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October 12, 2006

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 900
San Diego, CA 92117

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Final Staff Analysis, Proposed Statement of Decision, and Hearing Date
Racial Profiling: Law Enforcement Training (K-14) (02-TC-05)
Santa Monica Community College District, Claimant
Penal Code Section 13519.4
Statutes 1990, Chapter 480 (SB 2680); Statutes 1992, Chapter 1267 (AB 401);
Statutes 2000, Chapter 684 (SB 1102); and Statutes 2001, Chapter 854 (SB 205)

Dear Mr. Petersen:

The final staff analysis and proposed Statement of Decision for this test claim are complete and enclosed for your review.

Hearing

The test claim and proposed Statement of Decision are set for hearing on **Thursday, October 26, 2006, at 9:30 a.m.** in Room 126 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, or if other witnesses will appear.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Deborah Borzelleri at (916) 322-4230 with any questions regarding the above.

Sincerely,

PAULA HIGASHI
Executive Director

Enc. Final Staff Analysis and Proposed Statement of Decision

MAILED: Mail List FAXED: _____
DATE: 10/12/06 INITIAL: LD
CHRON: _____ FILE: _____
WORKING BINDER: _____

ITEM 6

TEST CLAIM
FINAL STAFF ANALYSIS

Penal Code Section 13519.4

Statutes 1990, Chapter 480
Statutes 1992, Chapter 1267
Statutes 2000, Chapter 901
Statutes 2001, Chapter 854

Racial Profiling: Law Enforcement Training (K-14)
(02-TC-05)

Santa Monica Community College District, Claimant

EXECUTIVE SUMMARY

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by the Commission on Peace Officer Standards and Training (POST).

Law enforcement officers are required to take a basic training course prior to exercising their duties as peace officers, and must subsequently complete 24 hours of continuing professional training every two years. The test claim statute, as interpreted by POST, required a five-hour initial racial profiling training course and a two-hour refresher course every five years.

The test claim poses the following issue:

- Is the test claim statute subject to article XIII B, section 6 of the California Constitution?

The Test Claim Statute Does Not Impose a Reimbursable State-Mandated Program on K-14 School Districts

The test claim statute does not mandate any activities. There is no legal requirement on school districts or community colleges (hereafter, collectively "K-14 school districts") to establish police departments and employ peace officers. Furthermore, there is nothing in the test claim statute, the statute's legislative history, or the record for this test claim indicating that the Legislature intended the statute to protect the health and safety of the state's citizens on school district property in accordance with the Constitutional requirement for safe schools. Thus, the requirement for racial profiling training is only triggered by the K-14 school district's initial discretionary decision to establish a police department, and consequently does not impose a reimbursable state-mandated program on K-14 school districts.

Conclusion

Commission staff concludes that, since the initial decision by K-14 school districts to establish a police department and employ peace officers is discretionary, and there is no other evidence to support a finding that reimbursement should be allowed when triggered by such a discretionary decision, the test claim statute does not impose any mandated activities on K-14 school districts. Therefore, the test claim statute does not impose a reimbursable state-mandated program on K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.

STAFF ANALYSIS

Claimant

Santa Monica Community College District

Chronology

09/13/02	Santa Monica Community College District filed test claim with the Commission on State Mandates (Commission)
10/18/02	The Department of Finance (DOF) submitted comments on test claim with the Commission
08/31/06	Commission staff issued draft staff analysis
10/13/06	Commission staff issued final staff analysis

Background

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling, as defined,[1] and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by the Commission on Peace Officer Standards and Training (POST).

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.[2] The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.[3] Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.[4]

In enacting the test claim statute (Stats. 2000, ch. 684), the Legislature found that racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society, is abhorrent and cannot be tolerated.[5] The Legislature further found that motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.[6]

The test claim statute requires every law enforcement officer in the state to participate in expanded training regarding racial profiling, beginning no later than January 1, 2002.[7] The

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[1] Racial profiling is defined as "the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." (Pen. Code § 13519.4, subd. (d), as enacted in Stats. 2000, ch. 684.)

[2] Penal Code section 13500 et seq.

[3] *About California POST*, <http://www.POST.ca.gov>

[4] Penal Code sections 13522 and 13523.

[5] Penal Code section 13519.4, subdivision (c)(1) (as enacted in Stats. 2000, ch. 684).

[6] Penal Code section 13519.4, subdivision (c)(2).

[7] Penal Code section 13519.4, subdivision (f); Statutes 2004, chapter 700 (SB 1234) renumbered subdivision *(f)* to subdivision *(g)*. Commission staff makes no findings regarding

training shall be prescribed and certified by POST, in collaboration with a five-person panel appointed by the Governor, Senate Rules Committee and Speaker of the Assembly.[8]

Once the initial training on racial profiling is completed, each law enforcement officer in California, as described in subdivision (a) of Penal Code section 13510, who adheres to the standards approved by POST, is required to complete a two-hour refresher course every five years thereafter, or on a more frequent basis if deemed necessary.[9]

POST developed a five-hour approved curriculum to meet the initial training required by Penal Code section 13519.4, subdivision (f). The curriculum was designed to be presented in-house by a trained instructor within the law enforcement agency, who must complete a Racial Profiling Train-the-Trainer Course prior to facilitating the training. That course is given on an ongoing basis by the Museum of Tolerance in Los Angeles at no cost to the law enforcement agency, and the newly-trained instructor is provided with all necessary course material to train his or her own officers.[10] POST also developed a two-hour racial profiling refresher course curriculum, pursuant to subdivision (i).[11]

The five-hour initial racial profiling training was incorporated into the Regular Basic Course[12] for peace officer applicants after January 1, 2004,[13] and POST suggested that incumbent peace

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any substantive changes which may have been made in the 2004 statute since it was not pled in the test claim. Accordingly, staff will continue to refer to this provision as "subdivision (f)" as originally set forth in the test claim statute.

[8] Penal Code section 13519.4, subdivision (f).

[9] Penal Code section 13519.4, subdivision (i).

[10] Letter from POST, August 10, 2005:

> It is believed that in-house instructors provide validity to the training and can relate the material directly to agency policies.
>
> The curriculum was designed as a "course-in-a-box" and includes an instructor guide, facilitated discussion questions, class exercises, and a companion training video. ... The course was designed to ensure training consistency throughout the State.
>
> Due to the complexity and sensitivity of the topic, POST regulation requires that each instructor complete the 24-hour Racial Profiling Train-the-Trainer Course prior to facilitation the training. The Training for Trainers course is presented on an on-going basis by the Museum of Tolerance in Los Angeles. The course is presented under contract and is of no cost to the [local law enforcement] agency. At the completion of the training, the instructor is provided with all necessary course material to train their own officers.

[11] Letter from POST, August 10, 2005.

[12] Penal Code section 832.3 requires peace officers to complete a course of training prescribed by POST before exercising the powers of a peace officer.

[13] California Code of Regulations, title 11, section 1081, subdivision (a)(33).

officers complete the five-hour training by July 2004.[14] POST can certify a course retroactively,[15] thus it is possible for racial profiling courses that were developed and presented prior to the time POST developed its curriculum to be certified as meeting the requirements of Penal Code section 13519.4. Additionally, both the five-hour racial profiling course and the two-hour refresher course can be certified by POST to allow agencies and officers to apply the training hours toward their 24-hour Continuing Professional Training requirement.[16, 17]

Prior Test Claim Decisions

In the past, the Commission has decided six other test claims addressing POST training for peace officers, and one other case regarding school peace officers, that are relevant for this analysis.

1. Domestic Violence Training

In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course regarding the handling of domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376). The Commission reached the following conclusions:

- the test claim statute does not require local agencies to implement a domestic violence training program and to pay the cost of such training;
- the test claim statute does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours and, thus, no additional costs are incurred by local agencies; and
- the test claim statute does not require local agencies to provide domestic violence training.

2. Domestic Violence and Incident Reporting

In January 1998, the Commission denied a test claim filed by the County of Los Angeles requiring veteran law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years (*Domestic Violence Training and Incident Reporting*, CSM-96-362-01). Although the Commission recognized that the test claim statute imposed a new program or higher level of service, the Commission found that local agencies incurred *no* increased "costs mandated by the state" in carrying out the two-hour course for the following reasons:

- *immediately before and after* the effective date of the test claim statute, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*; after the operative date of the

[14] POST Legislative Training Mandates, updated August, 2004.

[15] California Code of Regulations, title 11, section 1052, subdivision (d).

[16] Letter from POST, dated August 10, 2005.

[17] Title 11, section 1005(d)(1) requires peace officers to complete 24 hours of POST-qualifying training every two years.

test claim statute these officers must still complete at least 24 hours of professional training every two years;

- the two-hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum;
- the two-hour training is *neither* "separate and apart" *nor* "on top of" the 24-hour minimum;
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two-hour course;
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question; and
- of the 24-hour minimum, the two-hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

That test claim was subsequently litigated and decided in the Second District Court of Appeal (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176 [*County of Los Angeles II*]), where the Commission's decision was upheld and reimbursement was ultimately denied.

3. Sexual Harassment Training in the Law Enforcement Workplace

In September 2000, the Commission approved in part and denied in part a test claim filed by the County of Los Angeles regarding sexual harassment training for peace officers (*Sexual Harassment Training in the Law Enforcement Workplace,* 97-TC-07). The test claim statute required POST to develop complaint guidelines to be followed by local law enforcement agencies for peace officers who are victims of sexual harassment in the workplace. The statute also required the course of basic training for law enforcement officers to include instruction on sexual harassment in the workplace, and veteran peace officers that had already completed basic training were required to receive supplementary training on sexual harassment in the workplace. The Commission reached the following conclusions:

- the sexual harassment complaint guidelines to be followed by local law enforcement agencies developed by POST constituted a reimbursable state-mandated program;
- the modifications to the course of basic training did not constitute a reimbursable state-mandated program since it did not impose any mandated duties on the local agency; and
- the supplemental training that required veteran peace officers to receive a one-time, two-hour course on sexual harassment in the workplace constituted a reimbursable state mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding

existing on the effective date of the statute which required the local agency to provide or pay for continuing education training.[18]

4. Law Enforcement Racial and Cultural Diversity Training

In October 2000, the Commission denied a test claim filed by the County of Los Angeles regarding racial and cultural diversity training for law enforcement officers (*Law Enforcement Racial and Cultural Diversity Training,* 97-TC-06). The test claim statute required that, no later than August 1, 1993, the basic training course for law enforcement officers include adequate instruction, as developed by POST, on racial and cultural diversity. The Commission found that the test claim statute did not impose any mandated duties or activities on local agencies since the requirement to complete the basic training course on racial and cultural diversity is a mandate imposed only on the individual who seeks peace officer status.

5. Elder Abuse Training

In January 2001, the Commission approved in part and denied in part a test claim filed by the City of Newport Beach regarding elder abuse training for city police officers and deputy sheriffs (*Elder Abuse Training,* 98-TC-12). The test claim statute required city police officers or deputy sheriffs at a supervisory level and below who are assigned field or investigative duties to complete an elder abuse training course, as developed by POST, by January 1, 1999, or within 18 months of being assigned to field duties. The Commission reached the following conclusions:

- The elder abuse training *did constitute* a reimbursable state-mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding existing on the effective date of the statute, which requires the local agency to provide or pay for continuing education training.[19]
- The elder abuse training *did not constitute* a reimbursable state-mandated program when applied to city police officers or deputy sheriffs hired after the effective date of the test claim statute, since such officers could apply the two-hour elder abuse training course towards their 24-hour continuing education requirement.

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[18] Reimbursable "costs mandated by the state" for this test claim included: 1) salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment in the workplace; and 2) costs to present the one-time, two-hour course in the form of materials and trainer time.

[19] Reimbursable "costs mandated by the state" for this test claim included: 1) costs to present the one-time, two-hour course in the form of trainer time and necessary materials provided to trainees; and 2) salaries, benefits and incidental expenses for each city police officer or deputy sheriff to receive the one-time, two-hour course on elder abuse in those instances where the police officer or deputy sheriff already completed their 24 hours of continuing education at the time the training requirement was imposed on the particular officer, and when a new two-year training cycle did not commence until after the deadline for that officer or deputy to complete elder abuse training.

6. Mandatory On-The-Job Training For Peace Officers Working Alone

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/ 02-TC-06). The Commission found that these executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

7. Peace Officer Procedural Bill of Rights

In April 2006, the Commission reconsidered a 1999 Statement of Decision in the *Peace Officer Procedural Bill of Rights* ("POBOR") test claim, to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions, as required by Statutes 2005, chapter 72. The Commission determined that the POBOR legislation did impose a reimbursable state-mandated program on school districts[20] for the following reasons:

- the Supreme Court in *San Diego Unified School Dist.* provided an example of circumstances in which a discretionary decision might, in a practical sense, constitute compulsion, i.e., that in light of a school district's constitutional obligation to provide a safe educational environment, incurring due process costs as result of the district's discretionary decision to expel a student for damaging or stealing property, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct that warrant such expulsion, may in a practical sense constitute compulsion;
- the Legislature declared that: 1) the rights and protections provided to peace officers under the test claim legislation is a matter of statewide concern; 2) effective law enforcement depends upon the maintenance of stable employer-employee relations; and 3) in order to assure that stable relations are continued throughout the state and to assure that effective services are provided to all people of the state, it was necessary to apply the legislation to all public safety officers;
- the Supreme Court in *Baggett v. Gates* (1982) 32 Cal.3d 128 held that the subject peace officers provided an "essential service" to the public and that the consequences

[20] *Peace Officer Procedural Bill of Rights* (05-RL-4499-01), Statement of Decision, April 26, 2006.

of a breakdown in employment relations between peace officers and their employers — a situation the POBOR legislation was intended to prevent — would create a clear and present threat to the health, safety, and welfare of the citizens of the state; and

- the Supreme Court in *In re Randy G.* (2001) 26 Cal.4th 556 held that, pursuant to article I, section 28, subdivision (c), of the California Constitution, school districts have an obligation to provide safe schools, and California fulfills that obligation by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.

Claimant's Position

The claimant states that the test claim statute constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for K-14 school districts.

Claimant asserts that costs for the following activities will be incurred and are reimbursable:

- Development of policies and procedures, and periodic updates of policies and procedures, to insure that each law enforcement officer employed by the district shall participate in the expanded training to prevent racial profiling, pursuant to Penal Code section 13519.4.
- Development and implementation of tracking procedures, commencing January 1, 2002, to assure that every law enforcement officer employed by the district shall participate and successfully complete the expanded course of training on racial and cultural differences and the negative impacts of racial profiling, pursuant to Penal Code section 13519.4, subdivision (f).
- Unreimbursed costs for travel, subsistence, meals, training and substitute salaries of law enforcement officers attending expanded training for preventing racial profiling, pursuant to Penal Code section 13519.4, subdivision (f).
- Development and implementation of tracking procedures to assure that every law enforcement officer employed by the district shall participate and successfully complete a refresher course to keep current with changing racial and cultural trends every five years, or possibly on a more frequent basis if deemed necessary, pursuant to Penal Code section 13519.4, subdivision (i).
- Unreimbursed costs for travel, subsistence, meals, training and substitute salaries of law enforcement officers attending refresher courses for preventing racial profiling, pursuant to Penal Code section 13519.4, subdivision (i).

Position of Department of Finance

DOF stated in its comments that the test claim statute does not result in a reimbursable state-mandated program for the following reasons:

- The test claim statute does not impose an obligation on any *law enforcement agency* to provide training — rather the statute imposes the requirement on the *law enforcement officer* — and three previous test claims are cited in which the Commission has found this to be the case.

- The statute does not require local agencies to develop and implement policies and procedures to ensure that law enforcement officers employed by the agency participate in the required training or to track whether or not these individuals participate in and successfully complete the training. Therefore, these activities would be conducted at the option of the local agency and would not result in a reimbursable state-mandated local program.
- The statute does not require local agencies to pay any costs related to travel, subsistence, meals, training, and substitute salaries of law enforcement officers attending the required training course on racial profiling that are not reimbursed by POST. Since the training requirement is on the individual officer and not the local agency, the local agency would not be liable for these costs. In addition, POST has determined that officers attending the courses on racial profiling are eligible for reimbursement of travel, subsistence, and meals. Officers and departments are not charged for the cost of the training course itself, rather these costs are incurred directly by POST, a state agency. POST has made efforts to ensure that the course is available at a number of locations throughout the state to minimize travel costs and officer time away from regular duties. Therefore, any costs related to reimbursement for travel, subsistence, and meals should be minimal. To the extent that a peace officer takes time off from regular duties to attend training, the local agency would incur costs to replace that officer during the time he or she is in training. However, DOF does not view these costs as any different from those that would be incurred if the officer were on vacation or sick leave.
- To the extent a local agency has a policy or agreement with an employee association to provide additional leave to the employees with peace officer status to attend training or to pay for training-related costs incurred by the peace officer, any costs incurred as a result of such policy or agreement is at the option of the local agency. Therefore, regardless of whether an individual officer is required to attend specified training to maintain his or her peace officer status, costs incurred by the local agency would not constitute a reimbursable state-mandated program.

DOF further noted that the test claim identifies Statutes 1992, chapter 1267, and Statutes 1990, chapter 480, as legislation that are alleged to contain a mandate. The chapters are relevant to providing legislative history of the issue, but do not appear to be specifically related to the new duties identified in this claim. DOF cited a previous test claim denied by the Commission — *Law Enforcement Racial and Cultural Diversity Training – CSM 97-TC-06* — which was based on Statutes 1992, chapter 1267, and thus it does not seem appropriate to include references to these chapters as a part of this claim.

DISCUSSION

The courts have found that article XIII B, section 6 of the California Constitution[21] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[22] "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."[23] 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.[24] In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.[25]

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.[26] To determine if the program is new or imposes a higher level of service, the test claim statute must be compared with the legal requirements in effect immediately before the enactment of the test claim statute.[27] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[28]

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[21] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse 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."

[22] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, 735.

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

[24] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[25] *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*).

[26] *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 (*Los Angeles I*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

[27] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[28] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[29]

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.[30] 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."[31]

The analysis addresses the following issue:

- Is the test claim statute subject to article XIII B, section 6 of the California Constitution?

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

The claimant pled in the test claim Penal Code section 13519.4, as added and amended by four statutes.[32] The 1990 statute enacted the first version of Penal Code section 13519.4, directing POST to develop and disseminate guidelines and training for law enforcement officers on the racial and cultural differences among the residents of California. It did not impose any activities on local law enforcement agencies. Commission staff also notes that the 1992 statute was pled and determined in a previous test claim, *Law Enforcement Racial and Cultural Diversity Training* (97-TC-06), which was denied by the Commission and was not appealed. Therefore, the Commission no longer has jurisdiction over that test claim and the 1992 statute. The 2001 statute made one spelling correction to subdivision (c) of Penal Code section 13519.4, and therefore is not relevant for this analysis. Accordingly, the analysis addresses only the provisions of the 2000 statute as that legislation affects Penal Code section 13519.4.

In order for the test claim statute to impose a reimbursable state-mandated program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental agencies or school districts. If the language does not mandate or require local entities to perform a task, then article XIII B, section 6 is not triggered.

The test claim statute, Statutes 2000, chapter 684, amended Penal Code section 13519.4 by adding subdivisions (c)(1) through (c)(4), and subdivisions (d) through (j). Each of these new provisions is summarized below.

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[29] *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.

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

[31] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[32] 1) Statutes 1990, chapter 480; 2) Statutes 1992, chapter 1267; 3) Statutes 2000, chapter 684; and 4) Statutes 2001, chapter 854.

Subdivisions (c)(1) through (c)(4): These subdivisions state the Legislature's findings and declarations regarding racial profiling and do not mandate any activities.

Subdivision (d): This subdivision provides a definition for racial profiling and does not mandate any activities.

Subdivision (e): This subdivision states that law enforcement officers "shall not engage in racial profiling" and thus prohibits, rather than mandates, an activity.

Subdivision (f): This subdivision states that every law enforcement officer in the state shall participate in expanded racial profiling training that is prescribed and certified by POST, to begin no later than January 1, 2002; it further sets forth requirements for POST to collaborate with a five-person panel appointed by the Governor and the Legislature in developing the training. Thus, the provision does mandate an activity on local law enforcement officers. Whether this mandates an activity on K-14 school districts is analyzed below.

Subdivision (g): This subdivision states that members of the panel established pursuant to subdivision (f) shall not be compensated except for reasonable per diem related to their work for panel purposes, and does not mandate any activities on local government entities.

Subdivision (h): This subdivision specifies that certain requirements be incorporated into the racial profiling curriculum, but does not mandate any activities on local government entities.

Subdivision (i): This subdivision requires that once the initial racial profiling training is completed, each law enforcement officer as described in Penal Code section 13510, subdivision (a), who adheres to the standards approved by POST, complete a refresher course every five years thereafter or on a more frequent basis if deemed necessary. Thus, the provision does mandate an activity on specified law enforcement officers. Whether this mandates an activity on K-14 school districts is analyzed below.

Subdivision (j): This provision requires the Legislative Analyst to conduct a study of data being voluntarily collected on racial profiling and provide a report to the Legislature. It does not mandate any activities on local government entities.

A. Does Penal Code section 13519.4 mandate any activities on school districts?

Penal Code section 13519.4, subdivision (f), states in pertinent part:

> Every law enforcement officer in this state shall participate in expanded [racial profiling] training as prescribed and certified by the Commission on Peace Officers Standards and Training. Training shall begin being offered no later than January 1, 2002.

Subdivision (i) states in pertinent part:

> Once the initial basic [racial profiling] training is completed, each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by the commission shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends.

Claimant contends that Penal Code section 13519.4 mandates K-14 school districts to: 1) develop, implement and periodically update policies and procedures to insure that each law enforcement officer employed by the district participates in the expanded and refresher racial profiling training; 2) develop and implement tracking procedures to assure that every law enforcement officer employed by the district participates and successfully completes the expanded and refresher racial profiling training; and 3) pay the unreimbursed costs for travel, subsistence, meals, training and substitute salaries of their law enforcement officers attending the expanded and refresher racial profiling training.

The plain meaning of Penal Code section 13519.4, subdivisions (f) and (i), requires only that each law enforcement officer attend the expanded and refresher racial profiling training. Nothing in the test claim statute requires the employer of law enforcement officers to develop and implement policies, procedures, or tracking measures to ensure that the officers attend the required training. Further, nothing in the statute requires employers to pay for travel, subsistence or meals for these officers.

Thus, the only activities for which the claimant has requested reimbursement that could possibly be considered mandated are: 1) the unreimbursed costs of the actual training; and 2) substitute salaries for the officers while attending the training.

1. K-14 School District Police Officers are Subject to the POST Racial Profiling Training Requirements

To determine whether any activities are mandated of K-14 school districts, the first issue which must be addressed is whether K-14 school district police officers are subject to these requirements. Penal Code section 13519.4, subdivision (f), requires "[e]very law enforcement officer in this state," to attend expanded racial profiling training. Subdivision (i) requires "each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by [POST]" to attend refresher training. As explained below, K-14 school district police officers hired to enforce the law are required to attend both the initial and refresher racial profiling training.

Penal Code section 13510, subdivision (a), states that, "[f]or the purpose of raising the level of competence of local *law enforcement officers*, [POST] shall adopt ... rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of ... police officers of a district authorized by statute to maintain a police department ..." (Emphasis added.) Subdivision (a) further states that, "[POST] also shall adopt, and may from time to time amend, rules establishing minimum standards for training ... police officers of a district authorized by statute to maintain a police department..." Thus, POST is required to adopt minimum standards for the recruitment and training of police officers of districts that are authorized to maintain police departments.

Education Code section 38000[33] authorizes the formation of school district police departments and hiring of peace officers: "(a) The governing board of any school district may establish a ... police department... [T]he governing board may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the

[33] Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

school district." Section 38001 states that "persons employed and compensated as members of a police department of a school district, when appointed and duly sworn, are *peace officers*, for the purposes of carrying out their duties of employment pursuant to Section 830.32 of the Penal Code."

Education Code section 72330,[34] subdivision (a), authorizes the formation of community college police departments and hiring of peace officers: "The governing board of a community college district may establish a community college police department and ... may employ personnel as necessary to *enforce the law* on or near the campus of the community college and on or near other grounds or properties [of] the community college..." Subdivision (c) states that "[p]ersons employed and compensated as members of a community college police department, when so appointed and duly sworn, are *peace officers* as defined in ... the Penal Code."

Penal Code section 830.32 provides:

> The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.
>
> (a) Members of a California Community College police department appointed pursuant to Section 72330 of the Education Code, if the primary duty of the police officer is the *enforcement of the law* as prescribed in Section 72330 of the Education Code.
>
> (b) Persons employed as members of a police department of a school district pursuant to Section 38000 of the Education Code, if the primary duty of the police officer is the *enforcement of the law* as prescribed in Section 38000 of the Education Code.
>
> (c) Any peace officer employed by a K-12 public school district or Community College district who has completed training as prescribed by subdivision (f) of Section 832.3 shall be designated a school police officer. (Emphasis added.)

Furthermore, Penal Code section 832.3, subdivisions (f) through (h), state the following:

> (f) Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete a basic course of training as prescribed by subdivision (a) before exercising the powers of a peace officer ...
>
> (g) [POST] shall prepare a specialized course of instruction for the training of school peace officers, as defined in Section 830.32, to meet the

[34] Derived from 1959 Education Code section 25429.

unique safety needs of a school environment. This course is intended to supplement any other training requirements.

(h) Any school peace officer first employed by a K-12 public school district or California Community College district before July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) no later than July 1, 2002. Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) within two years of the date of first employment.

Thus, K-14 school district police officers are considered peace officers when their primary duties are to enforce the law, and pursuant to those duties would also be considered part of the broader classification of "law enforcement officer" for purposes of POST. Since they are also required to attend basic training and specialized school peace officer training prescribed by POST, these police officers would also be considered law enforcement officers who "adhere to the standards approved by POST." Accordingly, those K-14 employees who exercise the duties of "peace officer" are "law enforcement offers" in the state who are required to attend initial and refresher racial profiling training pursuant to Penal Code section 13519.4, subdivisions (f) and (i).

2. K-14 School Districts Are Not Mandated by the State to Comply with the POST Racial Profiling Training Requirements

The next issue is whether K-14 school districts that employ such peace officers are mandated by the state to comply with the racial profiling training requirements. As noted above, in 1959 both K-12 school districts and community college districts were granted statutory *authority* to establish police departments and employ peace officers. However, while counties and cities are mandated by the California Constitution to establish sheriff or police forces,[35] K-12 school districts and community college districts are not expressly required to do so.

The California Constitution, article IX, Education, establishes and permits the formation of school districts, including community college districts, and county boards of education, all for the purpose of encouraging "the promotion of intellectual, scientific, moral and agricultural improvement."[36] Although the Legislature is permitted to authorize K-14 school districts "to act in any manner which is not in conflict with the laws and purposes for which school districts are established,"[37] and Article I, section 28, subdivision (c), of the California Constitution

[35] Article XI of the California Constitution provides for the formation of cities and counties. Section 1, regarding counties, states that the Legislature shall provide for an elected county sheriff. Section 5, regarding city charters, specifies that city charters are to provide for the "government of the city police force."

[36] California Constitution, article IX, section 1.

[37] California Constitution, article IX, section 14.

requires K-12 school districts to maintain safe schools,[38] the Constitution does not specifically require K-14 school districts to operate police departments or employ school security officers independent of the public safety services provided by the cities and counties a school district serves.

The case law is instructive in analyzing whether programs are mandatory or discretionary. The first significant case addressing the issue was *City of Merced v. State of California* (1984) 153 Cal. App. 3d 777. In that case, the test claim statute had revised the California eminent domain laws to include a new requirement that the owner of a business conducted on condemned property is entitled to compensation for loss of goodwill.[39] The City claimed reimbursement for its required compensation to the business owner for good will pursuant to the new statute, in proceedings to acquire property under the City's power of eminent domain. The court held that, because it was clear from the Legislature's intent in enacting the new statute that the decision to exercise eminent domain is left to the *discretion of the entity authorized to acquire the property*, the payment for loss of goodwill was not a state-mandated cost.[40]

In *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, the Supreme Court addressed another aspect of the issue, i.e., whether a mandate could be created by requirements that attached to a school district as a result of that district's participation in an underlying voluntary program. There, the district had voluntarily participated in various school-related educational programs establishing councils and advisory committees, where participation resulted in state or federal funding grants to operate the programs.[41] Subsequent legislation, in an effort to make such councils and advisory committees more open and accessible to the public, required certain notice and agenda requirements claimed by the school district to constitute a reimbursable state-mandated program.[42]

The court found in this case that the notice and agenda requirements did not constitute a reimbursable state-mandated program, reasoning as follows:

> First, we reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that the notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, without regard to whether a claimant's participation in the underlying program is voluntary or compelled. Second, we conclude that as to *eight* of the nine underlying funded programs here at issue, claimants have not been legally compelled to participate in those

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[38] Article I, section 28, subdivision (c), of the California Constitution provides that "[a]ll students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful."

[39] *City of Merced, supra,* 153 Cal.App.3d 777, 782.

[40] *Id.* at page 783.

[41] *Kern High School Dist., supra,* 30 Cal.4th 727, 732.

[42] *Ibid.*

> programs, and hence cannot establish a reimbursable state mandate as to those programs based upon a theory of legal compulsion. Third, assuming (without deciding) that claimants have been legally compelled to participate in *one* of the nine programs, we conclude that claimants nonetheless have no entitlement to reimbursement from the state for such expenses, because they have been free at all relevant times to use funds provided by the state for that program to pay required program expenses — including the notice and agenda costs here at issue.

The court also stated that although it analyzed the legal compulsion issue, the court found it "*unnecessary* in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that *even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion*, the circumstances presented in this case do not constitute such a mandate."[43] (Emphasis added.) The court did provide language addressing what might constitute *practical* compulsion, for instance if the state were to impose a substantial penalty for nonparticipation in a program, as follows:

> Finally, we reject claimants' alternative contention that even if they have not been *legally* compelled to participate in the underlying funded programs, as a *practical* matter they have been compelled to do so and hence to incur notice- and agenda-related costs. Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion — for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program — claimants here faced no such practical compulsion. Instead, although claimants argue that they have had "no true option or choice" other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that 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. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate. (Emphasis in original.)[44]

The 2004 *San Diego Unified School Dist.* case further clarified the Supreme Court's views on the legal compulsion issue. In that case, the test claim statute required the district to afford a student specified hearing procedures whenever an expulsion recommendation was made and before a student may be expelled.[45] The court held that hearing costs incurred as a result of *statutorily required* expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.[46] The court found the factor that

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[43] *Id.* at page 736.

[44] *Id.* at 731.

[45] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 866.

[46] *Id.* at pages 881-882.

triggered the mandate was the *state statute* requiring an expulsion recommendation, and that state statute did not implement a federal law or regulation then in existence.[47]

Regarding expulsion recommendations that were *discretionary* on the part of the district, the court acknowledged the school district's argument that the hearing procedures were mandated even when the district exercised its discretion, despite the *City of Merced* and *Kern High School Dist.* cases. The court stated:

> Indeed, the Court of Appeal below suggested that the present case is distinguishable from *City of Merced* [citation omitted], in light of article I, section 28, subdivision (c), of the state Constitution. That constitutional subdivision, part of Proposition 8 (known as the Victims' Bill of Rights initiative, adopted by the voters at the Primary Election in June 1982), states: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." The Court of Appeal below concluded: "In light of a school district's constitutional obligation to provide a safe educational environment ..., the incurring of [due process hearing] costs cannot properly be viewed as a nonreimbursable 'downstream' consequence of a decision to [seek to] expel a student under [the discretionary expulsion provisions] for damaging or stealing school or private property, suing or selling illicit drugs, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct ... that warrant such expulsion."
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> Building upon this theme, amicus curiae on behalf of the District, California School Boards Association, argues that based upon article I, section 28, subdivision (c), of the state Constitution, together with Education Code section 48200 et seq. and article IX, section 5 of the state Constitution (establishing and implementing a right of public education), *no* expulsion recommendation is "truly discretionary." Indeed, amicus curiae argues, school districts may not, "either as a matter of law or policy, realistically choose to [forgo] expelling [a] student [who commits one of the acts, other than firearm possession, referenced in [the] Education Code ... discretionary provision], because doing so would fail to meet that school district's legal obligations to provide a safe, secure and peaceful learning environment for the other students."[48]

In response to these arguments, the Supreme Court stated that "[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial

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[47] *Ibid.*

[48] *San Diego Unified School Dist., supra,* 33 Cal.4th at page 887, footnote 22.

discretionary decision that in turn triggers mandated costs."[49] (Emphasis added.) The court provided the following explanation:

> Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been proper. For example, as explained above, in *Carmel Valley, supra,* 190 Cal.App.3d 531, ... an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.* at pp. 537-538 ... .) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ — and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable *for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc.* We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result. (Emphasis added.)[50]

The Supreme Court did not decide the issue in *San Diego Unified School Dist.* on that basis, however, stating: "[i]n any event, we have determined that we need not address in this case the problems posed by such an application of the rule articulated in *City of Merced*, because this aspect of the present case can be resolved on an alternative basis."[51] Ultimately, no reimbursement was allowed where the district exercised its discretion in recommending an expulsion, because the court found that "all hearing costs ... triggered by the District's exercise of discretion to seek expulsion, should be treated as having been incurred pursuant to a mandate of federal [due process] law ..."[52]

Nevertheless, both *Kern High School Dist.* and *San Diego Unified School Dist.* demonstrate the Supreme Court's hesitation to apply the rule from *City of Merced,* where that rule would preclude reimbursement in *every* instance that an entity makes an initial discretionary decision which in turn triggers mandated costs.

In summary, the *Kern High School Dist.* case provided an example of "practical" compulsion, i.e., where a local entity might face substantial penalties for nonparticipation in a program, and

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[49] *Id.* at page 887.

[50] *Id.* at pages 887-888.

[51] *Id.* at page 888.

[52] *Id.* at page 890.

thus reimbursement might be appropriate. The court in *San Diego Unified School Dist.* supported the district's argument regarding "practical" compulsion in the circumstance where a K-12 school district makes a discretionary decision to expel a student who commits one of the acts set forth in the Education Code's discretionary provisions, in order to fulfill its legal obligations under the constitutional requirement to provide a safe, secure and peaceful learning environment at the school. The court in *San Diego Unified School Dist.* also expressed concerns that the intent of article XIII B, section 6, might not be carried out if the *City of Merced* rule were used to preclude reimbursement "for the simple reason" that the local agency's decision to employ firefighters, and how many to employ, involves an exercise of discretion.

One additional case, *In re Randy G.* (2001) 26 Cal.4th 556, is relevant for this analysis. There, the Supreme Court held that pursuant to the safe schools provision of the Constitution, K-12 school districts, apart from education, have an "obligation to protect pupils from other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern." The court further held that California fulfills its obligations under the K-12 safe schools constitutional provision by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.[53]

As previously noted, reimbursement has been denied, pursuant to *Kern*, for activities imposed on K-14 school districts when those activities were triggered by the district's discretionary decision to establish a police department and employ peace officers, since there was neither any legal compulsion to establish a police department, nor any "practical" compulsion in the form of "substantial penalties" for the school district to fail to establish a police department.

On the other hand, the Commission has approved reimbursement for activities imposed on K-14 school district police departments in light of the constitutional requirement for safe schools coupled with the Legislature's declaration that the condition being addressed by the test claim statute would "create a clear and present threat to the health, safety, and welfare of the citizens of the state." Thus, previous interpretations of the *San Diego Unified School Dist.* case have allowed reimbursement where the test claim statute establishes a direct connection to the need to provide safe schools pursuant to the Constitution.

In the test claim statute at issue here, pursuant to the *Kern High School Dist.* case, K-14 school districts have neither the legal compulsion nor any practical compulsion to establish a police department and employ peace officers, since the statutes authorize but do not require establishment, and no "substantial penalties" would be imposed for the district's failure to establish a police department. In addition, staff finds that the purpose of the test claim statute is not to provide safe schools. Thus, there is no showing of practical compulsion pursuant to the *San Diego Unified School Dist.* case.

The test claim statute requires racial profiling training for "every law enforcement officer" in California. In Penal Code section 13519.4, subdivision (c), the Legislature declared that:

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[53] *In re Randy G.* (2001) 26 Cal.4th 556, 562-563.

(1) Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated.

(2) Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.

(3) It is the intent of the Legislature in enacting the changes to Section 13519.4 of the Penal Code made by the act that added this subdivision that more than additional training is required to address the pernicious practice of racial profiling and that enactment of this bill is in no way dispositive of the issue of how the state should deal with racial profiling.

Although the test claim statute affects all law enforcement officers in the state, and addresses a "discriminatory practice" that presents a "great danger to the fundamental principles of a democratic society," it does not provide a direct connection to the constitutional requirement to provide safe schools. There is no evidence in the test claim statute or its legislative history, or the record of this test claim, which indicates that the Legislature intended the statute to protect the health and safety of the citizens on school district property. Therefore, no "practical" compulsion with regard to safe schools can be found with this test claim statute.

Furthermore, since the constitutional provision requiring safe schools does not apply to community colleges, the cases cited above do not address the issue for community college districts.

No other indications by the Supreme Court, the Constitution or the Legislature support a finding that *reimbursement should be allowed* when triggered by a K-14 school district's discretionary decision to establish a police department and employ peace officers, and there is no other evidence in the record to support such a finding.

CONCLUSION

Commission staff concludes that, since the initial decision by K-14 school districts to establish a police department and employ peace officers is discretionary, and there is no other evidence to support a finding that reimbursement should be allowed when triggered by such a discretionary decision, the test claim statute does not impose any mandated activities on K-14 school districts. Therefore, the test claim statute does not impose a reimbursable state-mandated program on K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.

ITEM 7

TEST CLAIM
PROPOSED STATEMENT OF DECISION

Penal Code Section 13519.4

Statutes 1990, Chapter 480
Statutes 1992, Chapter 1267
Statutes 2000, Chapter 901
Statutes 2001, Chapter 854

Racial Profiling: Law Enforcement Training (K-14)
(02-TC-05)

Santa Monica Community College District, Claimant

EXECUTIVE SUMMARY

The sole issue before the Commission on State Mandates ("Commission") is whether the Proposed Statement of Decision accurately reflects the Commission's decision on the *Racial Profiling: Law Enforcement Training (K-14)* test claim.[1].

Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision, beginning on page three, which accurately reflects the staff analysis and recommendation on this test claim. Minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

If the Commission's vote on Item 6 modifies the staff analysis, staff recommends that the motion to adopt the Proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. Alternatively, if the changes are significant, staff recommends that adoption of a Proposed Statement of Decision be continued to the December 2006 Commission hearing.

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[1] California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM:	**Case No.: 02-TC-05**
Penal Code Section 13519.4; Statutes 1990, Chapter 480; Statutes 1992, Chapter 1267; Statutes 2000, Chapter 684; Statutes 2001, Chapter 854; Filed on September 13, 2002 by the Santa Monica Community College District, Claimant.	***Racial Profiling: Law Enforcement Training (K-14)*** PROPOSED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Proposed for Adoption on October 26, 2006)*

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on October 26, 2006. [Witness list will be included in the final Statement of Decision.]

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/modified] the staff analysis denying this test claim at the hearing by a vote of [vote count will be included in the final Statement of Decision].

Summary of Findings

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by the Commission on Peace Officer Standards and Training (POST).

Law enforcement officers are required to take a basic training course prior to exercising their duties as peace officers, and must subsequently complete 24 hours of continuing professional training every two years. The test claim statute, as interpreted by POST, required a five-hour initial racial profiling training course and a two-hour refresher course every five years.

The test claim statute does not mandate any activities. The decision by school districts or community colleges (hereafter, collectively "K-14 school districts") to establish police departments and employ peace officers is discretionary. Furthermore, there is nothing in the test claim statute, the statute's legislative history, or the record for this test claim indicating

that the Legislature intended the statute to protect the health and safety of the state's citizens on school district property in accordance with the Constitutional requirement for safe schools, and there is no other evidence to support a finding that reimbursement should be allowed when triggered by such a discretionary decision. Therefore, the test claim statute does not impose a reimbursable state-mandated program on K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution.

BACKGROUND

This test claim addresses legislation that prohibits law enforcement officers from engaging in racial profiling, as defined,[2] and establishes racial profiling training requirements for law enforcement officers, with the curriculum developed by POST.

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.[3] The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.[4] Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.[5]

In enacting the test claim statute (Stats. 2000, ch. 684), the Legislature found that racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society, is abhorrent and cannot be tolerated.[6] The Legislature further found that motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.[7]

The test claim statute requires every law enforcement officer in the state to participate in expanded training regarding racial profiling, beginning no later than January 1, 2002.[8] The training shall be prescribed and certified by POST, in collaboration with a five-person panel appointed by the Governor, Senate Rules Committee and Speaker of the Assembly.[9]

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[2] Racial profiling is defined as "the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." (Pen. Code § 13519.4, subd. (d), as enacted in Stats. 2000, ch. 684.)

[3] Penal Code section 13500 et seq.

[4] *About California POST*, <http://www.POST.ca.gov>

[5] Penal Code sections 13522 and 13523.

[6] Penal Code section 13519.4, subdivision (c)(1) (as enacted in Stats. 2000, ch. 684).

[7] Penal Code section 13519.4, subdivision (c)(2).

[8] Penal Code section 13519.4, subdivision (f); Statutes 2004, chapter 700 (SB 1234) renumbered subdivision *(f)* to subdivision *(g)*. The Commission makes no findings regarding any substantive changes which may have been made in the 2004 statute since it was not pled in the test claim. Accordingly, the Commission will continue to refer to this provision as "subdivision (f)" as originally set forth in the test claim statute.

[9] Penal Code section 13519.4, subdivision (f).

Once the initial training on racial profiling is completed, each law enforcement officer in California, as described in subdivision (a) of Penal Code section 13510, who adheres to the standards approved by POST, is required to complete a two-hour refresher course every five years thereafter, or on a more frequent basis if deemed necessary.[10]

POST developed a five-hour approved curriculum to meet the initial training required by Penal Code section 13519.4, subdivision (f). The curriculum was designed to be presented in-house by a trained instructor within the law enforcement agency, who must complete a Racial Profiling Train-the-Trainer Course prior to facilitating the training. That course is given on an ongoing basis by the Museum of Tolerance in Los Angeles at no cost to the law enforcement agency, and the newly-trained instructor is provided with all necessary course material to train his or her own officers.[11] POST also developed a two-hour racial profiling refresher course curriculum, pursuant to subdivision (i).[12]

The five-hour initial racial profiling training was incorporated into the Regular Basic Course[13] for peace officer applicants after January 1, 2004,[14] and POST suggested that incumbent peace officers complete the five-hour training by July 2004.[15] POST can certify a course retroactively,[16] thus it is possible for racial profiling courses that were developed and presented prior to the time POST developed its curriculum to be certified as meeting the requirements of Penal Code section 13519.4. Additionally, both the five-hour racial profiling course and the

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[10] Penal Code section 13519.4, subdivision (i).

[11] Letter from POST, August 10, 2005:

> It is believed that in-house instructors provide validity to the training and can relate the material directly to agency policies.
>
> The curriculum was designed as a "course-in-a-box" and includes an instructor guide, facilitated discussion questions, class exercises, and a companion training video. ... The course was designed to ensure training consistency throughout the State.
>
> Due to the complexity and sensitivity of the topic, POST regulation requires that each instructor complete the 24-hour Racial Profiling Train-the-Trainer Course prior to facilitation the training. The Training for Trainers course is presented on an on-going basis by the Museum of Tolerance in Los Angeles. The course is presented under contract and is of no cost to the [local law enforcement] agency. At the completion of the training, the instructor is provided with all necessary course material to train their own officers.

[12] Letter from POST, August 10, 2005.

[13] Penal Code section 832.3 requires peace officers to complete a course of training prescribed by POST before exercising the powers of a peace officer.

[14] California Code of Regulations, title 11, section 1081, subdivision (a)(33).

[15] POST Legislative Training Mandates, updated August, 2004.

[16] California Code of Regulations, title 11, section 1052, subdivision (d).

two-hour refresher course can be certified by POST to allow agencies and officers to apply the training hours toward their 24-hour Continuing Professional Training requirement.[17, 18]

Prior Test Claim Decisions

In the past, the Commission has decided six other test claims addressing POST training for peace officers, and one other case regarding school peace officers, that are relevant for this analysis.

1. Domestic Violence Training

In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course regarding the handling of domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376). The Commission reached the following conclusions:

- the test claim statute does not require local agencies to implement a domestic violence training program and to pay the cost of such training;
- the test claim statute does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours and, thus, no additional costs are incurred by local agencies; and
- the test claim statute does not require local agencies to provide domestic violence training.

2. Domestic Violence and Incident Reporting

In January 1998, the Commission denied a test claim filed by the County of Los Angeles requiring veteran law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years (*Domestic Violence Training and Incident Reporting*, CSM-96-362-01). Although the Commission recognized that the test claim statute imposed a new program or higher level of service, the Commission found that local agencies incurred *no* increased "costs mandated by the state" in carrying out the two-hour course for the following reasons:

- *immediately before and after* the effective date of the test claim statute, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*; after the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years;
- the two-hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum;
- the two-hour training is *neither* "separate and apart" *nor* "on top of" the 24-hour minimum;

[17] Letter from POST, dated August 10, 2005.

[18] Title 11, section 1005(d)(1) requires peace officers to complete 24 hours of POST-qualifying training every two years.

- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two-hour course;
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question; and
- of the 24-hour minimum, the two-hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

That test claim was subsequently litigated and decided in the Second District Court of Appeal (*County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176 [*County of Los Angeles II*]), where the Commission's decision was upheld and reimbursement was ultimately denied.

3. Sexual Harassment Training in the Law Enforcement Workplace

In September 2000, the Commission approved in part and denied in part a test claim filed by the County of Los Angeles regarding sexual harassment training for peace officers (*Sexual Harassment Training in the Law Enforcement Workplace,* 97-TC-07). The test claim statute required POST to develop complaint guidelines to be followed by local law enforcement agencies for peace officers who are victims of sexual harassment in the workplace. The statute also required the course of basic training for law enforcement officers to include instruction on sexual harassment in the workplace, and veteran peace officers that had already completed basic training were required to receive supplementary training on sexual harassment in the workplace. The Commission reached the following conclusions:

- the sexual harassment complaint guidelines to be followed by local law enforcement agencies developed by POST constituted a reimbursable state-mandated program;
- the modifications to the course of basic training did not constitute a reimbursable state-mandated program since it did not impose any mandated duties on the local agency; and
- the supplemental training that required veteran peace officers to receive a one-time, two-hour course on sexual harassment in the workplace constituted a reimbursable state mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding existing on the effective date of the statute which required the local agency to provide or pay for continuing education training.[19]

[19] Reimbursable "costs mandated by the state" for this test claim included: 1) salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment in the workplace; and 2) costs to present the one-time, two-hour course in the form of materials and trainer time.

4. Law Enforcement Racial and Cultural Diversity Training

In October 2000, the Commission denied a test claim filed by the County of Los Angeles regarding racial and cultural diversity training for law enforcement officers (*Law Enforcement Racial and Cultural Diversity Training,* 97-TC-06). The test claim statute required that, no later than August 1, 1993, the basic training course for law enforcement officers include adequate instruction, as developed by POST, on racial and cultural diversity. The Commission found that the test claim statute did not impose any mandated duties or activities on local agencies since the requirement to complete the basic training course on racial and cultural diversity is a mandate imposed only on the individual who seeks peace officer status.

5. Elder Abuse Training

In January 2001, the Commission approved in part and denied in part a test claim filed by the City of Newport Beach regarding elder abuse training for city police officers and deputy sheriffs (*Elder Abuse Training,* 98-TC-12). The test claim statute required city police officers or deputy sheriffs at a supervisory level and below who are assigned field or investigative duties to complete an elder abuse training course, as developed by POST, by January 1, 1999, or within 18 months of being assigned to field duties. The Commission reached the following conclusions:

- The elder abuse training *did constitute* a reimbursable state-mandated program when the training occurred during the employee's regular working hours, or when the training occurred outside the employee's regular working hours and was an obligation imposed by a Memorandum of Understanding existing on the effective date of the statute, which requires the local agency to provide or pay for continuing education training.[20]
- The elder abuse training *did not constitute* a reimbursable state-mandated program when applied to city police officers or deputy sheriffs hired after the effective date of the test claim statute, since such officers could apply the two-hour elder abuse training course towards their 24-hour continuing education requirement.

[20] Reimbursable "costs mandated by the state" for this test claim included: 1) costs to present the one-time, two-hour course in the form of trainer time and necessary materials provided to trainees; and 2) salaries, benefits and incidental expenses for each city police officer or deputy sheriff to receive the one-time, two-hour course on elder abuse in those instances where the police officer or deputy sheriff already completed their 24 hours of continuing education at the time the training requirement was imposed on the particular officer, and when a new two-year training cycle did not commence until after the deadline for that officer or deputy to complete elder abuse training.

6. Mandatory On-The-Job Training For Peace Officers Working Alone

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/ 02-TC-06). The Commission found that these executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

7. Peace Officer Procedural Bill of Rights

In April 2006, the Commission reconsidered a 1999 Statement of Decision in the *Peace Officer Procedural Bill of Rights* ("POBOR") test claim, to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions, as required by Statutes 2005, chapter 72. The Commission determined that the POBOR legislation did impose a reimbursable state-mandated program on school districts[21] for the following reasons:

- the Supreme Court in *San Diego Unified School Dist.* provided an example of circumstances in which a discretionary decision might, in a practical sense, constitute compulsion, i.e., that in light of a school district's constitutional obligation to provide a safe educational environment, incurring due process costs as result of the district's discretionary decision to expel a student for damaging or stealing property, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct that warrant such expulsion, may in a practical sense constitute compulsion;
- the Legislature declared that: 1) the rights and protections provided to peace officers under the test claim legislation is a matter of statewide concern; 2) effective law enforcement depends upon the maintenance of stable employer-employee relations; and 3) in order to assure that stable relations are continued throughout the state and to assure that effective services are provided to all people of the state, it was necessary to apply the legislation to all public safety officers;
- the Supreme Court in *Baggett v. Gates* (1982) 32 Cal.3d 128 held that the subject peace officers provided an "essential service" to the public and that the consequences

[21] *Peace Officer Procedural Bill of Rights* (05-RL-4499-01), Statement of Decision, April 26, 2006.

of a breakdown in employment relations between peace officers and their employers — a situation the POBOR legislation was intended to prevent — would create a clear and present threat to the health, safety, and welfare of the citizens of the state; and

- the Supreme Court in *In re Randy G.* (2001) 26 Cal.4th 556 held that, pursuant to article I, section 28, subdivision (c), of the California Constitution, school districts have an obligation to provide safe schools, and California fulfills that obligation by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.

Claimant's Position

The claimant states that the test claim statute constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for K-14 school districts.

Claimant asserts that costs for the following activities will be incurred and are reimbursable:

- Development of policies and procedures, and periodic updates of policies and procedures, to insure that each law enforcement officer employed by the district shall participate in the expanded training to prevent racial profiling, pursuant to Penal Code section 13519.4.
- Development and implementation of tracking procedures, commencing January 1, 2002, to assure that every law enforcement officer employed by the district shall participate and successfully complete the expanded course of training on racial and cultural differences and the negative impacts of racial profiling, pursuant to Penal Code section 13519.4, subdivision (f).
- Unreimbursed costs for travel, subsistence, meals, training and substitute salaries of law enforcement officers attending expanded training for preventing racial profiling, pursuant to Penal Code section 13519.4, subdivision (f).
- Development and implementation of tracking procedures to assure that every law enforcement officer employed by the district shall participate and successfully complete a refresher course to keep current with changing racial and cultural trends every five years, or possibly on a more frequent basis if deemed necessary, pursuant to Penal Code section 13519.4, subdivision (i).
- Unreimbursed costs for travel, subsistence, meals, training and substitute salaries of law enforcement officers attending refresher courses for preventing racial profiling, pursuant to Penal Code section 13519.4, subdivision (i).

Position of Department of Finance (DOF)

DOF stated in its comments that the test claim statute does not result in a reimbursable state-mandated program for the following reasons:

- The test claim statute does not impose an obligation on any *law enforcement agency* to provide training — rather the statute imposes the requirement on the *law enforcement officer* — and three previous test claims are cited in which the Commission has found this to be the case.

- The statute does not require local agencies to develop and implement policies and procedures to ensure that law enforcement officers employed by the agency participate in the required training or to track whether or not these individuals participate in and successfully complete the training. Therefore, these activities would be conducted at the option of the local agency and would not result in a reimbursable state-mandated local program.
- The statute does not require local agencies to pay any costs related to travel, subsistence, meals, training, and substitute salaries of law enforcement officers attending the required training course on racial profiling that are not reimbursed by POST. Since the training requirement is on the individual officer and not the local agency, the local agency would not be liable for these costs. In addition, POST has determined that officers attending the courses on racial profiling are eligible for reimbursement of travel, subsistence, and meals. Officers and departments are not charged for the cost of the training course itself, rather these costs are incurred directly by POST, a state agency. POST has made efforts to ensure that the course is available at a number of locations throughout the state to minimize travel costs and officer time away from regular duties. Therefore, any costs related to reimbursement for travel, subsistence, and meals should be minimal. To the extent that a peace officer takes time off from regular duties to attend training, the local agency would incur costs to replace that officer during the time he or she is in training. However, DOF does not view these costs as any different from those that would be incurred if the officer were on vacation or sick leave.
- To the extent a local agency has a policy or agreement with an employee association to provide additional leave to the employees with peace officer status to attend training or to pay for training-related costs incurred by the peace officer, any costs incurred as a result of such policy or agreement is at the option of the local agency. Therefore, regardless of whether an individual officer is required to attend specified training to maintain his or her peace officer status, costs incurred by the local agency would not constitute a reimbursable state-mandated program.

DOF further noted that the test claim identifies Statutes 1992, chapter 1267, and Statutes 1990, chapter 480, as legislation that are alleged to contain a mandate. The chapters are relevant to providing legislative history of the issue, but do not appear to be specifically related to the new duties identified in this claim. DOF cited a previous test claim denied by the Commission — *Law Enforcement Racial and Cultural Diversity Training – CSM 97-TC-06* — which was based on Statutes 1992, chapter 1267, and thus it does not seem appropriate to include references to these chapters as a part of this claim.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[22] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[23] "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."[24] 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.[25] In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.[26]

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.[27] To determine if the program is new or imposes a higher level of service, the test claim statute must be compared with the legal requirements in effect immediately before the enactment of the test claim statute.[28] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[29]

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[22] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse 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."

[23] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, 735.

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

[25] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[26] *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*).

[27] *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 (*Los Angeles I*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

[28] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[29] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[30]

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.[31] 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."[32]

The analysis addresses the following issue:

- Is the test claim statute subject to article XIII B, section 6 of the California Constitution?

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

The claimant pled in the test claim Penal Code section 13519.4, as added and amended by four statutes.[33] The 1990 statute enacted the first version of Penal Code section 13519.4, directing POST to develop and disseminate guidelines and training for law enforcement officers on the racial and cultural differences among the residents of California. It did not impose any activities on local law enforcement agencies. The Commission also notes that the 1992 statute was pled and determined in a previous test claim, *Law Enforcement Racial and Cultural Diversity Training* (97-TC-06), which was denied by the Commission and was not appealed. Therefore, the Commission no longer has jurisdiction over that test claim and the 1992 statute. The 2001 statute made one spelling correction to subdivision (c) of Penal Code section 13519.4, and therefore is not relevant for this analysis. Accordingly, the analysis addresses only the provisions of the 2000 statute as that legislation affects Penal Code section 13519.4.

In order for the test claim statute to impose a reimbursable state-mandated program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental agencies or school districts. If the language does not mandate or require local entities to perform a task, then article XIII B, section 6 is not triggered.

The test claim statute, Statutes 2000, chapter 684, amended Penal Code section 13519.4 by adding subdivisions (c)(1) through (c)(4), and subdivisions (d) through (j). Each of these new provisions is summarized below.

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[30] *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.

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

[32] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[33] 1) Statutes 1990, chapter 480; 2) Statutes 1992, chapter 1267; 3) Statutes 2000, chapter 684; and 4) Statutes 2001, chapter 854.

Subdivisions (c)(1) through (c)(4): These subdivisions state the Legislature's findings and declarations regarding racial profiling and do not mandate any activities.

Subdivision (d): This subdivision provides a definition for racial profiling and does not mandate any activities.

Subdivision (e): This subdivision states that law enforcement officers "shall not engage in racial profiling" and thus prohibits, rather than mandates, an activity.

Subdivision (f): This subdivision states that every law enforcement officer in the state shall participate in expanded racial profiling training that is prescribed and certified by POST, to begin no later than January 1, 2002; it further sets forth requirements for POST to collaborate with a five-person panel appointed by the Governor and the Legislature in developing the training. Thus, the provision does mandate an activity on local law enforcement officers. Whether this mandates an activity on K-14 school districts is analyzed below.

Subdivision (g): This subdivision states that members of the panel established pursuant to subdivision (f) shall not be compensated except for reasonable per diem related to their work for panel purposes, and does not mandate any activities on local government entities.

Subdivision (h): This subdivision specifies that certain requirements be incorporated into the racial profiling curriculum, but does not mandate any activities on local government entities.

Subdivision (i): This subdivision requires that once the initial racial profiling training is completed, each law enforcement officer as described in Penal Code section 13510, subdivision (a), who adheres to the standards approved by POST, complete a refresher course every five years thereafter or on a more frequent basis if deemed necessary. Thus, the provision does mandate an activity on specified law enforcement officers. Whether this mandates an activity on K-14 school districts is analyzed below.

Subdivision (j): This provision requires the Legislative Analyst to conduct a study of data being voluntarily collected on racial profiling and provide a report to the Legislature. It does not mandate any activities on local government entities.

A. Does Penal Code section 13519.4 mandate any activities on school districts?

Penal Code section 13519.4, subdivision (f), states in pertinent part:

> Every law enforcement officer in this state shall participate in expanded [racial profiling] training as prescribed and certified by the Commission on Peace Officers Standards and Training. Training shall begin being offered no later than January 1, 2002.

Subdivision (i) states in pertinent part:

> Once the initial basic [racial profiling] training is completed, each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by the commission shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends.

Claimant contends that Penal Code section 13519.4 mandates K-14 school districts to: 1) develop, implement and periodically update policies and procedures to insure that each law enforcement officer employed by the district participates in the expanded and refresher racial profiling training; 2) develop and implement tracking procedures to assure that every law enforcement officer employed by the district participates and successfully completes the expanded and refresher racial profiling training; and 3) pay the unreimbursed costs for travel, subsistence, meals, training and substitute salaries of their law enforcement officers attending the expanded and refresher racial profiling training.

The plain meaning of Penal Code section 13519.4, subdivisions (f) and (i), requires only that each law enforcement officer attend the expanded and refresher racial profiling training. Nothing in the test claim statute requires the employer of law enforcement officers to develop and implement policies, procedures, or tracking measures to ensure that the officers attend the required training. Further, nothing in the statute requires employers to pay for travel, subsistence or meals for these officers.

Thus, the only activities for which the claimant has requested reimbursement that could possibly be considered mandated are: 1) the unreimbursed costs of the actual training; and 2) substitute salaries for the officers while attending the training.

1. K-14 School District Police Officers are Subject to the POST Racial Profiling Training Requirements

To determine whether any activities are mandated of K-14 school districts, the first issue which must be addressed is whether K-14 school district police officers are subject to these requirements. Penal Code section 13519.4, subdivision (f), requires "[e]very law enforcement officer in this state," to attend expanded racial profiling training. Subdivision (i) requires "each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by [POST]" to attend refresher training. As explained below, K-14 school district police officers hired to enforce the law are required to attend both the initial and refresher racial profiling training.

Penal Code section 13510, subdivision (a), states that, "[f]or the purpose of raising the level of competence of local *law enforcement officers*, [POST] shall adopt ... rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of ... police officers of a district authorized by statute to maintain a police department ..." (Emphasis added.) Subdivision (a) further states that, "[POST] also shall adopt, and may from time to time amend, rules establishing minimum standards for training ... police officers of a district authorized by statute to maintain a police department..." Thus, POST is required to adopt minimum standards for the recruitment and training of police officers of districts that are authorized to maintain police departments.

Education Code section 38000[34] authorizes the formation of school district police departments and hiring of peace officers: "(a) The governing board of any school district may establish a ... police department... [T]he governing board may employ personnel to ensure the safety of school district personnel and pupils and the security of the real and personal property of the

[34] Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

school district." Section 38001 states that "persons employed and compensated as members of a police department of a school district, when appointed and duly sworn, are *peace officers*, for the purposes of carrying out their duties of employment pursuant to Section 830.32 of the Penal Code."

Education Code section 72330,[35] subdivision (a), authorizes the formation of community college police departments and hiring of peace officers: "The governing board of a community college district may establish a community college police department and ... may employ personnel as necessary to *enforce the law* on or near the campus of the community college and on or near other grounds or properties [of] the community college..." Subdivision (c) states that "[p]ersons employed and compensated as members of a community college police department, when so appointed and duly sworn, are *peace officers* as defined in ... the Penal Code."

Penal Code section 830.32 provides:

> The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.
>
> (a) Members of a California Community College police department appointed pursuant to Section 72330 of the Education Code, if the primary duty of the police officer is the *enforcement of the law* as prescribed in Section 72330 of the Education Code.
>
> (b) Persons employed as members of a police department of a school district pursuant to Section 38000 of the Education Code, if the primary duty of the police officer is the *enforcement of the law* as prescribed in Section 38000 of the Education Code.
>
> (c) Any peace officer employed by a K-12 public school district or Community College district who has completed training as prescribed by subdivision (f) of Section 832.3 shall be designated a school police officer. (Emphasis added.)

Furthermore, Penal Code section 832.3, subdivisions (f) through (h), state the following:

> (f) Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete a basic course of training as prescribed by subdivision (a) before exercising the powers of a peace officer ...
>
> (g) [POST] shall prepare a specialized course of instruction for the training of school peace officers, as defined in Section 830.32, to meet the

[35] Derived from 1959 Education Code section 25429.

unique safety needs of a school environment. This course is intended to supplement any other training requirements.

(h) Any school peace officer first employed by a K-12 public school district or California Community College district before July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) no later than July 1, 2002. Any school police officer first employed by a K-12 public school district or California Community College district after July 1, 1999, shall successfully complete the specialized course of training prescribed in subdivision (g) within two years of the date of first employment.

Thus, K-14 school district police officers are considered peace officers when their primary duties are to enforce the law, and pursuant to those duties would also be considered part of the broader classification of "law enforcement officer" for purposes of POST. Since they are also required to attend basic training and specialized school peace officer training prescribed by POST, these police officers would also be considered law enforcement officers who "adhere to the standards approved by POST." Accordingly, those K-14 employees who exercise the duties of "peace officer" are "law enforcement offers" in the state who are required to attend initial and refresher racial profiling training pursuant to Penal Code section 13519.4, subdivisions (f) and (i).

2. K-14 School Districts Are Not Mandated by the State to Comply with the POST Racial Profiling Training Requirements

The next issue is whether K-14 school districts that employ such peace officers are mandated by the state to comply with the racial profiling training requirements. As noted above, in 1959 both K-12 school districts and community college districts were granted statutory *authority* to establish police departments and employ peace officers. However, while counties and cities are mandated by the California Constitution to establish sheriff or police forces,[36] K-12 school districts and community college districts are not expressly required to do so.

The California Constitution, article IX, Education, establishes and permits the formation of school districts, including community college districts, and county boards of education, all for the purpose of encouraging "the promotion of intellectual, scientific, moral and agricultural improvement."[37] Although the Legislature is permitted to authorize K-14 school districts "to act in any manner which is not in conflict with the laws and purposes for which school districts are established,"[38] and Article I, section 28, subdivision (c), of the California Constitution

[36] Article XI of the California Constitution provides for the formation of cities and counties. Section 1, regarding counties, states that the Legislature shall provide for an elected county sheriff. Section 5, regarding city charters, specifies that city charters are to provide for the "government of the city police force."

[37] California Constitution, article IX, section 1.

[38] California Constitution, article IX, section 14.

requires K-12 school districts to maintain safe schools,[39] the Constitution does not specifically require K-14 school districts to operate police departments or employ school security officers independent of the public safety services provided by the cities and counties a school district serves.

The case law is instructive in analyzing whether programs are mandatory or discretionary. The first significant case addressing the issue was *City of Merced v. State of California* (1984) 153 Cal. App. 3d 777. In that case, the test claim statute had revised the California eminent domain laws to include a new requirement that the owner of a business conducted on condemned property is entitled to compensation for loss of goodwill.[40] The City claimed reimbursement for its required compensation to the business owner for good will pursuant to the new statute, in proceedings to acquire property under the City's power of eminent domain. The court held that, because it was clear from the Legislature's intent in enacting the new statute that the decision to exercise eminent domain is left to the *discretion of the entity authorized to acquire the property*, the payment for loss of goodwill was not a state-mandated cost.[41]

In *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, the Supreme Court addressed another aspect of the issue, i.e., whether a mandate could be created by requirements that attached to a school district as a result of that district's participation in an underlying voluntary program. There, the district had voluntarily participated in various school-related educational programs establishing councils and advisory committees, where participation resulted in state or federal funding grants to operate the programs.[42] Subsequent legislation, in an effort to make such councils and advisory committees more open and accessible to the public, required certain notice and agenda requirements claimed by the school district to constitute a reimbursable state-mandated program.[43]

The court found in this case that the notice and agenda requirements did not constitute a reimbursable state-mandated program, reasoning as follows:

> First, we reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that the notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, without regard to whether a claimant's participation in the underlying program is voluntary or compelled. Second, we conclude that as to *eight* of the nine underlying funded programs here at issue, claimants have not been legally compelled to participate in those

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[39] Article I, section 28, subdivision (c), of the California Constitution provides that "[a]ll students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful."

[40] *City of Merced, supra,* 153 Cal.App.3d 777, 782.

[41] *Id.* at page 783.

[42] *Kern High School Dist., supra,* 30 Cal.4th 727, 732.

[43] *Ibid.*

> programs, and hence cannot establish a reimbursable state mandate as to those programs based upon a theory of legal compulsion. Third, assuming (without deciding) that claimants have been legally compelled to participate in *one* of the nine programs, we conclude that claimants nonetheless have no entitlement to reimbursement from the state for such expenses, because they have been free at all relevant times to use funds provided by the state for that program to pay required program expenses — including the notice and agenda costs here at issue.

The court also stated that although it analyzed the legal compulsion issue, the court found it "*unnecessary* in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that *even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion*, the circumstances presented in this case do not constitute such a mandate."[44] (Emphasis added.) The court did provide language addressing what might constitute *practical* compulsion, for instance if the state were to impose a substantial penalty for nonparticipation in a program, as follows:

> Finally, we reject claimants' alternative contention that even if they have not been *legally* compelled to participate in the underlying funded programs, as a *practical* matter they have been compelled to do so and hence to incur notice- and agenda-related costs. Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion — for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program — claimants here faced no such practical compulsion. Instead, although claimants argue that they have had "no true option or choice" other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that 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. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate. (Emphasis in original.)[45]

The 2004 *San Diego Unified School Dist.* case further clarified the Supreme Court's views on the legal compulsion issue. In that case, the test claim statute required the district to afford a student specified hearing procedures whenever an expulsion recommendation was made and before a student may be expelled.[46] The court held that hearing costs incurred as a result of *statutorily required* expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.[47] The court found the factor that

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[44] *Id.* at page 736.

[45] *Id.* at 731.

[46] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 866.

[47] *Id.* at pages 881-882.

triggered the mandate was the *state statute* requiring an expulsion recommendation, and that state statute did not implement a federal law or regulation then in existence.[48]

Regarding expulsion recommendations that were *discretionary* on the part of the district, the court acknowledged the school district's argument that the hearing procedures were mandated even when the district exercised its discretion, despite the *City of Merced* and *Kern High School Dist.* cases. The court stated:

> Indeed, the Court of Appeal below suggested that the present case is distinguishable from *City of Merced* [citation omitted], in light of article I, section 28, subdivision (c), of the state Constitution. That constitutional subdivision, part of Proposition 8 (known as the Victims' Bill of Rights initiative, adopted by the voters at the Primary Election in June 1982), states: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." The Court of Appeal below concluded: "In light of a school district's constitutional obligation to provide a safe educational environment ..., the incurring of [due process hearing] costs cannot properly be viewed as a nonreimbursable 'downstream' consequence of a decision to [seek to] expel a student under [the discretionary expulsion provisions] for damaging or stealing school or private property, suing or selling illicit drugs, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct ... that warrant such expulsion."
>
> Building upon this theme, amicus curiae on behalf of the District, California School Boards Association, argues that based upon article I, section 28, subdivision (c), of the state Constitution, together with Education Code section 48200 et seq. and article IX, section 5 of the state Constitution (establishing and implementing a right of public education), *no* expulsion recommendation is "truly discretionary." Indeed, amicus curiae argues, school districts may not, "either as a matter of law or policy, realistically choose to [forgo] expelling [a] student [who commits one of the acts, other than firearm possession, referenced in [the] Education Code ... discretionary provision], because doing so would fail to meet that school district's legal obligations to provide a safe, secure and peaceful learning environment for the other students."[49]

In response to these arguments, the Supreme Court stated that "[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial

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[48] *Ibid.*

[49] *San Diego Unified School Dist., supra,* 33 Cal.4th at page 887, footnote 22.

discretionary decision that in turn triggers mandated costs."[50] (Emphasis added.) The court provided the following explanation:

> Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been proper. For example, as explained above, in *Carmel Valley, supra,* 190 Cal.App.3d 531, ... an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.* at pp. 537-538 ... .) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ — and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable *for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc.* We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result. (Emphasis added.)[51]

The Supreme Court did not decide the issue in *San Diego Unified School Dist.* on that basis, however, stating: "[i]n any event, we have determined that we need not address in this case the problems posed by such an application of the rule articulated in *City of Merced*, because this aspect of the present case can be resolved on an alternative basis."[52] Ultimately, no reimbursement was allowed where the district exercised its discretion in recommending an expulsion, because the court found that "all hearing costs ... triggered by the District's exercise of discretion to seek expulsion, should be treated as having been incurred pursuant to a mandate of federal [due process] law ..."[53]

Nevertheless, both *Kern High School Dist.* and *San Diego Unified School Dist.* demonstrate the Supreme Court's hesitation to apply the rule from *City of Merced,* where that rule would preclude reimbursement in *every* instance that an entity makes an initial discretionary decision which in turn triggers mandated costs.

In summary, the *Kern High School Dist.* case provided an example of "practical" compulsion, i.e., where a local entity might face substantial penalties for nonparticipation in a program, and

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[50] *Id.* at page 887.

[51] *Id.* at pages 887-888.

[52] *Id.* at page 888.

[53] *Id.* at page 890.

thus reimbursement might be appropriate. The court in *San Diego Unified School Dist.* supported the district's argument regarding "practical" compulsion in the circumstance where a K-12 school district makes a discretionary decision to expel a student who commits one of the acts set forth in the Education Code's discretionary provisions, in order to fulfill its legal obligations under the constitutional requirement to provide a safe, secure and peaceful learning environment at the school. The court in *San Diego Unified School Dist.* also expressed concerns that the intent of article XIII B, section 6, might not be carried out if the *City of Merced* rule were used to preclude reimbursement "for the simple reason" that the local agency's decision to employ firefighters, and how many to employ, involves an exercise of discretion.

One additional case, *In re Randy G.* (2001) 26 Cal.4th 556, is relevant for this analysis. There, the Supreme Court held that pursuant to the safe schools provision of the Constitution, K-12 school districts, apart from education, have an "obligation to protect pupils from other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern." The court further held that California fulfills its obligations under the K-12 safe schools constitutional provision by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.[54]

As previously noted, reimbursement has been denied, pursuant to *Kern*, for activities imposed on K-14 school districts when those activities were triggered by the district's discretionary decision to establish a police department and employ peace officers, since there was neither any legal compulsion to establish a police department, nor any "practical" compulsion in the form of "substantial penalties" for the school district to fail to establish a police department.

On the other hand, the Commission has approved reimbursement for activities imposed on K-14 school district police departments in light of the constitutional requirement for safe schools coupled with the Legislature's declaration that the condition being addressed by the test claim statute would "create a clear and present threat to the health, safety, and welfare of the citizens of the state." Thus, previous interpretations of the *San Diego Unified School Dist.* case have allowed reimbursement where the test claim statute establishes a direct connection to the need to provide safe schools pursuant to the Constitution.

In the test claim statute at issue here, pursuant to the *Kern High School Dist.* case, K-14 school districts have neither the legal compulsion nor any practical compulsion to establish a police department and employ peace officers, since the statutes authorize but do not require establishment, and no "substantial penalties" would be imposed for the district's failure to establish a police department. In addition, the Commission finds that the purpose of the test claim statute is not to provide safe schools. Thus, there is no showing of practical compulsion pursuant to the *San Diego Unified School Dist.* case.

The test claim statute requires racial profiling training for "every law enforcement officer" in California. In Penal Code section 13519.4, subdivision (c), the Legislature declared that:

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[54] *In re Randy G.* (2001) 26 Cal.4th 556, 562-563.

(1) Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated.

(2) Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.

(3) It is the intent of the Legislature in enacting the changes to Section 13519.4 of the Penal Code made by the act that added this subdivision that more than additional training is required to address the pernicious practice of racial profiling and that enactment of this bill is in no way dispositive of the issue of how the state should deal with racial profiling.

Although the test claim statute affects all law enforcement officers in the state, and addresses a "discriminatory practice" that presents a "great danger to the fundamental principles of a democratic society," it does not provide a direct connection to the constitutional requirement to provide safe schools. There is no evidence in the test claim statute or its legislative history, or the record of this test claim, which indicates that the Legislature intended the statute to protect the health and safety of the citizens on school district property. Therefore, no "practical" compulsion with regard to safe schools can be found with this test claim statute.

Furthermore, since the constitutional provision requiring safe schools does not apply to community colleges, the cases cited above do not address the issue for community college districts.

No other indications by the Supreme Court, the Constitution or the Legislature support a finding that *reimbursement should be allowed* when triggered by a K-14 school district's discretionary decision to establish a police department and employ peace officers, and there is no other evidence in the record to support such a finding.

CONCLUSION

The Commission concludes that, since the initial decision by K-14 school districts to establish a police department and employ peace officers is discretionary, and there is no other evidence to support a finding that reimbursement should be allowed when triggered by such a discretionary decision, the test claim statute does not impose any mandated activities on K-14 school districts. Therefore, the test claim statute does not impose a reimbursable state-mandated program on K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution.

Commission on State Mandates

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Claim Number: 02-TC-05
Issue: Racial Profiling: Law Enforcement Training (K-14)

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Mailing List

Related Matter(s)

01-TC-01 Racial Profiling: Law Enforcement Training

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