy and permit broader and earlier participation in diversion by clarifying the circumstances under which disciplinary investigation and prosecution might proceed during and after diversion. (See Analysis of Sen. Bill No. 779 dated July 11, 1995 by Assembly Committee on Appropriations; Analysis of Sen. Bill No. 799 dated June 26, 1995, by Assembly Committee on Health; Analysis of Sen. Bill No. 779 dated April 17, 1995, by Office of Senate Floor Analyses; Analysis of Sen. Bill No. 779 dated February 23, 1995, by Senate Committee on Business and Pro-

fessions.)

FN5. Subdivision (e) of section 2350 provides: "Any physician and surgeon terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the division for acts committed before, during, and after participation in the diversion program. The division shall not be precluded from taking disciplinary action for violations identified in the statement of understanding described in subdivision (b) if a physician and surgeon is terminated from the diversion program for failure to comply with program requirements. The termination of a physician and surgeon who has been referred to the diversion program pursuant to subdivision (b) shall be reported by the program manager to the division."

C. Apparent Statutory Purpose

[9] When construing an ambiguous statute, a court may consider its apparent purpose. (See *Hughes v. Board of Architectural Examiners*, *supra*, 17 Cal.4th at p. 776, 72 Cal.Rptr.2d 624, 952 P.2d 641.) Under section 2229, Board disciplinary proceedings are intended to serve twin purposes: protection of the public and rehabilitation of the physician. (§ 2229, subds.(a), (b).) If section 2354 is construed to authorize disciplinary action solely on the basis of a failure to complete diversion, it will in many instances fail both these goals. This is a case in point.

After Liskey's termination from diversion, the administrative law judge twice determined that the evidence was not sufficient to prove that his ability to practice competently was impaired and that there was no basis for imposing discipline under section 822, as charged in the accusation. The Board adopted that finding. Nevertheless, the Board imposed discipline for Liskey's failure to complete diversion successfully under section 2354. The Board found that "[g]iven [Liskey's] admissions and the differing opinions regarding whether and to what extent [he] is or has been chemically dependent, the panel ... can only carry out its public protection mandate (Business and Professions Code Section 2229) by monitoring [his] practice for a period of time. This is best effectuated by means of probation and the Diversion Program." The

problem with the Board's finding is that it was based on evidence not relevant to the violation for which the Board imposed discipline, that is, Liskey's failure to complete diversion successfully. Rather, it was based on evidence relating to his continuing impairment under section 822-evidence which, it is undisputed, was insufficient to prove that violation. There was no evidence that discipline was needed to protect the public or rehabilitate Liskey for his failure to complete the diversion program.

[10] There is yet another problem with the Board's interpretation of the statute. In order to take disciplinary action against a medical license, the Board is *178 obligated to base its decision on "clear and convincing proof to a reasonable certainty and not a mere preponderance of the evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856, 185 Cal.Rptr. 601.) Liskey was terminated from the diversion program because on **412 two occasions he tested positive for cocaine use. The Board never investigated nor proved the accuracy of the tests despite Liskey's vigorous dispute and his contrary evidence. At the administrative hearing, Shane Wright, a senior investigator for the Board, testified that "the diversion program does not share any information with the enforcement program except that the person has been terminated from diversion." The program manager notifies the Board that the physician has been "terminated for reasons other than successful completion of the Diversion Program." FN6

FN6. The Board diversion program manager notified the enforcement deputy on November 30, 1998: "Pursuant to the California Code of Regulations, Title 16, Section 1357.6, this memorandum is to notify you that Lee Liskey, M.D. was terminated from the Diversion Program effective November 20, 1998, for reasons other than successful completion of the Diversion Program."

[11] The statute cannot be read to authorize the Board to revoke a physician's license on the basis of the program manager's summary notice, without investigation into the reasons for termination, and with no finding of impairment or unprofessional conduct by clear and convincing evidence. FN7 To say that section 2354 authorizes discipline for failure to complete diversion successfully whenever the failure is ac-

accompanied by *some* evidence of impairment would essentially permit discipline to be imposed on the basis of a lesser standard of proof. The Board's interpretation would allow it to evade the burden of proving by clear and convincing evidence that Liskey's ability to practice medicine was impaired due to misuse of drugs or alcohol.

FN7. Section 2350, subdivision (j) now requires that diversion participants consent to release of their program records if terminated from the program under specified conditions.

[12] In our analysis, we do not overlook the preventative functions of license discipline. The protection of the public includes the prevention of future harm. (*Griffiths v. Superior Court*, *supra*, 96 Cal.App.4th at p. 772, 117 Cal.Rptr.2d 445 [three misdemeanor convictions involving the consumption of alcohol conclusive presumption of unprofessional conduct under § 2239].) When misconduct poses a sufficient danger to the public, the Legislature defines it as unprofessional conduct that is a basis for discipline without any showing that the misconduct actually impaired the physician's ability to practice medicine. (*Griffiths*, *supra*, at p. 774, 117 Cal.Rptr.2d 445.) In such instances, the Legislature has made such definitions unequivocally. For example, a violation or conviction of a state or federal statute regulating dangerous drugs or controlled substances, or convictions (one felony or more than one misdemeanor) involving the use of dangerous drugs, controlled substances, or alcohol, are all defined specifically in article 12 as unprofessional conduct. (§§ 2237, 2238, 2239, subd. (a).) The *179 disregard of the public evidenced by such illegal conduct is deemed to be sufficient evidence of danger to the public safety without further evidence of actual impairment of professional competency. (*Griffiths v. Superior Court*, *supra*, 96 Cal.App.4th at pp. 773-774, 117 Cal.Rptr.2d 445.) Here, however, there is nothing in the language, statutory context, or apparent purpose of section 2354 that shows a legislative intent to define a failure to complete an agreed-on diversion successfully as unprofessional conduct requiring preventative discipline. Nor does a physician's failure to complete a voluntary attempt at substance-abuse rehabilitation, by itself, demonstrate a disregard of public safety equivalent to that shown by the commission of a criminal offense.

**413 The Board has not demonstrated by clear and convincing evidence that there is a danger to the public or that Liskey needs rehabilitation. The Board's interpretation and application of section 2354 in this case do not further the legislative goals underlying diversion programs and physician discipline.

D. Legislative History

The administrative law judge and Board rested their interpretation of section 2354 on their reading of the statute's legislative history. Having independently reviewed that legislative history, we cannot agree with the Board's position that the Legislature intended to allow the Board to impose discipline solely on the ground of a physician's failure to complete successfully an agreed-on diversion program. Instead, we agree with the trial court's conclusion that the legislative history does not "provide a clear indication that the legislature intended to make a violation of section 2354 a new and separate basis for physician discipline." Because the legislative history does not illuminate the intent of the final version of section 2354, we adhere to the interpretation dictated by constitutional and contextual considerations.

[13] We rely on the legislative history of an ambiguous statute as dispositive only when that history is itself unambiguous. (*J.A. Jones Construction Co. v. Superior Court* (1994) 27 Cal.App.4th 1568, 1578, 33 Cal.Rptr.2d 206.) "The members of the Legislature have no opportunity to disapprove legislative history, and the Governor has no chance to veto it. Legislative history directly represents only the views of the few actors in the legislative process, including lobbyists and committee staff people, who are intimately involved with particular legislation. [¶] ... [¶] [L]egislators are often 'blissfully unaware of the existence' of the issue with which the court must grapple ... [and an] ambiguity may be the deliberate outcome of the legislative process." (*Id.* at pp. 1577-1578, 33 Cal.Rptr.2d 206.) Only "[a] clear statement of intent allows a court to reasonably indulge the inference that the individual members of the Legislature may have given at least a little thought to that statement before voting on the bill." (*Id.* at p. 1579, 33 Cal.Rptr.2d 206, italics added.)

*180 Section 2354, as originally enacted in 1980, provided that: "Each physician and surgeon who re-

quests participation in a diversion program shall agree to cooperate with the treatment and monitoring program designed by a committee. Any failure to comply with the provisions of the treatment program may result in termination of the physician's and surgeon's participation in a program." (Stats.1980, ch. 1313, § 2, p. 4491.) In 1990, the second sentence was amended to read: "Any failure to complete successfully a treatment program or an acceptable substitute program may result in the filing of an accusation for discipline which may include any acts giving rise to the original diversion." (Stats.1990, ch. 1597, § 29, p. 7697 (Sen. Bill No. 2375), italics added.) It is this second sentence that commands our attention.

Proposals to amend section 2354 were first made in March 1989. Senate Bill No. 1434 provided that: "Any failure to comply with the provisions of a treatment program shall result in license revocation unless the likelihood of successful rehabilitation clearly outweighs the threat of harm to patients which may occur as a result of the impairment." (Sen. Bill No. 1434 (1989-1990 Reg. Sess.) § 16, as amended May 4, 1989, italics added.) The bill was amended in July 1989 to read: "Any failure to complete successfully a treatment program or an acceptable substitute program may result in license revocation unless**414 the likelihood of successful rehabilitation clearly outweighs the threat of harm to patients which may occur as a result of the impairment." (Sen. Bill No. 1434 (1989-1990 Reg. Sess.) § 16, as amended July 17, 1989, italics added.) The only change was the substitution of the word "may" for the word "shall." Senate Bill No. 1434 died on file before leaving the Senate on January 30, 1990.

Less than a month later, however, Senator Presley introduced Senate Bill No. 2375, the "Medical Reform Act." The bill, drafted and sponsored by the Center for Public Interest Law (CPIL) of the University of San Diego, was designed as a comprehensive reform of physician discipline procedures. (*Landau v. Superior Court* (1998) 81 Cal.App.4th 191, 202, 205, 97 Cal.Rptr.2d 657.) The Medical Reform Act included a proposed "Medical Judicial Procedure Improvement Act." (Sen. Bill No. 2375 (1989-1990 Reg. Sess.) § 31, as introduced Feb. 28, 1990.) It proposed an amendment to section 2354 that was identical to the amendment proposed in the final version of Senate Bill No. 1434.

Between introduction and passage of the Medical Reform Act, the second sentence of section 2354 was amended once more to read: "Any failure to complete successfully a treatment program or an acceptable substitute program may result in the filing of an accusation for discipline which may include any acts giving rise to the original diversion." (Stats.1990, ch. 1597 (Sen. Bill No. 2375), § 29, p. 7697, italics added.) This language was incorporated *181 into the bill and was signed into law on September 30, 1990. (Sen. Bill No. 2375 (1989-1990 Reg. Sess.) § 29, as amended May 24, 1990; Stats.1990, ch. 1597, § 29, p. 7697.)

In interpreting section 2354, the administrative law judge and Board relied heavily on letters exchanged between the bill sponsor, CPIL, the CMA, and the Board. They placed particular reliance on a statement made by CPIL in its July 11, 1989, response to the Senate Judiciary Committee Staff Analysis of Senate Bill No. 1434, the predecessor bill. The response addressed the objection of the Board and CMA that under the mandatory revocation language of the predecessor bill, "licensees voluntarily [entering] diversion would have had no due process or case review [before] license revocation." The administrative law judge and the Board found "that the intent of the statutory amendment was ... to make the failure to successfully complete a diversion program an independent cause for discipline could not have been made more clear than by the bill's sponsor's statement that 'flunking out of a diversion program is a basis for discipline.' "

[14] This was error for two reasons. First, comments by an individual legislator or sponsor have little value when they merely express the individual's personal understanding or opinion. (*Smith v. Santa Rosa Police Dept.* (2002) 97 Cal.App.4th 546, 564, 119 Cal.Rptr.2d 72.) The authority of such material derives from whether the material reliably reflects the collective intent of the Legislature. In *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 128 Cal.Rptr. 427, 546 P.2d 1371, the Supreme Court made clear that "[i]n construing a statute we do not consider the motives or understandings of individual legislators who cast their votes in favor of it. [Citations.] Nor do we carve an exception to this principle simply because the legislator whose motives are proffered [sic] actually authored the bill in controversy." (*Id.* at p. 589, 128 Cal.Rptr. 427, 546 P.2d 1371.) In *Bouquet*, the

Supreme Court concluded that the legislator's letter did command respect because it was evidence of more than the legislator's personal understanding; it was a reiteration of the discussion **415 in the Assembly committee hearing and the letter was printed in the Senate Journal on motion of a senator as a "letter of legislative intent." (Id. at p. 590, 128 Cal.Rptr. 427, 546 P.2d 1371.) Here, we do not see clear indicia that the letters from the sponsor, CPIL, the CMA or the Board reflect the collective intent of the Legislature.

[15][16] Second, the letters pertain to Senate Bill No. 1434. Prior unpassed bills generally have little value in showing legislative intent. (*Lolley v. Campbell* (2002) 28 Cal.4th 367, 378-379, 121 Cal.Rptr.2d 571, 48 P.3d 1128.) Where a predecessor bill is passed by both houses and contains provisions "virtually identical" to those enacted in the successor bill, the history of that predecessor bill may reliably indicate intent. (See *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, *182 1199, 75 Cal.Rptr.2d 754.) The history of Senate Bill No. 1434 cannot be deemed a reliable and clear indication of the Legislature's intent when it enacted the Medical Reform Act because it is not "virtually identical" to the subsequent measure and because it did not pass both houses before being vetoed. Senate Bill No. 1434 died on the Senate floor and was neither approved by the full Senate nor considered by the Assembly. (Cf. *City of Richmond, supra*, 64 Cal.App.4th at p. 1199, 75 Cal.Rptr.2d 754.) There is no indication that the sponsor's comments regarding Senate Bill No. 1434 were considered by any legislators other than the members of the Senate Judiciary Committee, nor is there any indication that they carried over to consideration of the Medical Reform Act, Senate Bill No. 2375. We agree with the trial court that these materials have "minimal value in construing legislative intent," and we do not rely on them.

Those sources of legislative history that do pertain to the Medical Reform Act and the collective intent of the Legislature are similarly unhelpful; they shed no light on the correct interpretation of section 2354. After section 2354 was revised to provide that a failure to complete diversion successfully "may result in ... an accusation for discipline which may include any acts giving rise to the original diversion," the Legislative Counsel's Digest of Senate Bill No. 2375 continued to analyze the earlier version of the amend-

ment. For each amended version of Senate Bill No. 2375, the digest continued to state that the amendment to section 2354 "would ... provide that any failure to successfully complete the treatment program ... may result in license revocation unless the likelihood of successful rehabilitation clearly outweighs the threat of harm to patients which may occur as a result of the impairment."

Similarly, the analyses of the final draft of Senate Bill No. 2375 prepared by staffs of the Senate Rules Committee dated June 14, 1990, and the Assembly Committee on Health dated August 7, 1990, quote the language of the previous draft of the amendment to section 2354, stating that the bill "[p]rovide[s] that anyone who fails to successfully complete a diversion program which is an alternative to discipline under current law may have his or her license revoked, unless some future likelihood of successful rehabilitation outweighs any threat of harm to patients."

We are not privy to the extensive negotiations and concessions by the sponsor, the lobbying interests, or the legislators. We are left with no clear indication of the intent behind the amendment to section 2354 ultimately enacted. Because the legislative history is itself ambiguous, it is not useful in construing section 2354. (See *J.A. Jones Construction Co. v. Superior **416 Court, supra*, 27 Cal.App.4th at pp. 1578-1579, 33 Cal.Rptr.2d 206.) The legislative history offers us no reason to depart from the interpretation of section 2354 suggested by other considerations.

*183 E. Past Practice and Agency Regulations

[17] The Board correctly argues that interpretations of a statute by the agency charged with its administration and enforcement, while not controlling, are entitled to great weight unless clearly erroneous. (*State Compensation Ins. Fund v. Workers' Comp. Appeals Bd., supra*, 88 Cal.App.3d at p. 53, 152 Cal.Rptr. 153.) However, this principle has no application here. The Board's interpretation of section 2354 is not supported by its practice or its administrative regulations.

As for the Board's practice, the statements of understanding drafted by the Board and signed by Liskey provide only that a physician terminated "for failure to comply with the Diversion Program requirements ... may be prosecuted administratively for violations

identified above " (italics added). The "violation[] identified above" is the alleged violation that led to his diversion, that is, alleged "[s]elf-administration of alcohol or drugs per B & P Code section 2239."

As for the regulations governing the Board's diversion program, they do not provide that a failure to complete diversion may result, by itself, in disciplinary action. Rather, the regulations provide that the program manager may terminate a physician's participation in the program for any number of reasons including failure to comply with the prescribed monitoring or treatment regimen or use of an unauthorized drug. (See Cal.Codes Reg., tit. 16, § 1357 et. seq.) The regulations offer no support for the Board's position.

DISPOSITION

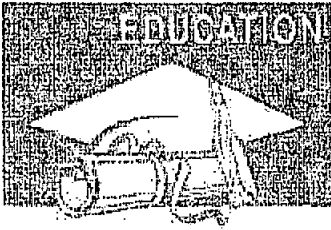
Constitutional constraints, the statutory scheme of which section 2354 is a part, and the purposes behind physician discipline expressed in sections 2229 and 2340 all support the conclusion that mere failure to complete successfully an agreed-on diversion program is not a basis for discipline under section 2354.

The order to show cause is discharged, and the petition for writ of mandate is denied. Liskey shall recover costs pursuant to California Rules of Court, rule 56.4. The stay is dissolved upon the finality of the opinion as to this court. (Cal. Rules of Court, rule 24(b)(1).)

We concur. JONES, P.J., and STEVENS, J.
Cal.App. 1 Dist., 2003.

Medical Bd. of California v. Superior Court
111 Cal.App.4th 163, 4 Cal.Rptr.3d 403, 03 Cal.
Daily Op. Serv. 7379, 2003 Daily Journal D.A.R.
9261

END OF DOCUMENT



Legislative Analyst's Office

Analysis of the 2001-02 Budget Bill

School Accountability

The Public Schools Accountability Act (PSAA) (Chapter 3x, Statutes of 1999, [SB 1x, Alpert]) created a statewide school-level accountability system which (1) rewards schools for academic improvement, (2) provides external assistance for lower-performing schools, and (3) potentially sanctions schools which continue to fail after receiving external assistance. The Academic Performance Index (API) is the cornerstone of the PSAA. Its purpose is to measure a school's academic performance and the growth in performance over time.

Recently, the second annual set of API scores was released, allowing the first API growth scores to be calculated. Based on the API growth data, the State Department of Education (SDE) will be distributing \$677 million in rewards to schools, teachers, and other school personnel in the current year. Figure 1 shows the various rewards programs tied to API results.

Figure 1			
Rewards Programs Based On API ^a			
1999-00 Through 2001-02 (Proposition 98 Appropriations, in Millions)			
Program	1999-00	2000-01	2001-02 Proposed
Governor's Performance Awards	\$96 ^b	\$131 ^b	\$350
Teacher Performance Awards	—	350	—
Certificated Staff Performance Incentives	50	100	100
Totals	\$146	\$581	\$450
^a Academic Performance Index.			
^b The Public Schools Accountability Act appropriated \$96 million in the 1999-00 fiscal year. Those funds were carried over and are being used for rewards in 2000-01.			

As shown in Figure 2, the budget also proposes significant resources for various programs targeted at low-performing schools, based upon the API. As Figures 1 and 2 illustrate, the state is allocating a significant amount of money—almost \$1.7 billion in 1999-00 through 2001-02—for programs using this index. The box nearby provides some background information on how the API is calculated and how the measure is used.

Figure 2		
Programs Targeted at Low-Performing Schools, Based on the API ^a		
<i>2000-01 and 2001-02 (In Millions)</i>		
Program	2000-01	2001-02
Immediate Intervention/Underperforming Schools Program	\$52.1 ^b	\$139.1 ^b
Teaching as a Priority	118.7	118.7
Governor's Teaching Fellows	3.5	17.5
National Board Certification	10.0	10.0
Cal Grant T	10.0	10.0
Assumption Program of Loans for Education (APLE)	5.6 ^c	14.6 ^c
Totals	\$199.9	\$309.9
^a Academic Performance Index.		
^b Includes both General Fund and federal funds.		
^c The APLE provided 6,500 warrants in 2000-01 with the same number proposed for 2001-02. There is no Immediate cost to issuing a warrant, but the state will incur out-year costs of up to \$19,000 each. In the proposed budget, the state would commit to out-year costs of up to \$123.5 million for 6,500 warrants.		

How Does the Academic Performance Index Work?

An API Score

The State Department of Education (SDE) calculates a score ranging from 200 to 1,000 for each school based on its students' standardized test scores (Stanford-9). The calculation is relatively complex and involves combining student scores across the different subject areas. The SDE ranks the schools and provides a decile ranking (one to ten), which is generally used for its ease of understanding. A decile ranking of ten is best.

Subgroup Population API Score

The SDE performs a similar calculation for each "numerically significant" subgroup of students. These subgroups include: African American, American Indian, Asian, Filipino, Pacific Islander, white not Hispanic, Hispanic, and socioeconomic disadvantaged. Numerically significant means either (1) at least 30 pupils and at least 15 percent of a school's enrollment or (2) at least 100 students in a school.

Growth Target

Annually, a school receives a growth target for the next school year along with its API score. The State Board of Education set an interim statewide performance target of 800 points. Schools with API scores below 800 must close the gap between their

current score and the state performance target by at least 5 percent to meet their growth target. For example, if a school's 1999 API score was 500, the school's growth target would be $(800 - 500) * 5 \text{ percent} = 15 \text{ points}$. Schools with API scores at the 800 point level or above must increase their scores by 1 point to meet their growth target.

Subgroup Growth Targets

Each numerically significant subgroup at a school has a growth target of 80 percent of the schoolwide growth target. In the example used above, the schoolwide growth target was 15 points. Under that example, each numerically significant subgroup at the school must improve by at least 80 percent of 15 points - thus, by at least 12 points to meet the target.

Reward Programs

Schools are eligible for rewards based on meeting their assigned annual growth targets for their API scores and subgroup API scores. The reward programs are described below.

Governor's Performance Awards	School Site Employee Performance Bonus (One-Time)	Certificated Staff Performance Incentives
Eligibility Requirements?		
<ul style="list-style-type: none"> • Meet school API growth target. • Meet subgroup targets. • Have 95 percent Stanford-9 participation in grades K-8 or 90 percent participation for grades 9-11. 	<ul style="list-style-type: none"> • Same as Governor's Performance Awards 	<ul style="list-style-type: none"> • Low-performing schools (below 50th percentile on API); ranked by highest API growth rates. • Same subgroup and participation rate requirements as Governor's Performance Awards.
Who Receives the Funding?		
		<ul style="list-style-type: none"> • Certificated staff only.

<ul style="list-style-type: none"> • School site councils decide uses. 	<ul style="list-style-type: none"> • Half decided by school site councils, other half distributed among all school site staff. 	<ul style="list-style-type: none"> • 1,000 across state receive \$25,000 each. • 3,750 receive \$10,000 each. • 7,500 receive \$5,000 each.
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The API Is a Work in Progress

The state's accountability system is still a work in progress. The API is currently based on only one measure, namely the Stanford-9 test results. The Stanford-9 is an "off the shelf" student assessment produced by Harcourt Brace and administered to California students in grades 2 through 11. The PSAA requires that the API include at least five additional measures: graduation rates, student attendance rate, teacher attendance rate, Standards-Aligned Standardized Testing and Recording (STAR), and the High School Exit Exam (HSEE). The Legislature included this broad set of outcome measures to ensure that increases in the API were based upon real gains in achievement and not temporary fluctuations in a single measure.

The SDE has not included graduation rates, student attendance nor teacher attendance in the API because it is currently not able to collect accurate school-level data on these outcome measures. The SDE has not included Standards-Aligned STAR and HSEE results because the assessments are not yet fully operational. While California's current system is a long way from the full implementation, many efforts are under way to improve the quality of the information used in calculating a school's API (see shaded box on Improving the API).

Improving the API

Since the state rewards schools for their *growth* in academic performance index (API) scores, the State Department of Education (SDE) must be able to collect data on performance measures for two years before it can be included in the API measure. The timetable for possibly including additional measures in the API is as follows:

Measure to Include in API	Potential Availability
Standards-Aligned STAR	2002
High School Exit	2003



Written July, 2004

Proposition 59

Access to Government Information. SCA 1 (Resolution Chapter 1, Statutes of 2004) Burton.

Background

The State Constitution generally does not address the public's access to government information. California, however, has a number of state statutes that provide for the public's access to government information, including documents and meetings.

Access to Government Documents. There are two basic laws that provide for the public's access to government documents:

- **The California Public Records Act** establishes the right of every person to inspect and obtain copies of state and local government documents. The act requires state and local agencies to establish written guidelines for public access to documents and to post these guidelines at their offices.
- **The Legislative Open Records Act** provides that the public may inspect legislative records. The act also requires legislative committees to maintain documents related to the history of legislation.

Access to Government Meetings. There are several laws that provide for the public's access to government meetings:

- **The Ralph M. Brown Act** governs meetings of legislative bodies of local agencies. The act requires local legislative bodies to provide public notice of agenda items and to hold meetings in an open forum.
- **The Bagley-Keene Open Meeting Act** requires that meetings of state bodies be conducted openly and that documents related to a subject of discussion at a public meeting be made available for inspection.
- **The Grunsky-Burton Open Meeting Act** requires that meetings of the Legislature be open to the public and that all persons be allowed to attend the meetings.

Some Information Exempt From Disclosure. While these laws provide for public access to a

significant amount of information, they also allow some information to be kept private. Many of the exclusions are provided in the interest of protecting the privacy of members of the public. For instance, medical testing records are exempt from disclosure. Other exemptions are provided for legal and confidential matters. For instance, governments are allowed to hold closed meetings when considering personnel matters or conferring with legal counsel.

Proposal

This measure adds to the State Constitution the requirement that meetings of public bodies and writings of public officials and agencies be open to public scrutiny. The measure also requires that statutes or other types of governmental decisions, including those already in effect, be broadly interpreted to further the people's right to access government information. The measure, however, still exempts some information from disclosure, such as law enforcement records. Under the measure, future governmental actions that limit the right of access would have to demonstrate the need for that restriction.

The measure does not directly require any specific information to be made available to the public. It does, however, create a constitutional right for the public to access government information. As a result, a government entity would have to demonstrate to a somewhat greater extent than under current law why information requested by the public should be kept private. Over time, this change could result in additional government documents being available to the public.

Fiscal Effect

Government entities incur some costs in complying with the public's request for documents. Entities can charge individuals requesting this information a fee for the cost of photocopying documents. These fees, however, do not cover all costs, such as staff time to retrieve the documents. By potentially increasing the amount of government information required to be made public, the measure could result in some minor annual costs to state and local governments.

[Return to Propositions](#)

[Return to Legislative Analyst's Office Home Page](#)

COMMISSION ON STATE MANDATES

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EXHIBIT K

May 27, 2009

Dr. Pat Jaurequi
Superintendent
San Juan Unified School District
3738 Walnut Avenue
Carmichael, CA 95608

Mr. Robert Miyashiro
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Revised Draft Staff Analysis and Hearing Date

Academic Performance Index, 01-TC-22

Education Code Sections 44650-44654, 52050-52055.51, 52056-52057, 52058
Statutes 1999-2000x1, Chapter 3; Statutes 1999, Chapter 52; Statutes 2000, Chapters 71,
190 and 695; Statutes 2001, Chapters 159, 745, 749, and 887
California Code of Regulations, Title 5, Sections 1031-1039 Register 00, No. 52
(Dec. 28, 2000); Register 01, No. 4 (Jan. 26, 2001); Register 01, No. 5 (Jan. 30, 2001);
Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01,
No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002)
San Juan Unified School District, Claimant

Dear Dr. Jaurequi and Mr. Miyashiro:

The revised draft staff analysis of this test claim is enclosed for your review and comment.

Written Comments


Any party or interested person may file written comments on the revised draft staff analysis by **June 22, 2009**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Friday, July 31, 2009** at 9:30 a.m. in Room 447, State Capitol, Sacramento, CA. The final staff analysis will be issued on or about July 16, 2009. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Eric Feller at (916) 323-8221 with any questions regarding the above.

Sincerely,


PAULA HIGASHI
Executive Director

Enclosures

ITEM ___
TEST CLAIM
REVISED DRAFT STAFF ANALYSIS

Education Code Sections 44650-44654, 52050-52055.51, 52056-52057, 52058
Statutes 1999-2000x1, Chapter 3; Statutes 1999, Chapter 52;
Statutes 2000, Chapters 71, 190 and 695; Statutes 2001, Chapters 159, 745, 749, and 887
California Code of Regulations, Title 5, Sections 1031-1039
Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 4 (Jan. 26, 2001); Register 01, No. 5
(Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001);
Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002)

Academic Performance Index
(01-TC-22)

San Juan Unified School District, Claimant

EXECUTIVE SUMMARY

The original draft staff analysis for this test claim was issued in October 2007 in anticipation of a December 2007 hearing. The hearing was postponed, however, when the Department of Finance, in comments submitted in November 2007, alleged that the test claim statute imposes "duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election" (Gov. Code, § 17556, subd. (f)) and thus should be denied. Specifically, Finance asserted that one of the activities staff found to be reimbursable in the draft staff analysis was necessary to implement or reasonably within the scope of Proposition 59, adopted by the voters in November 2004. In response to Finance's allegation, Commission staff postponed hearing this test claim until the litigation related to Government Code section 17556, subdivision (f), was final. The superior court issued an injunction on April 20, 2007, prohibiting the Commission from implementing Government Code section 17556, subdivision (f). The issue was finally decided by the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183.

The test claim consists of programs of the Public Schools Accountability Act and the Certificated Staff Performance Incentive Act, and related regulations. The Public Schools Accountability Act contains the following programs: (1) the Academic Performance Index (API), a method of measuring pupil performance, (2) the Governor's High Achieving/Improving Schools Program, an incentive program that rewards high-performing schools, and (3) the Intermediate Intervention/Underperforming Schools Program (II/USP), an intervention and sanctions program to assist low-performing schools.¹ The Certificated Staff Performance Incentive Act, in addition to the Governor's Performance Award and the Schoolsite Employees Performance Bonus

¹ Education Code section 52051 et seq..

program reward certificated staff for making improvements in the academic progress of their pupils.

For reasons specified in the analysis, staff finds, effective June 25, 1999, that Education Code section 52056, subdivision (c), imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for a school district governing board to discuss the results of its annual ranking at the next regularly scheduled meeting following the annual publication of the API and Superintendent of Public Instruction (SPI) school rankings (Ed. Code § 52056, subd. (c), Stats. 1999-2000 1st Ex. Sess., ch. 3, eff. Jun. 25, 1999, Stats. 2000, ch. 695).

Staff also finds, however, that districts' discussing the results of the annual API and SPI rankings (in § 52056, subd. (c)) is not a reimbursable mandate for schools with fewer than 100 valid test scores, or schools in the alternative accountability system that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, alternative schools, including continuation high schools and opportunity schools and independent study schools. (Ed. Code, § 52052, subd. (f)(1), Stats. 2001, ch. 887 & Cal. Code Regs., tit. 5, § 1032, subd. (b).)

Staff also finds that section 52053, subdivisions (d) and (j), do not constitute a reimbursable state mandate because no schools or school districts have participated in the II/USP pursuant to these provisions, and because there is no evidence that school districts have incurred costs mandated by the state² to comply with these provisions.

Staff also finds that all other test claim statutes and regulations do not constitute a reimbursable state-mandated program because they are either voluntary or are downstream of a voluntary activity.

Recommendation

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activity listed above.

² Government Code section 17514 defines 'costs mandated by the state' as "any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

STAFF ANALYSIS

Claimant

San Juan Unified School District

Chronology

- 6/28/02 Claimant files test claim 01-TC-22, *Academic Performance Index*
- 8/7/02 California Department of Education files comments on the test claim
- 9/10/02 Department of Finance requests extension to file test-claim comments
- 10/7/02 Department of Finance files comments on the test claim
- 11/7/02 Claimant files rebuttal comments on the test claim
- 4/20/07 The superior court issues an injunction in *California School Boards Assoc. v. State of California*, prohibiting the Commission from implementing Government Code section 17556, subdivision (f)
- 8/24/07 Commission staff requests further information from California Dept. of Education
- 8/27/07 Commission staff severs Education Code section 52056, subdivision (b) from the test claim to create a *Student Accountability Report Cards IV* test claim
- 9/12/07 Department of Education replies to Commission staff's request for information
- 10/09/07 Claimant files a history of the title 5 regulations in the test claim
- 10/19/07 Commission staff issues draft staff analysis
- 11/13/07 Claimant files comments on the draft staff analysis
- 11/15/07 San Diego Unified School District files comments on the draft staff analysis
- 11/15/07 Department of Finance files comments on the draft staff analysis
- 11/19/07 Commission postpones hearing the test claim because of Finance's comments regarding Government Code section 17556, subdivision (f), which was being litigated (based on the injunction issued in April 2007, the Commission was prohibited from implementing Gov. Code, § 17556, subd. (f))
- 3/9/09 Third District issues its decision in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183
- 4/21/09 The decision in *California School Boards Assoc.* becomes final
- 5/22/09 Commission staff issues a revised draft staff analysis

Background

This test claim alleges activities based on the Public Schools Accountability Act,⁴ the Certificated Staff Performance Incentive Act,⁵ and related statutes⁶ and regulations.⁷

The Public Schools Accountability Act consists of the following programs: (1) the Academic Performance Index (API), a method of measuring pupil performance; (2) the Governor's High Achieving/Improving Schools Program, an incentive program that rewards high-performing schools; and (3) the Intermediate Intervention/ Underperforming Schools Program (II/USP), an intervention and sanctions program to assist low-performing schools.⁸

One of the legislative findings of the Public Schools Accountability Act states: "The statewide accountability system must include rewards that recognize high achieving schools as well as interventions and, ultimately, sanctions for schools that are continuously low performing."⁹

The Certificated Staff Performance Incentive Act, in addition to the Governor's Performance Award and the Schoolsite Employees Performance Bonus program that the claimant also pled, reward certificated staff for making improvements in the academic progress of pupils.

Test Claim Statutes

Academic Performance Index (Ed. Code, §§ 52050 – 52052.5): The purpose of the Academic Performance Index (API) is to "measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools."¹⁰ A California Department of Education's (CDE) publication describes the API as follows:

A school's API is a number that ranges from 200 to 1000 and is calculated from the results for each school's students on statewide tests. The state has set 800 as the API target for all schools to meet. Schools that fall short of 800 are required to

⁴ Statutes 1999-2000x1 chapter 3; Education Code section 52050 et seq.. The Public Schools Accountability Act was effective June 25, 1999, because statutes enacted in a special session of the Legislature are not effective until the 91st day after the adjournment of the session at which they are passed. (Cal. Const. art. IV, § 8 (c)(1)).

⁵ Statutes 1999, chapter 52; Education Code section 44650 et seq.

⁶ Statutes 2000, chapter 71; section 40, uncodified.

⁷ California Code of Regulations, title 5, sections 1031-1039. The regulations implement the Governor's Performance Award Program of the Public Schools Accountability Act, as well as the Certificated Staff Performance Incentive Act.

⁸ Education Code section 52051.

⁹ Education Code section 52050.5, subdivision (i). All references herein are to the Education Code unless otherwise indicated.

¹⁰ Education Code section 52052, subdivision (a)(1).

meet annual growth targets until that goal is achieved. API targets vary for each school.¹¹

The API is calculated annually for each school using a variety of indicators that are reported to CDE, including but not limited to the results of the STAR tests,¹² and the High School Exit Exam.¹³ Attendance rates for pupils in elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools is also used.¹⁴ Pupil data is disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group.¹⁵

The Superintendent of Public Instruction (SPI) is required to develop, and the State Board of Education (SBE) to adopt, expected annual percentage growth targets for all schools based on their API baseline score measured from the previous year. The minimum growth target is 5 percent of the difference between the school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target need only maintain their API score above the statewide API performance target. To meet its growth target, a school must demonstrate that all ethnic and socioeconomically disadvantaged subgroups, as defined, are making comparable improvement.¹⁶

The API is used to measure the progress of schools selected for participation in the II/USP (pursuant to § 52053), and rank all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to section 52056.¹⁷

Originally, the SPI was to create an alternative accountability system for schools with less than 100 pupils, but those schools now receive an API with an asterisk to indicate less statistical certainty than an API based on 100 or more test scores.¹⁸ These small schools are eligible to participate in the Governor's Performance Awards Program and in the II/USP,¹⁹ both of which

¹¹ California Department of Education "Parent and Guardian Guide to California's 2008-09 Accountability Progress Reporting System." April 2009. See <<http://www.cde.ca.gov/ta/ac/ap/documents/parentguide09.pdf>> as of May 4, 2009.

¹² The Standardized Testing and Reporting Program, or STAR, consists of four testing programs: the (1) California Standards Tests; (2) The California Achievement Tests, Sixth Edition Survey (a national norm referenced achievement test, formerly the Stanford 9); (3) Spanish Assessment of Basic Education, Second Edition; and (4) the California Alternative Performance Assessment for pupils with significant cognitive disabilities that prevent them from taking the other tests.

¹³ Education Code section 52052, subdivision (b).

¹⁴ Education Code section 52052, subdivision (a)(4). Attendance information for certificated school personnel was deleted from the API by Statutes 2004, chapter 915 (SB 722).

¹⁵ Education Code section 52052, subdivision (a)(4)(B).

¹⁶ Education Code section 52052, subdivision (c) (Stats. 2001, ch. 887).

¹⁷ Education Code section 52052, subdivision (e).

¹⁸ Education Code section 52052, subdivision (f)(1).

¹⁹ Education Code section 52052.2.

are discussed below. The SPI is required to develop an alternative accountability system for schools under the jurisdiction of a county board of education, or county superintendent of schools, community day schools, nonpublic, nonsectarian schools, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools.²⁰

Section 52052.5 requires the SPI to establish an advisory committee to advise the SPI and SBE on "all appropriate matters relative to the creation of the Academic Performance Index and the implementation of the Immediate Intervention/Underperforming School Program and the High Achieving/Improving Schools Program."²¹

The API is also used to meet federal "Adequate Yearly Progress" requirements under the No Child Left Behind Act of 2001 (NCLB). NCLB requires, as a condition of funding, all states to develop and implement a single, statewide accountability system that will ensure all public schools make Adequate Yearly Progress toward the federal goal that all pupils perform at the proficient or above level in English-language arts and mathematics by 2014. Under Adequate Yearly Progress requirements, schools and local educational agencies²² are required to meet criteria in four areas: participation rate, percent proficient, API as an additional indicator, and graduation rate (if applicable).²³

Intermediate Intervention/Underperforming Schools Program (Ed. Code, §§ 52053 – 52055.51 & 52056.5 & 52058): The purpose of the II/USP is to provide schools in decile ranks 1-5 (that score in the lower 50% on STAR tests) an opportunity to apply for funding to improve pupil achievement in exchange for greater accountability.²⁴ The SPI, with approval from the SBE, invites schools that scored below the 50th percentile on both the spring 1998 and spring 1999 STAR tests to participate in the program. "A school invited to participate may take any action not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates to improve pupil performance."²⁵ The program is limited to 430 schools, no more than 301 elementary schools, 78 middle schools, and 52 high schools.²⁶

The test claim statutes provide three ways that schools may be selected to participate in the II/USP without applying to CDE. Subdivision (d) of section 52053 requires the SPI to randomly select eligible schools to participate if fewer than the number of schools in any grade level category apply to the program. Similarly, subdivision (j) states that if fewer schools apply for

²⁰ Education Code section 52052, subdivision (h).

²¹ Education Code section 52052.5.

²² Local educational agencies (LEAs) are school districts and county offices of education.

²³ California Department of Education, "2007 Growth Academic Performance Index Report, Information Guide" August 2007, See <<http://www.cde.ca.gov/ta/ac/ap/documents/infoguide07g.pdf>> as of May 4, 2009.

²⁴ California State Board of Education Policy, May 2004. See <<http://www.cde.ca.gov/re/lr/wr/documents/policy4iiusp.doc>> as of April 27, 2009.

²⁵ Education Code section 52053, subdivision (a).

²⁶ Education Code section 52053, subdivision (b).

participation than can be funded, the SPI with the approval of the SBE shall randomly select the balance of schools from schools eligible to participate that did not apply. Also, section 52056.5 authorizes the SPI to make a school subject to the II/USP if the school fails to meet annual state growth targets established pursuant to Section 52052.

Schools districts with schools in the II/USP must choose between contracting with an external evaluator or contracting with an entity that has proven and successful expertise specific to challenges in low-performing schools.²⁷ The external evaluator or entity has a long list of specified duties, including developing an action plan with the school and consulting employee organizations. Schools that participate receive state grants, some of which may be from federal funds (Pub. Law 105-78).²⁸ The grants require a school district match.²⁹

If a school has not met its growth targets each year and has failed to show significant growth 24 months after receipt of funding, it is deemed a state-monitored school (formerly a low-performing school). The SPI may take one or more actions with regard to a state-monitored school, including reorganizing or closing it.³⁰

High Achieving/Improving Schools Program (Ed. Code, § 52056, except subdivision (b)):

This program provides monetary and non-monetary rewards, pursuant to a Governor's Performance Award Program, to schools that meet or exceed performance targets or demonstrate high achievement.³¹ The SPI, with approval of the SBE, ranks all public schools based on the API in decile categories. The SPI also reports the target annual growth rates of schools and the actual growth rates attained. Schools are also ranked by API compared with schools that have similar characteristics. The SPI publishes these rankings annually on the Internet.³²

According to section 52056, subdivision (b), "schools shall report their ranking, including a description of the components of the API, in their annual school accountability report card pursuant to Section 33126 and 35256." This provision was severed from this test claim in August 2007 and was renamed *School Accountability Report Cards IV*. Subdivision (c) of section 52056 states that the school district governing board "shall discuss the results of the annual ranking" at a regularly scheduled meeting.

Governor's Performance Award Program (Ed. Code, § 52057; Cal. Code Regs., tit. 5, §§ 1031-1033, 1036, 1038-1039): This program is under article 4, the High Achieving/Improving Schools Program, of chapter 6.1, the Public School Accountability Act. To be eligible for the Governor's Performance Awards, schools must "meet or exceed API performance growth targets ... and demonstrate comparable improvement in academic

²⁷ Education Code section 52054, subdivision (a) (Stats. 2001, ch. 749).

²⁸ Education Code section 52053, subdivision (f).

²⁹ Education Code section 52054.5.

³⁰ Education Code section 52055.5, subdivision (b)(3). The statute states that the SPI "shall do one or more of the following with respect to a state-monitored school."

³¹ Education code section 52057, subdivision (a).

³² Education Code section 52056, subdivision (a).

achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.”³³ All schools, including those in the II/USP may participate in the Governor’s Performance Award Program. The monetary awards, made available on either a per-pupil or per-school basis, may not exceed \$150 per pupil who receive a score on the STAR tests, and are subject to budget act appropriation.³⁴ The SPI, with approval of the SBE, may also establish nonmonetary awards for schools, as specified.³⁵ Schools that are eligible for performance awards may request that the SBE waive all code sections or any part of code sections, or any regulations controlling specified education programs, for categorical programs, with some specified exceptions.³⁶

Title 5 of the California Code of Regulations provide the regulatory intent (§ 1031) and describe general eligibility criteria (§ 1032) and award funding criteria (§ 1033) for the Governor’s Performance Award. It also states the waiver deadline (§ 1036), and exemption from school district, county, or school indirect charges or other administrative charges (§ 1038), and that use of funds is decided by the school site governance team/school site council (§ 1039).³⁷

Schoolsite Employees Performance Bonus Program (Stats. 2000, ch. 71; Cal.Code Regs., tit. 5, §§ 1031–1033, 1036- 1038): This uncodified program was established in Statutes 2000, chapter 71, section 40, with an appropriation of \$350 million to the State School Fund for allocation on a one-time basis by the SPI to school districts, county offices of education and charter schools. It requires school districts, county offices of education and charter schools, “as a condition of receiving funds pursuant to this section” upon request from the SPI, to certify the number of full-time equivalent employees at each schoolsite under their jurisdiction that are eligible for awards under the Governor’s Performance Award Program. Schools use 50% of the award for one-time bonuses to employees, and the other 50% for any one-time purpose.

The title 5 regulations adopted for the Governor’s Performance Award program also applied to the Schoolsite Employees Performance Bonus program until the regulations, as applied to the Schoolsite Employees Performance Bonus, were repealed in January 2002.³⁸

Certificated Staff Performance Incentive Act (Ed. Code, §§ 44650 et seq.; Cal. Code Regs., tit. 5, §§ 1031-1032 & 1034 -1038): The purpose of this program is to make one-time performance awards to teachers and other certificated staff in underachieving schools, where the academic performance of pupils significantly improves beyond the minimum percentage growth

³³ Education Code section 52057, subdivision (a).

³⁴ Education Code section 52057, subdivision (b).

³⁵ Education Code section 52057, subdivision (c).

³⁶ Education Code section 52057, subdivisions (d) & (e).

³⁷ Register 00, No. 52 (Dec. 28, 2000). California Code of Regulations, title 5, section 1039, Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

³⁸ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

target established by the SPI based on the school's API. "Any school district or charter school that maintains classes in kindergarten or in any of grades 1 to 12, inclusive, may apply for funding"³⁹ if it meets the following conditions: (1) the school's aggregate score on the API must be below the 50th percentile relative to other public schools in the state in the prior year; and (2) the school must meet any other SBE criteria.⁴⁰ Maximum awards may not exceed \$25,000 per full-time equivalent certificated staff person.⁴¹

The SBE criteria are in the title 5 regulations, which states intent to implement the Certificated Staff Performance Incentive Act (§ 1031). The regulations also specify the general (§ 1032) and specific (§ 1034) eligibility criteria for the awards, describe funding distribution (§ 1035) and the waiver deadline (§ 1036), and specify that the awards are not considered compensation when calculating retirement benefits (§ 1037). The regulations also state that this program is not subject to school district, county, or school indirect charges or other administrative charges (§1038).⁴²

Prior Law

The Focus Schools Program was enacted in 1992 (Stats. 1992, ch. 1335) but, according to the bill analysis for the Public Schools Accountability Act, was never implemented because it was never funded.⁴³ Under the program, the SPI was to designate the schools with the lowest performing pupils, which were to develop a school action plan to improve pupil achievement and were entitled to expert assistance and additional resources to implement the plan. The SPI was to appoint an outside management consultant to assist and, in some circumstances, intervene in the management of schools that fail to improve performance.⁴⁴ The Focus Schools program became inoperative, by its own terms, on July 1, 1998, about a year before the Public Schools Accountability Act was enacted.

Claimant Position

Claimant seeks reimbursement based on article XIII B, section 6 of the California Constitution, for the following activities, as stated in its declaration submitted with the test claim:

³⁹ Education Code section 44651, subdivision (a).

⁴⁰ Education Code section 44651, subdivision (b).

⁴¹ Education Code section 44650, subdivision (b).

⁴² Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 4 (Jan. 26, 2001); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

⁴³ The 1992 statute's stated legislative intent was that funding be provided for the program in future Budget Acts, and that the SPI was only required to implement the provisions in fiscal years in which sufficient funds were appropriated (Sen. Bill No. 171, Stats. 1992, ch. 1335, § 3).

⁴⁴ Assembly Committee on Education, Analysis of Senate Bill No. 1 (1999-2000 1st Ex. Sess.) as amended March 4, 1999, page 7.

- A. Establish, periodically update and maintain data gathering proceedings to collect and report data as may be required by the SPI for computation of the API (Ed. Code, § 52052) "This includes, but is not limited to:"
1. Notifying CDE when circumstances may exist which would invalidate a school's API (Cal. Code Regs., tit.5, § 1032, subd. (d)).
 2. Upon receipt of a report of STAR testing and demographic data from the CDE, notify the department and the test publisher within 30 days by way of e-mail or writing that there are errors in the STAR testing or demographic data (Cal. Code Regs., tit. 5, § 1032, subd. (j)).
 3. Submit all data corrections to the test publisher in writing or e-mail on or before a deadline specified by the test publisher (Cal. Code Regs., tit. 5, § 1032, subd. (j)).
 4. To the extent current rates are not available to the CDE, to respond to any requests from the CDE for attendance rates for pupils and certificated school personnel for elementary, middle and secondary schools (§ 52052, subd. (a)).
 5. To the extent current rates are not available to the CDE, to respond to any requests from the CDE for graduation rates for pupils in secondary schools (§ 52052, subd. (a)).
 6. To provide the SPI, when required, with data pertaining to high school graduation and attendance rates (§ 52052, subd. (a)).
- B. For schools that are required (under §§ 52053, subd. (j) & 52056.5) to participate in the Immediate Intervention/Underperforming School Program and to the extent funding is unavailable or insufficient:
1. To contract with an external evaluator and appoint a broad-based schoolsite and community team (§ 52054, subd. (a)).
 2. To assist the external evaluator and schoolsite and community team, as requested or required, in the preparation of an action plan (§ 52054, subs. (b)-(i)).
 3. To contribute matching funds to any implementation grant provided (§ 52054.5).
 4. For those which fail to meet their annual short-term growth targets within 12 months following receipt of funding, to hold a public hearing and to consult with the external evaluator and the schoolsite and community team in choosing interventions in order to continue to implement the action plan (§ 52055).
 5. For schools that may be deemed low-performing schools under § 52055.5, when required by the SPI, to enter into a contract with a school assistance and intervention team (contracting schools) (§ 52055.51).
 6. For contracting schools to provide support and assistance to the team at the targeted schoolsites (§ 52055.51).
 7. For contracting schools to adopt the team's recommendations at a regularly scheduled meeting of the governing board and to submit the recommendations to the SPI and SBE (§ 52055.51).

8. For contracting schools, no less than three times during the year, to present the team with data regarding progress toward the goals established by the team, and to present the data to the governing board, the SPI, and SBE (§ 52055.51).
 9. By November 30 after the first full year of implementation, and every November 30 thereafter, to submit an evaluation to the SPI of the impact, costs, and benefits of the program, and a report on whether the schools have, or have not, met their program growth targets (§ 52058, subd. (a)).
- C. For school districts and charter schools (not county offices of education) to establish, periodically update and maintain employee payroll records to receive, administer and distribute award monies to staff, as part of the one-time Certificated Staff Performance Incentive Act (§ 44653).
 - D. Before January 8, 2002, for each school district and charter school (not county offices of education) to complete an application on behalf of its eligible schools to participate in the Certificated Staff Performance Incentive Act which shall include: (1) the number of eligible schools, (2) certification that the data used in the API calculations is accurate, and (3) a list of certificated staff positions on a full-time equivalent basis at each eligible school. After January 8, 2002, the application shall certify: (a) that the data used in the API calculations from the schools is accurate, and (b) to report the number of certificated positions on an FTE basis at each of the eligible schools (§ 44651, Cal. Code Regs., tit. 5, § 1034).
 - E. When an award is received, school districts and charter schools to negotiate with the exclusive representative of the bargaining unit of the teachers and other certificated staff to determine how the funds are to be distributed (§ 44653).
 - F. In case there is no agreement on disbursement, for school districts and charter schools to calculate and distribute the award amounts as a percentage of base salaries that is determined by a specified formula (§ 44653).
 - G. When requested by the SPI, to certify the number of FTE employees for the period requested in the creation of the one-time API Schoolsite Employees Performance Bonus, (Stats. 2000, ch. 71, § 40).
 - H. For school districts, charter schools, and county offices of education, to establish and periodically update and maintain employee payroll records to receive, administer and distribute award moneys to staff as part of the API Schoolsite Employees Performance Bonus (Stats. 2000, ch. 71, § 40).
 - I. Upon receipt of an award from the Governor's Performance Award Program and schoolsite portion of the API Schoolsite Employees Performance Bonus, to consult with the existing school site governance team/school site council to decide the use of the award and have a distribution plan ratified by the governing board (Stats. 2000, ch. 71; Cal. Code Regs., tit. 5, § 1039).
 - J. The administrative costs to calculate individual salary awards, to determine and locate recipients, and to deliver those salary awards (§ 44654, Cal. Code Regs., tit. 5, § 1038).
 - K. Compensation-driven benefit costs (employer's share of Medicare, unemployment insurance, worker's compensation) incurred as a result of individual salary awards made pursuant to the

Governor's High Achieving Schools' Program, the Certificated Staff Performance Incentive Act, or the API Schoolsite Employees Performance Bonus Program (§ 44654, Cal. Code Regs., tit. 5, § 1038).

Claimant filed comments in November 2002, rebutting those of the Department of Finance and CDE and arguing that their comments should be stricken from the record because they do not comply with section 1183.02, subdivision (d) of the Commission's regulations. This regulation requires that assertions or representations of fact be supported by documentary evidence submitted with the state agency's response, and authenticated by declarations under penalty of perjury.⁴⁵ Claimant also made substantive comments that are discussed in the analysis below.

Claimant also filed comments on the draft staff analysis in November 2007 on section 1032, subdivision (d) of the title 5 regulations and on the II/USP, both of which are discussed below.

State Agency Positions

Department of Education: In comments dated August 7, 2002, the CDE discusses each program separately, arguing that none of them is reimbursable. As to the API, CDE states in part:

The API is calculated from indicators currently reported to the CDE as part of the Standardized Testing and Reporting Program (STAR). Part III, Section 1.A of the Test Claim alleges reimbursable costs for activities which already receive funding under Title 5, California Code of Regulations, Division 1, Chapter 2 Pupils, Subchapter 3.75 Standardized Testing and Reporting Program. The Budget provides \$65 million for STAR administration, continued development, scoring, error correction, and apportionment.

CDE alleges that the other programs are not reimbursable because they are voluntary and are already funded.

For the High Achieving Schools Program or Governor's Performance Awards, CDE states it is not a mandated program. Eligible schools that meet or exceed API growth targets and testing participation rates are notified that they will receive the award, but districts have the option of turning down these funds (although CDE admits that this option was not explicitly stated to school districts). The funding for this program is to be decided by existing School Site Councils, and "any additional costs not covered by awards due to decisions made by School Site Councils are due to discretionary actions.

In comments submitted in September 2007 responding to a question from Commission staff, CDE reiterates that the II/USP is a voluntary program, and that the statutes authorizing or requiring the SPI to select schools for participation in the II/USP have not been used.

⁴⁵ The existence of a reimbursable state mandate is a question of law. (*County of San Diego v. State of California (County of San Diego)* (1997) 15 Cal.4th 68, 89.) State agency or other comments are not relied on by staff, which reaches conclusions based on independent analysis of the test claim statutes and relevant facts supported in the record. The Commission weighs the evidence accordingly.

Department of Finance: Finance, in its October 2002 comments, also argues that the test claim is not reimbursable. Finance asserts that the activities are discretionary because they stem from voluntary programs, and that they are already funded.

In comments submitted in November 2007 on the draft staff analysis, Finance disagrees with both activities that staff found reimbursable. As to the school board discussion of the API annual rankings (§ 52056, subd. (c)), Finance asserts that it is not reimbursable due to Government Code section 17556, subdivision (f), which prohibits finding a reimbursable mandate if “the statute ... imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election.” Finance argues that the governing board discussion of the annual rankings is within the scope of Proposition 59, that provides that the people have the right to access to information concerning the conduct of the people’s business and that the meetings of public bodies are open to public scrutiny.

The Proposition 59 issue was discussed by the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, and is discussed below.

Interested Party Comments

San Diego Unified School District (SDUSD) filed comments on the draft staff analysis in November 2007, arguing that California Code of Regulations, title 5, section 1032, subdivision (d), constitutes a state-mandated program to notify CDE of errors in the API, as discussed below.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution⁴⁶ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁴⁷ “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.”⁴⁸ A test claim statute or executive order may impose a reimbursable state-mandated

⁴⁶ Article XIII B, section 6, subdivision (a), (as amended in Nov. 2004) provides:

(a) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

⁴⁷ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁴⁸ *County of San Diego, supra*, 15 Cal.4th 68, 81.

program if it orders or commands a local agency or school district to engage in an activity or task.⁴⁹

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.⁵⁰

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.⁵¹ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.⁵² A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."⁵³

Finally, the newly required activity or increased level of service must impose costs mandated by the state.⁵⁴

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 6.⁵⁵ 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."⁵⁶

⁴⁹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁵⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

⁵¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

⁵² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

⁵³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

⁵⁴ *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

⁵⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁵⁶ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Issue 1: Are the test claim statutes and regulations subject to article XIII B, section 6 of the California Constitution?

A. Do the test claim statutes and regulations impose state-mandated activities on school districts within the meaning of article XIII B, section 6?

Academic Performance Index (Ed. Code, §§ 52050 – 52052.5): As indicated above, the purpose of the API is to measure the performance of schools and to demonstrate comparable improvement in academic achievement.

Section 52020 names chapter 6.1 as the “Public Schools Accountability Act of 1999,” and section 52050.5 contains legislative findings and declarations. Section 52051 states that the Public School Accountability program is established and consists of the API, the II/USP and the Governor’s High Achieving/Improving Schools Program. Section 52051.5 states that all references to schools in chapter 6.1 shall include charter schools. Section 52052 describes the API’s purpose, indicators, pupil subgroups, included test scores, growth targets, performance target, uses, and alternative accountability systems. Section 52052.3 indicates which pupil test scores are included in the API.⁵⁷ Section 52052.5 requires the SPI to form an advisory committee to advise the SPI and SBE on matters related to the API, the II/USP and the Governor’s High Achieving/Improving Schools Program.

Claimant alleges establishing, periodically updating and maintaining data gathering procedures to collect and report data as may be required by the SPI for computation of the API, as follows:

- To the extent current rates are not available to the CDE, to respond to any requests from the CDE for attendance rates for pupils and certificated school personnel for elementary, middle and secondary schools (§ 52052, subd. (a));
- To provide the SPI, when required, with data pertaining to high school ... attendance rates (§ 52052, subd. (a)).

CDE and Finance commented, in August and October 2002, that the API is calculated from indicators currently reported to the CDE as part of the STAR Program. CDE’s August 2002 comments stated that the test claim alleges activities that already receive funding under the STAR program, including error correction, and that test claim 97-TC-23 “will provide reimbursement for reimbursable costs not covered by the STAR apportionment.”⁵⁸

⁵⁷ Section 52052.3 was repealed by Statutes 2002, chapter 1035, which is not included in this test claim so staff makes no findings on it.

⁵⁸ The Commission’s 2005 reconsideration of the decision in test claim 97-TC-23 (04-RL-9723-01), found that activities that related to the national norm referenced test (CAT/6) are reimbursable, and are subject to offsets for state STAR funding and federal Title VI funding. But Statutes 2008, chapter 757, effective September 30, 2008, deleted the CAT/6 mandate in Education Code section 60640, subdivision (b), thus ending the state-mandated program for administration of the CAT/6 tests in grades 3 and 7.

Reporting attendance and graduation rates (Ed. Code, §§ 52050 – 52052.5): Section 52052, subdivision (a)(3), as of Statutes 2001, chapter 887 (the last amendment claimant pled)⁵⁹ states that the API “shall consist of a variety of indicators *currently reported to the State Department of Education*, including, but not limited to ... attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.”⁶⁰ [Emphasis added.] Thus, although the statute states that the API shall consist of indicators currently reported to CDE, subdivisions (a)(3)(B) and (C) of section 52052 (Stats. 2001, ch. 887) state:

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data is currently reported to the state and the accuracy of the data.

(C) If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.⁶¹

In its *Analysis of the 2001-02 Budget Bill*, the Office of the Legislative Analyst stated: “The SDE [State Dept. of Education] has not included graduation rates, student attendance nor teacher attendance in the API because it is currently not able to collect accurate school-level data on these outcome measures.”⁶² And the CDE’s current description of the API does not indicate that pupil or teacher attendance or graduation rates are included in it.⁶³ Moreover, there is no evidence in the record that CDE has ever required schools to report attendance information or graduation rates, or that they are currently incorporated into the API.

⁵⁹ Section 52052 has been further amended by Statutes 2002, chapter 1035, Statutes 2004, chapter 914, Statutes 2004, chapter 915, Statutes 2005, chapter 639, Statutes 2006, chapter 538, Statutes 2006, chapter 743, Statutes 2007, chapter 130, Statutes 2008, chapter 710, and Statutes 2008, chapter 757. Staff makes no findings on these later amendments.

⁶⁰ Attendance rates for certificated school personnel was removed by Statutes 2004, chapter 915.

⁶¹ Education Code section 52052, subdivision (a) (Stats. 1999-2000x1, ch. 3). The second sentence was removed by Statutes 2001, chapter 745, effective October 12, 2001, but the first sentence remains in subdivision (a)(4)(C), with a nonsubstantive amendment made by Statutes 2008, chapter 757.

⁶² Office of the Legislative Analyst, “Analysis of the 2001-02 Budget Bill.” See <http://www.lao.ca.gov/analysis_2001/education/ed_10_sch_acct_anl01.htm> as of May 4, 2009.

⁶³ California Department of Education, “Parent and Guardian Guide to California’s 2008-09 Accountability Progress Reporting System.” April 2009. See <<http://www.cde.ca.gov/ta/ac/ap/documents/parentguide09.pdf>> as of May 4, 2009.

Staff finds that section 52052 does not expressly require schools to report attendance data for pupils or certificated personnel,⁶⁴ or graduation rates to CDE for the API, so doing so does not impose a state mandate within the meaning of article XIII B, section 6.

Staff also finds that the remaining sections, 52020 (title of act), 52050.5 (legislative findings and declarations), 52051 (programs within the act), 52051.5 (charter schools included), 52052.5 (advisory committee) and former section 52052.3 (test scores in API), do not require any activities of school districts, so they do not impose state-mandated activities within the meaning of article XIII B, section 6.

Discuss the API ranking: Subdivision (c) of section 52056 requires the governing board of each school district, after the annual publication of the API and SPI school rankings, to “discuss the results of the annual ranking at the next regularly scheduled meeting.” (As of Stats. 2000, ch. 695.) Because this statute uses the word “shall,”⁶⁵ staff finds that section 52056, subdivision (c), is a mandate on a school district governing board to discuss its API annual ranking at the next regularly scheduled meeting following the annual API publication by the SPI.⁶⁶

⁶⁴ Attendance information for certificated school personnel was deleted from section 52052 by Statutes 2004, chapter 915 (Sen. Bill No. 722) upon which staff makes no finding because it was not pled.

⁶⁵ Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

⁶⁶ Although staff makes no finding on it because it was not pled by claimant, section 52056, subdivision (c) was amended, and a new (d) was added by Statutes 2003, chapter 45, as follows:

(c) The governing board is strongly encouraged to include in the discussion an examination by school, grade, and subgroup enumerated by and in accordance with subclause (II) of clause (v) of subparagraph (C) of paragraph (2) of subsection (b) of Section 6311 of Title 20 of the United States Code, of scores on the tests administered pursuant to the Standardized Testing and Reporting (STAR) Program set forth in Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(d) If the average STAR test score of the school is below the 50th percentile, or if the test scores of more than 25 percent of the pupils of a school are below the 50th percentile, the school district governing board may do both of the following:

(1) Conduct an assessment of the reasons for the performance results of the school, by grade.

(2) Adopt an improved performance plan that includes methods determined by the district to have been used by schools with similar pupil populations elsewhere in the district or state and significantly higher pupil scores. If it is deemed not feasible to adopt those methods, the plan shall explain why an alternate approach is preferable. If a school district governing board adopts an improved performance plan, it shall reevaluate the plan at each future annual meeting described by subdivision (c), until STAR test scores reach a level above those specified in this subdivision.

Intermediate Intervention/Underperforming Schools Program (Ed. Code, §§ 52053-52055.51 & 52056.5 & 52058): As indicated above, the SPI with approval from the SBE, invites schools that scored below the 50th percentile on the Spring 1998 and Spring 1999 administrations of the STAR tests to participate in the II/USP, the purpose of which is to provide those schools with the opportunity to apply for funding to improve pupil achievement in exchange for greater accountability.

Section 52053 establishes the program and how schools are selected. Section 52053.5 describes qualifications for external evaluators, and 52054 concerns school contracts with and duties of external evaluators, including developing an action plan with specified contents. Section 52054.3 provides an option of using an existing plan instead of developing an action plan, and section 52054.5 details the grants available for the II/USP, including a local school district matching requirement. Section 52055 requires schools that have not met their growth targets⁶⁷ within 12 months after receiving funding to hold public hearings and, after consulting specified groups, choose from a range of interventions. Section 52055.5 states the fate of schools that, 24 months after receiving funding, have not met their growth targets. If the school is making substantial progress, it may participate in the program for an additional year. If the school is not making substantial progress, it is deemed a state-monitored school (formerly a low-performing school) and the SPI must assume the legal rights, duties and powers of the governing board and reassign the principal. The SPI must also take other action, to include such options as reorganizing or closing the school. Section 52055.51 authorizes the SPI to require the school to contract with a school assistance and intervention team instead of taking action as a result of the school's state-monitored school status in section 52055.5, subdivision (b). Section 52056.5 authorizes the SPI to make schools that fail to meet annual state growth targets subject to the II/USP. Section 52058 requires school districts with schools participating in the II/USP to submit evaluation reports, as specified.

Claimant pleads the following activities under the II/USP, "to the extent funding is unavailable or insufficient."

- (1) Contracting with an external evaluator and appointing a broad-based schoolsite and community team (§ 52054, subd. (a));
- (2) Assisting the external evaluator and schoolsite and community team in preparing the plan (§ 52054, subs. (b)-(i));
- (3) Contributing matching funds to any implementation grant provided (§ 52054.5);

The federal law cited in subdivision (c) above is the definition of "adequate yearly progress" that "(v) includes separate measurable annual objectives for continuous and substantial improvement for each of the following ... (II) The achievement of (aa) economically disadvantaged students; (bb) students from major racial and ethnic groups; (cc) students with disabilities; and (dd) students with limited English proficiency;"

⁶⁷ Growth targets are selected by the SPI based on the previous year's API (Ed. Code, § 52052, subs. (c) & (d)).

- (4) Holding a public hearing and consulting with external evaluator and schoolsite and community team in choosing interventions if school fails to meet its annual short-term growth target within 12 months (§ 52055);
- (5) Contracting with a school assistance and intervention team if the school is deemed a low-performing school, as required by the SPI (§ 52055.51), and for contracting schools to do the following:
 - a. Provide support and assistance to the team at targeted schoolsites (§ 52055.51);
 - b. Adopt the team's recommendations at a regularly scheduled meeting of the governing board and to submit the recommendations to the SPI and SBE (§ 52055.51); and
 - c. No less than three times during the year, present the team with data regarding progress toward the goals established by the team, and to present the data to the governing board, the SPI and SBE (§ 52055.51).
- (6) By November 30 after the first full year of implementation, and every November 30 thereafter, to submit an evaluation to the SPI of the impact, costs, and benefits of the program and report on whether schools have met their program growth targets (§ 52058, subd. (a)).

CDE, in its August 2002 comments, states that the II/USP is not mandated, but is discretionary, so all the activities associated with the election by the district to be in the program are not mandated. Finance also states that the program is voluntary in its September 2007 comments.

The first statute establishing the program states: "the Superintendent of Public Instruction, with the approval of the State Board of Education, *shall invite* schools that scored below the 50th percentile on the achievement tests ... to participate in the ... Program."⁶⁸ [Emphasis added.] The program is limited to 430 schools, no more than 301 elementary schools, 78 middle schools, and 52 high schools.⁶⁹ Nothing in the statute requires schools to accept the invitation from CDE. Therefore, based on the plain language of section 52053, subdivision (a) (which describes eligibility for the II/USP), it does not legally compel the school or the school district to participate in the program.

In the *Kern High School Dist.* case,⁷⁰ the California Supreme Court stated, "if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate."⁷¹ Applying the reasoning of *Kern*, the downstream activities pled by claimant for participating in the II/USP are not state mandates because program participation is voluntary. Since participation is at the discretion of the school district, staff finds there is no legal compulsion to implement it.

⁶⁸ Education Code section 52053, subdivision (a).

⁶⁹ *Ibid.*

⁷⁰ *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

⁷¹ *Id.* at page 743. Emphasis in original.

Claimant, in comments submitted in November 2002, argues that the California Supreme Court, in *City of Sacramento v. State of California* has held that:

[T]he determination of whether a program is truly voluntary depends upon (1) the nature and purpose of the program, (2) whether the program's design evidences an intent to coerce, (3) the penalties assessed for non-participation, (4) the legal and other practical consequences of non participation.⁷²

According to claimant, "the concept of state mandate is sufficiently broad to include situations where the local school district has no reasonable alternative to the state scheme or no true choice but to participate in it." Claimant argues it would be fiscally irresponsible to turn down the state funds, since district employees and their "exclusive representatives" (unions) know about the program.

Staff disagrees. Although the Supreme Court in *Kern* stated that state mandates could be found in cases of practical compulsion on the local entity, it described this as the statute imposing "certain and severe penalties such as double taxation or other draconian consequences"⁷³ for not participating in the programs. The court also described practical compulsion as "a substantial penalty (independent of the program funds at issue) for not complying with the statute."⁷⁴

Here, the only *certain* consequence of a school district not participating in the II/USP is losing the program funds at issue. There is nothing in the record to show that the school districts are practically compelled to participate in the II/USP program.⁷⁵ There are no certain and severe penalties, or draconian consequences in the statute or the record for nonparticipation. Nor is there a "substantial penalty independent of the program funds at issue" for not complying with the II/USP statute.⁷⁶

Therefore, in the absence of both legal and practical compulsion to participate, staff finds that a school's voluntary participation in the II/USP (Ed. Code, §§ 52053 (except subs. (d) & (j)) 52053.5-52055.51 & 52056.5 & 52058) is not a state-mandated program within the meaning of article XIII B, section 6.

Thus, for schools that participate in the II/USP upon their own application, the various downstream activities are not mandated, including contracting with an external evaluator or entity with proven expertise specific to challenges in low-performing schools.

Claimant's November 2002 comments state that the test claim alleges the "detailed list of mandated duties for those schools who are required, pursuant to Education Code Sections 52053

⁷² Keith B. Petersen, claimant comments submitted November 5, 2002. Citing *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

⁷³ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751.

⁷⁴ *Id.* at p. 731.

⁷⁵ Cf. *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th, 1355, 1366.

⁷⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

(j) and/or 52056.5, to participate in the Immediate Intervention/Underperforming School Program.”

Section 52056.5 authorizes the SPI to make a school subject to the II/USP if the school fails to meet annual state growth targets established pursuant to section 52052. On its face, this section does not require a school district activity.⁷⁷ Therefore, staff finds that section 52056.5 is not a state mandate within the meaning of article XIII B, section 6.

Two provisions, however, authorize the SPI to select a school to participate in the II/USP without the school applying. Section 52053, subdivision (d), requires the SPI to randomly select schools to participate if fewer than the eligible number of schools in any grade level category apply to the program. Similarly, if fewer schools apply than can be funded, the SPI is required to randomly select schools to participate (§ 52053, subd. (j)).

Section 52053, subdivisions (i) and (l), indicate that schools selected to participate in the II/USP receive planning grants of \$50,000:

(i) The total number of schools selected for participation in the program shall be no more than the number that can be funded through the total appropriation for the planning grants referenced in subdivision (l) below. [¶]...[¶]

(l) A school selected to participate on or before October 15, 2000, and each year thereafter, shall be awarded a planning grant from funds appropriated pursuant to Section 2 of Chapter 3 of the Statutes of 1999, First Extraordinary Session, of fifty thousand dollars (\$50,000).

In a September 12, 2007 reply to a request for information from Commission staff, CDE commented: “schools have participated in II/USP strictly on a voluntary basis. None of the participating schools were selected by the State Superintendent of Public Instruction as prescribed in Education Code sections 52053 (d) and (j), and 52056.5.”

Subdivision (m) of section 52053 states that “schools selected for participation in the program shall be notified by the [SPI] ... no later than October 15 of each year.” There is no evidence in the record (such as a letter or executive order from the SPI) of any notification to a school that has been selected involuntarily to participate in the II/USP.

Because subdivisions (d) and (j) contain a trigger that has never been used by the SPI to require a school to participate in the II/USP, staff finds that section 52053, subdivisions (d) and (j), does not impose a state mandate within the meaning of article XIII B, section 6.

Claimant, in its November 2007 comments on the draft staff analysis, asserts that the alleged fact that no districts participated involuntarily in the II/USP does not prevent finding reimbursable costs mandated by the state. According to claimant “that no districts may claim these costs on their annual reimbursement claims does not relieve the Commission on the duty to determine whether the costs are reimbursable.” Claimant states that the Commission should find reimbursable, potentially claimable activities for the II/USP.

⁷⁷ Staff makes no finding on the mandate implication of the SPI issuing an executive order (as defined in Gov. Code, § 17516) under the authority of section 52056.5 of the Education Code.

Staff disagrees. The record indicates no involuntary participation. If a school were involuntarily selected to participate in the II/USP, it could submit a test claim on the SPI's notification of its selection (in § 52053, subd. (m)). Given that there is no evidence in the record of any such state-mandated selection by the SPI, staff finds that section 52053, subdivisions (d) and (j), do not constitute a state mandate.

In sum, staff finds that the II/USP is not a state-mandated program within the meaning of article XIII B, section 6.

High Achieving/Improving Schools Program (Ed. Code, § 52056, except subdivision (b)):

This program provides monetary and non-monetary rewards, including the Governor's Performance Award Program (discussed separately below), to schools that meet or exceed performance targets or demonstrate high achievement. Claimant pled this section as it was amended by Statutes 2000, chapter 695.

Subdivision (a) of section 52056 describes the program and requires the SPI to rank all public schools based on the API in decile categories by grade level of instruction, and rank them by value of the API when compared to schools with similar characteristics. The SPI must also report the target annual growth rate of schools and the actual growth rates attained, and must publish the rankings on the Internet. Because subdivision (a) does not require a school or school district activity, staff finds it is not a mandate within the meaning of article XIII B, section 6.

Governor's Performance Award Program (Ed. Code, § 52057; Cal. Code Regs., tit. 5, §§ 1031-1033, 1036, 1038-1039): This program provides monetary and nonmonetary awards to schools that meet or exceed API performance growth targets, as described above.

Section 52057 establishes the program eligibility, awards, waiver of certain provisions, and expenditure of funds. Section 1031 of the title 5 regulations states the regulatory intent is to implement the Governor's Performance Award Program and the Certificated Staff Performance Incentive Act. As to the remaining title 5 regulations, section 1032 details the general eligibility criteria for these awards. Section 1033 outlines the award funding criteria and states in part, "Schools that meet the eligibility requirements in 2000-2001 for the Governor's Performance Award Program (GPA) shall receive a per pupil award amount for each of their eligible pupils." Section 1033 also describes eligible pupils, and how the amount allocated for the award is determined. Section 1036 states the deadline for requesting waivers of the regulations, and section 1038 states that the award is not subject to indirect or other administrative charges. Section 1039 of the regulations states that the use of funds at the school site for the program shall be decided by the existing school site governance team/school site council and then ratified by the governing board of each local educational agency.⁷⁸

There is nothing in Education Code section 52057 or the applicable title 5 regulations that states that schools or school districts are required to participate in the Governor's Performance Award Program, so there is no legal compulsion to do so. And neither the statute nor the record indicates practical compulsion, defined as: "certain and severe penalties such as double taxation

⁷⁸ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

or other draconian consequences”⁷⁹ for not participating in the program, or “a substantial penalty (independent of the program funds at issue) for not complying with the statute.”⁸⁰

Therefore, staff finds that section 52057 is not a state mandate within the meaning of article XIII B, section 6. Staff also finds that California Code of Regulations, title 5, sections 1031, 1033, 1036, and 1038⁸¹ do not constitute a state mandate on schools or school districts for purposes of the Governor’s Performance Award Program.⁸²

Deciding on use of Governor’s Performance Award Program funds: Section 1039 of the title 5 regulations state:

Use of funds at the school site for the Governor’s Performance Award Program shall be decided by the existing school site governance team/school site council representing major stakeholders and then ratified by the governing board of each local education agency.⁸³

Although this provision appears to be mandatory based on the plain meaning of “shall be decided by the existing school site governance team and then ratified by the governing board,” it is not because these activities are conditional on participation in the Governor’s Performance Award Program, which is voluntary.

As the Supreme Court stated in *Kern*, “if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate.”

Because deciding the use of funds, and ratifying this decision, is a downstream activity that results from *voluntary* participation in the Governor’s Performance Award Program, staff finds that section 1039⁸⁴ of the title 5 regulations is not a state mandate within the meaning of article XIII B, section 6.

⁷⁹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751.

⁸⁰ *Id.* at p. 731.

⁸¹ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

⁸² The regulations also apply to the API and the Certificated Staff Performance Incentive Act. The finding here is limited to the regulations as they apply to the Governor’s Performance Award program.

⁸³ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

⁸⁴ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

This conclusion is also supported by the rules of statutory construction. In interpreting these regulations, “[t]he same rules of construction apply in the interpretation or [sic] regulations as apply in the interpretation of statutes.”⁸⁵ And the Commission, like a court, keeps in mind the following principles of statutory construction:

A statute must be construed ‘in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts.’ [Citation omitted.]” A court may consider the overall scheme in which an ambiguous statute is included in order to ascertain its intended meaning. [Citation omitted.] The organization of the division, chapters, and articles is an aid to understanding its purpose. [Citation omitted.] [division, chapter, article, and section headings may properly be considered in determining intent and are entitled to considerable weight].⁸⁶

Considered in context, section 1039 is under article 1.7 of title 5 of the California Code of Regulations. The express purpose of article 1.7, as stated in section 1031, subdivision (b), is to “implement the programs established by two statutes relating to the API: (1) The Governor’s Performance Award Program of the Public Schools Accountability Act of 1999... (2) the Certificated Staff Performance Incentive Act”

As indicated above, the Governor’s Performance Award Program is not a state-mandated program, and as indicated below, the Certificated Staff Performance Incentive Act, is also not a state-mandated program. Thus, deciding the use of funds at the school site for purposes of the voluntary Governor’s Performance Award Program is not a state mandate. Rather, like the requirements placed on school districts in the *Kern* case, it is a “procedural condition imposed on program participation.”⁸⁷ As such, it is not reimbursable because participation in the underlying award and incentive programs is voluntary.

In addition, the section heading to section 1032 is “General Eligibility Criteria for Award Programs Related to API Growth,” which indicates that the regulation contains award program criteria rather than requirements that are independent of those award programs: The Governor’s Performance Award Program and the Certificated Staff Performance Incentive Act (§ 1031, subd. (b)).

So again, staff finds that section 1039⁸⁸ of the title 5 regulations is not a state mandate within the meaning of article XIII B, section 6.

Notifying CDE regarding invalidation of school’s API (Cal.Code Regs. tit.5, § 1032, subd. (d)): Subdivision (d) of section 1032 in the title 5 regulations⁸⁹ describes conditions under which the

⁸⁵ *Lusardi Construction Co. v. California Occupational Safety & Health Appeals Bd.* (1991) 1 Cal.App.4th 639, 647.

⁸⁶ *Medical Bd. of California v. Superior Court* (2003) 111 Cal.App.4th 163, 175.

⁸⁷ *Kern High School Dist., supra*, 30 Cal.4th 727, 753.

⁸⁸ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

API is invalid, including if the school district notifies CDE of any of the following: (d)(1), there were adult testing irregularities at the school affecting five percent or more of pupils tested; or (d)(2), that the API is not representative of the pupil population at the school; or (d)(3), that the school has experienced a significant demographic change in pupil population between the base year and growth year, and that the API between years is not comparable.⁹⁰ Subdivisions (d)(6) and (e) state as follows:

(6) If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized. The department may invalidate or withhold the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.⁹¹

(e) If a school's API is considered invalid pursuant to subdivisions (d)(1) [district notifies CDE of adult testing irregularities at the school affecting 5% or more of the pupils tested], (d)(2) [district notifies CDE that the API is not representative of the pupil population at the school], (d)(4) [school's proportion of parental waivers compared to its STAR test enrollment is equal to or greater than 15% for the 2000 STAR, or 10 % for subsequent STARs, with exceptions], or (d)(5) [In any content area of the California Standards Tests, the school's proportion of the number of test-takers in that content area compared with the total numbers of test-takers is less than 85 percent], *the school is ineligible for participation in any of the award programs for the current and subsequent year.* If a school does not receive an API pursuant to subdivision (d)(3) [the district notifies CDE that the school has experienced a significant demographic change in pupil population between the base year and growth year, and the API between years is not comparable], *the*

⁸⁹ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

⁹⁰ Other information that can also invalidate a school's API (but is silent on whether the district notifies CDE of the information) include: in subdivision (d)(4), the schools proportion of parental waivers compared to its STAR enrollment, is equal to or greater than 15 percent for the 2000 STAR, or greater than 10 percent for the 2001 and each subsequent STAR, with exceptions. Also, (in subd. (d)(5)) the STAR can be invalidated if the school's proportion of the number of test-takers in any content area of the California Standard's Test compared with the total number of test-takers is less than 85 percent. And (subd. (d)(6)) if information is made available or obtained by CDE that would lead a reasonable person to conclude that one or more of the preceding circumstances occurred, the API shall be considered invalid.

⁹¹ This was originally in subdivisions (d)(4) and (e) of section 1032. Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

*school is ineligible for participation in any of the award programs for the current year only.*⁹² [Emphasis added.]

Claimant pleads the following activity: (1) Notifying CDE when circumstances may exist which would invalidate a school's API (Cal Code Regs., tit.5, § 1032, subd. (d)).

Finance, in October 2002, comments that this regulation does not require districts to provide information to the SPI, but states that a school's API shall be considered invalid under certain circumstances.

Claimant disagrees, stating in November 2002 that it cannot be the intent of the law for local districts to fail to disclose data deficiencies when they exist regarding testing irregularities, the API not being representative of the pupil population, or a school experiencing a significant demographic change in pupil population. Regarding the STAR apportionments, claimant argues they are for the costs of the STAR testing process, but costs alleged in this claim relate to additional post-test duties required to ensure the accuracy of the API.

In comments on the draft staff analysis submitted in November 2007, claimant states that Education Code section 52052 and section 1032, subdivision (d) of the title 5 regulations require school districts to report the API information and to "satisfy" a CDE investigation. Claimant also distinguishes this case from the *Kern* case, and that if the district potentially removes itself from participation in the awards programs, it would not be complying with section 1032, subdivision (d), to establish eligibility for cash awards.

San Diego Unified School District (SDUSD) filed comments on the draft staff analysis in November 2007, arguing that California Code of Regulations, title 5, section 1032, subdivision (d), constitutes a state-mandated program to notify CDE of errors in the API. This is because the draft staff analysis found a state mandate in section 52056, subdivision (c)'s requirement for the district governing board to discuss the results of the annual ranking following the annual publication of the API and SPI school rankings. SDUSD argues that the intent is to have the governing board make decisions and use the information to ultimately improve pupil performance. SDUSD asserts the existence of compulsion to notify the governing board of validation errors in the API, so the board shall discuss why the API annual ranking may be inaccurate. Also, SDUSD notes that section 52056, subdivision (b), states: "All schools shall report their ranking, including a description of the components of the API in their school accountability report card pursuant to Sections 33126 and 35256." And section 33126, subdivision (a), states the "school accountability report card shall provide data by which a parent can make meaningful comparisons between public schools that will enable him or her to make informed decisions on which school to enroll his or her children." According to SDUSD, the intent is to have the API and its component information used by parents to make decisions about school choice, and that there is a compulsion to provide parents with meaningful data, including a correct API.

The issue is whether section 1032, subdivision (d), of the title 5 regulations imposes a state-mandated activity within the meaning of article XIII B, section 6.

⁹² This language was amended into subdivision (e) by Register 02, No. 2 (Jan. 8, 2002).

Although the regulation states that the API "shall be considered invalid" if the school district reports the information in subdivisions (d)(1) through (d)(3), it does not expressly require the school district to report it. Therefore, staff finds that school districts are not legally compelled under section 1032 to report this information.

The next issue is whether there is practical compulsion by the state to certify the information in subdivisions (d)(1) through (d)(3) of section 1032 of the title 5 regulations, when doing so would invalidate the school's API. Staff finds that there is not.

Section 1032 states in subdivision (d)(6) that CDE "may investigate" information "to determine if the integrity of the API has been jeopardized" and authorizes CDE to "invalidate or withhold the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized." According to subdivision (e), the consequence of having an invalid API is that "the school is ineligible for participation in any of the award programs for the current and subsequent year" except in the case of the school experiencing a significant demographic change in pupil population between the base and growth years, in which case, the school is ineligible for participation in any of the award programs for the current year only.

For a school district that certifies the information in subdivisions (d)(1) through (d)(3) of section 1032, its API "shall be considered invalid" which in turn, renders it ineligible for the Governor's Performance Award Program or the Certificated Staff Performance Incentive Act, according to subdivision (e).

In the *Kern High School District* case, the California Supreme Court considered school district's voluntary participation in the School Improvement Program, which the court called "substantial" because it provided \$394 million statewide in fiscal year 1998-1999.⁹³ In finding that claimants were not practically compelled to participate in that and the other programs at issue, the court stated:

In essence, claimants assert that their participation in the education-related programs here at issue is so beneficial that, as a practical matter, they feel they must participate in the programs, accept program funds, and-by virtue of ... [the test claim statutes]- incur expenses necessary to comply with the procedural conditions imposed on program participation. Although it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of continued participation in the program; just as such a participant would be disappointed if the total amount of the annual funds provided for the program were reduced by legislative or gubernatorial action, the circumstance that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render the local entity's decision whether to continue its participation in the modified program any less voluntary.⁹⁴

As discussed below, the Governor's Performance Award Program and the Certificated Staff Performance Incentive Act are voluntary programs. The activities in section 1032, subdivision

⁹³ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 732.

⁹⁴ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 753.

(d), of the title 5 regulations are performed only if the district chooses to participate in the Governor's Performance Award Program and the Certificated Staff Performance Incentive Act, the programs implemented by the regulations (§ 1031, subd. (b)). Therefore, the regulatory activities of notifying CDE of testing irregularities or other factors that would invalidate a school's API, like the activities at issue in the *Kern* case, do not constitute practical compulsion. Rather, "claimants have found the benefits of various funded programs 'too good to refuse' - even though as a condition of program participation, they have been forced to incur some costs."⁹⁵ Moreover, there is nothing in the record to show that the school districts are practically compelled to participate in the programs.⁹⁶

Additionally, the section 1032 regulation is under article 1.7 of title 5 of the California Code of Regulations, the express purpose of which, as stated in section 1031, subdivision (b), is to "implement the programs established by two statutes relating to the API.: (1) The Governor's Performance Award Program of the Public Schools Accountability Act of 1999... (2) the Certificated Staff Performance Incentive Act" The regulation is a downstream requirement imposed on participants in these optional programs. As such, applying the reasoning in the *Kern School Dist.* case, staff finds that this regulation does not impose a state mandate.

SDUSD asserts that the interest in accurate information and informed parental choice of schools compels the school to comply with section 1032, subdivision (d). Although those may be worthwhile goals, they do not create practical compulsion for purposes of finding a state mandate. The Supreme Court in *Kern* described practical compulsion as the statute imposing "certain and severe penalties such as double taxation or other draconian consequences"⁹⁷ for not participating in the programs, and described practical compulsion as "a substantial penalty (independent of the program funds at issue) for not complying with the statute."⁹⁸ As discussed above, the activity at issue (notifying CDE of circumstances that may invalidate a school's API) does not meet this standard.

Therefore, in the absence of legal or practical compulsion to notify the CDE when circumstances may exist that would invalidate a school's API (Cal Code Regs., tit.5, § 1032, subd. (d)), staff finds that subdivision (d) of section 1032 of the title 5 regulations⁹⁹ does not impose a state mandate within the meaning of article XIII B, section 6.

⁹⁵ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

⁹⁶ Cf. *Department of Finance v. Commission on State Mandates*, *supra*, 170 Cal.App.4th, 1355, 1366.

⁹⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751.

⁹⁸ *Id.* at p. 731.

⁹⁹ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

Notify CDE and publisher of errors in STAR testing and demographic data: Subdivision (j) of section 1032 in the title 5 regulations states:

The local educational agency [school district or county office of education] *must* notify the department and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data. The local education agency's notification *must* be received by the department and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on the department's web-site. The local education agency *must* submit all data corrections to the publisher in writing or e-mail. The test publisher shall specify a deadline for submittal of the data corrections that is no less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data.¹⁰⁰ [Emphasis added.]

Claimant pleads the following activities in the test claim:

- (1) Upon receipt of a report of STAR testing and demographic data from the CDE, notify the department and the test publisher within 30 days by way of e-mail or writing that there are errors in the STAR testing or demographic data (Cal Code Regs., tit. 5, § 1032, subd. (j)); and
- (2) Submit all data corrections to the test publisher in writing or e-mail on or before a deadline specified by the test publisher (*Ibid*).

Finance, in its October 2002 comments, states that the section does not specifically require districts to provide any information. Also, CDE states that school districts already receive funding under the STAR program for administration and error correction. Finance alleges that currently it is the test publisher's responsibility to incur costs associated with correcting a publishing error in regards to the STAR program. According to Finance, if the district provides inaccurate data despite receiving funds to ensure the quality of the STAR data, the district should be held responsible for the fiscal implications at the local level.

In its November 2007 comments on the draft staff analysis, Finance asserts that the annual Budget Act provides apportionment funding per test to each district to ensure quality data collection and reporting. According to Finance, if a district provides erroneous data, it is responsible to correct it because the district receives apportionment payments for correction and thus does not incur mandated costs.

Turning to the issue of whether the section 1032, subdivision (j), of the title 5 regulations imposes a state mandate, the regulation states that the local educational agency "must" notify the department and publisher of errors in the STAR testing and demographic data, and "must" submit data corrections to the publisher. The word "must" in the regulation is as mandatory as

¹⁰⁰ This language was formerly in subdivision (i), Register 01, No. 46 (Nov. 15, 2001). It was moved to subdivision (j) by Register 02, No. 2 (Jan. 8, 2002).

the word "shall."¹⁰¹ For the reasons discussed below, however, staff finds that these activities are not mandated by the state.

In interpreting this regulation, "[t]he same rules of construction apply in the interpretation or [sic] regulations as apply in the interpretation of statutes."¹⁰² And the Commission, like a court, keeps in mind the following principles of statutory construction:

A statute must be construed 'in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts.' [Citation omitted.] "A court may consider the overall scheme in which an ambiguous statute is included in order to ascertain its intended meaning. [Citation omitted.] The organization of the division, chapters, and articles is an aid to understanding its purpose. [Citation omitted.] [division, chapter, article, and section headings may properly be considered in determining intent and are entitled to considerable weight]."¹⁰³

Section 1032, put in context, is under article 1.7 of title 5 of the California Code of Regulations. The express purpose of article 1.7, as stated in section 1031, subdivision (b), is to "implement the programs established by two statutes relating to the API: (1) The Governor's Performance Award Program of the Public Schools Accountability Act of 1999... (2) the Certificated Staff Performance Incentive Act "

As discussed above, the Governor's Performance Award Program is not a state-mandated program, and as discussed below, the Certificated Staff Performance Incentive Act, is also not a state-mandated program. Thus, notifying CDE and the publisher of errors in the STAR testing or demographic data is not required. Rather, like the requirements placed on school districts in the *Kern* case, it is a "procedural condition imposed on program participation."¹⁰⁴ As such, it is not reimbursable because participation in the underlying award and incentive programs is voluntary.

This conclusion is also supported by the heading to section 1032, which is "General Eligibility Criteria for Award Programs Related to API Growth." This heading indicates that the regulation contains award program criteria rather than requirements that are independent of those award programs: The Governor's Performance Award Program and the Certificated Staff Performance Incentive Act (§ 1031, subd. (b)).

Therefore, staff finds that subdivision (j) of section 1032 of title 5 of the California Code of Regulations¹⁰⁵ does not impose a state mandate on school districts to notify the test publisher and CDE of errors in the STAR testing or demographic data.

¹⁰¹ Education Code section 75: "'Shall' is mandatory and 'may' is permissive." See *Marcus & Millichap Real Estate Investment Brokerage Co. v. Woodman Investment Group* (2005) 129 Cal.App.4th 508, 519.

¹⁰² *Lusardi Construction Co. v. California Occupational Safety & Health Appeals Bd.*, *supra*, 1 Cal.App.4th 639, 647.

¹⁰³ *Medical Bd. of California v. Superior Court*, *supra*, 111 Cal.App.4th 163, 175.

¹⁰⁴ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 753.

¹⁰⁵ Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

The other subdivisions in section 1032 (subds. (a), (i) & (k)) do not require a school district activity, so staff finds that they also do not impose a state mandate within the meaning of article XIII B, section 6.

Schoolsite Employees Performance Bonus (Stats. 2000, ch. 71, § 40, former Cal.Code Regs., tit. 5, §§ 1031–1033, 1036– 1038; former Cal. Code Regs., tit. 5, § 1033, subd. (b)): This uncodified statute requires school districts, county offices of education and charter schools, “as a condition of receiving funds” upon request from the SPI, to certify the number of full-time equivalent employees at each schoolsite under their jurisdiction that are eligible for awards under the Governor’s Performance Award Program. Schools are to use 50% of the award for one-time bonuses to employees, and the other 50% for any one-time purpose.

The title 5 regulations adopted for the Governor’s Performance Award program also applied to the Schoolsite Employees Performance Bonus program until the regulations, as applied to the Schoolsite Employees Performance Bonus, were repealed in January 2002.¹⁰⁶

Claimant alleges the following activities as a result of this program:

- (1) When requested by the SPI, to certify the number of full-time equivalent employees for the period requested in the creation of the one-time API Schoolsite Employees Performance Bonus (Stats. 2000, ch. 71, § 40);
- (2) For school districts and county offices of education to establish, periodically update and maintain employee records to receive, administer and distribute award moneys to staff as part of the Bonus program (*Ibid*);
- (3) Upon receipt of an award from the Governor’s Performance Award Program and the Schoolsite Employees Performance Bonus Award, to consult with the existing school site governance team/school site council to decide the use of the awards and have the distribution plan ratified by the governing board. The Superintendent of Public Instruction shall then apportion an equal amount per full-time equivalent employee to the appropriate school district, county office of education, or charter school for allocation to the schoolsites that have met or exceeded their Academic Performance Index growth target (*Ibid*).

CDE and Finance state that this program is voluntary and not a state mandate.

Claimant argues that the requirement to certify the number of full-time equivalent employees is mandatory upon the SPI’s request. Claimant argues that school districts do not apply for this program, but that the statute requires the SPI to allocate the sums appropriated, so the program is not discretionary.

The test claim statute (Stats. 2000, ch. 71, § 40) states in part:

- (a)(2) *As a condition of receiving funds pursuant to this section*, school districts, county offices of education, and charter schools shall, upon request by the

¹⁰⁶ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

Superintendent of Public Instruction and by November 1, 2000, certify the number of full-time equivalent employees employed... ” [¶]...[¶]

(a)(4) *As a condition of receiving funds pursuant to this section*, a schoolsite shall expend 50 percent of the funds to provide one-time bonuses, to its employees, to be divided equally among all schoolsite employees on a full-time equivalent basis. The other 50 percent may be used at the discretion of the schoolsite for any one-time purpose. [Emphasis added.]

The Schoolsite Employees Performance Bonus program is not mandated by the state. The school district requirements are only imposed “as a condition of receiving funds pursuant to this section.” (Stats. 2000, ch. 71, § 40, subd. (a)(2) & (a)(4).) The statute does not state that schools are required to accept the funds, so there is no legal compulsion to participate in the program.

Moreover, there is no practical compulsion to participate in the Schoolsite Employees Performance Bonus program. There are no “certain and severe penalties”¹⁰⁷ for not participating in the program, nor is there “a substantial penalty (independent of the program funds at issue) for not complying with the statute.”¹⁰⁸ Performing activities required as a condition of receiving funds does not create a state-mandated program.¹⁰⁹

Thus, the downstream activities (e.g., administering and distributing award funds and deciding on the use of funds) in this program are also not mandated, in accordance with the reasoning in the *Kern* case. Therefore, staff finds that Statutes 2000, chapter 71, section 40 (Schoolsite Employees Performance Bonus Program) is not a state mandate within the meaning of article XIII B, section 6.

Since the title 5 regulations (former Cal.Code Regs., tit. 5, §§ 1031–1033, 1036–1038)¹¹⁰ were intended to implement the Schoolsite Employees Performance Bonus Program (among others), staff also finds that they are not a state mandate because, as applied to this program, they are downstream of an optional program.

Certification of FTE employees: As originally adopted, section 1033, subdivision (b), of the title 5 regulations stated:

To participate in the Academic Performance Index Schoolsite Employees Performance Bonus awards school districts, county offices of education, and charter schools shall certify the number of full-time equivalent (FTE) employees employed as of the second principal apportionment of the 1999-2000 school year

¹⁰⁷ *Kern High School Dist., supra*, 30 Cal.4th 727, 751.

¹⁰⁸ *Id.* at p. 731.

¹⁰⁹ *Ibid.*

¹¹⁰ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

at each school site under their jurisdiction that are eligible for awards in accordance with Education Code section 52057 (a).¹¹¹

Although this provision appears to be mandatory based on the plain meaning of "shall certify the number of" FTEs, it is not. Rather, this activity is conditional on participation in the Academic Performance Index Schoolsite Employees Performance Bonus awards, which is voluntary.

Based on the Supreme Court's reasoning in *Kern* regarding voluntary participation, and because certification of FTEs is a downstream activity that results from *voluntary* participation in the Schoolsite Employees Performance Bonus awards, staff finds that former section 1033, subdivision (b), is not a state mandate within the meaning of article XIII B, section 6.

Certificated Staff Performance Incentive Act (Ed. Code, §§ 44650-44654; added by Stats. 1999, ch. 52; Cal. Code Regs., tit. 5, §§ 1031-1032 & 1034 -1038): As indicated above, this act establishes one-time performance awards for teachers and other certificated staff in underachieving schools, where the academic performance of pupils significantly improves beyond the minimum percentage growth target established by the SPI based on the school's API.

Section 44650 establishes the act and the maximum award at \$25,000 per full-time equivalent (FTE) employee, subject to annual Budget Act appropriation. Section 44651 describes eligibility for funding. Section 44652 provides for allocation of funds by the SPI to school districts and charter schools. Section 44653 states that after receiving the allocation from the SPI, the governing board shall negotiate individual teacher and other certificated staff salary award amounts with the exclusive representative of the bargaining unit. Section 44654 details how funds are to be classified for purposes of the district's revenue limit, and for purposes of teacher retirement or benefits. Section 44650, subdivision (b), states that the SBE shall establish criteria for determining the eligibility of schools to receive the awards.

The criteria are in the title 5 regulations, which state their intent is to implement the Governor's Performance Award Program and the Certificated Staff Performance Incentive Act (§ 1031). The regulations also specify the general (§ 1032) and specific (§ 1034) eligibility criteria for the awards, describe funding distribution (§ 1035), specify the waiver deadline (§ 1036), and specify that the awards are not considered compensation when calculating retirement benefits (§ 1037), and that the Certificated Staff Performance Incentive program and the Governor's Performance Awards are not subject to the school district or school or indirect or other administrative charges (§1038).¹¹²

Claimant alleges the following activities associated with the Certificated Staff Performance Incentive Act:

¹¹¹ This provision in subdivision (b) was adopted by Register 01, No. 5 (Jan. 30, 2001) and repealed by Register 02, No. 2 (Jan. 8, 2002)).

¹¹² Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 4 (Jan. 26, 2001); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

(1) Establishing, periodically updating and maintaining employee payroll records to receive, administer and distribute the awards as part of the One-time Certificated Staff Performance Incentive Act (§ 44653);

(2) For each school district to complete an application on behalf of its eligible schools to participate in the program, to include (a) the number of eligible schools, (b) certification that the data used in the API calculations is accurate, and (c) a list of certificated staff positions on a full-time equivalent (FTE) basis at each of the eligible schools. After January 8, 2002, the application shall certify the data used in the API calculations is accurate, and report the number of certificated positions on an FTE basis at each of the eligible schools (§ 44651 & Cal.Code Regs., tit. 5, § 1034);

(3) When an award is received, for school districts to negotiate with the exclusive representative of the bargaining unit of the teachers and other certificated staff to determine the distribution of funds (§ 44653);

(4) In the event the governing board and the exclusive representative of teachers and other certificated staff do not reach an agreement regarding the distribution of an award under the program, or if the teachers and other certificated staff are not represented by an exclusive bargaining representative, for districts to calculate and distribute the award amounts as a percentage of base salaries that is determined by formula (§ 44653);

(5) Claimant also pleads the administrative costs to calculate individual salary awards, determine and locate recipients, and to deliver the awards and the cost of compensation-driven benefits incurred as a result of this program, as well as the Governor's High Achieving Schools Program and the API Schoolsite Employees Performance Bonus Program (§ 44654 & Cal.Code Regs., tit. 5, § 1038);

CDE and Finance allege in their comments that this program is not a state mandate because it is voluntary.

Claimant argues that districts have no reasonable alternative to participate, as detailed above. Claimant also disagrees with CDE that salary-driven costs can be recovered through the awards program.

According to the program's eligibility statute: "Any school district or charter school that maintains classes in kindergarten or any of grades 1 to 12, inclusive, *may apply* for funding under this article if it meets the condition of subdivision (b)." [Emphasis added.] Subdivision (b) requires the school's API to be below the 50th percentile relative to other public schools in the state in the prior year, and requires schools to meet other SPI-established criteria (§ 44651, subs. (a) & (b)). These criteria are in the regulations (Cal. Code Regs., tit. 5, §§ 1031-1032 & 1034 -1038).¹¹³

The Certificated Staff Performance Incentive Act and applicable regulations do not legally compel school districts to participate, since the plain language of section 44651 authorizes but

¹¹³ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 4 (Jan. 26, 2001); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

does not require districts to apply for the program. Nor is there any practical compulsion to participate in this program, independent of the program funds at issue.¹¹³ There are no "certain and severe penalties ... or other draconian consequences"¹¹⁴ for not participating in the program.

Therefore, staff finds that the Certificated Staff Performance Incentive Act (Ed. Code, §§ 44650-44654) is not a state mandate within the meaning of article XIII B, section 6. Staff also finds California Code of Regulations, title 5, sections 1031 and 1034-1038¹¹⁵ do not impose state mandates for purposes of the Certificated Staff Performance Incentive Act.¹¹⁶

Schools in the alternative accountability system that choose the API: Not all schools are required to participate in the API. Section 52052, subdivision (h), as amended by Statutes 2001, chapter 887, states:

By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 test scores contributing to the schools' API scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools [formerly "independent study schools"].

The issue is whether schools with fewer than 100 valid test scores, or schools that are under the jurisdiction of the county board of education or a county superintendent of schools, community day schools, alternative schools (including continuation high schools, and opportunity schools or independent study schools) are mandated by the state to participate in the API. Staff finds that they are not.

As added by Statutes 2001, chapter 887, subdivisions (f)(1), (f)(2) and (g) of section 52052 stated:

(f)(1) A comprehensive high school, middle school, or elementary school with 11 to 99 valid test scores of pupils who were enrolled in a school within the same school district in the prior fiscal year shall receive an API score with an asterisk that indicates less statistical certainty than API scores based on 100 or more test scores.

(f)(2) A school under the jurisdiction of a county board of education or a county superintendent of schools, a community day school, or an alternative school,

¹¹³ *Kern High School Dist., supra*, 30 Cal.4th 727, 731.

¹¹⁴ *Id.* at 751.

¹¹⁵ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 4 (Jan. 26, 2001); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

¹¹⁶ The regulations also apply to the API and Governor's Performance Award programs, so the finding here is limited to the regulations as they apply to the Certificated Staff Performance Incentive Act.

including continuation high schools and opportunity schools, may receive an API score if the school has 11 more [sic] or more valid test scores **and the school chooses to receive an API score** for at least three years.¹¹⁷ [Emphasis added.]

(g) Only schools with 100 or more test scores contributing to the API may be included in the API rankings.

Similarly, the title 5 regulations apply to “schools” defined as “all schools, including charter schools, that receive a ranking on the API including schools participating in the ... [II/USP].” (Cal.Code Regs., tit. 5, § 1032, subd. (a).) Subdivision (b) of section 1032 further states:

For the purposes of these award programs, the API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system, once such a system is adopted by the [SBE] ... as required by Education Code section 52052(g). The Superintendent of Public Instruction will develop an alternative accountability system for schools with fewer than 100 valid test scores, schools that fall under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

Alternative schools **may elect to be part of the API accountability system** for the purposes of awards and interventions pursuant to the API.¹¹⁸ If the school elects to be part of the API accountability system, the school shall remain in the system for at least three subsequent years.¹¹⁹ [Emphasis added.]

According to the plain language of section 52052, subdivision (f), and the section 1032, subdivision (b) regulation, as quoted above, schools in the alternative accountability system participate in the API system voluntarily. The statute states that schools under the jurisdiction of a county board of education or county superintendent of schools, or a community day school or an alternative school may receive an API score “if the school has 11 or more valid test scores

¹¹⁷ Currently, subdivision (f)(2) states: “A school annually shall receive an API score, unless the Superintendent determines that an API score would be an invalid measure of the performance of the school for one or more of the following reasons...” Staff makes no finding on this current version.

¹¹⁸ This provision originally read: “Once the alternative accountability system required by Education Code section 52052 (g) is adopted by the State Board of Education, alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API.” (Register 00, No. 52 (Dec. 28, 2000).) Although in earlier versions of the regulation, this choice is contingent on SBE’s adoption of an alternative accountability system, the finding is based on the statute (former Ed. Code, § 52052, subd. (f)(2)) which is not contingent.

¹¹⁹ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

and the school chooses to receive an API score for at least three years.”¹²⁰ And alternative schools, according to the regulation, may “elect” to be part of the API accountability system.¹²¹

As the Supreme Court stated: “if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate.”¹²² In this case, the test claim statutes and regulations expressly state that the API is voluntary as to the following types of schools: schools with fewer than 100 valid test scores, or schools that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, or alternative schools, including continuation high schools and opportunity schools and independent study schools. Therefore, based on the plain language of the statute and regulation, there is no legal compulsion for these schools to participate in the API program.

The Supreme Court, in *Kern*, also said that state mandates could be found in cases of practical compulsion, which it described as the statute imposing “certain and severe penalties such as double taxation or other draconian consequences”¹²³ for not participating in the programs. In another part of the *Kern* opinion, the court described practical compulsion as “a substantial penalty (independent of the program funds at issue) for not complying with the statute.”¹²⁴

There is, however, no practical compulsion to participate in the API. Section 52052.2 states that a school with an API score with an asterisk (11-99 valid test scores) may participate in the Governor’s Performance Awards Program and the II/USP. But even for schools not eligible for award programs due to lacking an API, there is no evidence of practical compulsion.

Not having an API, or having an invalid API score, is not practical compulsion, even though it excludes the school from some award programs. As in *Kern*, there is no practical compulsion merely because “claimants have found the benefits of various funded programs ‘too good to refuse’ –even though, as a condition of program participation, they have been forced to incur some costs.”¹²⁵ In short, there is no practical compulsion to participate in the API if the consequence of not participating is a school’s ineligibility for the Governor’s Performance Awards and the II/USP that the school finds “too good to refuse.”

Because there is no legal or practical compulsion for these specified types of schools to have an API, staff finds that the following schools are not mandated by the state to participate in the API system: schools with fewer than 100 valid test scores, or schools that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, or alternative schools, including continuation high schools and opportunity schools and independent

¹²⁰ Education Code section 52052, subdivision (f). Emphasis added.

¹²¹ California Code of Regulations, title 5, section 1032, subdivision (b).

¹²² *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743. Emphasis in original.

¹²³ *Id.* at p. 751.

¹²⁴ *Id.* at p. 731.

¹²⁵ *Id.* at p. 731.

study schools. For purposes of an API-related activity that is as a state mandate, 'schools' does not include these types of schools.

B. Does Education Code section 52056, subdivision (c), constitute a program within the meaning of article XIII B, section 6?

Discussion is now limited to the following provision that imposes a state mandate on school districts:

- Education Code section 52056, subdivision (c), for the governing board of each school district, after the annual publication of the API and SPI school rankings, to "discuss the results of the annual ranking at the next regularly scheduled meeting." (Stats. 2000, ch. 695.)

In order for this provision to be subject to article XIII B, section 6 of the California Constitution, it must constitute a "program." This means 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.¹²⁶ Only one of these findings is necessary to trigger article XIII B, section 6.¹²⁷

The activity in the API statute is within the purview of public education accountability and improvement, programs that carry out a governmental function of providing a service to the public.¹²⁸ Moreover, the statute imposes a unique requirement on school districts. In sum, section 52056, subdivision (c), carries out the governmental function of providing accountability and improvement in public education, and is a law which, to implement state policy, imposes unique requirements on school districts and does not apply generally to all residents and entities in the state. Thus, staff finds that Education Code section 52056, subdivision (c), constitutes a program within the meaning of article XIII B, section 6.

Issue 2: Does Education Code section 52056, subdivision (c), impose a new program or higher level of service?

The next issue is whether subdivision (c) of section 52056, i.e., found above to be a state-mandated program, is a new program or higher level of service. To determine this, the test claim statute is compared to the legal requirements in effect immediately before enacting the test claim statute.¹²⁹

Discuss the API (Ed. Code, § 52056, subd. (c)): This provision requires the governing board of each school district, after the annual publication of the API and SPI school rankings, to "discuss the results of the annual ranking at the next regularly scheduled meeting." (As of Stats. 2000, ch. 695.)

¹²⁶ *County of Los Angeles v. State of California, supra*, 43 Cal.3d 46, 56.

¹²⁷ *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

¹²⁸ "Education in our society is ... a peculiarly governmental function." *Long Beach Unified School District v. State of California, supra*, 225 Cal.App.3d 155, 172.

¹²⁹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

This activity is a new program or higher level of service, since prior law did not require this discussion. Nor could it have, given that the API did not exist prior to the test claim statute. Therefore, staff finds that the requirement for the school district governing board to discuss the API at its next meeting (Ed. Code, § 52056, subd. (c)) is a new program or higher level of service.

The school districts' discussion of the results of the annual API and SPI rankings is not state-mandated, however, for schools with fewer than 100 valid test scores, or schools in the alternative accountability system that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, or alternative schools, including continuation high schools and opportunity schools and independent study schools.

Issue 3: Does Education Code section 52056, subdivision (c), impose costs mandated by the state within the meaning of Government Code sections 17514 and 17556?

The final issue is whether Education Code section 52056, subdivision (c), imposes costs mandated by the state,¹³⁰ and whether any statutory exceptions listed in Government Code section 17556 apply to the claim. Government Code section 17514 defines "cost mandated by the state" as follows:

[A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

In the test claim,¹³¹ claimant declares that it will incur costs in excess of \$200 during 2000-2002 to implement the claim statutes.¹³²

Discuss the API (Ed. Code, § 52056, subd. (c)): This provision requires the governing board of each school district, after the annual publication of the API and SPI school rankings, to "discuss the results of the annual ranking at the next regularly scheduled meeting."

Finance, in its November 2007 comments on the draft staff analysis, argues that this discussion of the API by the governing board is already required by Proposition 59. As approved by the voters in November 2004, this ballot initiative added the following to the California Constitution:

(b)(1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A

¹³⁰ *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

¹³¹ Test Claim 01-TC-22, Exhibit 1, Declaration of Diana Halpenny, June 24, 2002.

¹³² Government Code section 17564. The current requirement is \$1000 in costs.

statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

The ballot materials given to the electorate on Proposition 59 state that: "The measure does not directly require any specific information to be made available to the public. It does, however, create a constitutional right for the public to access government information."¹³³

The yardstick by which we measure the application of Proposition 59 to subdivision (c) of section 52056 is Government Code section 17556, subdivision (f), which states that the Commission shall not find costs mandated by the state if, after a hearing, the Commission finds:

(f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

In *California School Boards Association v. State of California*,¹³⁴ the court invalidated the "reasonably within the scope of" language in Government Code section 17556, subdivision (f). In fact, the court used Proposition 59 to illustrate why the "reasonably within the scope of" language is invalid:

One example suffices to show that the "reasonably within the scope of" language is overly broad. ... Any statute that has anything to do with open government is "reasonably within the scope of" Proposition 59. However, it is unlikely that the voters intended to grant carte blanche to the Legislature to impose unlimited, unreimbursable costs on local governments for all duties associated with open government.

Therefore, the issue is whether section 52056's requirement to discuss the API ranking at the next regularly scheduled school board meeting is "necessary to implement or expressly included in" Proposition 59. Staff finds that it is not.

A requirement to discuss API rankings at a school board meeting is not expressly included in Proposition 59, nor is there any evidence or argument in the record that discussing API rankings is necessary to implement Proposition 59. The requirement to discuss the API rankings at school board meeting was enacted by Statutes 1999-2000 (1st Ex. Sess.), chapter 3, before Proposition 59 was enacted in November 2004. There is no indication in the legislative history of the test claim statute (Ed. Code, § 52056, subd. (c), Stats. 1999-2000 1st Ex. Sess., ch. 3, eff. Jun. 25,

¹³³ Ballot Pamphlet, Statewide General Election (Nov. 2, 2004) Proposition 59, analysis by the Legislative Analyst. See: <http://www.lao.ca.gov/ballot/2004/59_11_2004.htm> as of May 11, 2008. The courts frequently look to ballot materials to understand the terms of a measure enacted by the electorate. *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 737.

¹³⁴ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1215-1216.

1999, Stats. 2000, ch. 695) that it was intended to implement Proposition 59 or any other ballot initiative. Lacking any evidence to the contrary, staff finds that the provision regarding discussion of the API ranking in section 52056 is not "necessary to implement" Proposition 59 or any other ballot initiative.

Based on claimant's declaration accompanying the test claim, staff finds that Education Code section 52056, subdivision (c), imposes costs mandated by the state within the meaning of Government Code section 17514, and that no exceptions to reimbursement in Government Code section 17556 apply. (Ed. Code, § 52056, subd. (c), Stats. 1999-2000 1st Ex. Sess., ch. 3, eff. Jun. 25, 1999, Stats. 2000, ch. 695.)

CONCLUSION

For the reasons discussed above, staff finds, effective June 25, 1999, that Education Code section 52056, subdivision (c), imposes a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for a school district governing board to discuss the results of its annual ranking at the next regularly scheduled meeting following the annual publication of the API and SPI school rankings (Ed. Code § 52056, subd. (c), Stats. 1999-2000 1st Ex. Sess., ch. 3, eff. Jun. 25, 1999, Stats. 2000, ch. 695).

Staff also finds, however, that districts' discussing the results of the annual API and SPI rankings (in § 52056, subd. (c)) is not a reimbursable mandate for schools with fewer than 100 valid test scores, or schools in the alternative accountability system that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, alternative schools, including continuation high schools and opportunity schools and independent study schools. (Ed. Code, § 52052, subd. (f)(1), Stats. 2001, ch. 887 & Cal. Code Regs., tit. 5, § 1032, subd. (b).)

Staff also finds that participation in the II/USP pursuant to section 52053, subdivisions (d) and (j), do not constitute a reimbursable state mandate because no schools or school districts have participated in the II/USP pursuant to these provisions.

Staff also finds that all other test claim statutes and regulations do not constitute a reimbursable state-mandated program because they are either voluntary or are downstream of a voluntary activity.

Recommendation

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activity listed above.

Commission on State Mandates

Original List Date: 7/3/2002
Last Updated: 4/26/2007
List Print Date: 05/27/2009
Claim Number: 01-TC-22
Issue: Academic Performance Index

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Dr. Pat Jaurequi, Superintendent of Schools
Michael G. Dencavage, Chief Financial Officer

June 30, 2009

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Test Claim Draft Staff Analysis (10/19/07)
Academic Performance Index, 01-TC-22

Dear Ms. Higashi:

Claimant San Juan Unified School District (District) respectfully requests that the Commission's staff (Staff) reconsider its recommendation to deny costs for a school district to notify CDE when circumstances may exist which would invalidate a school's Academic Performance Index (API) pursuant to California Code of Regulations, title 5, section 1032, subdivision (d). Staff argued that there were no legal or practical compulsions to notify the California Department of Education (CDE) of errors in the API.

Intermediate Intervention/Underperforming Schools Program (California Education Code sections 52053-52055.51, 52056.5 and 52058): Schools that scored below the 50th percentile on the Spring 1998 and Spring 1999 administrations of the STAR tests are invited to participate in the II/USP, the purpose of which is to provide those schools with the opportunity to apply for funding to improve pupil achievement in exchange for greater accountability.

Staff has recommended denial of the above sections as a test claim since there is no legal or practical compulsion. However, the potential consequence of not participating in the aforementioned program is that a state-monitored school will be established and the SPI must assume the legal rights, duties and powers of the governing board and reassign the principal. The SPI must also take other action, to include such options as reorganizing or closing the school.

Nearly all state school administrators would contend such penalties would be substantial and severe and that there is a practical and legal compulsion to participate in the program. The

Paula Higashi, Executive Director
June 30, 2009
Page 2

Supreme Court in *Kern* [*Department of Finance v. Commission on State Mandates* (Kern High School District) (2003) 30 Cal.4th 727] stated that state mandates could be found in cases of practical compulsion on the local entity, if there is a substantial penalty for not complying with the statute.

District argues that the California Supreme Court, in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, has held that the determination of whether a program is truly voluntary depends upon (1) the nature and purpose of the program, (2) whether the program's design evidences an intent to coerce, (3) the penalties assessed for non-participation, (4) the legal and other practical consequences of non participation. District reiterates that, "the concept of state mandate is sufficiently broad to include situations where the local school district has no reasonable alternative to the state scheme or no true choice but to participate in it," and argues it would be fiscally irresponsible to turn down the state funds, since district employees and their "exclusive representatives" (unions) know about the program.

District further asserts the contentions stated above also apply to High Achieving/Improving Schools Program (California Education Code section 52056, except subdivision (b)); and to Governor's Performance Award Program (California Education Code section 52057; California Code of Regulations, title 5, sections 1031-1033, 1036, 1038-1039).

Staff also finds that California Education Code section 52053, subdivisions (d) and (j), do not constitute a reimbursable state mandate because no schools or school districts have participated in the II/USP pursuant to these provisions, and because there is no evidence that school districts have incurred costs mandated by the state to comply with these provisions. Staff also finds that all other test claim statutes and regulations do not constitute a reimbursable state-mandated program because they are either voluntary or are downstream of a voluntary activity.

It is well established that a reimbursable mandate may exist despite the claimant not claiming any reimbursable costs in a fiscal year. To deny a test claim on the basis of not incurring reimbursable costs is improper and lacks any legal authority.

Sincerely,



Michael G. Dencavage
Chief Financial Officer

c: Dr. Pat Jaurequi, Superintendent
Linda C. T. Simlick, General Counsel
Sharon Rew, Controller

PROOF OF SERVICE

I declare I am a citizen of the United States, over the age of 18 years, and not a party to this matter. I am employed in the County of Sacramento, and my business address is 3738 Walnut Avenue, Carmichael, California 95608.

On June 30, 2009, I served a copy of the following documents:

June 30, 2009, Letter from Michael G. Dencavage, San Juan Unified School District, to Paula Higashi, Executive Director, Commission on State Mandates regarding Test Claim Draft Staff Analysis (10/19/07) Academic Performance Index, 01-TC-22

by placing in sealed envelopes addressed to each of the individuals identified below for collection and mailing by the United States Postal Service, following standard business practices at Carmichael, California.

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I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 30, 2009, at Carmichael, County of Sacramento, California.

Ann L. Snyder
(Print Name)

Ann L. Snyder
(Signature)

ITEM 13
TEST CLAIM
FINAL STAFF ANALYSIS

Education Code Sections 44650-44654, 52050-52055.51, 52056-52057, 52058
Statutes 1999-2000x1, Chapter 3; Statutes 1999, Chapter 52;
Statutes 2000, Chapters 71, 190 and 695; Statutes 2001, Chapters 159, 745, 749, and 887
California Code of Regulations, Title 5, Sections 1031-1039
Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 4 (Jan. 26, 2001); Register 01, No. 5
(Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001);
Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002)

Academic Performance Index
(01-TC-22)

San Juan Unified School District, Claimant

EXECUTIVE SUMMARY

The original draft staff analysis for this test claim was issued in October 2007 in anticipation of a December 2007 hearing. The hearing was postponed, however, when the Department of Finance, in comments submitted in November 2007, alleged that the test claim statute imposes "duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election" (Gov. Code, § 17556, subd. (f)) and thus should be denied. Specifically, Finance asserted that one of the activities staff found to be reimbursable in the draft staff analysis was necessary to implement or reasonably within the scope of Proposition 59, adopted by the voters in November 2004. In response to Finance's allegation, Commission staff postponed hearing this test claim until the litigation related to Government Code section 17556, subdivision (f), was final. The superior court issued an injunction on April 20, 2007, prohibiting the Commission from implementing a portion of Government Code section 17556, subdivision (f), that the court found unconstitutional. The issue was finally decided on March 9, 2009, by the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183.

The test claim consists of programs of the Public Schools Accountability Act and the Certificated Staff Performance Incentive Act, and related regulations. The Public Schools Accountability Act contains the following programs: (1) the Academic Performance Index (API), a method of measuring pupil performance, (2) the Governor's High Achieving/Improving Schools Program, an incentive program that rewards high-performing schools, and (3) the Intermediate Intervention/Underperforming Schools Program (II/USP), an intervention and sanctions program to assist low-performing schools.¹ The Certificated Staff Performance Incentive Act, in addition to the Governor's Performance Award and the Schoolsite Employees Performance Bonus

¹ Education Code section 52051 et seq..

program reward certificated staff for making improvements in the academic progress of their pupils.

For reasons specified in the analysis, staff finds, effective June 25, 1999, that Education Code section 52056, subdivision (c), imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for a school district governing board to discuss the results of its annual ranking at the next regularly scheduled meeting following the annual publication of the API and Superintendent of Public Instruction (SPI) school rankings (Ed. Code § 52056, subd. (c), Stats. 1999-2000 1st Ex. Sess., ch. 3, eff. Jun. 25, 1999, Stats. 2000, ch. 695).

Staff also finds, however, that districts' discussing the results of the annual API and SPI rankings (in § 52056, subd. (c)) is not a reimbursable mandate for schools with fewer than 100 valid test scores, or schools in the alternative accountability system that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, alternative schools, including continuation high schools and opportunity schools and independent study schools. (Ed. Code, § 52052, subd. (f)(1), Stats. 2001, ch. 887 & Cal. Code Regs., tit. 5, § 1032, subd. (b).)

Staff also finds that section 52053, subdivisions (d) and (j), do not constitute a reimbursable state mandate because no schools or school districts have participated in the II/USP pursuant to these provisions.

Staff also finds that all other test claim statutes and regulations do not constitute a reimbursable state-mandated program because they are either voluntary or are downstream of a voluntary activity.

Recommendation

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activity listed above.

STAFF ANALYSIS

Claimant

San Juan Unified School District

Chronology

- 06/28/02 Claimant files test claim 01-TC-22, *Academic Performance Index*
- 08/07/02 California Department of Education files comments on the test claim
- 09/10/02 Department of Finance requests extension to file test-claim comments
- 10/07/02 Department of Finance files comments on the test claim
- 11/07/02 Claimant files rebuttal comments on the test claim
- 04/20/07 The superior court issues an injunction in *California School Boards Assoc. v. State of California*, prohibiting the Commission from implementing Government Code section 17556, subdivision (f)
- 08/24/07 Commission staff requests further information from California Dept. of Education
- 08/27/07 Commission staff severs Education Code section 52056, subdivision (b) from the test claim to create a *Student Accountability Report Cards IV* test claim
- 09/12/07 Department of Education replies to Commission staff's request for information
- 10/09/07 Claimant files a history of the title 5 regulations in the test claim
- 10/19/07 Commission staff issues draft staff analysis
- 11/13/07 Claimant files comments on the draft staff analysis
- 11/15/07 San Diego Unified School District files comments on the draft staff analysis
- 11/15/07 Department of Finance files comments on the draft staff analysis
- 11/19/07 Commission postpones hearing the test claim because of Finance's comments regarding Government Code section 17556, subdivision (f), which was being litigated (based on the injunction issued in April 2007, the Commission was prohibited from implementing Gov. Code, § 17556, subd. (f))
- 03/09/09 Third District issues its decision in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183
- 04/21/09 The decision in *California School Boards Assoc.* becomes final
- 05/22/09 Commission staff issues a revised draft staff analysis
- 06/30/09 Claimant submits comments on the draft staff analysis

Background

This test claim alleges activities based on the Public Schools Accountability Act,² the Certificated Staff Performance Incentive Act,³ and related statutes⁴ and regulations.⁵

The Public Schools Accountability Act consists of the following programs: (1) the Academic Performance Index (API), a method of measuring pupil performance; (2) the Governor's High Achieving/Improving Schools Program, an incentive program that rewards high-performing schools; and (3) the Intermediate Intervention/ Underperforming Schools Program (II/USP), an intervention and sanctions program to assist low-performing schools.⁶

One of the legislative findings of the Public Schools Accountability Act states: "The statewide accountability system must include rewards that recognize high achieving schools as well as interventions and, ultimately, sanctions for schools that are continuously low performing."⁷

The Certificated Staff Performance Incentive Act, in addition to the Governor's Performance Award and the Schoolsite Employees Performance Bonus program that the claimant also pled, reward certificated staff for making improvements in the academic progress of pupils.

Test Claim Statutes

Academic Performance Index (Ed. Code, §§ 52050 – 52052.5): The purpose of the Academic Performance Index (API) is to "measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools."⁸ A California Department of Education's (CDE) publication describes the API as follows:

A school's API is a number that ranges from 200 to 1000 and is calculated from the results for each school's students on statewide tests. The state has set 800 as the API target for all schools to meet. Schools that fall short of 800 are required to

² Statutes 1999-2000x1 chapter 3; Education Code section 52050 et seq.. The Public Schools Accountability Act was effective June 25, 1999, because statutes enacted in a special session of the Legislature are not effective until the 91st day after the adjournment of the session at which they are passed. (Cal. Const. art. IV, § 8 (c)(1)).

³ Statutes 1999, chapter 52; Education Code section 44650 et seq.

⁴ Statutes 2000, chapter 71; section 40, uncodified.

⁵ California Code of Regulations, title 5, sections 1031-1039. The regulations implement the Governor's Performance Award Program of the Public Schools Accountability Act, as well as the Certificated Staff Performance Incentive Act. Exhibit J.

⁶ Education Code section 52051.

⁷ Education Code section 52050.5, subdivision (i). All references herein are to the Education Code unless otherwise indicated.

⁸ Education Code section 52052, subdivision (a)(1).

meet annual growth targets until that goal is achieved. API targets vary for each school.⁹

The API is calculated annually for each school using a variety of indicators that are reported to CDE, including but not limited to the results of the STAR tests,¹⁰ and the High School Exit Exam.¹¹ Attendance rates for pupils in elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools is also used.¹² Pupil data is disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group.¹³

The Superintendent of Public Instruction (SPI) is required to develop, and the State Board of Education (SBE) to adopt, expected annual percentage growth targets for all schools based on their API baseline score measured from the previous year. The minimum growth target is 5 percent of the difference between the school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target need only maintain their API score above the statewide API performance target. To meet its growth target, a school must demonstrate that all ethnic and socioeconomically disadvantaged subgroups, as defined, are making comparable improvement.¹⁴

The API is used to measure the progress of schools selected for participation in the II/USP (pursuant to § 52053), and rank all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to section 52056.¹⁵

Originally, the SPI was to create an alternative accountability system for schools with less than 100 pupils, but those schools now receive an API with an asterisk to indicate less statistical certainty than an API based on 100 or more test scores.¹⁶ These small schools are eligible to participate in the Governor's Performance Awards Program and in the II/USP,¹⁷ both of which

⁹ California Department of Education "Parent and Guardian Guide to California's 2008-09 Accountability Progress Reporting System." April 2009. See <<http://www.cde.ca.gov/ta/ac/ap/documents/parentguide09.pdf>> as of May 4, 2009. Exhibit J.

¹⁰ The Standardized Testing and Reporting Program, or STAR, consists of four testing programs: the (1) California Standards Tests; (2) The California Achievement Tests, Sixth Edition Survey (a national norm referenced achievement test, formerly the Stanford 9); (3) Spanish Assessment of Basic Education, Second Edition; and (4) the California Alternative Performance Assessment for pupils with significant cognitive disabilities that prevent them from taking the other tests.

¹¹ Education Code section 52052, subdivision (b).

¹² Education Code section 52052, subdivision (a)(4). Attendance information for certificated school personnel was deleted from the API by Statutes 2004, chapter 915 (SB 722).

¹³ Education Code section 52052, subdivision (a)(4)(B).

¹⁴ Education Code section 52052, subdivision (c) (Stats. 2001, ch. 887).

¹⁵ Education Code section 52052, subdivision (e).

¹⁶ Education Code section 52052, subdivision (f)(1).

¹⁷ Education Code section 52052.2.

are discussed below. The SPI is required to develop an alternative accountability system for schools under the jurisdiction of a county board of education, or county superintendent of schools, community day schools, nonpublic, nonsectarian schools, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools.¹⁸

Section 52052.5 requires the SPI to establish an advisory committee to advise the SPI and SBE on "all appropriate matters relative to the creation of the Academic Performance Index and the implementation of the Immediate Intervention/Underperforming School Program and the High Achieving/Improving Schools Program."¹⁹

The API is also used to meet federal "Adequate Yearly Progress" requirements under the No Child Left Behind Act of 2001 (NCLB). NCLB requires, as a condition of funding, all states to develop and implement a single, statewide accountability system that will ensure all public schools make Adequate Yearly Progress toward the federal goal that all pupils perform at the proficient or above level in English-language arts and mathematics by 2014. Under Adequate Yearly Progress requirements, schools and local educational agencies²⁰ are required to meet criteria in four areas: participation rate, percent proficient, API as an additional indicator, and graduation rate (if applicable).²¹

Intermediate Intervention/Underperforming Schools Program (Ed. Code, §§ 52053 – 52055.51 & 52056.5 & 52058): The purpose of the II/USP is to provide schools in decile ranks 1-5 (with scores in the lower 50% on STAR tests) an opportunity to apply for funding to improve pupil achievement in exchange for greater accountability.²² The SPI, with approval from the SBE, invites schools that scored below the 50th percentile on both the spring 1998 and spring 1999 STAR tests to participate in the program. "A school invited to participate may take any action not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates to improve pupil performance."²³ The program is limited to 430 schools, no more than 301 elementary schools, 78 middle schools, and 52 high schools.²⁴

The test claim statutes provide three ways that schools may be selected to participate in the II/USP without applying to CDE. Subdivision (d) of section 52053 requires the SPI to randomly select eligible schools to participate if fewer than the number of schools in any grade level category apply to the program. Similarly, subdivision (j) states that if fewer schools apply for

¹⁸ Education Code section 52052, subdivision (h).

¹⁹ Education Code section 52052.5.

²⁰ Local educational agencies (LEAs) are school districts and county offices of education.

²¹ California Department of Education, "2007 Growth Academic Performance Index Report, Information Guide" August 2007, See <<http://www.cde.ca.gov/ta/ac/ap/documents/infoguide07g.pdf>> as of May 4, 2009. Exhibit J.

²² California State Board of Education Policy, May 2004. See <<http://www.cde.ca.gov/re/lr/wr/documents/policy4iisp.doc>> as of April 27, 2009. Exhibit J.

²³ Education Code section 52053, subdivision (a).

²⁴ Education Code section 52053, subdivision (b).

participation than can be funded, the SPI with the approval of the SBE shall randomly select the balance of schools from schools eligible to participate that did not apply. Also, section 52056.5 authorizes the SPI to make a school subject to the II/USP if the school fails to meet annual state growth targets established pursuant to Section 52052.

Schools districts with schools in the II/USP must choose between contracting with an external evaluator or contracting with an entity that has proven and successful expertise specific to challenges in low-performing schools.²⁵ The external evaluator or entity has a long list of specified duties, including developing an action plan with the school and consulting employee organizations. Schools that participate receive state grants, some of which may be from federal funds (Pub. Law 105-78).²⁶ The grants require a school district match.²⁷

If a school has not met its growth targets each year and has failed to show significant growth 24 months after receipt of funding, it is deemed a state-monitored school (formerly a low-performing school). The SPI may take one or more actions with regard to a state-monitored school, including reorganizing or closing it.²⁸

High Achieving/Improving Schools Program (Ed. Code, § 52056, except subdivision (b)):

This program provides monetary and non-monetary rewards, pursuant to a Governor's Performance Award Program, to schools that meet or exceed performance targets or demonstrate high achievement.²⁹ The SPI, with approval of the SBE, ranks all public schools based on the API in decile categories. The SPI also reports the target annual growth rates of schools and the actual growth rates attained. Schools are also ranked by API compared with schools that have similar characteristics. The SPI publishes these rankings annually on the Internet.³⁰

According to section 52056, subdivision (b), "schools shall report their ranking, including a description of the components of the API, in their annual school accountability report card pursuant to Section 33126 and 35256." This provision was severed from this test claim in August 2007 and was renamed *School Accountability Report Cards IV*. Subdivision (c) of section 52056 states that the school district governing board "shall discuss the results of the annual ranking" at a regularly scheduled meeting.

Governor's Performance Award Program (Ed. Code, § 52057; Cal. Code Regs., tit. 5, §§ 1031-1033, 1036, 1038-1039): This program is under article 4, the High Achieving/Improving Schools Program, of chapter 6.1, the Public School Accountability Act. To be eligible for the Governor's Performance Awards, schools must "meet or exceed API performance growth targets ... and demonstrate comparable improvement in academic

²⁵ Education Code section 52054, subdivision (a) (Stats. 2001, ch. 749).

²⁶ Education Code section 52053, subdivision (f).

²⁷ Education Code section 52054.5.

²⁸ Education Code section 52055.5, subdivision (b)(3). The statute states that the SPI "shall do one or more of the following with respect to a state-monitored school."

²⁹ Education Code section 52057, subdivision (a).

³⁰ Education Code section 52056, subdivision (a).

achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.³¹ All schools, including those in the II/USP may participate in the Governor's Performance Award Program. The monetary awards, made available on either a per-pupil or per-school basis, may not exceed \$150 per pupil who receive a score on the STAR tests, and are subject to budget act appropriation.³² The SPI, with approval of the SBE, may also establish nonmonetary awards for schools, as specified.³³ Schools that are eligible for performance awards may request that the SBE waive all code sections or any part of code sections, or any regulations controlling specified education programs, for categorical programs, with some specified exceptions.³⁴

Title 5 of the California Code of Regulations provide the regulatory intent (§ 1031) and describe general eligibility criteria (§ 1032) and award funding criteria (§ 1033) for the Governor's Performance Award. It also states the waiver deadline (§ 1036), and exemption from school district, county, or school indirect charges or other administrative charges (§ 1038), and that use of funds is decided by the school site governance team/school site council (§ 1039).³⁵

Schoolsite Employees Performance Bonus Program (Stats. 2000, ch. 71; Cal.Code Regs., tit. 5, §§ 1031-1033, 1036- 1038): This uncodified program was established in Statutes 2000, chapter 71, section 40, with an appropriation of \$350 million to the State School Fund for allocation on a one-time basis by the SPI to school districts, county offices of education and charter schools. It requires school districts, county offices of education and charter schools, "as a condition of receiving funds pursuant to this section" upon request from the SPI, to certify the number of full-time equivalent employees at each schoolsite under their jurisdiction that are eligible for awards under the Governor's Performance Award Program. Schools use 50% of the award for one-time bonuses to employees, and the other 50% for any one-time purpose.

The title 5 regulations adopted for the Governor's Performance Award program also applied to the Schoolsite Employees Performance Bonus program until the regulations, as applied to the Schoolsite Employees Performance Bonus, were repealed in January 2002.³⁶

Certificated Staff Performance Incentive Act (Ed. Code, §§ 44650 et seq.; Cal. Code Regs., tit. 5, §§ 1031-1032 & 1034 -1038): The purpose of this program is to make one-time performance awards to teachers and other certificated staff in underachieving schools, where the academic performance of pupils significantly improves beyond the minimum percentage growth

³¹ Education Code section 52057, subdivision (a).

³² Education Code section 52057, subdivision (b).

³³ Education Code section 52057, subdivision (c).

³⁴ Education Code section 52057, subdivisions (d) & (e).

³⁵ Register 00, No. 52 (Dec. 28, 2000). California Code of Regulations, title 5, section 1039, Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

³⁶ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

target established by the SPI based on the school's API. "Any school district or charter school that maintains classes in kindergarten or in any of grades 1 to 12, inclusive, may apply for funding"³⁷ if it meets the following conditions: (1) the school's aggregate score on the API must be below the 50th percentile relative to other public schools in the state in the prior year; and (2) the school must meet any other SBE criteria.³⁸ Maximum awards may not exceed \$25,000 per full-time equivalent certificated staff person.³⁹

The SBE criteria are in the title 5 regulations, which states intent to implement the Certificated Staff Performance Incentive Act (§ 1031). The regulations also specify the general (§ 1032) and specific (§ 1034) eligibility criteria for the awards, describe funding distribution (§ 1035) and the waiver deadline (§ 1036), and specify that the awards are not considered compensation when calculating retirement benefits (§ 1037). The regulations also state that this program is not subject to school district, county, or school indirect charges or other administrative charges (§1038).⁴⁰

Prior Law

The Focus Schools Program was enacted in 1992 (Stats. 1992, ch. 1335) but, according to the bill analysis for the Public Schools Accountability Act, was never implemented because it was never funded.⁴¹ Under the program, the SPI was to designate the schools with the lowest performing pupils, which were to develop a school action plan to improve pupil achievement and were entitled to expert assistance and additional resources to implement the plan. The SPI was to appoint an outside management consultant to assist and, in some circumstances, intervene in the management of schools that fail to improve performance.⁴² The Focus Schools program became inoperative, by its own terms, on July 1, 1998, about a year before the Public Schools Accountability Act was enacted.

Claimant Position

Claimant seeks reimbursement based on article XIII B, section 6 of the California Constitution, for the following activities, as stated in its declaration submitted with the test claim:

³⁷ Education Code section 44651, subdivision (a).

³⁸ Education Code section 44651, subdivision (b).

³⁹ Education Code section 44650, subdivision (b).

⁴⁰ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 4 (Jan. 26, 2001); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

⁴¹ The 1992 statute's stated legislative intent was that funding be provided for the program in future Budget Acts, and that the SPI was only required to implement the provisions in fiscal years in which sufficient funds were appropriated (Sen. Bill No. 171, Stats. 1992, ch. 1335, § 3).

⁴² Assembly Committee on Education, Analysis of Senate Bill No. 1 (1999-2000 1st Ex. Sess.) as amended March 4, 1999, page 7. Exhibit J.

- A. Establish, periodically update and maintain data gathering proceedings to collect and report data as may be required by the SPI for computation of the API (Ed. Code, § 52052) "This includes, but is not limited to:"
1. Notifying CDE when circumstances may exist which would invalidate a school's API (Cal. Code Regs., tit.5, § 1032, subd. (d)).
 2. Upon receipt of a report of STAR testing and demographic data from the CDE, notify the department and the test publisher within 30 days by way of e-mail or writing that there are errors in the STAR testing or demographic data (Cal. Code Regs., tit. 5, § 1032, subd. (j)).
 3. Submit all data corrections to the test publisher in writing or e-mail on or before a deadline specified by the test publisher (Cal. Code Regs., tit. 5, § 1032, subd. (j)).
 4. To the extent current rates are not available to the CDE, to respond to any requests from the CDE for attendance rates for pupils and certificated school personnel for elementary, middle and secondary schools (§ 52052, subd. (a)).
 5. To the extent current rates are not available to the CDE, to respond to any requests from the CDE for graduation rates for pupils in secondary schools (§ 52052, subd. (a)).
 6. To provide the SPI, when required, with data pertaining to high school graduation and attendance rates (§ 52052, subd. (a)).
- B. For schools that are required (under §§ 52053, subd. (j) & 52056.5) to participate in the Immediate Intervention/Underperforming School Program and to the extent funding is unavailable or insufficient:
1. To contract with an external evaluator and appoint a broad-based schoolsite and community team (§ 52054, subd. (a)).
 2. To assist the external evaluator and schoolsite and community team, as requested or required, in the preparation of an action plan (§ 52054, subs. (b)-(i)).
 3. To contribute matching funds to any implementation grant provided (§ 52054.5).
 4. For those which fail to meet their annual short-term growth targets within 12 months following receipt of funding, to hold a public hearing and to consult with the external evaluator and the schoolsite and community team in choosing interventions in order to continue to implement the action plan (§ 52055).
 5. For schools that may be deemed low-performing schools under § 52055.5, when required by the SPI, to enter into a contract with a school assistance and intervention team (contracting schools) (§ 52055.51).
 6. For contracting schools to provide support and assistance to the team at the targeted schoolsites (§ 52055.51).
 7. For contracting schools to adopt the team's recommendations at a regularly scheduled meeting of the governing board and to submit the recommendations to the SPI and SBE (§ 52055.51).

8. For contracting schools, no less than three times during the year, to present the team with data regarding progress toward the goals established by the team, and to present the data to the governing board, the SPI, and SBE (§ 52055.51).
 9. By November 30 after the first full year of implementation, and every November 30 thereafter, to submit an evaluation to the SPI of the impact, costs, and benefits of the program, and a report on whether the schools have, or have not, met their program growth targets (§ 52058, subd. (a)).
- C. For school districts and charter schools (not county offices of education) to establish, periodically update and maintain employee payroll records to receive, administer and distribute award monies to staff, as part of the one-time Certificated Staff Performance Incentive Act (§ 44653).
 - D. Before January 8, 2002, for each school district and charter school (not county offices of education) to complete an application on behalf of its eligible schools to participate in the Certificated Staff Performance Incentive Act which shall include: (1) the number of eligible schools, (2) certification that the data used in the API calculations is accurate, and (3) a list of certificated staff positions on a full-time equivalent basis at each eligible school. After January 8, 2002, the application shall certify: (a) that the data used in the API calculations from the schools is accurate, and (b) to report the number of certificated positions on an FTE basis at each of the eligible schools (§ 44651, Cal. Code Regs., tit. 5, § 1034).
 - E. When an award is received, school districts and charter schools to negotiate with the exclusive representative of the bargaining unit of the teachers and other certificated staff to determine how the funds are to be distributed (§ 44653).
 - F. In case there is no agreement on disbursement, for school districts and charter schools to calculate and distribute the award amounts as a percentage of base salaries that is determined by a specified formula (§ 44653).
 - G. When requested by the SPI, to certify the number of FTE employees for the period requested in the creation of the one-time API Schoolsite Employees Performance Bonus, (Stats. 2000, ch. 71, § 40).
 - H. For school districts, charter schools, and county offices of education, to establish and periodically update and maintain employee payroll records to receive, administer and distribute award moneys to staff as part of the API Schoolsite Employees Performance Bonus (Stats. 2000, ch. 71, § 40).
 - I. Upon receipt of an award from the Governor's Performance Award Program and schoolsite portion of the API Schoolsite Employees Performance Bonus, to consult with the existing school site governance team/school site council to decide the use of the award and have a distribution plan ratified by the governing board (Stats. 2000, ch. 71; Cal. Code Regs., tit. 5, § 1039).
 - J. The administrative costs to calculate individual salary awards, to determine and locate recipients, and to deliver those salary awards (§ 44654, Cal. Code Regs., tit.5, § 1038).
 - K. Compensation-driven benefit costs (employer's share of Medicare, unemployment insurance, worker's compensation) incurred as a result of individual salary awards made pursuant to the

Governor's High Achieving Schools' Program, the Certificated Staff Performance Incentive Act, or the API Schoolsite Employees Performance Bonus Program (§ 44654, Cal. Code Regs., tit. 5, § 1038).

Claimant filed comments in November 2002, rebutting those of the Department of Finance and CDE and arguing that their comments should be stricken from the record because they do not comply with section 1183.02, subdivision (d) of the Commission's regulations.⁴³ This regulation requires that assertions or representations of fact be supported by documentary evidence submitted with the state agency's response, and authenticated by declarations under penalty of perjury.⁴⁴ Claimant also made substantive comments that are discussed in the analysis below.

Claimant also filed comments on the draft staff analysis in November 2007 on section 1032, subdivision (d) of the title 5 regulations and on the II/USP, both of which are discussed below.⁴⁵

Claimant filed additional comments on the revised draft staff analysis in June 2009, asserting that practical compulsion exists to participate in the II/USP, the High Achieving/Improving Schools Program, and the Governor's Performance Award Program.⁴⁶ Claimant also argues that denying a test claim on the basis of not incurring reimbursable costs is improper and lacks legal authority.

State Agency Positions

Department of Education: In comments dated August 7, 2002, the CDE discusses each program separately, arguing that none of them is reimbursable.⁴⁷ As to the API, CDE states in part:

The API is calculated from indicators currently reported to the CDE as part of the Standardized Testing and Reporting Program (STAR). Part III, Section 1.A of the Test Claim alleges reimbursable costs for activities which already receive funding under Title 5, California Code of Regulations, Division 1, Chapter 2 Pupils, Subchapter 3.75 Standardized Testing and Reporting Program. The Budget provides \$65 million for STAR administration, continued development, scoring, error correction, and apportionment.

CDE alleges that the other programs are not reimbursable because they are voluntary and are already funded.

⁴³ Exhibit C.

⁴⁴ The existence of a reimbursable state mandate is a question of law. (*County of San Diego v. State of California (County of San Diego)* (1997) 15 Cal.4th 68, 89.) State agency or other comments are not relied on by staff, which reaches conclusions based on independent analysis of the test claim statutes and relevant facts supported in the record. The Commission weighs the evidence accordingly.

⁴⁵ Exhibit G.

⁴⁶ Exhibit L.

⁴⁷ Exhibit B.

For the High Achieving Schools Program or Governor's Performance Awards, CDE states it is not a mandated program. Eligible schools that meet or exceed API growth targets and testing participation rates are notified that they will receive the award, but districts have the option of turning down these funds (although CDE admits that this option was not explicitly stated to school districts). The funding for this program is to be decided by existing School Site Councils, and "any additional costs not covered by awards due to decisions made by School Site Councils are due to discretionary actions.

In comments submitted in September 2007 responding to a question from Commission staff, CDE reiterates that the II/USP is a voluntary program, and that the statutes authorizing or requiring the SPI to select schools for participation in the II/USP have not been used.⁴⁸

Department of Finance: Finance, in its October 2002 comments, also argues that the test claim is not reimbursable.⁴⁹ Finance asserts that the activities are discretionary because they stem from voluntary programs, and that they are already funded.

In comments submitted in November 2007 on the draft staff analysis, Finance disagrees with both activities that staff found reimbursable.⁵⁰ As to the school board discussion of the API annual rankings (§ 52056, subd. (c)), Finance asserts that it is not reimbursable due to Government Code section 17556, subdivision (f), which prohibits finding a reimbursable mandate if "the statute ... imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election." Finance argues that the governing board discussion of the annual rankings is within the scope of Proposition 59, that provides that the people have the right to access to information concerning the conduct of the people's business and that the meetings of public bodies are open to public scrutiny.

Proposition 59 was discussed by the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, and is discussed below.

Interested Party Comments

San Diego Unified School District (SDUSD) filed comments on the draft staff analysis in November 2007, arguing that California Code of Regulations, title 5, section 1032, subdivision (d), constitutes a state-mandated program to notify CDE of errors in the API, as discussed below.⁵¹

⁴⁸ Exhibit D.

⁴⁹ Exhibit B.

⁵⁰ Exhibit H.

⁵¹ Exhibit I.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution⁵² recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁵³ “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.”⁵⁴ 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.⁵⁵

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.⁵⁶

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.⁵⁷ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

⁵² Article XIII B, section 6, subdivision (a), (as amended in Nov. 2004) provides:

(a) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

⁵³ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁵⁴ *County of San Diego, supra*, 15 Cal.4th 68, 81.

⁵⁵ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁵⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

⁵⁷ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

legislation.⁵⁸ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”⁵⁹

Finally, the newly required activity or increased level of service must impose costs mandated by the state.⁶⁰

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 6.⁶¹ 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.”⁶²

Issue 1: Are the test claim statutes and regulations subject to article XIII B, section 6 of the California Constitution?

A. Do the test claim statutes and regulations impose state-mandated activities on school districts within the meaning of article XIII B, section 6?

Academic Performance Index (Ed. Code, §§ 52050 – 52052.5): As indicated above, the purpose of the API is to measure the performance of schools and to demonstrate comparable improvement in academic achievement.

Section 52020 names chapter 6.1 as the “Public Schools Accountability Act of 1999,” and section 52050.5 contains legislative findings and declarations. Section 52051 states that the Public School Accountability program is established and consists of the API, the II/USP and the Governor’s High Achieving/Improving Schools Program. Section 52051.5 states that all references to schools in chapter 6.1 shall include charter schools. Section 52052 describes the API’s purpose, indicators, pupil subgroups, included test scores, growth targets, performance target, uses, and alternative accountability systems. Section 52052.3 indicates which pupil test scores are included in the API.⁶³ Section 52052.5 requires the SPI to form an advisory committee to advise the SPI and SBE on matters related to the API, the II/USP and the Governor’s High Achieving/Improving Schools Program.

⁵⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

⁵⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

⁶⁰ *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

⁶¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁶² *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁶³ Section 52052.3 was repealed by Statutes 2002, chapter 1035, which is not included in this test claim so staff makes no findings on it.

Claimant alleges establishing, periodically updating and maintaining data gathering procedures to collect and report data as may be required by the SPI for computation of the API, as follows:

- To the extent current rates are not available to the CDE, to respond to any requests from the CDE for attendance rates for pupils and certificated school personnel for elementary, middle and secondary schools (§ 52052, subd. (a));
- To provide the SPI, when required, with data pertaining to high school ... attendance rates (§ 52052, subd. (a)).

CDE and Finance commented, in August and October 2002, that the API is calculated from indicators currently reported to the CDE as part of the STAR Program. CDE's August 2002 comments stated that the test claim alleges activities that already receive funding under the STAR program, including error correction, and that test claim 97-TC-23 "will provide reimbursement for reimbursable costs not covered by the STAR apportionment."⁶⁴

Reporting attendance and graduation rates (Ed. Code, §§ 52050 – 52052.5): Section 52052, subdivision (a)(3), as of Statutes 2001, chapter 887 (the last amendment claimant pled)⁶⁵ states that the API "shall consist of a variety of indicators *currently reported to the State Department of Education*, including, but not limited to ... attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools."⁶⁶ [Emphasis added.] Thus, although the statute states that the API shall consist of indicators currently reported to CDE, subdivisions (a)(3)(B) and (C) of section 52052 (Stats. 2001, ch. 887) state:

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data is currently reported to the state and the accuracy of the data.

(C) If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.⁶⁷

⁶⁴ The Commission's 2005 reconsideration of the decision in test claim 97-TC-23 (04-RL-9723-01), found that activities that related to the national norm referenced test (CAT/6) are reimbursable, and are subject to offsets for state STAR funding and federal Title VI funding. But Statutes 2008, chapter 757, effective September 30, 2008, deleted the CAT/6 mandate in Education Code section 60640, subdivision (b), thus ending the state-mandated program for administration of the CAT/6 tests in grades 3 and 7.

⁶⁵ Section 52052 has been further amended by Statutes 2002, chapter 1035, Statutes 2004, chapter 914, Statutes 2004, chapter 915, Statutes 2005, chapter 639, Statutes 2006, chapter 538, Statutes 2006, chapter 743, Statutes 2007, chapter 130, Statutes 2008, chapter 710, and Statutes 2008, chapter 757. Staff makes no findings on these later amendments.

⁶⁶ Attendance rates for certificated school personnel was removed by Statutes 2004, chapter 915.

⁶⁷ Education Code section 52052, subdivision (a) (Stats. 1999-2000x1, ch. 3). The second sentence was removed by Statutes 2001, chapter 745, effective October 12, 2001, but the first

In its *Analysis of the 2001-02 Budget Bill*, the Office of the Legislative Analyst stated: "The SDE [State Dept. of Education] has not included graduation rates, student attendance nor teacher attendance in the API because it is currently not able to collect accurate school-level data on these outcome measures."⁶⁸ And the CDE's current description of the API does not indicate that pupil or teacher attendance or graduation rates are included in it.⁶⁹ Moreover, there is no evidence in the record that CDE has ever required schools to report attendance information or graduation rates, or that they are currently incorporated into the API.

Staff finds that section 52052 does not expressly require schools to report attendance data for pupils or certificated personnel,⁷⁰ or graduation rates to CDE for the API, so doing so does not impose a state mandate within the meaning of article XIII B, section 6.

Staff also finds that the remaining sections, 52020 (title of act), 52050.5 (legislative findings and declarations), 52051 (programs within the act), 52051.5 (charter schools included), 52052.5 (advisory committee) and former section 52052.3 (test scores in API), do not require any activities of school districts, so they do not impose state-mandated activities within the meaning of article XIII B, section 6.

Discuss the API ranking: Subdivision (c) of section 52056 requires the governing board of each school district, after the annual publication of the API and SPI school rankings, to "discuss the results of the annual ranking at the next regularly scheduled meeting." (As of Stats. 2000, ch. 695.) Because this statute uses the word "shall,"⁷¹ staff finds that section 52056, subdivision (c), is a mandate on a school district governing board to discuss its API annual ranking at the next regularly scheduled meeting following the annual API publication by the SPI.⁷²

sentence remains in subdivision (a)(4)(C), with a nonsubstantive amendment made by Statutes 2008, chapter 757.

⁶⁸ Office of the Legislative Analyst, "Analysis of the 2001-02 Budget Bill." See <http://www.lao.ca.gov/analysis_2001/education/ed_10_sch_acct_anl01.htm> as of May 4, 2009. Exhibit J.

⁶⁹ California Department of Education, "Parent and Guardian Guide to California's 2008-09 Accountability Progress Reporting System." April 2009. See <<http://www.cde.ca.gov/ta/ac/ap/documents/parentguide09.pdf>> as of May 4, 2009. Exhibit J.

⁷⁰ Attendance information for certificated school personnel was deleted from section 52052 by Statutes 2004, chapter 915 (Sen. Bill No. 722) upon which staff makes no finding because it was not pled.

⁷¹ Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

⁷² Although staff makes no finding on it because it was not pled by claimant, section 52056, subdivision (c) was amended, and a new (d) was added by Statutes 2003, chapter 45, as follows:

(c) The governing board is strongly encouraged to include in the discussion an examination by school, grade, and subgroup enumerated by and in accordance with subclause (II) of clause (v) of subparagraph (C) of paragraph (2) of subsection (b) of Section 6311 of Title 20 of the United States Code, of scores on the tests administered pursuant to the Standardized Testing and Reporting (STAR)

Intermediate Intervention/Underperforming Schools Program (Ed. Code, §§ 52053-52055.51 & 52056.5 & 52058): As indicated above, the SPI with approval from the SBE, invites schools that scored below the 50th percentile on the Spring 1998 and Spring 1999 administrations of the STAR tests to participate in the II/USP, the purpose of which is to provide those schools with the opportunity to apply for funding to improve pupil achievement in exchange for greater accountability.

Section 52053 establishes the program and how schools are selected. Section 52053.5 describes qualifications for external evaluators, and 52054 concerns school contracts with and duties of external evaluators, including developing an action plan with specified contents. Section 52054.3 provides the option to use an existing plan instead of developing an action plan, and section 52054.5 details the grants available for the II/USP, including a local school district matching requirement. Section 52055 requires schools that have not met their growth targets⁷³ within 12 months after receiving funding to hold public hearings and, after consulting specified groups, choose from a range of interventions. Section 52055.5 states the fate of schools that, 24 months after receiving funding, have not met their growth targets. If the school is making substantial progress, it may participate in the program for an additional year. If the school is not making substantial progress, it is deemed a state-monitored school (formerly a low-performing school) and the SPI must assume the legal rights, duties and powers of the governing board and reassign the principal. The SPI must also take other action, to include such options as reorganizing or closing the school. Section 52055.51 authorizes the SPI to require the school to

Program set forth in Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(d) If the average STAR test score of the school is below the 50th percentile, or if the test scores of more than 25 percent of the pupils of a school are below the 50th percentile, the school district governing board may do both of the following:

(1) Conduct an assessment of the reasons for the performance results of the school, by grade.

(2) Adopt an improved performance plan that includes methods determined by the district to have been used by schools with similar pupil populations elsewhere in the district or state and significantly higher pupil scores. If it is deemed not feasible to adopt those methods, the plan shall explain why an alternate approach is preferable. If a school district governing board adopts an improved performance plan, it shall reevaluate the plan at each future annual meeting described by subdivision (c), until STAR test scores reach a level above those specified in this subdivision.

The federal law cited in subdivision (c) above is the definition of "adequate yearly progress" that "(v) includes separate measurable annual objectives for continuous and substantial improvement for each of the following ... (II) The achievement of (aa) economically disadvantaged students; (bb) students from major racial and ethnic groups; (cc) students with disabilities; and (dd) students with limited English proficiency;"

⁷³ Growth targets are selected by the SPI based on the previous year's API (Ed. Code, § 52052, subs. (c) & (d)).

contract with a school assistance and intervention team instead of taking action as a result of the school's state-monitored school status in section 52055.5, subdivision (b). Section 52056.5 authorizes the SPI to make schools that fail to meet annual state growth targets subject to the II/USP. Section 52058 requires school districts with schools participating in the II/USP to submit evaluation reports, as specified.

Claimant pleads the following activities under the II/USP, "to the extent funding is unavailable or insufficient."

- (1) Contracting with an external evaluator and appointing a broad-based schoolsite and community team (§ 52054, subd. (a));
- (2) Assisting the external evaluator and schoolsite and community team in preparing the plan (§ 52054, subs. (b)-(i));
- (3) Contributing matching funds to any implementation grant provided (§ 52054.5);
- (4) Holding a public hearing and consulting with external evaluator and schoolsite and community team in choosing interventions if school fails to meet its annual short-term growth target within 12 months (§ 52055);
- (5) Contracting with a school assistance and intervention team if the school is deemed a low-performing school, as required by the SPI (§ 52055.51), and for contracting schools to do the following:
 - a. Provide support and assistance to the team at targeted schoolsites (§ 52055.51);
 - b. Adopt the team's recommendations at a regularly scheduled meeting of the governing board and to submit the recommendations to the SPI and SBE (§ 52055.51); and
 - c. No less than three times during the year, present the team with data regarding progress toward the goals established by the team, and to present the data to the governing board, the SPI and SBE (§ 52055.51).
- (6) By November 30 after the first full year of implementation, and every November 30 thereafter, to submit an evaluation to the SPI of the impact, costs, and benefits of the program and report on whether schools have met their program growth targets (§ 52058, subd. (a)).

CDE, in its August 2002 comments, states that the II/USP is not mandated, but is discretionary, so all the activities associated with the election by the district to be in the program are not mandated.⁷⁴ Finance also states that the program is voluntary in its October 2002 comments.⁷⁵

The first statute establishing the program states: "the Superintendent of Public Instruction, with the approval of the State Board of Education, *shall invite* schools that scored below the 50th percentile on the achievement tests ... to participate in the ... Program."⁷⁶ [Emphasis added.] The program is limited to 430 schools, no more than 301 elementary schools, 78 middle schools,

⁷⁴ Exhibit B.

⁷⁵ Exhibit B.

⁷⁶ Education Code section 52053, subdivision (a).

and 52 high schools.⁷⁷ Nothing in the statute requires schools to accept the invitation from CDE. Therefore, based on the plain language of section 52053, subdivision (a) (which describes eligibility for the II/USP), it does not legally compel the school or the school district to participate in the program.

In the *Kern High School Dist.* case,⁷⁸ the California Supreme Court stated, “if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate.”⁷⁹ Applying the reasoning of *Kern*, the downstream activities pled by claimant for participating in the II/USP are not state mandates because program participation is voluntary. Since participation is at the discretion of the school district, staff finds there is no legal compulsion to implement it.

Claimant, in comments submitted in November 2002, states that the California Supreme Court, in *City of Sacramento v. State of California* has held that:

[T]he determination of whether a program is truly voluntary depends upon (1) the nature and purpose of the program, (2) whether the program’s design evidences an intent to coerce, (3) the penalties assessed for non-participation, (4) the legal and other practical consequences of non participation.⁸⁰

According to claimant, “the concept of state mandate is sufficiently broad to include situations where the local school district has no reasonable alternative to the state scheme or no true choice but to participate in it.” Claimant argues it would be fiscally irresponsible to turn down the state funds, since district employees and their “exclusive representatives” (unions) know about the program. Claimant reiterates this in its June 2009 comments on the draft staff analysis.⁸¹

Staff disagrees. Although the Supreme Court in *Kern* stated that state mandates could be found in cases of practical compulsion on the local entity, it described this as the statute imposing “certain and severe penalties such as double taxation or other draconian consequences”⁸² for not participating in the programs. The court also described practical compulsion as “a substantial penalty (independent of the program funds at issue) for not complying with the statute.”⁸³

Here, the only *certain* consequence of a school district not participating in the II/USP is losing the program funds at issue. There is nothing in the record to show that the school districts are

⁷⁷ *Ibid.*

⁷⁸ *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

⁷⁹ *Id.* at page 743. Emphasis in original.

⁸⁰ Keith B. Petersen, claimant comments submitted November 5, 2002. Citing *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76. Exhibit C.

⁸¹ Exhibit L.

⁸² *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751.

⁸³ *Id.* at p. 731.

practically compelled to participate in the II/USP program.⁸⁴ There are no certain and severe penalties, or draconian consequences in the statute or the record for nonparticipation. Nor is there a “substantial penalty independent of the program funds at issue” for not complying with the II/USP statute.⁸⁵

In its June 2009 comments on the draft staff analysis, claimant states as follows:

[T]he potential consequence of not participating in the [II/USP] ... program is that a state-monitored school will be established and the SPI must assume the legal rights, duties and powers of the governing board and reassign the principal. The SPI must also take other action, to include such options as reorganizing or closing the school.⁸⁶

Staff disagrees. First, the term “state-monitored school” applies to a school already in the II/USP that has not met its growth targets each year and has failed to show significant growth, as determined by the state board, after 24 months after receipt of funding under the II/USP (§ 52055.5, subd. (b)). Staff finds no evidence of “state-monitored schools” existing outside of this definition in the II/USP. Second, the claimant’s consequences were proposed to *potentially* apply to an underperforming school, so they are not *certain* consequences as required for a finding of practical compulsion. And third, even if the consequence were to apply to an underperforming school, they would not be for non-participation in the II/USP. Rather, the consequences would be for lack of performance, which in turn, may make a school eligible for the II/USP. In short, there is no practical compulsion to participate in the II/USP.

Therefore, in the absence of both legal and practical compulsion to participate, staff finds that a school’s voluntary participation in the II/USP (Ed. Code, §§ 52053 (except subds. (d) & (j)) 52053.5-52055.51 & 52056.5 & 52058) is not a state-mandated program within the meaning of article XIII B, section 6. This means the various downstream activities are not mandated, including contracting with an external evaluator or entity with proven expertise specific to challenges in low-performing schools, for schools that participate in the II/USP on their own application.

Claimant’s November 2002 comments state that the test claim alleges the “detailed list of mandated duties for those schools who are required, pursuant to Education Code Sections 52053 (j) and/or 52056.5, to participate in the Immediate Intervention/Underperforming School Program.”⁸⁷

Section 52056.5 authorizes the SPI to make a school subject to the II/USP if the school fails to meet annual state growth targets established pursuant to section 52052. On its face, this section

⁸⁴ Cf. *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th, 1355, 1366.

⁸⁵ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

⁸⁶ Exhibit L.

⁸⁷ Exhibit C.

does not require a school district activity.⁸⁸ Therefore, staff finds that section 52056.5 is not a state mandate within the meaning of article XIII B, section 6.

Two provisions, however, authorize the SPI to select a school to participate in the II/USP without the school applying. Section 52053, subdivision (d), requires the SPI to randomly select schools to participate if fewer than the eligible number of schools in any grade level category apply to the program. Similarly, if fewer schools apply than can be funded, the SPI is required to randomly select schools to participate (§ 52053, subd. (j)).

Section 52053, subdivisions (i) and (l), indicate that schools selected to participate in the II/USP receive planning grants of \$50,000:

(i) The total number of schools selected for participation in the program shall be no more than the number that can be funded through the total appropriation for the planning grants referenced in subdivision (l) below. [¶]...[¶]

(l) A school selected to participate on or before October 15, 2000, and each year thereafter, shall be awarded a planning grant from funds appropriated pursuant to Section 2 of Chapter 3 of the Statutes of 1999, First Extraordinary Session, of fifty thousand dollars (\$50,000).

In a September 12, 2007 reply to a request for information from Commission staff, CDE commented: "schools have participated in II/USP strictly on a voluntary basis. None of the participating schools were selected by the State Superintendent of Public Instruction as prescribed in Education Code sections 52053 (d) and (j), and 52056.5."

Subdivision (m) of section 52053 states that "schools selected for participation in the program shall be notified by the [SPI] ... no later than October 15 of each year." There is no evidence in the record (such as a letter or executive order from the SPI) of any notification to a school that has been selected involuntarily to participate in the II/USP.

Because subdivisions (d) and (j) do not on their face impose a mandate on school districts, and no executive order has been issued pursuant to them, staff finds that section 52053, subdivisions (d) and (j), does not impose a state mandate within the meaning of article XIII B, section 6.

Claimant, in its November 2007 comments on the draft staff analysis, asserts that the alleged fact that no districts participated involuntarily in the II/USP does not prevent finding reimbursable costs mandated by the state.⁸⁹ According to claimant "that no districts may claim these costs on their annual reimbursement claims does not relieve the Commission on the duty to determine whether the costs are reimbursable." Claimant states that the Commission should find reimbursable, potentially claimable activities for the II/USP.

In its June 2009 comments on the revised draft staff analysis, claimant asserts that a reimbursable mandate may exist despite the claimant not claiming any reimbursable costs in the fiscal year,

⁸⁸ Staff makes no finding on the mandate implication of the SPI issuing an executive order (as defined in Gov. Code, § 17516) under the authority of section 52056.5 of the Education Code.

⁸⁹ Exhibit G.

and that denying the test claim on the basis of not incurring reimbursable costs is improper and lacks any legal authority.⁹⁰

Staff disagrees. The plain language of section 52053, subdivisions (d) and (j), impose requirements on the SPI. According to the record, the SPI has not selected any schools to participate. If a school were involuntarily selected to participate in the II/USP, it could submit a test claim on the SPI's notification of its selection (in § 52053, subd. (m)). Given that there is no evidence in the record of any such state-mandated selection by the SPI, staff finds that section 52053, subdivisions (d) and (j), do not constitute a state mandate.

In sum, staff finds that the II/USP is not a state-mandated program within the meaning of article XIII B, section 6.

High Achieving/Improving Schools Program (Ed. Code, § 52056, except subdivision (b)):

This program provides monetary and non-monetary rewards, including the Governor's Performance Award Program (discussed separately below), to schools that meet or exceed performance targets or demonstrate high achievement. Claimant pled this section as it was amended by Statutes 2000, chapter 695.

Subdivision (a) of section 52056 describes the program and requires the SPI to rank all public schools based on the API in decile categories by grade level of instruction, and rank them by value of the API when compared to schools with similar characteristics. The SPI must also report the target annual growth rate of schools and the actual growth rates attained, and must publish the rankings on the Internet.

Because subdivision (a) does not require a school or school district activity, staff finds it is not a state mandate within the meaning of article XIII B, section 6.

In its June 2009 comments on the revised draft staff analysis, claimant states that "[T]he potential consequence of not participating in the ... program is that a state-monitored school will be established and the SPI must assume the legal rights, duties and powers of the governing board and reassign the principal ... [and] such options as reorganizing or closing the school."⁹¹

Staff disagrees. No potential consequences for non-participation in the High Achieving/Improving Schools Program are identified in the statute or the regulations, and there is no evidence in the record of consequences that would constitute practical compulsion,⁹² so there is no practical compulsion to participate. Therefore, staff finds that this program is not a state mandate.

Governor's Performance Award Program (Ed. Code, § 52057; Cal. Code Regs., tit. 5, §§ 1031-1033, 1036, 1038-1039): This program provides monetary and nonmonetary awards to schools that meet or exceed API performance growth targets, as described above.

⁹⁰ Exhibit L.

⁹¹ Exhibit L.

⁹² *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1369-1370.

Section 52057 establishes the program eligibility, awards, waiver of certain provisions, and expenditure of funds. Section 1031 of the title 5 regulations states the regulatory intent is to implement the Governor's Performance Award Program and the Certificated Staff Performance Incentive Act. As to the remaining title 5 regulations, section 1032 details the general eligibility criteria for these awards. Section 1033 outlines the award funding criteria and states in part, "Schools that meet the eligibility requirements in 2000-2001 for the Governor's Performance Award Program (GPA) shall receive a per pupil award amount for each of their eligible pupils." Section 1033 also describes eligible pupils, and how the amount allocated for the award is determined. Section 1036 states the deadline for requesting waivers of the regulations, and section 1038 states that the award is not subject to indirect or other administrative charges. Section 1039 of the regulations states that the use of funds at the school site for the program shall be decided by the existing school site governance team/school site council and then ratified by the governing board of each local educational agency.⁹³

There is nothing in Education Code section 52057 or the applicable title 5 regulations that states that schools or school districts are required to participate in the Governor's Performance Award Program, so there is no legal compulsion to do so. And neither the statute nor the record indicates practical compulsion, defined as: "certain and severe penalties such as double taxation or other draconian consequences"⁹⁴ for not participating in the program, or "a substantial penalty (independent of the program funds at issue) for not complying with the statute."⁹⁵

In its June 2009 comments on the draft staff analysis, claimant states that "[T]he potential consequence of not participating in the ... program is that a state-monitored school will be established and the SPI must assume the legal rights, duties and powers of the governing board and reassign the principal ... [and] such options as reorganizing or closing the school."⁹⁶

Staff disagrees. No potential consequences for non-participation in the Governor's Performance Award Program are identified in the statute or the regulations, and there is no evidence in the record of consequences that would constitute practical compulsion,⁹⁷ so there is no practical compulsion to participate.

Therefore, staff finds that section 52057 is not a state mandate within the meaning of article XIII B, section 6. Staff also finds that California Code of Regulations, title 5, sections 1031,

⁹³ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

⁹⁴ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751.

⁹⁵ *Id.* at p. 731.

⁹⁶ Exhibit L.

⁹⁷ *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1369-1370.

1033, 1036, and 1038⁹⁸ do not constitute a state mandate on schools or school districts for purposes of the Governor's Performance Award Program.⁹⁹

Deciding on use of Governor's Performance Award Program funds: Section 1039 of the title 5 regulations state:

Use of funds at the school site for the Governor's Performance Award Program shall be decided by the existing school site governance team/school site council representing major stakeholders and then ratified by the governing board of each local education agency.¹⁰⁰

Although this provision appears to be mandatory based on the plain meaning of "shall be decided by the existing school site governance team and then ratified by the governing board," it is not because these activities are conditional on participation in the Governor's Performance Award Program, which is voluntary.

As the Supreme Court stated in *Kern*, "if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate."

Because deciding the use of funds, and ratifying this decision, is a downstream activity that results from *voluntary* participation in the Governor's Performance Award Program, staff finds that section 1039¹⁰¹ of the title 5 regulations is not a state mandate within the meaning of article XIII B, section 6.

This conclusion is also supported by the rules of statutory construction. In interpreting these regulations, "[t]he same rules of construction apply in the interpretation or [sic] regulations as apply in the interpretation of statutes."¹⁰² And the Commission, like a court, keeps in mind the following principles of statutory construction:

⁹⁸ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

⁹⁹ The regulations also apply to the API and the Certificated Staff Performance Incentive Act. The finding here is limited to the regulations as they apply to the Governor's Performance Award program.

¹⁰⁰ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

¹⁰¹ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

¹⁰² *Lusardi Construction Co. v. California Occupational Safety & Health Appeals Bd.* (1991) 1 Cal.App.4th 639, 647.

A statute must be construed 'in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts.' [Citation omitted.]” A court may consider the overall scheme in which an ambiguous statute is included in order to ascertain its intended meaning. [Citation omitted.] The organization of the division, chapters, and articles is an aid to understanding its purpose. [Citation omitted.] [division, chapter, article, and section headings may properly be considered in determining intent and are entitled to considerable weight].¹⁰³

Considered in context, section 1039 is under article 1.7 of title 5 of the California Code of Regulations. The express purpose of article 1.7, as stated in section 1031, subdivision (b), is to “implement the programs established by two statutes relating to the API: (1) The Governor’s Performance Award Program of the Public Schools Accountability Act of 1999... (2) the Certificated Staff Performance Incentive Act ”

As indicated above, the Governor’s Performance Award Program is not a state-mandated program, and as indicated below, the Certificated Staff Performance Incentive Act, is also not a state-mandated program. Thus, deciding the use of funds at the school site for purposes of the voluntary Governor’s Performance Award Program is not a state mandate. Rather, like the requirements placed on school districts in the *Kern* case, it is a “procedural condition imposed on program participation.”¹⁰⁴ As such, it is not reimbursable because participation in the underlying award and incentive programs is voluntary.

In addition, the section heading to section 1032 is “General Eligibility Criteria for Award Programs Related to API Growth,” which indicates that the regulation contains award program criteria rather than requirements that are independent of those award programs: The Governor’s Performance Award Program and the Certificated Staff Performance Incentive Act (§ 1031, subd. (b)).

So again, staff finds that section 1039¹⁰⁵ of the title 5 regulations is not a state mandate within the meaning of article XIII B, section 6.

Notifying CDE regarding invalidation of school’s API (Cal.Code Regs. tit.5, § 1032, subd. (d)): Subdivision (d) of section 1032 in the title 5 regulations¹⁰⁶ describes conditions under which the API is invalid, including if the school district notifies CDE of any of the following: (d)(1), there were adult testing irregularities at the school affecting five percent or more of pupils tested; or (d)(2), that the API is not representative of the pupil population at the school; or (d)(3), that the school has experienced a significant demographic change in pupil population between the base

¹⁰³ *Medical Bd. of California v. Superior Court* (2003) 111 Cal.App.4th 163, 175.

¹⁰⁴ *Kern High School Dist., supra*, 30 Cal.4th 727, 753.

¹⁰⁵ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

¹⁰⁶ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

year and growth year, and that the API between years is not comparable.¹⁰⁷ Subdivisions (d)(6) and (e) state as follows:

(6) If after reviewing the information, the department determines that further investigation is warranted, the department may conduct an investigation to determine if the integrity of the API has been jeopardized. The department may invalidate or withhold the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized.¹⁰⁸

(e) If a school's API is considered invalid pursuant to subdivisions (d)(1) [district notifies CDE of adult testing irregularities at the school affecting 5% or more of the pupils tested], (d)(2) [district notifies CDE that the API is not representative of the pupil population at the school], (d)(4) [school's proportion of parental waivers compared to its STAR test enrollment is equal to or greater than 15% for the 2000 STAR, or 10 % for subsequent STARS, with exceptions], or (d)(5) [In any content area of the California Standards Tests, the school's proportion of the number of test-takers in that content area compared with the total numbers of test-takers is less than 85 percent], *the school is ineligible for participation in any of the award programs for the current and subsequent year.* If a school does not receive an API pursuant to subdivision (d)(3) [the district notifies CDE that the school has experienced a significant demographic change in pupil population between the base year and growth year, and the API between years is not comparable], *the school is ineligible for participation in any of the award programs for the current year only.*¹⁰⁹ [Emphasis added.]

Claimant pleads the following activity: (1) Notifying CDE when circumstances may exist which would invalidate a school's API (Cal Code Regs., tit.5, § 1032, subd. (d)).

¹⁰⁷ Other information that can also invalidate a school's API (but is silent on whether the district notifies CDE of the information) include: in subdivision (d)(4), the schools proportion of parental waivers compared to its STAR enrollment, is equal to or greater than 15 percent for the 2000 STAR, or greater than 10 percent for the 2001 and each subsequent STAR, with exceptions. Also, (in subd. (d)(5)) the STAR can be invalidated if the school's proportion of the number of test-takers in any content area of the California Standard's Test compared with the total number of test-takers is less than 85 percent. And (subd. (d)(6)) if information is made available or obtained by CDE that would lead a reasonable person to conclude that one or more of the preceding circumstances occurred, the API shall be considered invalid.

¹⁰⁸ This was originally in subdivisions (d)(4) and (e) of section 1032. Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

¹⁰⁹ This language was amended into subdivision (e) by Register 02, No. 2 (Jan. 8, 2002).

Finance, in October 2002, comments that this regulation does not require districts to provide information to the SPI, but states that a school's API shall be considered invalid under certain circumstances.¹¹⁰

Claimant disagrees, stating in November 2002 that it cannot be the intent of the law for local districts to fail to disclose data deficiencies when they exist regarding testing irregularities, the API not being representative of the pupil population, or a school experiencing a significant demographic change in pupil population.¹¹¹ Regarding the STAR apportionments, claimant argues they are for the costs of the STAR testing process, but costs alleged in this claim relate to additional post-test duties required to ensure the accuracy of the API.

In comments on the draft staff analysis submitted in November 2007, claimant states that Education Code section 52052 and section 1032, subdivision (d) of the title 5 regulations require school districts to report the API information and to "satisfy" a CDE investigation.¹¹² Claimant also distinguishes this case from the *Kern* case, and that if the district potentially removes itself from participation in the awards programs, it would not be complying with section 1032, subdivision (d), to establish eligibility for cash awards.

San Diego Unified School District (SDUSD) filed comments on the draft staff analysis in November 2007, arguing that California Code of Regulations, title 5, section 1032, subdivision (d), constitutes a state-mandated program to notify CDE of errors in the API.¹¹³ This is because the draft staff analysis found a state mandate in section 52056, subdivision (c)'s requirement for the district governing board to discuss the results of the annual ranking following the annual publication of the API and SPI school rankings. SDUSD argues that the intent is to have the governing board make decisions and use the information to ultimately improve pupil performance. SDUSD asserts the existence of compulsion to notify the governing board of validation errors in the API, so the board shall discuss why the API annual ranking may be inaccurate. Also, SDUSD notes that section 52056, subdivision (b), states: "All schools shall report their ranking, including a description of the components of the API in their school accountability report card pursuant to Sections 33126 and 35256." And section 33126, subdivision (a), states the "school accountability report card shall provide data by which a parent can make meaningful comparisons between public schools that will enable him or her to make informed decisions on which school to enroll his or her children." According to SDUSD, the intent is to have the API and its component information used by parents to make decisions about school choice, and that there is a compulsion to provide parents with meaningful data, including a correct API.

The issue is whether section 1032, subdivision (d), of the title 5 regulations imposes a state-mandated activity within the meaning of article XIII B, section 6.

¹¹⁰ Exhibit B.

¹¹¹ Exhibit C.

¹¹² Exhibit G.

¹¹³ Exhibit I.

Although the regulation states that the API "shall be considered invalid" if the school district reports the information in subdivisions (d)(1) through (d)(3), it does not expressly require the school district to report it. Therefore, staff finds that school districts are not legally compelled under section 1032 to report this information.

The next issue is whether there is practical compulsion by the state to certify the information in subdivisions (d)(1) through (d)(3) of section 1032 of the title 5 regulations, when doing so would invalidate the school's API. Staff finds that there is not.

Section 1032 states in subdivision (d)(6) that CDE "may investigate" information "to determine if the integrity of the API has been jeopardized" and authorizes CDE to "invalidate or withhold the school's API until such time that the department has satisfied itself that the integrity of the API has not been jeopardized." According to subdivision (e), the consequence of having an invalid API is that "the school is ineligible for participation in any of the award programs for the current and subsequent year" except in the case of the school experiencing a significant demographic change in pupil population between the base and growth years, in which case, the school is ineligible for participation in any of the award programs for the current year only.

For a school district that certifies the information in subdivisions (d)(1) through (d)(3) of section 1032, its API "shall be considered invalid" which in turn, renders it ineligible for the Governor's Performance Award Program or the Certificated Staff Performance Incentive Act, according to subdivision (e).

In the *Kern High School District* case, the California Supreme Court considered school district's voluntary participation in the School Improvement Program, which the court called "substantial" because it provided \$394 million statewide in fiscal year 1998-1999.¹¹⁴ In finding that claimants were not practically compelled to participate in that and the other programs at issue, the court stated:

In essence, claimants assert that their participation in the education-related programs here at issue is so beneficial that, as a practical matter, they feel they must participate in the programs, accept program funds, and-by virtue of ... [the test claim statutes]- incur expenses necessary to comply with the procedural conditions imposed on program participation. Although it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of continued participation in the program, just as such a participant would be disappointed if the total amount of the annual funds provided for the program were reduced by legislative or gubernatorial action, the circumstance that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render the local entity's decision whether to continue its participation in the modified program any less voluntary.¹¹⁵

As discussed below, the Governor's Performance Award Program and the Certificated Staff Performance Incentive Act are voluntary programs. The activities in section 1032, subdivision

¹¹⁴ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 732.

¹¹⁵ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 753.

(d), of the title 5 regulations are performed only if the district chooses to participate in the Governor's Performance Award Program and the Certificated Staff Performance Incentive Act, the programs implemented by the regulations (§ 1031, subd. (b)). Therefore, the regulatory activities of notifying CDE of testing irregularities or other factors that would invalidate a school's API, like the activities at issue in the *Kern* case, do not constitute practical compulsion. Rather, "claimants have found the benefits of various funded programs 'too good to refuse' - even though as a condition of program participation, they have been forced to incur some costs."¹¹⁶ Moreover, there is nothing in the record to show that the school districts are practically compelled to participate in the programs.¹¹⁷

Additionally, the section 1032 regulation is under article 1.7 of title 5 of the California Code of Regulations, the express purpose of which, as stated in section 1031, subdivision (b), is to "implement the programs established by two statutes relating to the API: (1) The Governor's Performance Award Program of the Public Schools Accountability Act of 1999... (2) the Certificated Staff Performance Incentive Act" The regulation is a downstream requirement imposed on participants in these optional programs. As such, applying the reasoning in the *Kern School Dist.* case, staff finds that this regulation does not impose a state mandate.

SDUSD asserts that the interest in accurate information and informed parental choice of schools compels the school to comply with section 1032, subdivision (d).¹¹⁸ Although those may be worthwhile goals, they do not create practical compulsion for purposes of finding a state mandate. The Supreme Court in *Kern* described practical compulsion as the statute imposing "certain and severe penalties such as double taxation or other draconian consequences"¹¹⁹ for not participating in the programs, and described practical compulsion as "a substantial penalty (independent of the program funds at issue) for not complying with the statute."¹²⁰ As discussed above, the activity at issue (notifying CDE of circumstances that may invalidate a school's API) does not meet this standard.

Therefore, in the absence of legal or practical compulsion to notify the CDE when circumstances may exist that would invalidate a school's API, staff finds that subdivision (d) of section 1032 of the title 5 regulations¹²¹ does not impose a state mandate within the meaning of article XIII B, section 6.

Notify CDE and publisher of errors in STAR testing and demographic data: Subdivision (j) of section 1032 in the title 5 regulations states:

¹¹⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

¹¹⁷ Cf. *Department of Finance v. Commission on State Mandates*, *supra*, 170 Cal.App.4th, 1355, 1366.

¹¹⁸ Exhibit I.

¹¹⁹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751.

¹²⁰ *Id.* at p. 731.

¹²¹ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

The local educational agency [school district or county office of education] *must* notify the department and the test publisher via e-mail or in writing whether there are errors in the STAR testing or demographic data. The local education agency's notification *must* be received by the department and the test publisher within thirty (30) calendar days of the initial date of publication of the STAR testing and demographic data on the department's web-site. The local education agency *must* submit all data corrections to the publisher in writing or e-mail. The test publisher shall specify a deadline for submittal of the data corrections that is no less than forty-five (45) calendar days after the date of publication of the STAR testing and demographic data.¹²² [Emphasis added.]

Claimant pleads the following activities in the test claim:

- (1) Upon receipt of a report of STAR testing and demographic data from the CDE, notify the department and the test publisher within 30 days by way of e-mail or writing that there are errors in the STAR testing or demographic data (Cal Code Regs., tit. 5, § 1032, subd. (j)); and
- (2) Submit all data corrections to the test publisher in writing or e-mail on or before a deadline specified by the test publisher (*Ibid*).

Finance, in its October 2002 comments, states that the section does not specifically require districts to provide any information.¹²³ Also, CDE states that school districts already receive funding under the STAR program for administration and error correction. Finance alleges that currently it is the test publisher's responsibility to incur costs associated with correcting a publishing error in regards to the STAR program. According to Finance, if the district provides inaccurate data despite receiving funds to ensure the quality of the STAR data, the district should be held responsible for the fiscal implications at the local level.

In its November 2007 comments on the draft staff analysis, Finance asserts that the annual Budget Act provides apportionment funding per test to each district to ensure quality data collection and reporting.¹²⁴ According to Finance, if a district provides erroneous data, it is responsible to correct it because the district receives apportionment payments for correction and thus does not incur mandated costs.

Turning to the issue of whether the section 1032, subdivision (j), of the title 5 regulations imposes a state mandate, the regulation states that the local educational agency "must" notify the department and publisher of errors in the STAR testing and demographic data, and "must" submit data corrections to the publisher. The word "must" in the regulation is as mandatory as

¹²² This language was formerly in subdivision (i), Register 01, No. 46 (Nov. 15, 2001). It was moved to subdivision (j) by Register 02, No. 2 (Jan. 8, 2002).

¹²³ Exhibit B.

¹²⁴ Exhibit H.

the word "shall."¹²⁵ For the reasons discussed below, however, staff finds that these activities are not mandated by the state.

In interpreting this regulation, "[t]he same rules of construction apply in the interpretation or [sic] regulations as apply in the interpretation of statutes."¹²⁶ And the Commission, like a court, keeps in mind the following principles of statutory construction:

A statute must be construed 'in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts.' [Citation omitted.] "A court may consider the overall scheme in which an ambiguous statute is included in order to ascertain its intended meaning. [Citation omitted.] The organization of the division, chapters, and articles is an aid to understanding its purpose. [Citation omitted.] [division, chapter, article, and section headings may properly be considered in determining intent and are entitled to considerable weight].¹²⁷

Section 1032, put in context, is under article 1.7 of title 5 of the California Code of Regulations. The express purpose of article 1.7, as stated in section 1031, subdivision (b), is to "implement the programs established by two statutes relating to the API: (1) The Governor's Performance Award Program of the Public Schools Accountability Act of 1999... (2) the Certificated Staff Performance Incentive Act"

As discussed above, the Governor's Performance Award Program is not a state-mandated program, and as discussed below, the Certificated Staff Performance Incentive Act, is also not a state-mandated program. Thus, notifying CDE and the publisher of errors in the STAR testing or demographic data is not required. Rather, like the requirements placed on school districts in the *Kern* case, it is a "procedural condition imposed on program participation."¹²⁸ As such, it is not reimbursable because participation in the underlying award and incentive programs is voluntary.

This conclusion is also supported by the heading to section 1032, which is "General Eligibility Criteria for Award Programs Related to API Growth." This heading indicates that the regulation contains award program criteria rather than requirements that are independent of those award programs: The Governor's Performance Award Program and the Certificated Staff Performance Incentive Act (§ 1031, subd. (b)).

Therefore, staff finds that subdivision (j) of section 1032 of title 5 of the California Code of Regulations¹²⁹ does not impose a state mandate on school districts to notify the test publisher and CDE of errors in the STAR testing or demographic data.

¹²⁵ Education Code section 75: "'Shall' is mandatory and 'may' is permissive." See *Marcus & Millichap Real Estate Investment Brokerage Co. v. Woodman Investment Group* (2005) 129 Cal.App.4th 508, 519.

¹²⁶ *Lusardi Construction Co. v. California Occupational Safety & Health Appeals Bd.*, *supra*, 1 Cal.App.4th 639, 647.

¹²⁷ *Medical Bd. of California v. Superior Court*, *supra*, 111 Cal.App.4th 163, 175.

¹²⁸ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 753.

¹²⁹ Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

The other subdivisions in section 1032 (subds. (a), (i) & (k)) do not require a school district activity, so staff finds that they also do not impose a state mandate within the meaning of article XIII B, section 6.

Schoolsite Employees Performance Bonus (Stats. 2000, ch. 71, § 40, former Cal.Code Regs., tit. 5, §§ 1031–1033, 1036- 1038; former Cal. Code Regs., tit. 5, § 1033, subd. (b)): This uncodified statute requires school districts, county offices of education and charter schools, “as a condition of receiving funds” upon request from the SPI, to certify the number of full-time equivalent employees at each schoolsite under their jurisdiction that are eligible for awards under the Governor’s Performance Award Program. Schools are to use 50% of the award for one-time bonuses to employees, and the other 50% for any one-time purpose.

The title 5 regulations adopted for the Governor’s Performance Award program also applied to the Schoolsite Employees Performance Bonus program until the regulations, as applied to the Schoolsite Employees Performance Bonus, were repealed in January 2002.¹³⁰

Claimant alleges the following activities as a result of this program:

- (1) When requested by the SPI, to certify the number of full-time equivalent employees for the period requested in the creation of the one-time API Schoolsite Employees Performance Bonus (Stats. 2000, ch. 71, § 40);
- (2) For school districts and county offices of education to establish, periodically update and maintain employee records to receive, administer and distribute award moneys to staff as part of the Bonus program (*Ibid*);
- (3) Upon receipt of an award from the Governor’s Performance Award Program and the Schoolsite Employees Performance Bonus Award, to consult with the existing school site governance team/school site council to decide the use of the awards and have the distribution plan ratified by the governing board. The Superintendent of Public Instruction shall then apportion an equal amount per full-time equivalent employee to the appropriate school district, county office of education, or charter school for allocation to the schoolsites that have met or exceeded their Academic Performance Index growth target (*Ibid*).

CDE and Finance state that this program is voluntary and not a state mandate.

Claimant argues that the requirement to certify the number of full-time equivalent employees is mandatory upon the SPI’s request. Claimant argues that school districts do not apply for this program, but that the statute requires the SPI to allocate the sums appropriated, so the program is not discretionary.

The test claim statute (Stats. 2000, ch. 71, § 40) states in part:

- (a)(2) *As a condition of receiving funds pursuant to this section*, school districts, county offices of education, and charter schools shall, upon request by the

¹³⁰ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

Superintendent of Public Instruction and by November 1, 2000, certify the number of full-time equivalent employees employed... ." [¶]...[¶]

(a)(4) *As a condition of receiving funds pursuant to this section*, a schoolsite shall expend 50 percent of the funds to provide one-time bonuses, to its employees, to be divided equally among all schoolsite employees on a full-time equivalent basis. The other 50 percent may be used at the discretion of the schoolsite for any one-time purpose. [Emphasis added.]

The Schoolsite Employees Performance Bonus program is not mandated by the state. The school district requirements are only imposed "as a condition of receiving funds pursuant to this section." (Stats. 2000, ch. 71, § 40, subd. (a)(2) & (a)(4).) The statute does not state that schools are required to accept the funds, so there is no legal compulsion to participate in the program.

Moreover, there is no practical compulsion to participate in the Schoolsite Employees Performance Bonus program. There are no "certain and severe penalties"¹³¹ for not participating in the program, nor is there "a substantial penalty (independent of the program funds at issue) for not complying with the statute."¹³² Performing activities required as a condition of receiving funds does not create a state-mandated program.¹³³

Thus, the downstream activities (e.g., administering and distributing award funds and deciding on the use of funds) in this program are also not mandated, in accordance with the reasoning in the *Kern* case. Therefore, staff finds that Statutes 2000, chapter 71, section 40 (Schoolsite Employees Performance Bonus Program) is not a state mandate within the meaning of article XIII B, section 6.

Since the title 5 regulations (former Cal.Code Regs., tit. 5, §§ 1031-1033, 1036- 1038)¹³⁴ were intended to implement the Schoolsite Employees Performance Bonus Program (among others), staff also finds that they are not a state mandate because, as applied to this program, they are downstream of an optional program.

Certification of FTE employees: As originally adopted, section 1033, subdivision (b), of the title 5 regulations stated:

To participate in the Academic Performance Index Schoolsite Employees Performance Bonus awards school districts, county offices of education, and charter schools shall certify the number of full-time equivalent (FTE) employees employed as of the second principal apportionment of the 1999-2000 school year

¹³¹ *Kern High School Dist., supra*, 30 Cal.4th 727, 751.

¹³² *Id.* at p. 731.

¹³³ *Ibid.*

¹³⁴ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

at each school site under their jurisdiction that are eligible for awards in accordance with Education Code section 52057 (a).¹³⁵

Although this provision appears to be mandatory based on the plain meaning of "shall certify the number of" FTEs, it is not. Rather, this activity is conditional on participation in the Academic Performance Index Schoolsite Employees Performance Bonus awards, which is voluntary.

Based on the Supreme Court's reasoning in *Kern* regarding voluntary participation, and because certification of FTEs is a downstream activity that results from *voluntary* participation in the Schoolsite Employees Performance Bonus awards, staff finds that former section 1033, subdivision (b), is not a state mandate within the meaning of article XIII B, section 6.

Certificated Staff Performance Incentive Act (Ed. Code, §§ 44650-44654; added by Stats. 1999, ch. 52; Cal. Code Regs., tit. 5, §§ 1031-1032 & 1034 -1038): As indicated above, this act establishes one-time performance awards for teachers and other certificated staff in underachieving schools, where the academic performance of pupils significantly improves beyond the minimum percentage growth target established by the SPI based on the school's API.

Section 44650 establishes the act and the maximum award at \$25,000 per full-time equivalent (FTE) employee, subject to annual Budget Act appropriation. Section 44651 describes eligibility for funding. Section 44652 provides for allocation of funds by the SPI to school districts and charter schools. Section 44653 states that after receiving the allocation from the SPI, the governing board shall negotiate individual teacher and other certificated staff salary award amounts with the exclusive representative of the bargaining unit. Section 44654 details how funds are to be classified for purposes of the district's revenue limit, and for purposes of teacher retirement or benefits. Section 44650, subdivision (b), states that the SBE shall establish criteria for determining the eligibility of schools to receive the awards.

The criteria are in the title 5 regulations, which state their intent is to implement the Governor's Performance Award Program and the Certificated Staff Performance Incentive Act (§ 1031). The regulations also specify the general (§ 1032) and specific (§ 1034) eligibility criteria for the awards, describe funding distribution (§ 1035), specify the waiver deadline (§ 1036), and specify that the awards are not considered compensation when calculating retirement benefits (§ 1037), and that the Certificated Staff Performance Incentive program and the Governor's Performance Awards are not subject to the school district or school or indirect or other administrative charges (§1038).¹³⁶

Claimant alleges the following activities associated with the Certificated Staff Performance Incentive Act:

¹³⁵ This provision in subdivision (b) was adopted by Register 01, No. 5 (Jan. 30, 2001) and repealed by Register 02, No. 2 (Jan. 8, 2002)).

¹³⁶ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 4 (Jan. 26, 2001); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

(1) Establishing, periodically updating and maintaining employee payroll records to receive, administer and distribute the awards as part of the One-time Certificated Staff Performance Incentive Act (§ 44653);

(2) For each school district to complete an application on behalf of its eligible schools to participate in the program, to include (a) the number of eligible schools, (b) certification that the data used in the API calculations is accurate, and (c) a list of certificated staff positions on a full-time equivalent (FTE) basis at each of the eligible schools. After January 8, 2002, the application shall certify the data used in the API calculations is accurate, and report the number of certificated positions on an FTE basis at each of the eligible schools (§ 44651 & Cal.Code Regs., tit. 5, § 1034);

(3) When an award is received, for school districts to negotiate with the exclusive representative of the bargaining unit of the teachers and other certificated staff to determine the distribution of funds (§ 44653);

(4) In the event the governing board and the exclusive representative of teachers and other certificated staff do not reach an agreement regarding the distribution of an award under the program, or if the teachers and other certificated staff are not represented by an exclusive bargaining representative, for districts to calculate and distribute the award amounts as a percentage of base salaries that is determined by formula (§ 44653);

(5) Claimant also pleads the administrative costs to calculate individual salary awards, determine and locate recipients, and to deliver the awards and the cost of compensation-driven benefits incurred as a result of this program, as well as the Governor's High Achieving Schools Program and the API Schoolsite Employees Performance Bonus Program (§ 44654 & Cal.Code Regs., tit. 5, § 1038);

CDE and Finance allege in their comments that this program is not a state mandate because it is voluntary.

Claimant argues that districts have no reasonable alternative to participate, as detailed above. Claimant also disagrees with CDE that salary-driven costs can be recovered through the awards program.

According to the program's eligibility statute: "Any school district or charter school that maintains classes in kindergarten or any of grades 1 to 12, inclusive, *may apply* for funding under this article if it meets the condition of subdivision (b)." [Emphasis added.] Subdivision (b) requires the school's API to be below the 50th percentile relative to other public schools in the state in the prior year, and requires schools to meet other SPI-established criteria (§ 44651, subs. (a) & (b)). These criteria are in the regulations (Cal. Code Regs., tit. 5, §§ 1031-1032 & 1034 -1038).¹³⁷

The Certificated Staff Performance Incentive Act and applicable regulations do not legally compel school districts to participate, since the plain language of section 44651 authorizes but

¹³⁷ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 4 (Jan. 26, 2001); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

does not require districts to apply for the program. Nor is there any practical compulsion to participate in this program, independent of the program funds at issue.¹³⁸ There are no "certain and severe penalties ... or other draconian consequences"¹³⁹ for not participating in the program.

Therefore, staff finds that the Certificated Staff Performance Incentive Act (Ed. Code, §§ 44650-44654) is not a state mandate within the meaning of article XIII B, section 6. Staff also finds California Code of Regulations, title 5, sections 1031 and 1034-1038¹⁴⁰ do not impose state mandates for purposes of the Certificated Staff Performance Incentive Act.¹⁴¹

Schools in the alternative accountability system that choose the API: Not all schools are required to participate in the API. Section 52052, subdivision (h), as amended by Statutes 2001, chapter 887, states:

By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 test scores contributing to the schools' API scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools [formerly "independent study schools"].

The issue is whether schools with fewer than 100 valid test scores, or schools that are under the jurisdiction of the county board of education or a county superintendent of schools, community day schools, alternative schools (including continuation high schools, and opportunity schools or independent study schools) are mandated by the state to participate in the API. Staff finds that they are not.

As added by Statutes 2001, chapter 887, subdivisions (f)(1), (f)(2) and (g) of section 52052 stated:

(f)(1) A comprehensive high school, middle school, or elementary school with 11 to 99 valid test scores of pupils who were enrolled in a school within the same school district in the prior fiscal year shall receive an API score with an asterisk that indicates less statistical certainty than API scores based on 100 or more test scores.

(f)(2) A school under the jurisdiction of a county board of education or a county superintendent of schools, a community day school, or an alternative school,

¹³⁸ *Kern High School Dist., supra*, 30 Cal.4th 727, 731.

¹³⁹ *Id.* at 751.

¹⁴⁰ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 4 (Jan. 26, 2001); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

¹⁴¹ The regulations also apply to the API and Governor's Performance Award programs, so the finding here is limited to the regulations as they apply to the Certificated Staff Performance Incentive Act.

including continuation high schools and opportunity schools, may receive an API score if the school has 11 more [sic] or more valid test scores **and the school chooses to receive an API score** for at least three years.¹⁴² [Emphasis added.]

(g) Only schools with 100 or more test scores contributing to the API may be included in the API rankings.

Similarly, the title 5 regulations apply to “schools” defined as “all schools, including charter schools, that receive a ranking on the API including schools participating in the ... [II/USP].” (Cal.Code Regs., tit. 5, § 1032, subd. (a).) Subdivision (b) of section 1032 further states:

For the purposes of these award programs, the API shall be the measure of accountability for all schools, except those that fall under the alternative accountability system, once such a system is adopted by the [SBE] ... as required by Education Code section 52052(g). The Superintendent of Public Instruction will develop an alternative accountability system for schools with fewer than 100 valid test scores, schools that fall under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

Alternative schools **may elect to be part of the API accountability system** for the purposes of awards and interventions pursuant to the API.¹⁴³ If the school elects to be part of the API accountability system, the school shall remain in the system for at least three subsequent years.¹⁴⁴ [Emphasis added.]

According to the plain language of section 52052, subdivision (f), and the section 1032, subdivision (b) regulation, as quoted above, schools in the alternative accountability system participate in the API system voluntarily. The statute states that schools under the jurisdiction of a county board of education or county superintendent of schools, or a community day school or an alternative school may receive an API score “if the school has 11 or more valid test scores

¹⁴² Currently, subdivision (f)(2) states: “A school annually shall receive an API score, unless the Superintendent determines that an API score would be an invalid measure of the performance of the school for one or more of the following reasons...” Staff makes no finding on this current version.

¹⁴³ This provision originally read: “Once the alternative accountability system required by Education Code section 52052 (g) is adopted by the State Board of Education, alternative schools may elect to be part of the API accountability system for the purposes of awards and interventions pursuant to the API.” (Register 00, No. 52 (Dec. 28, 2000).) Although in earlier versions of the regulation, this choice is contingent on SBE’s adoption of an alternative accountability system, the finding is based on the statute (former Ed. Code, § 52052, subd. (f)(2)) which is not contingent.

¹⁴⁴ Register 00, No. 52 (Dec. 28, 2000); Register 01, No. 5 (Jan. 30, 2001); Register 01, No. 24 (Jun. 11, 2001); Register 01, No. 31 (Aug. 2, 2001); Register 01, No. 46 (Nov. 15, 2001); Register 02, No. 2 (Jan. 8, 2002).

and the school chooses to receive an API score for at least three years.”¹⁴⁵ And alternative schools, according to the regulation, may “elect” to be part of the API accountability system.¹⁴⁶

As the Supreme Court stated: “if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate.”¹⁴⁷ In this case, the test claim statutes and regulations expressly state that the API is voluntary as to the following types of schools: schools with fewer than 100 valid test scores, or schools that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, or alternative schools, including continuation high schools and opportunity schools and independent study schools. Therefore, based on the plain language of the statute and regulation, there is no legal compulsion for these schools to participate in the API program.

The Supreme Court, in *Kern*, also said that state mandates could be found in cases of practical compulsion, which it described as the statute imposing “certain and severe penalties such as double taxation or other draconian consequences”¹⁴⁸ for not participating in the programs. In another part of the *Kern* opinion, the court described practical compulsion as “a substantial penalty (independent of the program funds at issue) for not complying with the statute.”¹⁴⁹

There is, however, no practical compulsion to participate in the API. Section 52052.2 states that a school with an API score with an asterisk (11-99 valid test scores) may participate in the Governor’s Performance Awards Program and the II/USP. But even for schools not eligible for award programs due to lacking an API, there is no evidence of practical compulsion.

Not having an API, or having an invalid API score, is not practical compulsion, even though it excludes the school from some award programs. As in *Kern*, there is no practical compulsion merely because “claimants have found the benefits of various funded programs ‘too good to refuse’ –even though, as a condition of program participation, they have been forced to incur some costs.”¹⁵⁰ In short, there is no practical compulsion to participate in the API if the consequence of not participating is a school’s ineligibility for the Governor’s Performance Awards and the II/USP that the school finds “too good to refuse.”

Because there is no legal or practical compulsion for these specified types of schools to have an API, staff finds that the following schools are not mandated by the state to participate in the API system: schools with fewer than 100 valid test scores, or schools that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, or alternative schools, including continuation high schools and opportunity schools and independent

¹⁴⁵ Education Code section 52052, subdivision (f). Emphasis added.

¹⁴⁶ California Code of Regulations, title 5, section 1032, subdivision (b).

¹⁴⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743. Emphasis in original.

¹⁴⁸ *Id.* at p. 751.

¹⁴⁹ *Id.* at p. 731.

¹⁵⁰ *Id.* at p. 731.

study schools. For purposes of an API-related activity that is as a state mandate, 'schools' does not include these types of schools.

B. Does Education Code section 52056, subdivision (c), constitute a program within the meaning of article XIII B, section 6?

Discussion is now limited to the following provision that imposes a state mandate on school districts:

- Education Code section 52056, subdivision (c), for the governing board of each school district, after the annual publication of the API and SPI school rankings, to "discuss the results of the annual ranking at the next regularly scheduled meeting." (Stats. 2000, ch. 695.)

In order for this provision to be subject to article XIII B, section 6 of the California Constitution, it must constitute a "program." This means 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.¹⁵¹ Only one of these findings is necessary to trigger article XIII B, section 6.¹⁵²

The activity in the API statute is within the purview of public education accountability and improvement, programs that carry out a governmental function of providing a service to the public.¹⁵³ Moreover, the statute imposes a unique requirement on school districts. In sum, section 52056, subdivision (c), carries out the governmental function of providing accountability and improvement in public education, and is a law which, to implement state policy, imposes unique requirements on school districts and does not apply generally to all residents and entities in the state. Thus, staff finds that Education Code section 52056, subdivision (c), constitutes a program within the meaning of article XIII B, section 6.

Issue 2: Does Education Code section 52056, subdivision (c), impose a new program or higher level of service?

The next issue is whether subdivision (c) of section 52056, i.e., found above to be a state-mandated program, is a new program or higher level of service. To determine this, the test claim statute is compared to the legal requirements in effect immediately before enacting the test claim statute.¹⁵⁴

Discuss the API (Ed. Code, § 52056, subd. (c)): This provision requires the governing board of each school district, after the annual publication of the API and SPI school rankings, to "discuss the results of the annual ranking at the next regularly scheduled meeting." (As of Stats. 2000, ch. 695.)

¹⁵¹ *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d 46, 56.

¹⁵² *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

¹⁵³ "Education in our society is ... a peculiarly governmental function." *Long Beach Unified School District v. State of California*, *supra*, 225 Cal.App.3d 155, 172.

¹⁵⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

This activity is a new program or higher level of service, since prior law did not require this discussion. Nor could it have, given that the API did not exist prior to the test claim statute. Therefore, staff finds that the requirement for the school district governing board to discuss the API at its next meeting (Ed. Code, § 52056, subd. (c)) is a new program or higher level of service.

The school districts' discussion of the results of the annual API and SPI rankings is not state-mandated, however, for schools with fewer than 100 valid test scores, or schools in the alternative accountability system that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, or alternative schools, including continuation high schools and opportunity schools and independent study schools.

Issue 3: Does Education Code section 52056, subdivision (c), impose costs mandated by the state within the meaning of Government Code sections 17514 and 17556?

The final issue is whether Education Code section 52056, subdivision (c), imposes costs mandated by the state,¹⁵⁵ and whether any statutory exceptions listed in Government Code section 17556 apply to the claim. Government Code section 17514 defines "cost mandated by the state" as follows:

[A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

In the test claim,¹⁵⁶ claimant declares that it will incur costs in excess of \$200 during 2000-2002 to implement the claim statutes.¹⁵⁷

Discuss the API (Ed. Code, § 52056, subd. (c)): This provision requires the governing board of each school district, after the annual publication of the API and SPI school rankings, to "discuss the results of the annual ranking at the next regularly scheduled meeting."

Finance, in its November 2007 comments on the draft staff analysis, argues that this discussion of the API by the governing board is already required by Proposition 59.¹⁵⁸ As approved by the voters in November 2004, this ballot initiative added the following to the California Constitution:

(b)(1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

¹⁵⁵ *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

¹⁵⁶ Test Claim 01-TC-22, Exhibit 1, Declaration of Diana Halpenny, June 24, 2002. Exhibit A.

¹⁵⁷ Government Code section 17564. The current requirement is \$1000 in costs.

¹⁵⁸ Exhibit H.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

The ballot materials given to the electorate on Proposition 59 state that: "The measure does not directly require any specific information to be made available to the public. It does, however, create a constitutional right for the public to access government information."¹⁵⁹

The yardstick by which we measure the application of Proposition 59 to subdivision (c) of section 52056 is Government Code section 17556, subdivision (f), which states that the Commission shall not find costs mandated by the state if, after a hearing, the Commission finds:

(f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

In *California School Boards Association v. State of California*,¹⁶⁰ the court invalidated the "reasonably within the scope of" language in Government Code section 17556, subdivision (f). In fact, the court used Proposition 59 to illustrate why the "reasonably within the scope of" language is invalid:

One example suffices to show that the "reasonably within the scope of" language is overly broad. ... Any statute that has anything to do with open government is "reasonably within the scope of" Proposition 59. However, it is unlikely that the voters intended to grant carte blanche to the Legislature to impose unlimited, unreimbursable costs on local governments for all duties associated with open government.¹⁶¹

Therefore, the issue is whether section 52056's requirement to discuss the API ranking at the next regularly scheduled school board meeting is "necessary to implement or expressly included in" Proposition 59. Staff finds that it is not.

A requirement to discuss API rankings at a school board meeting is not expressly included in Proposition 59, nor is there any evidence or argument in the record that discussing API rankings

¹⁵⁹ Ballot Pamphlet, Statewide General Election (Nov. 2, 2004) Proposition 59, analysis by the Legislative Analyst. See: < http://www.lao.ca.gov/ballot/2004/59_11_2004.htm > as of May 11, 2008. Exhibit J. The courts frequently look to ballot materials to understand the terms of a measure enacted by the electorate. *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 737.

¹⁶⁰ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183.

¹⁶¹ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1215-1216.

is necessary to implement Proposition 59. The requirement to discuss the API rankings at school board meeting was enacted by Statutes 1999-2000 (1st Ex. Sess.), chapter 3, before Proposition 59 was enacted in November 2004. There is no indication in the legislative history of the test claim statute (Ed. Code, § 52056, subd. (c), Stats. 1999-2000 1st Ex. Sess., ch. 3, eff. Jun. 25, 1999, Stats. 2000, ch. 695) that it was intended to implement Proposition 59 or any other ballot initiative. Lacking any evidence to the contrary, staff finds that the provision regarding discussion of the API ranking in section 52056 is not "necessary to implement" Proposition 59 or any other ballot initiative.

Based on claimant's declaration accompanying the test claim, staff finds that Education Code section 52056, subdivision (c), imposes costs mandated by the state within the meaning of Government Code section 17514, and that no exceptions to reimbursement in Government Code section 17556 apply. (Ed. Code, § 52056, subd. (c), Stats. 1999-2000 1st Ex. Sess., ch. 3, eff. Jun. 25, 1999, Stats. 2000, ch. 695.)

CONCLUSION

For the reasons discussed above, staff finds, effective June 25, 1999, that Education Code section 52056, subdivision (c), imposes a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for a school district governing board to discuss the results of its annual ranking at the next regularly scheduled meeting following the annual publication of the API and SPI school rankings (Ed. Code § 52056, subd. (c), Stats. 1999-2000 1st Ex. Sess., ch. 3, eff. Jun. 25, 1999, Stats. 2000, ch. 695).

Staff also finds, however, that districts' discussing the results of the annual API and SPI rankings (in § 52056, subd. (c)) is not a reimbursable mandate for schools with fewer than 100 valid test scores, or schools in the alternative accountability system that are under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, alternative schools, including continuation high schools and opportunity schools and independent study schools. (Ed. Code, § 52052, subd. (f)(1), Stats. 2001, ch. 887 & Cal. Code Regs., tit. 5, § 1032, subd. (b).)

Staff also finds that participation in the II/USP pursuant to section 52053, subdivisions (d) and (j), do not constitute a reimbursable state mandate because no schools or school districts have participated in the II/USP pursuant to these provisions.

Staff also finds that all other test claim statutes and regulations do not constitute a reimbursable state-mandated program because they are either voluntary or are downstream of a voluntary activity.

Recommendation

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activity listed above.