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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.

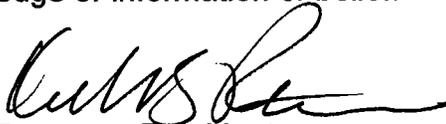
However, the DSA (39) concludes that for subsequent fiscal years, with specific Budget Act appropriations, that there "is no evidence in the record that these budget appropriations are insufficient to fund the mandate in section 1032, subdivision (j)." The DSA does not state, nor cite evidence, that 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

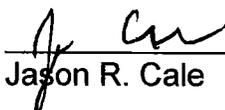
40 _____
41 (Describe)
42

FACSIMILE TRANSMISSION: On the
date below from facsimile machine
number (858) 514-8645, I personally
transmitted to the above-named person(s)
to the facsimile number(s) shown above,
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

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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