

ITEM 5
TEST CLAIM
FINAL STAFF ANALYSIS

Education Code Sections 32242, 32243, 32245, 46010.1; 48904, 48904.3, 48987
Welfare and Institutions Code Section 18285
Statutes 1983, Chapter 498; Statutes 1984, Chapter 482; Statutes 1984, Chapter 948;
Statutes 1986, Chapter 196; Statutes 1986, Chapter 332; Statutes 1992, Chapter 445;
Statutes 1992, Chapter 1317; Statutes 1993, Chapter 589; Statutes 1994, Chapter 1172;
Statutes 1996, Chapter 1023; Statutes 2002, Chapter 492
Title 5, California Code of Regulations, Section 11523
Pupil Safety Notices (02-TC-13)
San Jose Unified School District, Claimant

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Statutes 1996, Chapter 1023; Statutes 2002, Chapter 492

California Code of Regulations, Title 5, Section 11523

Pupil Safety Notices (02-TC-13)

San Jose Unified School District, Claimant

EXECUTIVE SUMMARY

This item was originally scheduled for the Commission's October 26, 2006 hearing. The item was continued at the request of claimant. No changes have been made to the staff analysis or the Proposed Statement of Decision in Item 6.

Background

This test claim was filed on February 21, 2003, by the San Jose Unified School District on statutes and a regulation that require school districts to provide, for the first time, notices and information regarding health, safety and legal issues to staff, parents, guardians and students. This test claim also addresses statutes and a regulation permitting school districts to withhold a student's transcripts, grades, and diploma if the student has willfully damaged or failed to return school property. In addition, the test claim includes a statute applicable to schools receiving notice from a student's previous school that the previous school has withheld a student's grades, diploma, or transcripts for good cause. In such a case, the new school must also withhold those grades, diplomas, or transcripts until the decision is rescinded.

The Department of Finance (DOF) filed comments concurring that the safety notices are a reimbursable state-mandated program, but disputed that the activities relating to withholding of student transcripts, grades and diplomas in Education Code sections 48904 and 48904.3 are state-mandated.

Conclusion

For reasons stated in the analysis, staff finds that the test claim statutes and regulation constitute a partially reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to perform the following activities:

1. For the principal of the school site, within 45 days of receiving lead test survey results from the Department of Health Services, to notify the teachers and other school personnel and parents of the survey results. (Ed. Code, § 32242, subd. (c).)
2. For schools to notify parents of the Childhood Lead Poisoning Prevention Act of 1991 upon receiving a finding that a school site has significant risk factors for lead. (Ed. Code, § 32243, subd. (a).)
3. For schools, within 45 days of receiving a finding by the Department of Health Services that a school subject to the Lead-Safe Schools Act has significant risk factors for lead, to notify the teachers, other personnel, and the parents of the finding. (Ed. Code, § 32243, subd. (a).)
4. For school districts to amend an existing notice sent to pupils in grades 7-12 and their parents or guardians to include the provision that "school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services without the consent of the pupil's parent or guardian." This activity is a one-time activity. (Ed. Code, § 46010.1.)
5. To disseminate guidelines, upon request, that describe complaint procedures, adopted by the State Department of Education, to parents or guardians of minor pupils in the primary language of the parent or guardian, which he or she can follow in filing a complaint of child abuse by a school employee or other person committed against a pupil at a school site. (Ed. Code, § 48987.)
6. To provide an interpreter for a parent or guardian, whose primary language is other than English, in the case of any communications concerning the guidelines and procedures for filing child abuse complaints committed against a pupil at a school site. (Ed. Code, § 48987.)
7. For the principal of each school with students in grades 11 and/or 12 to distribute to each pupil in those grades an announcement explaining the California High School Proficiency Exam provided for under Education Code section 48412 in time to meet registration requirements for the fall test of that year. (Cal. Code Regs., tit. 5, § 11523.)
8. To establish rules and regulations governing procedures for withholding grades, transcripts, and diplomas. (Ed. Code, § 48904, subd. (b)(3).)
9. For a transferee school, upon notice that a school district has withheld the grades, diploma or transcripts of any pupil pursuant to Education Code section 48904, to continue to withhold the grades, diploma or transcripts of any transfer student as authorized by that section, until such time as it receives notice from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section. (Ed. Code, § 48904.3, subd. (a).)

Staff further finds that:

- Funds appropriated pursuant to Education Code section 32245 and Welfare and Institutions Code section 18285, subdivision (e), shall be identified as an offset in the Parameters and Guidelines for purposes of the lead notice activities.
- Any statutes and or executive orders that were pled in this test claim that are not identified above do not constitute a reimbursable state-mandated program.

Staff Recommendation

Staff recommends that the Commission adopt this analysis to partially approve this test claim for the activities listed above.

STAFF ANALYSIS

Claimant

San Jose Unified School District (Claimant)

Chronology

02/21/03 Claimant files test claim with the Commission on State Mandates (Commission)¹
05/20/03 Department of Finance (DOF) requests an extension of time to file comments
05/21/03 Commission staff grants extension request
06/13/03 DOF files comments on the test claim
06/27/03 Claimant files rebuttal to state agency comments
09/05/06 Commission issues draft staff analysis
09/18/06 Claimant files e-mail comments on the draft staff analysis
10/13/06 Commission issues final staff analysis and proposed Statement of Decision

Background

This test claim consolidates statutes and a regulation concerning school districts' obligations to provide notices and information regarding health, safety and legal issues to staff, parents, guardians and students. For purposes of this analysis, the test claim statutes and regulation have been separated into two categories designated and discussed below as the "Notice Legislation" and the "Due Process Legislation."

"Notice Legislation"

The "Notice Legislation" generally requires school districts, for the first time, to provide notices to parents, staff, and pupils regarding:

- lead contamination risk factors in public schools,²
- excused absences for confidential medical procedures,³
- child abuse guidelines and notification procedures,⁴ and
- the high school proficiency exam.⁵

¹ Pursuant to Government Code section 17557, if claimant's test claim is approved, school districts may be reimbursed for the period beginning July 1, 2001.

² Education Code sections 32242, 32243, and 32245, added by Statutes 1992, chapter 1317 and amended by Statutes of 1993, chapter 589, Assem. Bill No. 2211, (AB 2211) section 37.

³ Education Code section 46010.1, added by Statutes 1986, chapter 196, effective June 27, 1986.

⁴ Education Code section 48987, added by Statutes 1994, chapter 1172, Assem. Bill No. 2971 (AB 2971), section 13.

"Due Process Legislation" (Ed. Code, §§ 48904 and 48904.3)

This test claim also addresses statutes permitting school districts to withhold a student's transcripts, grades and diploma if the student has willfully damaged or failed to return school property. For purposes of this analysis, these statutes are referred to collectively as the "Due Process Legislation." The "Due Process Legislation" provides as follows:

- Education Code section 48904, subdivision (a)(1), states that:

Notwithstanding Section 1714.1 of the Civil Code⁶, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by, or performing volunteer services for, a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee, shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed ten thousand dollars (\$10,000). The parent or guardian shall also be liable for the amount of any reward not exceeding ten thousand dollars (\$10,000) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district or private school for all property belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to make the demand.

- Education Code section 48904, subdivision (b)(1), states that:

Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned ...*may* after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a). (Emphasis added.)

- Education Code section 48904, subdivision (b)(2), states that if the school decides to withhold grades:

The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property,

⁵ California Code of Regulations, title 5, section 11523, filed September 15, 1978, as an emergency regulation; effective upon filing (Register 78, No. 37.)

⁶ California Civil Code section 1714.1 imposes joint and several liability upon a minor and his or her parents or guardians for willful misconduct of the minor. The liability imposed by this section is in addition to any liability now imposed by law.

the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

- Education Code section 48904, subdivision (b)(3), states that:

The governing board of each school district or governing body of each private school shall establish rules and a regulation governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils.

- Education Code section 48904.3, subdivision (a), states that:

Upon receiving notice that a school district has withheld the grades, diploma, or transcripts of any pupil pursuant to Section 48904, any school district to which the pupil has transferred shall likewise withhold the grades, diploma, or transcripts of the pupil as authorized by that section, until the time that it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section.

- Education Code section 48904.3, subdivision (b), states that:

Any school district that has decided to withhold a pupil's grades, diploma, or transcripts pursuant to Section 48904 shall, upon receiving notice that the pupil has transferred to any school district in this state, notify the parent or guardian of the pupil in writing that the decision to withhold will be enforced as specified in subdivision (a).

Claimant's Position

Claimant contends that the test claim statutes and a regulation constitute a reimbursable state-mandated program and is seeking reimbursement for the following activities:

Lead Notice

- "For public elementary schools to notify teachers, other school personnel and parents of the results of surveys developing risk factors to predict lead contamination conducted by the State Department of Health Services pursuant to Education Code section 32242, subdivision(c)."⁷
- "For public elementary schools to notify parents of the provisions of the Childhood Lead Poisoning Prevention Act of 1991 upon receiving a finding that a school site has significant risk factors for lead, pursuant to Education Code section 32243, subdivision (a)."⁸

⁷ Test Claim of San Jose Unified School District, page 20.

⁸ Test Claim of San Jose Unified School District, page 20. The Lead Poisoning Prevention Act of 1991 (Health & Saf. Code § 105272) provides, in pertinent part, that the Department of Health

- "For public elementary principals or the director of the school site to notify teachers, other personnel and the parents of a finding of significant risk factors for lead, within 45 days of receiving the finding, pursuant to Education Code section 32243, subdivision (a)."⁹

Medical Services Notice

- "For the governing board of each school district to "notify pupils in grades 7-12 and the parents or guardians of all pupils enrolled in the district that the school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services pursuant to Education Code section 46010.1."¹⁰

Notice of Child Abuse Complaint Guidelines

- "To disseminate guidelines upon request, that describe complaint procedures adopted by the State Department of Education, to parents or guardians of minor pupils in the primary language of the parent or guardian which he or she can follow in filing a complaint of child abuse by a school employee or other person committed against a pupil at a school site, pursuant to Education Code section 48987."¹¹
- "To provide an interpreter for a parent or guardian, whose primary language is other than English, in the case of any communications concerning the guidelines and procedures for filing child abuse complaints committed against a pupil at a school site, pursuant to Education Code section 48987."¹²

High School Proficiency Exam Notice

- "To distribute to each pupil in grades 11 and 12 an announcement explaining the High School Proficiency Exam in sufficient time to meet registration requirements pursuant to Title 5, California Code of Regulations, Section 11523."¹³

Due Process/ Withholding of Grades, Transcripts and Diplomas for Student Misconduct

- "To adopt and implement rules and regulations, and to periodically update those rules and regulations governing notices to parents when school property has been damaged by a student, providing due process rights to those students, the provision of voluntary work

Services , before July 1, 1993, shall adopt regulations establishing a standard of care for evaluation, treatment, and monitoring of lead poisoning in children.

⁹ *Ibid.*

¹⁰ *Id.* at page 19.

¹¹ *Id.* at page 20.

¹² *Ibid.*

¹³ *Id.* at page 18.

programs, and the withholding of grades, diplomas and transcripts pursuant to Education Code section 48904, subdivision (b)."¹⁴

- "To provide a program of voluntary work for a minor pupil in lieu of the payment of monetary damages in the event the minor and the parent are unable to pay for the damage caused by the student, pursuant to Education Code section 48904, subdivision (b)."¹⁵
- "To notify the parent or guardian of a pupil, in writing, of the pupil's alleged misconduct before withholding the pupil's grades, diploma or transcripts pursuant to Education Code section 48904, subdivision (b)."¹⁶
- "To afford a pupil his or her due process rights before withholding grades, diplomas or transcripts, pursuant to Education Code section 48904, subdivision (b)."¹⁷
- "To continue to withhold grades, diploma or transcripts of any transfer student whose grades were previously withheld by a transfer school as a result of his or her misconduct, pursuant to Education Code Section 48904.3, subdivision (a)."¹⁸
- "Upon receiving notice that a pupil, whose grades, diploma or transcripts are currently withheld, has transferred to another school district in this state to notify the parent or guardian that a decision to withhold a pupil's grades diploma or transcripts will be enforced by his or her new school district, pursuant to Education Code section 48904.3, subdivision (b)."¹⁹

On September 18, 2006, the claimant filed an e-mail comment regarding Education Code section 46010.1 stating that although claimant agrees that amending the notice is a one-time activity, the distribution of the notice is ongoing and annual.

Position of the Department of Finance

DOF concurs with claimant's position regarding the "Notice Legislation" but disagrees with regard to the "Due Process Legislation."²⁰

For example, the DOF letter dated June 13, 2003, states that:

As a result of our review we have concluded that parts D, E and G of Section 2: Withholding Grades, Diplomas, or Transcripts do not constitute reimbursable costs because these actions are required only if a school district chooses to withhold a pupil's grades, diploma, or transcripts... Therefore withholding grades,

¹⁴ Test Claim of San Jose Unified School District, page 18.

¹⁵ *Ibid.*

¹⁶ Test Claim of San Jose Unified School District, page 19.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Letter from the Department of Finance, June 13, 2003.

diplomas and transcripts is permissive and any activities required are non-reimbursable.

The June 13, 2003 letter from the DOF further states that:

Part B of Section 2 seeks reimbursement for costs associated with adopting and implementing rules and regulations, and periodically updating those rules and regulations governing: (1) notices to parents when school property has been damaged by a student, (2) providing due process rights to those students, (3) the provision of voluntary work programs, and (4) the withholding of grades, diplomas, and transcripts, pursuant to Education Code 48904, subdivision (b). All of these provisions are conditioned upon districts' decisions to seek payment for damages and return of property and the withholding of grades. Thus all activities are discretionary and not reimbursable. We concur with claimants that Sections 1, 3, 4, and 5 identify changes that impose new requirements.

No further comments have been filed by interested parties regarding this claim.

Discussion

The courts have found that article XIII B, section 6, of the California Constitution²¹ 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

²¹ Article XIII B, section 6, subdivision (a), of the California Constitution provides that:

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* (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.

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.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 statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.²⁷ A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."²⁸

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

Thus, this test claim presents the following issues:

- Are the test claim statutes and regulation subject to article XIII B, section 6 of the California Constitution?
- Do the test claim statutes and regulation constitute a "new program or higher level of service" for school districts within the meaning of article XIII B, section 6 of the California Constitution?

²⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878. *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

²⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; See also *Lucia Mar Unified School Dist. v. Honig* (1988) 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.

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 and 17552.

³¹ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

- Do the test claim statutes and regulation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

These issues are addressed below:

Issue 1: Are the test claim statutes and regulation subject to article XIII B, section 6 of the California Constitution?

Do the Test Claim Statutes and Regulation Impose State-Mandated Activities?

In order for test claim statutes and regulation 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 entities. If the statutory language does not mandate or require the school district to perform a task, then article XIII B, section 6, does not apply.

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.... If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.]³²

The "Notice Legislation"

Notice of Lead Contamination Risk Factors

The test claim legislation involving notice of lead contamination risk factors arises in the context of the "Lead-Safe Schools Protection Act"(1992) (the "Act") (Ed. Code, §§ 32240-32245). The "Act" provides for sample surveys by the state Department of Health Services (DHS) to develop risk factors to predict lead contamination in public schools and then requires DHS to notify local school districts of the results.³³ Then, when notified by DHS, local school districts must in turn notify school employees, pupils and parents of both the DHS lead survey results and/or of the Childhood Lead Poisoning Prevention Act of 1991.³⁴ Relevant portions of these statutes are discussed below.

Education Code section 32242, subdivision (c), states that:

Within 60 days of the completion of testing of a school site, the Department shall notify the principal of the school or the director of the school site of the survey results. Within 45 days of receiving the survey results, the principal or director, as the case may be, shall notify the teachers and other school personnel and parents of the survey results.

Education Code section 32243, subdivision (a), states that:

When a school subject to this article has been determined to have significant risk factors for lead...the school shall notify parents of the provisions of the Childhood Lead Poisoning Prevention Act of 1991 (pursuant to Chapter 5

³² *Whitcomb v. California Employment Commission* (1944) 24 Cal. 2d 753,757.

³³ For purposes of the Act "schools" means public elementary schools as well as preschools, and day care facilities located on school property. (Ed. Code, § 32241, subds. (b)-(c).)

³⁴ Health and Safety Code, section 105272.

(commencing with Section 105275) of Part 5 of Division 103 of the Health and Safety Code). Within 45 days of receiving this finding, the school principal or the director of the school site shall notify the teachers, other personnel, and the parents of the finding.

Here, based upon the plain language of Education Code section 32242, subdivision (c), and Education Code section 32243, subdivision (a) staff finds that the following are mandated activities subject to article XIII B, section 6, of the California Constitution:

- For the principal of the school site, within 45 days of receiving lead test survey results from the Department of Health Services, to notify the teachers and other school personnel and parents of the survey results pursuant to Education Code section 32242, subdivision (c).
- For schools to notify parents of the Childhood Lead Poisoning Prevention Act of 1991 upon receiving a finding that a school site has significant risk factors for lead, pursuant to Education Code Section 32243, subdivision (a).
- For schools, within 45 days of receiving a finding by the Department of Health Services that a school subject to the Lead-Safe Schools Act has a significant risk factors for lead, to notify the teachers, other personnel, and the parents of the finding pursuant to Education Code section 32243, subdivision (a).

Notice/Confidential Medical Services

Education Code section 46010.1 is a stand alone provision of the Education Code in that it is not part of a larger act.

Education Code section 46010.1 states that:

Commencing in the fall of 1986-87 academic year, the governing board of each school district shall, each academic year, notify pupils in grades 7-12, inclusive, and the parents or guardians of all pupils enrolled in the district, that school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services without the consent of the pupil's parent or guardian. The notice required pursuant to this section may be included with other notices.

Based upon the plain language of Education Code section 46010.1, the governing board of each school district, each academic year, as part of any other notice given pursuant to the Education Code, is required to notify pupils in grades 7-12, inclusive, and the parents or guardians of all pupils enrolled in the district, that school authorities may excuse any pupil for the purpose of obtaining confidential medical services. Since the notice required by section 46010.1 may be included with other notices already distributed by school districts to pupils in grades 7-12 and their parents or guardians, staff finds that the state-mandated activity is as follows:

- For school districts to amend an existing notice sent to pupils in grades 7-12 and their parents or guardians to include the provision that "school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services without the consent of the pupil's parent or guardian." This activity is a one-time activity.

Notice/Child Abuse Reporting/ Interpreters

Education Code section 48987 states, in pertinent part, that:

The governing board of a school district or county office of education shall *upon request* disseminate the guidelines adopted by the State Department of Education pursuant to Section 33308.1 [describing procedures a parent or guardian can follow in filing a complaint of child abuse] to parents or guardians of minor pupils in the primary language of the parent or guardian...In the case of oral communications with the parent or guardian whose primary language is other than English, concerning that guideline or the procedures for filing child abuse complaints, the governing board shall provide an interpreter for that parent or guardian. (Emphasis added.)

The language omitted from the quotation of Section 48987 above, is indicated by the ellipsis. It reads:

The governing board of a school district or county office of education is *encouraged* to inform a parent or guardian, that desires to file a complaint against a school employee or other person that commits an act of child abuse as defined in Section 11165.6 of the Penal Code against a pupil at a school site, of the procedures for filing the complaint with local child protective agencies pursuant to the Child Abuse and Neglect Reporting Act, established pursuant to Chapter 1444 of the Statutes of 1987. (Emphasis added.)

However, Claimant does not request reimbursement for the "encouraged" activity, nor is there any dispute that this language does not impose a state-mandated activity.³⁵

Thus, based upon the plain language of Education Code section 48987, staff finds that the following are mandated activities subject to article XIII B, section 6 of the California Constitution:

- To disseminate guidelines, upon request, that describe complaint procedures adopted by the State Department of Education, to parents or guardians of minor pupils in the primary language of the parent or guardian which he or she can follow in filing a complaint of child abuse by a school employee or other person committed against a pupil at a school site.
- To provide an interpreter for a parent or guardian, whose primary language is other than English, in the case of any communications concerning the guidelines and procedures for filing child abuse complaints committed against a pupil at a school site.

Notice/High School Proficiency Exam

California Code of Regulations, title 5, section 11523, references sections 48410, subdivision (e), and 48412 of the Education Code. These sections exempt students age 16 or older from compulsory continuing education if the pupils have demonstrated the required proficiency by

³⁵ See Test Claim of San Jose Unified School District at page 11. See also Declaration of Don Iglesias, Associate Superintendent of Instruction, San Jose Unified School District, February 2, 2003, at pages 3 and 4.

passing the High School Proficiency Exam. Students who pass this exam receive a certification of proficiency. This certification is not a high school diploma, and requirements for this certification are not related to the requirements for the High School Exit Exam.³⁶

California Code of Regulations, section 11523 implements provisions of the Education Code pertaining to the High School Proficiency Exam by requiring notices to be sent out as specified in this regulation.

California Code of Regulations, title 5, section 11523, states that:

The school district superintendent shall require the principal of each school maintaining either or both of grades 11 and 12 to distribute to each pupil in those grades an announcement explaining the California High School Proficiency Examination provided for under Education Code section 48412. Upon receipt of the announcements from the State Department of Education or its contractor, distribution shall be made in time sufficient to enable interested pupils to meet all examination registration requirements for the fall test of that year.

Here, based upon the plain language of California Code of Regulations, section 11523, staff finds that the following is a mandated activity subject to article XIII B, section 6 of the California Constitution:

- For the principal of each school maintaining either or both grades 11 and 12 to distribute to each pupil in those grades an announcement explaining the California High School Proficiency Exam provided for under Education Code section 48412 in time to meet registration requirements for the fall test of that year. (Cal. Code Regs., tit. 5 §11523.)

The "Due Process Legislation"

In addition to the "Notice Legislation," this test claim also addresses statutes and a regulation permitting school districts to withhold the transcripts, grades and diploma of a student who has willfully damaged or failed to return school property, after affording the student certain due process rights.³⁷ These provisions, collectively referred to in this analysis as the "Due Process Legislation," are codified in Education Code sections 48904 and 48904.3 and are located within the same section of the Education Code containing statutory provisions concerning student suspension and expulsion.³⁸

³⁶ Education Code section 60851.

³⁷ Statutes 2002, chapter 492, added subdivisions (c) and (d) to Education Code section 48904.3. Subdivision (c) of section 48904.3 now states that: "For purposes of this section and Section 48904, "school district" is defined to include any county superintendent of schools." Subdivision (d) of this section now states that: "This section and section 48904 shall also apply to state special schools, as described in Subdivision (a) of section 48927." Education Code section 48927, subdivision (a), describes state special schools and states: "This chapter shall also apply to pupils attending the California School for the Blind and the two California Schools for the Deaf, which shall be referred to as the "state special schools."

³⁸ Article 1, chapter 6, part 27, division 4, title 2 of the Education Code.

Claimant is requesting reimbursement for the following six activities based upon the "Due Process" test claim legislation:³⁹

- "To notify the parent or guardian of a pupil, of the pupil's alleged misconduct before withholding the pupil's grades, diploma or transcripts pursuant to Education Code section 48904, subdivision (b)."
- "To afford a pupil his or her due process rights before withholding grades, diplomas or transcripts, pursuant to Education Code section 48904, subdivision (b)."
- "To provide a program of voluntary work under specified circumstances pursuant to Education Code section 48904, subdivision (b)."
- "To notify the parent or guardian that a decision to withhold a pupil's grades diploma or transcripts will be enforced by the pupil's new school district, pursuant to Education Code section 48904.3, subdivision (b)."
- "To adopt and implement rules and regulations, and to periodically update those rules and regulations governing notices to parents when school property has been damaged by a student, providing due process rights to those students, the provision of voluntary work programs, and the withholding of grades, diplomas and transcripts pursuant to Education Code section 48904, subdivision (b)(3)."
- "To continue to withhold grades, diploma or transcripts of any transfer student whose grades were previously withheld by a transfer school pursuant to Education Code Section 48904.3, subdivision (a)."

In order for the test claim statutes 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.

In 2003, the California Supreme Court decided the case, *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. 4th 727 (*Kern High School District*) and considered the meaning of "state-mandate" pursuant to article XIII B, section 6 of the California Constitution.⁴⁰ In *Kern High School Dist.*, school districts requested reimbursement for notice and agenda costs for meetings of their school site counsels and advisory bodies. These bodies were established as a condition of various education-related programs that were funded by the state and federal government.

When analyzing the term "state-mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is forced to do."⁴¹ The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislative or executive orders."⁴²

³⁹ See Test Claim of San Jose Unified School District, pages 18-19.

⁴⁰ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 734.

⁴¹ *Id.* at page 737.

⁴² *Ibid.*

The court also reviewed and affirmed the holding in *City of Merced v. State of California* (1984) 153 Cal. App. 3d 777, determining that, when analyzing state-mandated claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.⁴³ The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain, but when it elected to employ that means of acquiring property; its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable mandate. (Emphasis in original.)⁴⁴

Thus, the Supreme Court held as follows:

[W]e 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 notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.]⁴⁵

Based upon the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled to participate in eight of the nine underlying programs.⁴⁶

In *San Diego School District v. Commission on State Mandates* (2004) 33 Cal 4th 859, 880, the Supreme Court stated that when determining if there is a state mandate, the focus is on who made the decision to incur the cost:

[I]n its mandatory aspect, Education Code section 48915 appears to constitute a state mandate, in that it establishes conditions under which the state, rather than local officials, has made the decision requiring a school district to incur the cost of an expulsion hearing.

In this test claim, claimant also requests reimbursement as follows:

- "To notify the parent or guardian of a pupil, of the pupil's alleged misconduct before withholding the pupil's grades, diploma or transcripts pursuant to Education Code section 48904, subdivision (b)."⁴⁷

⁴³ *Id.* at page 743.

⁴⁴ *Ibid.*

⁴⁵ *Id.* at page 731.

⁴⁶ *Id.* at pages 744-745.

⁴⁷ Test Claim of San Jose Unified School District, page 19.

- "To afford a pupil his or her due process rights before withholding grades, diplomas or transcripts, pursuant to Education Code section 48904, subdivision (b)."⁴⁸

However, Education Code section 48904, subdivision (b)(1), reads:

Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned upon demand of an employee of the district or private school authorized to make the demand *may*, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a). (Emphasis added.)

This statute states that the school district:

...*may*, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts (Emphasis added.)

The plain use of the term "may" in this context indicates that the initial decision to withhold a student's grades, diploma, or transcripts is wholly within the discretion of the school district and not the state.⁴⁹ Thus, the downstream required activities of providing notice and due process rights are not mandated by the state. For this reason, staff finds that the following activities are *not* state-mandated activities within the meaning of article XIII B, section 6 of the California Constitution:

- To notify the parent or guardian of a pupil, of the pupil's alleged misconduct before withholding the pupil's grades, diploma or transcripts pursuant to Education Code section 48904, subdivision (b).
- To afford a pupil his or her due process rights before withholding grades, diplomas or transcripts, for student misconduct pursuant to Education Code section 48904, subdivision (b).

Claimant also requests reimbursement for the following activity:

- "To provide a program of voluntary work under specified circumstances pursuant to Education Code section 48904, subdivision (b)."⁵⁰

Education Code section 48904, subdivision (b)(2), states that:

The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

⁴⁸ *Ibid.*

⁴⁹ Education Code section 75 states that "may" is discretionary and "shall" is mandatory.

⁵⁰ *Id.* at page 18.

Although this statute uses the phrase "shall" it does so in the context of a statutory obligation that is triggered only if the claimant undertakes the activities described in Education Code section 48904, subdivision (b)(1), to withhold a student's grades transcripts or diploma. Thus, because the activity described in this subdivision is a downstream obligation triggered by claimant's own discretionary act of deciding to withhold grades, transcripts, or a diploma from a student, it cannot be said that these obligations are "mandated" by the state.⁵¹ Instead, they are obligations that directly flow from the discretionary action of the school district.

Thus, staff finds that Education Code section 48904, subdivision (b)(2), does not impose a state-mandated activity upon the claimant to provide a program of voluntary work pursuant to article XIII B, section 6 of the California Constitution.

Claimant also requests reimbursement for the following activity:

- "Upon receiving notice that a pupil, whose grades, diploma, or transcripts are currently withheld, has transferred to another school district in this state, to notify the parent or guardian that a decision to withhold a pupil's grades, diploma or transcript will be enforced by his or her new district, pursuant to Education Code section 48904.3, subdivision (b)."⁵²

Education Code section 48904.3, subdivision (b), states that:

Any school district that has decided to withhold a pupil's grades, diploma, or transcripts pursuant to Section 48904 shall, upon receiving notice that the pupil has transferred to any school district in this state, notify the parent or guardian of the pupil in writing that the decision to withhold will be enforced as specified in subdivision (a).

Here again, despite the use of the word "shall" in Education code section 48904, subdivision (a), the obligation to perform the activity described by this subdivision (to notify the student's parent or guardian) is triggered only if the claimant exercises its discretion to withhold the grades, diploma and transcripts of a pupil pursuant to Education Code section 48904, subdivision (b)(1).⁵³

Thus, staff finds that Education Code section 48904.3, subdivision (b), does not impose a state-mandated activity upon the school district.

Claimant further requests reimbursement for the following activities:

- "To adopt and implement rules and regulations, and to periodically update those rules and regulations governing notices to parents when school property has been damaged by a student, providing due process rights to those students, the provision of voluntary work

⁵¹ See *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 880.

⁵² Test Claim of San Jose Unified School District, page 18.

⁵³ See *San Diego Unified School District supra* 33 Cal.4th 859, 880.

programs, and the withholding of grades, diplomas and transcripts pursuant to Education Code section 48904, subdivision (b).⁵⁴

- "To continue to withhold grades, diploma or transcripts of any transfer student whose grades were previously withheld by a transfer school pursuant to Education Code Section 48904.3, subdivision (a)."⁵⁵

Education Code section 48904.3, subdivision (a), states that:

Upon receiving notice that a school district has withheld the grades, diploma, or transcripts of any pupil pursuant to Section 48904, any school district to which the pupil has transferred shall likewise withhold the grades, diploma, or transcripts of the pupil as authorized by that section, until the time that it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section."

Education Code section 48904, subdivision (b)(3), states that:

The governing board of each school district...shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils.

These activities are not triggered by the local decision to withhold a pupil's grades, transcripts or a diploma, but are instead mandated by the state. The district is required to comply with these requirements even if that district has not made a decision to withhold grades, transcripts or a diploma. Thus staff finds that the following are state-mandated activities subject to article XIII B, section 6, of the California Constitution:

- To establish rules and regulations governing procedures for withholding grades, transcripts, and diplomas pursuant to Education Code section 48904, subdivision (b)(3).
- For a transferee school, upon notice that a school district has withheld the grades, diploma or transcripts of any pupil pursuant to Education Code section 48904, to continue to withhold the grades, diploma or transcripts of any transfer student as authorized by that section, until such time as it receives notice from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section.⁵⁶

Thus, to recap, in the instant case, staff has determined that the following activities impose state-mandated activities upon school districts within the meaning of article XIII B, section 6 of the California Constitution:

⁵⁴ Test Claim of San Jose Unified School District, page 18.

⁵⁵ *Id.* at page 19.

⁵⁶ Education Code section 48904.3, subdivision (a).

1. For the principal of the school site, within 45 days of receiving lead test survey results from the Department of Health Services, to notify the teachers and other school personnel and parents of the survey results. (Ed. Code, § 32242, subd. (c).)
2. For schools to notify parents of the Childhood Lead Poisoning Prevention Act of 1991 upon receiving a finding that a school site has significant risk factors for lead. (Ed. Code, § 32243, subd. (a).)
3. For schools, within 45 days of receiving a finding by the Department of Health Services that a school subject to the Lead-Safe Schools Act has significant risk factors for lead, to notify the teachers, other personnel, and the parents of the finding. (Ed. Code, § 32243, subd. (a).)
4. For school districts to amend an existing notice sent to pupils in grades 7-12 and their parents or guardians to include the provision that "school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services without the consent of the pupil's parent or guardian." This activity is a one-time activity. (Ed. Code, § 46010.1.)
5. To disseminate guidelines, upon request, that describe complaint procedures, adopted by the State Department of Education; to parents or guardians of minor pupils in the primary language of the parent or guardian, which he or she can follow in filing a complaint of child abuse by a school employee or other person committed against a pupil at a school site. (Ed. Code, § 48987.)
6. To provide an interpreter for a parent or guardian, whose primary language is other than English, in the case of any communications concerning the guidelines and procedures for filing child abuse complaints committed against a pupil at a school site. (Ed. Code, § 48987.)
7. For the principal of each school with students in grades 11 and/or 12 to distribute to each pupil in those grades an announcement explaining the California High School Proficiency Exam provided for under Education Code section 48412 in time to meet registration requirements for the fall test of that year. (Cal. Code Regs., tit. 5, § 11523.)
8. To establish rules and regulations governing procedures for withholding grades, transcripts, and diplomas. (Ed. Code, § 48904, subd. (b)(3).)
9. For a transferee school, upon notice that a school district has withheld the grades, diploma or transcripts of any pupil pursuant to Education Code section 48904, to continue to withhold the grades, diploma, or transcripts of any transfer student as authorized by that section, until such time as it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section. (Ed. Code, § 48904.3, subd. (a).)

Do the State-Mandated Activities Constitute "Programs" Subject to Article XIII B, Section 6 of the California Constitution?

In addition to being state-mandated, the test claim statutes and regulation must also constitute a "program" in order to be subject to article XIII B, section 6 of the California Constitution.

The relevant test is set forth in case law. The California Supreme Court, in the case of *County of Los Angeles v. State of California* (1987) 43 Cal 3d 46, defined the word "program" within the

meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.⁵⁷ The court has held that only one of these findings is necessary.⁵⁸

In the instant case, each of the above state-mandated activities meet this test to qualify as a program within the meaning of article XIII B, section 6 of the California Constitution.

Mandated activity numbers 1-7 and 9 (notices, child abuse guidelines, interpreters, and the withholding of grades, transcript, or diploma by a transferee school) meet this test by providing a service to members of the public who work in or whose children attend public schools.

Although mandated activity number 8 (adopting rules and regulations pertaining to withholding of grades, transcripts and diplomas) applies to both public and private schools, this distinction does not affect the outcome based upon the court's decision in *Long Beach Unified School District v. The State of California* (1990) 225 Cal. App. 3d 155, 172.

In *Long Beach*, the appellate court stated that:

[A]lthough numerous private schools exist, education in our society is considered to be a peculiarly governmental function. [Citations] Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a "program" within the meaning of section 6.

Thus, staff finds that mandated activities 1-9 above constitute state-mandated programs subject to article XIII B, section 6 of the California Constitution.

Issue 2: Do the (remaining) test claim statutes and regulation constitute a "new program or higher level of service" for school districts within the meaning of article XIII B, section 6 of the California Constitution?

The courts have held that statutes and regulations impose a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution when: (a) the requirements are new in comparison with the pre-existing scheme, and (b) the requirements were intended to provide an enhanced service to the public.⁵⁹

To make this determination, the test claim statutes and regulation must initially be compared with the legal requirements in effect immediately prior to its enactment.⁶⁰

In this case the test claim statutes and regulation in state-mandated activities numbers 1-9 did not exist in prior law.⁶¹ And, as discussed above, each of these activities provides a service to

⁵⁷ *County of Los Angeles, supra*, 43 Cal.3d, 56.

⁵⁸ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

⁵⁹ *San Diego Unified School District, supra*, 33 Cal. 4th 859,878; *Lucia Mar Unified School District, supra*, 44 Cal 3d 830, 835.

⁶⁰ *Ibid.*

⁶¹ In addition, subsequent amendments to state-mandated programs 1-6 during the test claim period have been technical in nature and effected no substantive changes. See Statutes of 1983, chapter 589, section 36; Statutes of 1993, chapter 589, section 37; Statutes of 1993,

members of the public who work in or whose children attend public schools. Therefore, staff concludes that these eight state-mandated activities are programs constituting a "new program or higher level of service" on school districts within the meaning of article XIII B, section 6 of the California Constitution.

Issue 3: Do the (remaining) test claim statutes and regulation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

Government Code section 17514 states that:

"Costs mandated by the state" means any increased cost which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

However, Government Code section 17556 prohibits the Commission from finding costs mandated by the state as defined in Government Code 17514 under certain circumstances such as when a statute includes additional revenue specifically intended to fund the cost of the state mandate. Government Code section 17556, subdivision (e), states in pertinent part that:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

....
(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to ... school districts that result in no net costs to the ... school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.
....

In this case there is an issue as to whether or not the Commission can find "costs mandated by the state," for providing notices to parents, teachers and other school personnel pursuant to the Lead-Safe Schools Protection Act. This is because part of this Act, Education Code section 32245, on its face, provides funding of those state-mandated activities. Education Code section 32245 states that:

Funding to implement this article [The Lead-Safe Schools Act] shall be provided from the Child Health and Safety Fund ... upon appropriation by the Legislature

chapter 589, section 39; Statutes of 1993, chapter 726, section 15; Statutes of 1996, chapter 1023, section 34; Statutes of 1993, chapter 726, section 15. Likewise although subdivision (a) of Education Code section 48904.3 was effectively broadened to include state special skills when Education Code section 48904.3 was amended by Statutes of 2002, chapter 492 these provisions do not apply to local school districts and thus do not affect this analysis.

pursuant to Section 18285 of the Welfare and Institutions Code. (Emphasis added.)

Thus, Education Code section 32245 appears to trigger the provisions of Government Code section 17556 by providing for funding of a mandated activity (lead risk notices).

However, in order for Government Code section 17556, subdivision (e) to prohibit the Commission from finding costs mandated by the state, two elements must be satisfied.

First, the funding provisions of Education Code section 32245 and Welfare and Institutions Code section 18285 would have to be implemented through a Budget Act appropriation to include revenue specifically intended to fund the costs of these state-mandated lead risk notices.

Second, this revenue would have to be in an amount sufficient to fund the cost of the state mandate.

Education Code section 32245 states that it was intended to fund the Lead Safe Schools Act, which includes the lead risk notices. Thus, the first element (specific intent to fund the mandate) is met with regard to the lead risk notices.

However, the second element, which would require that Education Code section 32245 and Welfare and Institutions Code section 18285 be implemented through a Budget Act appropriation in an amount *sufficient* to fund the cost of the lead risk notices, must also be met.

Welfare and Institutions Code section 18285, which is incorporated by reference into Education Code section 32245, creates in the State Treasury the Child Health and Safety Fund. Section 18285 states that the Child Health and Safety Fund shall be created from money collected by the state pursuant to the license plate program and from civil penalties on family day care providers. It further provides that monies in the fund shall be expended, for up to any of eleven different programs having to do with child health and safety upon appropriation by the Legislature. Subdivision (e) of section 18285 states in pertinent part that:

(e) Fifty percent of moneys derived from the license plate program pursuant to Section 5072 of the Vehicle Code ...shall be available, *upon appropriation*, for programs which address *any* of the following [eleven] child health and safety concerns ...that are either to be carried out within a two-year period or whose implementation is dependent upon one-time initial funding: ... (10) *Childhood lead poisoning*.... (Emphasis added.)

The language of subdivision (e) provides that the Legislature *may* appropriate up to 50% of the Child Health and Safety Fund to fund any of eleven different programs. Only one of which includes prevention of childhood lead poisoning. However, there is no evidence in the law or record that any amount was appropriated pursuant to Education Code section 32245 sufficient to cover the cost of the lead notices.

Claimant states that:

It is estimated that the San Juan Unified School District incurred approximately in excess of \$1000.00, annually in staffing and other costs in excess of the funding provided to school districts and the state for the period of July 1, 2000 through June 30, 2002 to implement these new

duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency.⁶²

There is no evidence that this is not the case.

Therefore, staff concludes that the lead risk notices are "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556.

However to the extent, and in the event, that funds are appropriated from the Child Health and Safety Fund pursuant to Education Code section 32245 or Welfare and Institutions Code section 18285, subdivision (e), they will be identified in the parameters and guidelines as offsetting revenue.

Staff further finds that none of the exceptions in Government Code section 17556 apply to the remaining test claim statutes and regulation. Thus, these activities also constitute "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556.

CONCLUSION

Staff concludes that the test claim statutes and regulation constitute a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

1. For the principal of the school site, within 45 days of receiving lead test survey results from the Department of Health Services, to notify the teachers and other school personnel and parents of the survey results. (Ed. Code, § 32242, subd. (c).)
2. For schools to notify parents of the Childhood Lead Poisoning Prevention Act of 1991 upon receiving a finding that a school site has significant risk factors for lead. (Ed. Code, § 32243, subd. (a).)
3. For schools, within 45 days of receiving a finding by the Department of Health Services that a school subject to the Lead-Safe Schools Act has significant risk factors for lead, to notify the teachers, other personnel, and the parents of the finding. (Ed. Code, § 32243, subd. (a).)
4. For school districts to amend an existing notice sent to pupils in grades 7-12 and their parents or guardians to include the provision that "school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services without the consent of the pupil's parent or guardian." This activity is a one-time activity. (Ed. Code, § 46010.1.)
5. To disseminate guidelines, upon request, that describe complaint procedures, adopted by the State Department of Education, to parents or guardians of minor pupils in the primary language of the parent or guardian which he or she can follow in filing a complaint of child abuse by a school employee or other person committed against a pupil at a school site. (Ed. Code, § 48987.)

⁶² Declaration of Don Iglesias, Associate Superintendent of Instruction, San Jose Unified School District; dated February 19, 2003; pages 4-5, lines 18 -21 and 1-2, respectively.

6. To provide an interpreter for a parent or guardian, whose primary language is other than English, in the case of any communications concerning the guidelines and procedures for filing child abuse complaints committed against a pupil at a school site. (Ed. Code, § 48987.)
7. For the principal of each school with students in grades 11 and/or 12 to distribute to each pupil in those grades an announcement explaining the California High School Proficiency Exam provided for under Education Code section 48412 in time to meet registration requirements for the fall test of that year. (Cal. Code Regs., tit. 5, § 11523.)
8. To establish rules and regulations governing procedures for withholding grades, transcripts, and diplomas. (Ed. Code, § 48904, subd. (b)(3).)
9. For a transferee school, upon notice that a school district has withheld the grades, diploma or transcripts of any pupil pursuant to Education code section 48904, to continue to withhold the grades, diploma or transcripts of any transfer student as authorized by that section, until such time as it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section. (Ed. Code, § 48904.3, subd. (a).)

Staff further finds that:

- Funds appropriated pursuant to Education Code section 32245 and Welfare and Institutions Code section 18285, subdivision (e), shall be identified as an offset in the Parameters and Guidelines for purposes of the lead notice activities.
- Any statutes and or executive orders that were pled in this test claim that are not identified above do not constitute a reimbursable state-mandated program.

Staff Recommendation

Staff recommends that the Commission adopt this analysis to partially approve this test claim for the activities listed above.

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State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

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EXHIBIT A

FEB 21 2003
COMMISSION ON
STATE MANDATES

TEST CLAIM FORM

Claim No. 02-TC-13

Local Agency or School District Submitting Claim

SAN JOSE UNIFIED SCHOOL DISTRICT

Contact Person

Keith B. Petersen, President
StxTen and Associates

Telephone Number

Voice: 858-514-8605
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Claimant Address

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San Jose Unified School District
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Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
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1121 L Street, Suite 1060
Sacramento, CA 95814

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

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

PUPIL SAFETY NOTICES

Chapter 492, Statutes of 2002
Chapter 1023, Statutes of 1996
Chapter 1172, Statutes of 1994
Chapter 589, Statutes of 1993
Chapter 1317, Statutes of 1992
Chapter 445, Statutes of 1992
Chapter 332, Statutes of 1986
Chapter 196, Statutes of 1986
Chapter 948, Statutes of 1984
Chapter 482, Statutes of 1984
Chapter 498, Statutes of 1983

Education Code Sections
32242, 32243, 32245, 46010.1,
48904, 48904.3, 48987

Welfare and Institutions Code Section 18285

Title 5, California Code of Regulations, Section 11523

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

Name and Title of Authorized Representative

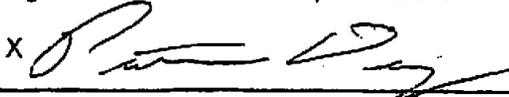
Telephone No.

Patrick Day
Director of Special Projects

(408) 535-6142
FAX: (408) 286-4965

Signature of Authorized Representative

Date

X 

February 10, 2003

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10
11 BEFORE THE
12
13 COMMISSION ON STATE MANDATES
14
15 STATE OF CALIFORNIA
16

| | | |
|---------------------|---|--|
| 17 Test Claim of: |) | No. CSM. <u>02-TC-13</u> |
| 18 |) | |
| 19 San Jose Unified |) | Chapter 492, Statutes of 2002 |
| 20 School District |) | Chapter 1023, Statutes of 1996 |
| 21 |) | Chapter 1172, Statutes of 1994 |
| 22 |) | Chapter 589, Statutes of 1993 |
| 23 |) | Chapter 1317, Statutes of 1992 |
| 24 Test Claimant. |) | Chapter 445, Statutes of 1992 |
| 25 |) | Chapter 332, Statutes of 1986 |
| 26 |) | Chapter 196, Statutes of 1986 |
| 27 |) | Chapter 948, Statutes of 1984 |
| 28 |) | Chapter 482, Statutes of 1984 |
| 29 |) | Chapter 498, Statutes of 1983 |
| 30 |) | |
| 31 |) | Education Code Sections 32242, |
| 32 |) | 32243, 32245, 46010.1, 48904, |
| 33 |) | 48904.3, 48987 |
| 34 |) | |
| 35 |) | Welfare and Institutions Code |
| 36 |) | Section 18285 |
| 37 |) | |
| 38 |) | Title 5 California Code of Regulations |
| 39 |) | Section 11523 |
| 40 |) | |
| 41 |) | <u>Pupil Safety Notices</u> |
| 42 |) | |
| 43 |) | |
| 44 |) | TEST CLAIM FILING |
| 45 |) | |
| 46 |) | |

1 PART I. AUTHORITY FOR THE CLAIM

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

8 PART II. LEGISLATIVE HISTORY OF THE CLAIM

9 Requirements Prior to 1975

10 Former Education Code Section 10606² provided that any minor who willfully
damages school district property was liable to suspension or expulsion and his or her
12 parents were financially liable. But, prior to January 1, 1975, there were no statutes,
13 codes or regulations which required school districts or county offices of education to:

¹ Government Code Section 17519, as added by Chapter 1459/B4:
"School district" means any school district, community college district, or county
superintendent of schools.

² Education Code Section 10606, amended by Chapter 1324, Statutes of 1969:

"Any minor who willfully cuts, defaces, or otherwise injures in any way any property, real
or personal, belonging to a school district is liable to suspension or expulsion, and the
parent or guardian shall be liable for all damages so caused by the minor. The parent
or guardian of any such minor shall also be liable for the amount of any reward paid
pursuant to Section 53069.5 of the Government Code. The parent or guardian of a
minor shall be liable to a school district for all property belonging to the school district
loaned to the minor and not returned upon demand of an employee of the district
authorized to make the demand."

1 distribute announcements explaining the California High School Proficiency
2 Examination; provide a program of voluntary work for a minor who is unable to pay
3 monetary damages; notify the parent or guardian before withholding a pupil's grades,
4 diploma or transcripts; to withhold grades, diploma or transcripts until the transferor
5 school rescinds its initial decision to withhold; to notify parents or guardians that a
6 decision to withhold will be enforced at the student's new school; to notify pupils and
7 their parents that school authorities may excuse any pupil from the school for the
8 purpose of obtaining confidential medical services; to disseminate complaint
9 procedures to parents which they can follow in filing a complaint of child abuse or
10 neglect at a schoolsite; to provide an interpreter when needed for a parent in the case
11 of any communications concerning the guidelines and procedures for filing child abuse
12 complaints committed at a schoolsite; to notify parents, teachers and other personnel
13 (K-9) of the results of surveys conducted for the purpose of developing risk factors to
14 predict lead contamination; and to notify parents, teachers and school personnel (K-9)
15 of the provisions of the Childhood Lead Poisoning Act of 1991 when findings indicate
16 the schoolsite has significant risk factors for lead.

17 Requirements After 1974

18 Section 1: High School Proficiency Examination

19 Title 5, California Code of Regulations, Section 11523³, requires the principal of

³ Title 5, California Code of Regulations, Section 11523, filed September 15,
1978:

1 each school maintaining either or both of grades 11 and 12 to distribute an
2 announcement to each pupil in those grades explaining the California High School
3 Proficiency Examination in sufficient time to meet registration requirements.

4 Section 2: Withholding Grades, Diplomas and Transcripts

5 Chapter 1010, Statutes of 1976, Section 2, recodified and renumbered
6 Education Code Section 10606 as Section 48909. Section 48909 was repealed by
7 Chapter 498, Statutes of 1983, Section 90.

8 Chapter 498, Statutes of 1983, Section 91, added a new Education Code
9 Section 48904⁴. New subdivision (b) allows a school district to withhold grades,

"The school district superintendent shall require the principal of each school maintaining either or both of grades 11 or 12 to distribute to each pupil in those grades an announcement explaining the California High School Proficiency Examination provided for under Education Code Section 48412. Upon receipt of the announcements from the State Department of Education or its contractor, distribution shall be made in time sufficient to enable interested pupils to meet all examination registration requirements for the fall test of that year."

⁴ Education Code Section 48904, added by Chapter 498, Statutes of 1983, Section 91:

"(a) Notwithstanding Section 1714.1 of the Civil Code, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by or performing volunteer services for a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee, shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed five thousand dollars (\$5,000). The parent or guardian shall also be liable for the amount of any reward not exceeding five thousand dollars (\$5,000) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district or private school for all property belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to

1 diplomas or transcripts of pupils, after affording the pupil his or her due process rights,
2 who engage in willful misconduct causing damage to real or personal property or who
3 refuse to return loaned school property and requires the school district to notify, in
4 writing, the parent or guardian of the pupil's alleged misconduct prior to withholding
5 grades, diplomas or transcripts. Subdivision (b) also requires the school district to
6 provide a program of voluntary work for the minor pupil in lieu of the payment of
7 monetary damages in the event the minor and parent are unable to pay for the
8 damages, and to adopt rules and regulations governing procedures for the
9 implementation of this subdivision.

10 Chapter 482, Statutes of 1984, Section 13, amended Education Code Section

make the demand.

(b) Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned upon demand of an employee or the district or private school authorized to make the demand may, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a).

The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

The governing board of each school district or governing body of each private school shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils."

1 48904 to except transfer transcripts and to make technical changes.

2 Chapter 948, Statutes of 1984, Section 1, amended Education Code Section
3 48904⁵ to make several changes. The Superintendent of Public Instruction is now

⁵ Education Code Section 48904 added by Chapter 498, Statutes of 1983,
Section 91 as amended by Chapter 948, Statutes of 1984, Section 1:

"(a) Notwithstanding Section 1714.1 of the Civil Code, the parent or guardian of any minor whose willful misconduct results in injury or death of any pupil or any person employed by, or performing volunteer services for, a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee, shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed ~~five thousand dollars (\$5,000)~~ seven thousand five hundred dollars (\$7,500). The parent or guardian shall also be liable for the amount of any reward not exceeding ~~five thousand dollars (\$5,000)~~ seven thousand five hundred dollars (\$7,500) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian or a minor shall be liable to a school district or private school for all property belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to make the demand.

The Superintendent of Public Instruction shall compute an adjustment of the liability limits prescribed by this subdivision at a rate equivalent to the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year.

(b) Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned upon demand of an employee of the district or private school authorized to make the demand may, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage, ~~except transfer transcripts as provided in Section 49068~~, until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a).

The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private

1 required to annually compute adjustments of the liability limits prescribed by subdivision
2 (a) and re-included transfer transcripts.

3 Chapter 332, Statutes of 1986; Section 1, added Education Code Section
4 48904.3^b. Subdivision (a) requires any school district to which the pupil has transferred,
5 upon receipt of notice that another school district has withheld grades, diploma or
6 transcripts, to likewise withhold the grades, diploma or transcripts until such time as it
7 receives notice from the district that initiated the decision to withhold that the decision
8 has been rescinded. Subdivision (b) requires any school district that has decided to

school shall provide a program of voluntary work for the minor in lieu of the payment of
monetary damages. Upon completion of the voluntary work, the grades, diploma, and
transcripts of the pupil shall be released.

The governing board of each school district or governing body of each private
school shall establish rules and regulations governing procedures for the
implementation of this subdivision. The procedures shall conform to, but are not
necessarily limited to, those procedures established in this code for the expulsion of
pupils.

^b Education Code Section 48904.3 added by Chapter 332, Statutes of 1986;
Section 1:

"(a) Upon receiving notice that a school district has withheld the grades, diploma,
or transcripts of any pupil pursuant to Section 48904, any school district to which the
pupil has transferred shall likewise withhold the grades, diploma, or transcripts of the
pupil as authorized by that section, until such time as it receives notice, from the district
that initiated the decision to withhold, that the decision has been rescinded under the
terms of that section.

(b) Any school district that has decided to withhold a pupil's grades, diploma, or
transcripts pursuant to Section 48904 shall, upon receiving notice that the pupil has
transferred to any school district in this state, notify the parent or guardian of the pupil in
writing that the decision to withhold will be enforced as specified in subdivision (a).

(c) For purposes of this section and Section 48904, "school district" is defined to
include any county superintendent of schools."

Test Claim of San Jose Unified School District
Chapter 492/2002 Pupil Safety Notices

1 withhold a pupil's grades, diploma or transcripts; upon receiving notice that the pupil
2 has transferred to another school district in this state, to notify the parent or guardian of
3 the pupil in writing that the decision will be enforced by his or her new school.

4 Chapter 445, Statutes of 1992, Section 1, amended Education Code Section
5 48904⁷ to make technical changes and to increase the parent or guardian liability limit

⁷ Education Code Section 48904 added by Chapter 498, Statutes of 1983,
Section 91, as amended by Chapter 445, Statutes of 1992, Section 1:

"(a) (1) Notwithstanding Section 1714.1 of the Civil Code, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by, or performing volunteer services for, a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee, shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed ~~seven thousand five hundred dollars (\$7,500)~~ ten thousand dollars (\$10,000). The parent or guardian shall also be liable for the amount of any reward not exceeding ~~seven thousand five hundred dollars (\$7,500)~~ ten thousand dollars (\$10,000) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district or private school for all property belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to make the demand.

(2) The Superintendent of Public Instruction shall compute an adjustment of the liability limits prescribed by this subdivision at a rate equivalent to the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year.

(b) (1) Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned upon demand of an employee of the district or private school authorized to make the demand may, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a).

1 from seven thousand five hundred dollars (\$7,500) to ten thousand dollars (\$10,000).

2 Chapter 492, Statutes of 2002, Section 2, added subdivision (d) to Section
3 48904.3 to make Sections 48904 and 48904.3^b applicable to state special schools and
4 to make other technical changes.

5 Section 3: Confidential Medical Services

(2) The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

(3) The governing board of each school district or governing body of each private school shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils."

^b Education Code Section 48904.3, added by Chapter 332, Statutes of 1986, Section 1, as amended by Chapter 492, Statutes of 2002, Section 2:

"a) Upon receiving notice that a school district has withheld the grades, diploma, or transcripts of any pupil pursuant to Section 48904, any school district to which the pupil has transferred shall likewise withhold the grades, diploma, or transcripts of the pupil as authorized by that section, until such the time as that it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section.

(b) Any school district that has decided to withhold a pupil's grades, diploma, or transcripts pursuant to Section 48904 shall, upon receiving notice that the pupil has transferred to any school district in this state, notify the parent or guardian of the pupil in writing that the decision to withhold will be enforced as specified in subdivision (a).

(c) For purposes of this section and Section 48904, "school district" is defined to include any county superintendent of schools.

(d) This section and Section 48904 shall also apply to the state special schools as described in subdivision (a) of Section 48927."

1 Chapter 196, Statutes of 1986, Section 1, added Education Code Section
2 46010.1⁹ to require, for the first time, the governing board of each school district to
3 notify pupils in grades 7 to 12, inclusive, and the parents or guardians of all pupils
4 enrolled in the district, that school authorities may excuse any pupil from the school for
5 the purpose of obtaining confidential medical services without the consent of the pupil's
6 parent or guardian.

7 Section 4: Child Abuse Complaint Procedures

8 Chapter 1102, Statutes of 1991, Section 4, added Education Code Section
9 33308.1¹⁰ to require the State Department of Education to adopt guidelines that
10 describe the procedures that a parent or guardian may follow in filing a complaint of

⁹ Education Code Section 46010.1 added by Chapter 196, Statutes of 1986,
Section 1:

"Commencing in the fall of the 1986-87 academic year, the governing board of each school district shall, each academic year, notify pupils in grades 7 to 12, inclusive, and the parents or guardians of all pupils enrolled in the district, that school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services without the consent of the pupil's parent or guardian.

The notice required pursuant to this section may be included with any other notice given pursuant to this code."

¹⁰ Education Code Section 33308.1 added by Chapter 1102, Statutes of 1991,
Section 4:

"The State Department of Education shall adopt guidelines to be disseminated to parents or guardians of pupils that describe the procedures that a parent or guardian can follow in filing a complaint of child abuse, as defined in Section 11165.6 of the Penal Code, with the school or a child protective services agency against a school employee or other person that commits an act of child abuse, as defined in Section 11165.6 of the Penal Code, against a pupil at a school site."

1 child abuse with the school or a child protective services agency against a school
2 employee or other person who commits an act of child abuse upon a pupil at a
3 schoolsite.

4 Chapter 1172, Statutes of 1994, Section 13, added Education Code Section
5 48987¹¹ to require, for the first time, the governing board of each school district or
6 county office of education to disseminate, upon request, the guidelines adopted by the
7 State Department of Education pursuant to Section 33308.1 to parents or guardians of
8 minor pupils in the primary language of the parent or guardian. Section 48987 also
9 requires, for the first time, the governing board to provide an interpreter for a parent or
10 guardian, whose primary language is other than English, in the case of oral
11 communications with the parent or guardian concerning the guidelines and procedures
12 for filing child abuse complaints committed against a pupil at a schoolsite.

13 Section 5: Lead Risk Factors

¹¹ Education Code Section 48987 added by Chapter 1172, Statutes of 1994,
Section 13:

"The governing board of a school district or county office of education shall upon request disseminate the guidelines adopted by the State Department of Education pursuant to Section 33308.1 to parents or guardians of minor pupils in the primary language of the parent or guardian. The governing board of a school district or county office of education is encouraged to inform a parent or guardian, that desires to file a complaint against a school employee or other person that commits an act of child abuse as defined in Section 11165.6 of the Penal Code against a pupil at a schoolsite, of the procedures for filing the complaint with local child protective agencies pursuant to Chapter 1444 of the Statutes of 1987. In the case of oral communications with the parent or guardian whose primary language is other than English, concerning that guideline or the procedures for filing child abuse complaints, the governing board shall provide an interpreter for that parent or guardian."

1 Chapter 1317, Statutes of 1992, Section 2, added the "Lead-Safe Schools
2 Protection Act", commencing with Education Code Section 32240. Section 32241¹²
3 requires the State Department of Health Services to conduct a sample survey of
4 schools in the state for the purpose of developing risk factors to predict lead
5 contamination in public schools. Subdivision (b) defines "schools" to mean public
6 elementary schools, public preschools, and public day care facilities. Subdivision (c)
7 defines "public preschools" and "public day care facilities" as preschools and day care
8 centers located on public school property.
9 Section 32242¹³, at subdivision (b), requires the department to notify the principal

¹² Education Code Section 32241, added by Chapter 1317, Statutes of 1992,
Section 2:

"(a) The State Department of Health Services shall conduct a sample survey of schools in this state for the purpose of developing risk factors to predict lead contamination in public schools. The survey shall include schools that are representative of the state by geographical region and size of enrollment. The schools to be surveyed shall be selected on the basis of their ability to provide data necessary to make scientifically valid estimates of the nature and extent of lead hazards. Risk factors shall include, but are not limited to, location in relation to high-risk areas, age of the facility, likely use of lead paint in or around the facility, levels of children enrolled under the age of six, and results of lead screening programs established pursuant to Article 4.6 (commencing with Section 372) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.

(b) For purposes of this article, "schools" mean public elementary schools, public preschools, and public day care facilities.

(c) For purposes of this article, "public preschools" and "public day care facilities" mean preschools and day care facilities located on public school property."

¹³ Education Code Section 32242, added by Chapter 1317, Statutes of 1992,
Section 2:

"The department shall do all of the following:

1 of the school or director of the schoolsite of the survey results. Within 45 days of
2 receiving the survey results, the principal or director shall notify the teachers and other
3 school personnel and parents of the survey results. Therefore, for the first time,
4 principals of public elementary schools and directors of schoolsites are required to
5 notify teachers, school personnel and parents of lead risk survey results within 45 days
6 after receiving them.

(a) Design and implement a strategy for identifying the characteristics of high-risk schools and provide a basis for statewide estimates of the presence of lead in schools attended by young children.

(b) Conduct a sample survey, as described in Section 32241 to determine the likely extent and distribution of lead exposure to children from paint on the school, soil in play areas at the school, drinking water at the tap, and other potential sources identified by the department for this purpose. To the maximum extent possible, limited sample testing shall be used to validate survey results. The department shall compile and summarize the results of that survey and report those results to the Legislature and the State Department of Education.

(c) Within 60 days of the completion of testing a schoolsite, the department shall notify the principal of the school or director of the schoolsite of the survey results. Within 45 days of receiving the survey results, the principal or director, as the case may be, shall notify the teachers and other school personnel and parents of the survey results.

(d) Make recommendations to the Legislature and the State Department of Education, based on the survey results and consideration of appropriate federal and state standards, on the feasibility and necessity of conducting statewide lead testing and any additional action needed relating to lead contamination in the schools.

(e) As deemed necessary and appropriate in view of the survey results, develop environmental lead testing methods and standards to ensure the scientific integrity of results, for use by schools and contractors designated by schools for that purpose.

(f) Evaluate the most current cost-effective lead abatement technologies.

(g) Work with the State Department of Education to develop voluntary guidelines for distribution to requesting schools to ensure that lead hazards are minimized in the course of school repair and maintenance programs and abatement procedures."

1 Section 32243¹⁴, at subdivision (a), requires the department to advise a school
2 when it has been determined that the schoolsite has significant risk factors for lead, and
3 the school is then required to notify parents of the provisions of the Childhood Lead
4 Poisoning Prevention Act of 1991. Within 45 days of receiving such a finding, the
5 school principal or director is required to notify teachers, school personnel and parents
6 of the finding. Therefore, for the first time, principals of public elementary schools and
7 directors of school sites are required to notify parents of the Childhood Lead Poisoning
8 Prevention Act of 1991 and are required to notify teachers, school personnel and
9 parents when the department makes a finding that the schoolsite has significant risk
10 factors for lead.

Section 32245¹⁵ provides that funding to implement the Article shall be provided

¹⁴ Education Code Section 32243, added by Chapter 1317, Statutes of 1992,
Section 2:

"(a) When a school subject to this article has been determined to have significant risk factors for lead, the school shall be advised of this finding, and the school shall notify parents of the provisions of the Childhood Lead Poisoning Prevention Act of 1991 (pursuant to Article 4.6 (commencing with Section 372) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code). Within 45 days of receiving this finding, the school principal or the director of the schoolsite shall notify the teachers, other personnel, and the parents of the finding.

(b) At such time that the state implements a certification and training program for environmental lead testing and abatement, any school that undertakes any remedial action shall utilize trained and state certified contractors, inspectors, and workers."

¹⁵ Education Code Section 32245, added by Chapter 1317, Statutes of 1992,
Section 2:

"Funding to implement the provisions of this article shall be provided from the Child

1 from the Child Health and Safety Fund upon appropriation by the Legislature. The
2 Child Health and Safety Fund is found in the Welfare and Institutions Code,
3 commencing with Section 18285. Section 18285¹⁸ provides that the source of funding

Health and Safety Fund, to be created by under Chapter 4.6 (commencing with Section 18285) of Part 6 of Division 9 of the Welfare and Institutions Code pursuant to the proposed provisions of Assembly Bill 3087 of the 1992-92 Regular Session upon appropriation by the Legislature pursuant to Section 18285 of the Welfare and Institutions Code."

¹⁸ Welfare and Institutions Code Section 18285, added by Chapter 1316, Statutes of 1992, Section 15, as amended by Chapter 726, Statutes of 1993, Section 15:

"(a) There is hereby created in the State Treasury the Child Health and Safety Fund for the purposes specified in this section.

(b) Moneys for this fund shall be derived from the license plate program provided for pursuant to Section 5028 of the Vehicle Code and from civil penalties on family day care providers pursuant to Sections 1596.893 and 1597.62 of the Health and Safety Code.

(c) Moneys in the fund shall be expended, upon appropriation by the Legislature, for the purposes specified in subdivisions (d), (e) and (f).

(d) Fifty percent of moneys derived from the license plate program pursuant to Section 5072 of the Vehicle Code shall be available, upon appropriation, to the State Department of Social Services for the purpose of administering provisions of Sections 1596.816, 1596.87, 1596.872, 1596.8725, 1596.893, 1596.895, 1596.95, 1597.091, 1597.54, 1597.541, 1597.542, 1597.55, and 1597.62 of the Health and Safety Code, as added or amended by this bill in the 1991-92 Regular Session, that are either not funded or insufficiently funded in the 1991-92 Budget Act, as determined by the State Department of Social Services. The State Department of Social Services shall allocate these special funds according to the following priorities:

- (1) Site visits performed pursuant to Sections 1597.091 and 1597.55.
- (2) The monitoring responsibility of the child care advocate program performed pursuant to Section 1596.8725.
- (3) Training for investigative and licensing field staff.
- (4) Other aspects of the child care advocate program performed pursuant to Section 1596.872.
- (5) The salary of the chief of the child care licensing branch.

In order to implement the list of priorities set forth in this subdivision, and to complete implementation of subdivision (a) of Section 1596.816 of the Health and

1 is moneys derived from a license plate program and from penalties on family day care
2 providers. Subdivision (d) requires the first 50% of the moneys to be spent on other
3 designated programs. Subdivision (e) requires that up to 25% of the total be spent on
4 child abuse prevention with the balance to be spent on 10 other programs, including
5 childhood lead poisoning.

6 Chapter 589, Statutes of 1993, Section 36, amended Education Code Section

Safety Code, the State Department of Social Services may, as necessary, fund appropriate administrative support costs.

(e) Fifty percent of moneys derived from the license plate program pursuant to Section 5072 of the Vehicle Code shall be available, upon appropriation, for programs which address any of the following child health and safety concerns and that are either to be carried out within a two-year period or whose implementation is dependent upon one-time initial funding:

- (1) Child abuse prevention, except that not more than 25 percent of the moneys in this fund shall be used for this purpose. Ninety percent of the 25 percent shall be deposited in the county children's trust fund, established pursuant to Section 18966 of the Welfare and Institutions Code, for the support of child abuse prevention services in the community, and 10 percent of the 25 percent shall be deposited in the State Children's Trust Fund, established pursuant to Section 18969, for public education, training, and technical assistance.
- (2) Vehicular safety, including restraint warnings and education programs.
- (3) Drowning prevention.
- (4) Playground safety standards.
- (5) Bicycle safety.
- (6) Gun safety.
- (7) Fire safety.
- (8) Poison control and safety.
- (9) In-home safety.
- (10) Childhood lead poisoning.
- (11) Sudden infant death syndrome.

(f) Moneys derived from civil penalties imposed on family day care providers shall be available, upon appropriation, to the State Department of Social Services exclusively for orientation, training, and education of family day care providers.

1 32242 to make technical changes.

2 Chapter 589, Statutes of 1993, Section 37, amended Education Code Section

3 32243 to make technical changes.

4 Chapter 589, Statutes of 1993, Section 39, amended Education Code Section

5 32245 to make technical changes.

6 Chapter 1023, Statutes of 1996, Section 34, amended Education Code Section

7 32243 to make technical changes.

8 PART III. STATEMENT OF THE CLAIM

9 SECTION 1. REQUIREMENT FOR STATE REIMBURSEMENT

10 The Statutes referenced in this test claim result in school districts incurring costs
11 mandated by the state, as defined in Government Code section 17514¹⁷, by creating
12 new state-mandated duties related to the uniquely governmental function of providing
13 public services to students and these statutes apply to school districts and do not apply
14 generally to all residents and entities in the state¹⁸.

¹⁷ Government Code section 17514, as added by Chapter 1459, Statutes of 1984:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which means a new program or higher level or service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

¹⁸ Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 275 Cal.Rptr. 449, 225 Cal.App.3d 155:

1 The new duties mandated by the state upon school districts require state
2 reimbursement of the direct and indirect costs of labor, materials and supplies, data
3 processing services and software, contracted services and consultants, equipment and
4 capital assets, staff and student training and travel to implement the following activities:

5 Section 1: High School Proficiency Examinations

- 6 A) To distribute to each pupil in grades 11 and 12 an announcement
7 explaining the California High School Proficiency Examination in sufficient
8 time to meet registration requirements, pursuant to Title 5, California Code
9 of Regulations, Section 11523.

10 Section 2: Withholding Grades, Diplomas and Transcripts

- 11 B) To adopt and implement rules and regulations, and to periodically update
12 those rules and regulations governing notices to parents when school
13 property has been damaged by a student, providing due process rights to
14 those students, the provision of voluntary work programs, and the
15 withholding of grades, diplomas and transcripts, pursuant to Education
16 Code Section 48904, subdivision (b).

- 17 C) To provide a program of voluntary work for a minor pupil in lieu of the
18 payment of monetary damages in the event the minor and parent are

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d at p. 537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

1 unable to pay for damages caused by the student, pursuant to Education
2 Code Section 48904, subdivision (b).

3 D) To notify the parent or guardian of a pupil, in writing, of the pupil's alleged
4 misconduct before withholding the pupil's grades, diploma or transcripts,
5 pursuant to Education Code Section 48904, subdivision (b).

6 E) To afford a pupil his or her due process rights before withholding grades,
7 diplomas or transcripts, pursuant to Education Code Section 48904,
8 subdivision (b).

9 F) To continue to withhold grades, diploma or transcripts of any transfer
10 student whose grades were previously withheld by a transferor school as
11 a result of his or her misconduct, pursuant to Education Code Section
12 48904.3, subdivision (a).

13 G) Upon receiving notice that a pupil, whose grades, diploma or transcripts
14 are currently withheld, has transferred to another school district in this
15 state, to notify the parent or guardian that a decision to withhold a pupil's
16 grades, diploma or transcripts will be enforced by his or her new school
17 district, pursuant to Education Code Section 48904.3, subdivision (b).

18 Section 3: Confidential Medical Services

19 H) To notify pupils in grades 7 through 12 and the parents or guardians of all
20 pupils enrolled in the district that school authorities may excuse any pupil
21 from the school for the purpose of obtaining confidential medical services,

1 pursuant to Education Code Section 46010.1.

2 **Section 4: Child Abuse Complaint Procedures**

3 I) To disseminate guidelines, upon request, that describe complaint
4 procedures, adopted by the State Department of Education, to parents or
5 guardians of minor pupils in the primary language of the parent or
6 guardian which he or she can follow in filing a complaint of child abuse by
7 a school employee or other person committed against a pupil at a
8 schoolsite, pursuant to Education Code Section 48987.

9 J) To provide an interpreter for a parent or guardian, whose primary
10 language is other than English, in the case of any communications
11 concerning the guidelines and procedures for filing child abuse complaints
12 committed against a pupil at a schoolsite, pursuant to Education Code
13 Section 48987.

14 **Section 5: Lead Risk Factors**

15 K) For public elementary schools to notify teachers, other school personnel
16 and parents of the results of surveys developing risk factors to predict
17 lead contamination conducted by the State Department of Health
18 Services, pursuant to Education Code Section 32242, subdivision (c).

19 L) For public elementary schools to notify parents of the provisions of the
20 Childhood Lead Poisoning Prevention Act of 1991 upon receiving a
21 finding that a schoolsite has significant risk factors for lead, pursuant to

1 Education Code Section 32243, subdivision (a).

- 2 M) For public elementary principals or the director of the schoolsite to notify
3 teachers, other personnel, and the parents of a finding of significant risk
4 factors for lead, within 45 days of receiving the finding, pursuant to
5 Education Code Section 32243, subdivision (a).

6 SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

7 None of the Government Code Section 17556¹⁹ statutory exceptions to a finding

¹⁹ Government Code section 17556 as last amended by Chapter 589, Statutes of 1989:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

1 of costs mandated by the state apply to this test claim. Note, that to the extent school
2 districts may have previously performed functions similar to those mandated by the
3 referenced code sections, such efforts did not establish a preexisting duty that would
4 relieve the state of its constitutional requirement to later reimburse school districts when
5 these activities became mandated.²⁰

6 SECTION 3. FUNDING FOR THE STATE MANDATE

7 To the extent that funds are sufficient and appropriated from the Child Health
8 and Safety Fund, the costs of providing notices of lead risk factors will be reduced by
9 any funds received by the claimant. No funds are appropriated by the state for
10 reimbursement of the other costs mandated by the state and there is no other provision
of law for recovery of costs from any other source.

12 PART IV. ADDITIONAL CLAIM REQUIREMENTS

13 The following elements of this claim are provided pursuant to Section 1183, Title
14 2, California Code of Regulations:

15 Exhibit 1: Don Iglesias, Associate Superintendent

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

²⁰ Government Code section 17565:

"If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

San Jose Unified School District

Exhibit 2:

Copies of Statutes Cited
Chapter 492, Statutes of 2002
Chapter 1023, Statutes of 1996
Chapter 1172, Statutes of 1994
Chapter 589, Statutes of 1993
Chapter 1317, Statutes of 1992
Chapter 445, Statutes of 1992
Chapter 332, Statutes of 1986
Chapter 196, Statutes of 1986
Chapter 948, Statutes of 1984
Chapter 482, Statutes of 1984
Chapter 498, Statutes of 1983

Exhibit 3:

Copies of Code Sections Cited

Education Code Section 32242
Education Code Section 32243
Education Code Section 32245
Education Code Section 48010.1
Education Code Section 48904
Education Code Section 48904.3
Education Code Section 48987

Welfare and Institutions Code Section 18285

Exhibit 4:

California Code of Regulations Cited

Title 5, California Code of Regulations Section 11523

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on ^{February} ~~January~~ 10, 2003, at San Jose, California, by:

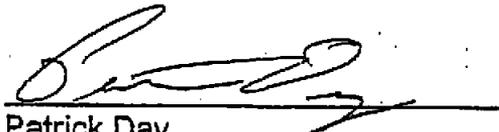


Patrick Day
Director of Special Projects
San Jose Unified School District

Voice: (408) 535-6142
Fax: (408) 286-4965

PART VI. APPOINTMENT OF REPRESENTATIVE

San Jose Unified School District appoints Keith B. Petersen, SixTen and Associates and Associates, as its representative for this test claim.



Patrick Day
Director of Special Projects

February 10, 2003
(Date)

**EXHIBIT 1:
DECLARATION**

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DECLARATION OF DON IGLESIAS

San Jose Unified School District

COSM No. _____

Chapter 492, Statutes of 2002
Chapter 1023, Statutes of 1996
Chapter 1172, Statutes of 1994
Chapter 589, Statutes of 1993
Chapter 1317, Statutes of 1992
Chapter 445, Statutes of 1992
Chapter 332, Statutes of 1986
Chapter 196, Statutes of 1986
Chapter 948, Statutes of 1984
Chapter 482, Statutes of 1984
Chapter 498, Statutes of 1983

Education Code Sections:
32242, 32243, 32245, 46010.1,
48904, 48904.3, 47987

Welfare & Institutions Code Section 18285

Title 5, California Code of Regulations,
Section 11523

Pupil Safety Notices

I, Don Iglesias, Associate Superintendent of Instruction, San Jose Unified School District, make the following declaration and statement.

In my capacity as Associate Superintendent of Instruction, I am responsible for implementation of procedures to provide notices to pupils, parents, guardians and others. I am familiar with the provisions and requirements of the Education Code Sections, Welfare and Institutions Code Section and Title 5 regulation enumerated above.

These Code sections and regulation require the San Jose Unified School District to:

Section 1: High School Proficiency Examinations

- A) To distribute to each pupil in grades 11 and 12 an announcement explaining the California High School Proficiency Examination in sufficient time to meet registration requirements, pursuant to Title 5, California Code

1 of Regulations, Section 11523.

2 Section 2: Withholding Grades, Diplomas and Transcripts

- 3 B) To adopt and implement rules and regulations, and to periodically update
4 those rules and regulations governing notices to parents when school
5 property has been damaged by a student, providing due process rights to
6 those students, the provision of voluntary work programs, and the
7 withholding of grades, diplomas and transcripts, pursuant to Education
8 Code Section 48904, subdivision (b).
- 9 C) To provide a program of voluntary work for a minor pupil in lieu of the
10 payment of monetary damages in the event the minor and parent are
11 unable to pay for damages caused by the student, pursuant to Education
12 Code Section 48904, subdivision (b).
- 13 D) To notify the parent or guardian of a pupil, in writing, of the pupil's alleged
14 misconduct before withholding the pupil's grades, diploma or transcripts,
15 pursuant to Education Code Section 48904, subdivision (b).
- 16 E) To afford a pupil his or her due process rights before withholding grades,
17 diplomas or transcripts, pursuant to Education Code Section 48904,
18 subdivision (b).
- 19 F) To continue to withhold grades, diploma or transcripts of any transfer
20 student whose grades were previously withheld by a transferor school as
21 a result of his or her misconduct, pursuant to Education Code Section

1 48904.3, subdivision (a).

2 G) Upon receiving notice that a pupil, whose grades, diploma or transcripts
3 are currently withheld, has transferred to another school district in this
4 state, to notify the parent or guardian that a decision to withhold a pupil's
5 grades, diploma or transcripts will be enforced by his or her new school
6 district, pursuant to Education Code Section 48904.3, subdivision (b).

7 Section 3: Confidential Medical Services

8 H) To notify pupils in grades 7 through 12 and the parents or guardians of all
9 pupils enrolled in the district that school authorities may excuse any pupil
10 from the school for the purpose of obtaining confidential medical services,
pursuant to Education Code Section 46010.1.

12 Section 4: Child Abuse Complaint Procedures

13 I) To disseminate guidelines, upon request, that describe complaint
14 procedures, adopted by the State Department of Education, to parents or
15 guardians of minor pupils in the primary language of the parent or
16 guardian which he or she can follow in filing a complaint of child abuse by
17 a school employee or other person committed against a pupil at a
18 schoolsite, pursuant to Education Code Section 48987.

19 J) To provide an interpreter for a parent or guardian, whose primary
20 language

21 is other than English, in the case of any communications concerning the

1 guidelines and procedures for filing child abuse complaints committed
2 against a pupil at a schoolsite, pursuant to Education Code Section
3 48987.

4 Section 5: Lead Risk Factors

5 K) For public elementary schools to notify teachers, other school personnel
6 and parents of the results of surveys developing risk factors to predict
7 lead contamination conducted by the State Department of Health
8 Services, pursuant to Education Code Section 32242, subdivision (c).

9 L) For public elementary schools to notify parents of the provisions of the
10 Childhood Lead Poisoning Prevention Act of 1991 upon receiving a
11 finding that a schoolsite has significant risk factors for lead, pursuant to
12 Education Code Section 32243, subdivision (a).

13 M) For public elementary principals or the director of the schoolsite to notify
14 teachers, other personnel, and the parents of a finding of significant risk
15 factors for lead, within 45 days of receiving the finding, pursuant to
16 Education Code Section 32243, subdivision (a).

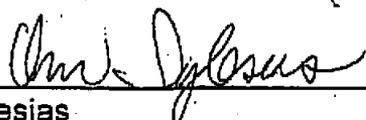
17
18 It is estimated that the San Jose Unified School District incurred approximately in
19 excess of \$1000, annually, in staffing and other costs in excess of the funding provided
20 to school districts and the state for the period from July 1, 2000 through June 30, 2002
21 to implement these new duties mandated by the state for which the school district has

Declaration of Don Iglesias
San Jose Unified School District
Chapter 492/02 Pupil Safety Notices

1 not been reimbursed by any federal, state, or local government agency, and for which it
2 cannot otherwise obtain reimbursement.

3 The foregoing facts are known to me personally and, if so required, I could testify
4 to the statements made herein. I hereby declare under penalty of perjury that the
5 foregoing is true and correct except where stated upon information and belief and
6 where so stated I declare that I believe them to be true.

7 EXECUTED this ~~3~~RD day of February ~~10~~th, 2003, at San Jose, California

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Don Iglesias
Associate Superintendent of Instruction
San Jose Unified School District

EXHIBIT 2
COPIES OF STATUTES CITED

Subject to the limitations in paragraphs (1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(1) Monetary sanctions may not be awarded against a represented party for a violation of paragraph (2) of subdivision (b).

(2) Monetary sanctions may not be awarded on the court's motion unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(a) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.

(f) In addition to any award pursuant to this section for conduct described in subdivision (b), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(g) This section shall not apply to disclosures and discovery requests, responses, objections, and motions.

(h) A motion for sanctions brought by a party or a party's attorney primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions. It is the intent of the Legislature that courts shall vigorously use its sanctions authority to deter that improper conduct or comparable conduct by others similarly situated.

(i) This section shall apply to a complaint or petition filed on or after January 1, 1995, and any other pleading, written notice of motion, or other similar paper filed in * * * that matter.

(j) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SCHOOLS AND SCHOOL DISTRICTS—SPECIAL EDUCATION—FEDERAL FUNDS

CHAPTER 492

A.B. No. 1859

AN ACT to amend Sections 48902, 48904.3, 48911, 49070, 56026, 56043, 56125, 56171, 56173, 56175, 56176, 56320, 56321, 56329, 56340, 56341.5, 56342, 56344, 56347, 56343.5, 56365, 56381, 56426.9, 56501, 56502, 56504.5, 56505, 56505.1, 56600, and 60640 of, to add Sections 48927, 56021.1, 56026.1, 56138, 56174.5, 56304, 56330, 56342.1, 56383, 56500.4, 56500.5, 56600.6, and 56601.5 to, to add Article 4 (commencing with Section 56385) to Chapter 4 of Part 30 of, to repeal Sections 56600.5 and 56603 of, to repeal Section 48915.6 of, and to repeal and add Sections 48915.5, 56500.2, and 56602 of, the Education Code, and to amend Section 7579.5 of the Government Code, relating to special education.

[Filed with Secretary of State September 12, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1859, Papan. Special education: pupil suspension and expulsion.

Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with

Additions or changes indicated by underline; deletions by asterisks * * * 2339

Disabilities Education Act (IDEA), in order that the state may qualify for federal funds available for the education of individuals with exceptional needs.

This bill would revise and recast those provisions relating to the education of a pupil with exceptional needs to conform those provisions with the IDEA.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 48902 of the Education Code is amended to read:

48902. (a) The principal of a school or the principal's designee shall, prior to the suspension or expulsion of any pupil, notify the appropriate law enforcement authorities of the county or city in which the school is situated, of any acts of the * * * pupil that may violate Section 245 of the Penal Code.

(b) The principal of a school or the principal's designee shall, within one schoolday after suspension or expulsion of any pupil, notify, by telephone or any other appropriate method chosen by the school, the appropriate law enforcement authority of the county or the school district in which the school is situated of any acts of the * * * pupils that may violate subdivision (c) or (d) of Section 48900.

(c) Notwithstanding subdivision (b), the principal of a school or the principal's designee shall notify the appropriate law enforcement authorities of the county or city in which the school is located of any acts of a student that may involve the possession or sale of narcotics or of a controlled substance or a violation of Section 626.9 or 626.10 of the Penal Code.

(d) A principal, the principal's designee, or any other person reporting a known or suspected act described in subdivision (a) or (b) is not civilly or criminally liable as a result of making any report authorized by this article unless it can be proven that a false report was made and that the person knew the report was false or the report was made with reckless disregard for the truth or falsity of the report.

(e) The willful failure to make any report required by this section is an infraction punishable by a fine to be paid by the principal or principal's designee who is responsible for the failure of not more than five hundred dollars (\$500).

(f) The principal of a school or the principal's designee reporting a criminal act committed by a schoolage individual with exceptional needs, as defined in Section 56026, shall ensure that copies of the special education and disciplinary records of the pupil are transmitted, as described in paragraph (9) of subsection (k) of Section 1415 of Title 20 of the United States Code, for consideration by the appropriate authorities to whom he or she reports the criminal act. Any copies of the pupil's special education and disciplinary records may be transmitted only to the extent permissible under the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g et seq.).

SEC. 2. Section 48904.3 of the Education Code is amended to read:

48904.3. (a) Upon receiving notice that a school district has withheld the grades, diploma, or transcripts of any pupil pursuant to Section 48904, any school district to which the pupil has transferred shall likewise withhold the grades, diploma, or transcripts of the pupil as authorized by that section, until the time that it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section.

(b) Any school district that has decided to withhold a pupil's grades, diploma, or transcripts pursuant to Section 48904 shall, upon receiving notice that the pupil has transferred to any school district in this state, notify the parent or guardian of the pupil in writing that the decision to withhold will be enforced as specified in subdivision (a).

(c) For purposes of this section and Section 48904, "school district" is defined to include any county superintendent of schools.

(d) This section and Section 48904 shall also apply to the state special schools, as described in subdivision (a) of Section 48927.

or physical therapy services pursuant to this chapter. The surrogate parent may sign any consent relating to individualized education program purposes.

(e) As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

(f) Individuals who would have a conflict of interest in representing the child, as specified under federal regulations, shall not be appointed as a surrogate parent. "An individual who would have a conflict of interest," for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure a free appropriate public education for an individual with exceptional needs, as defined in Section 56026 of the Education Code.

(g) Except for individuals who have a conflict of interest in representing the child, and notwithstanding any other law or regulation, individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of a public agency involved in the education or care of the child. The surrogate parent shall not be an employee of a public or private agency that is involved in the education or care of the child in accordance with paragraph (3) of subsection (c) and subsection (d) of Section 800.515 of Title 34 of the Code of Federal Regulations. If a conflict of interest arises subsequent to the appointment of the surrogate parent, the local educational agency shall terminate the appointment and appoint another surrogate parent.

(h) The surrogate parent and the local educational agency appointing the surrogate parent shall be held harmless by the State of California when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.

(i) Nothing in this section shall be interpreted to prevent a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services.

(j) If funding for implementation of this section is provided, it may only be provided from Item 6110-161-890 of the annual Budget Act.

SEC. 55. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

LOCAL AGENCIES—FORMATION COMMISSIONS—REVENUES

CHAPTER 498

A.B. No. 1948

AN ACT to amend Section 56881 of the Government Code, relating to local agency formation commissions.

[Filed with Secretary of State September 12, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1948, Kelley. Local agency formation commissions.

Existing law prescribes the apportionment for the net operating expenses of the local agency formation commission among the county and the cities and special districts within the county.

This bill would revise the method of calculating independent special district revenues in order to determine independent special districts' apportionments of the net operating expenses of a commission, and would provide that no independent special district shall be apportioned a share of more than 50% of the total independent special districts' share of the commission's operational costs. The bill would provide, with respect to a district formed under the Local Health Care District Law that operates a hospital, that the district may not

2362

Additions or changes indicated by underline; deletions by asterisks * * *

Senate Bill No. 1497

CHAPTER 1023

An act to amend Sections 690, 1244, 1271, 1300.1, 1320, 2252, 2253, 2254, 2257, 2543, 2812, 4009, 4084.5, 4084.6, 4148, 4160, 4211.5, 4228, 4240, 7649, 9744, 12240, 17577.2, and 22955 of the Business and Professions Code, to amend Sections 56.17, 56.30, 1714.25, and 1940 of the Civil Code, to amend Section 564 of the Code of Civil Procedure, to amend Sections 8208, 32064, 32065, 32241, 32243, 33319, 44978, 46010, 46010.5, 48213, 48931, 49452.5, 87408.6, and 87781 of the Education Code, to amend Sections 359, 1852, 6925, 7571, and 7639 of the Family Code, to amend Section 5855 of the Fish and Game Code, to amend Sections 11408, 12533, 12846, 12982, 14505, 14904, 18694, 18813, 18849, 18850, 18851, 19260, 41302, 41332, 41581, 46000, 46002, 46003, 46003.5, 46004, 46005, 46006, 46007, 46008, 46009, 46010, 46012, 46014, 46015, 55861.7, 56571.7, and 58108 of the Food and Agricultural Code, to amend Sections 6103.4, 7575, 7901, 8607.2, 8610.5, 8870.95, 8894.1, 11121, 14964, 15438, 15438.1, 24306.5, 25852, 26857, 26859, 27491.41, 27504.1, 33202, 54985, 65352, 65352.5, 65962.5, and 66013 of the Government Code, to amend Section 784 of the Harbors and Navigation Code, to amend Sections 1201, 1205.5, 1212, 1250.1, 1250.4, 1250.8, 1251.3, 1253.1, 1255, 1268, 1271.1, 1339.5, 1339.8, 1339.30, 1395, 1403.1, 1569.691, 1569.692, 1596.813, 1603.3, 1603.4, 1616.5, 1619, 1729.1, 1797.98e, 1797.189, 1797.221, 1799.54, 2202, 2317, 2805, 6542, 7025, 7054, 7054.6, 7117, 8961.5, 11026, 11122, 11150, 11210, 11250, 11251, 11758.54, 17961, 24174, 24177, 25143.10, 25163, 25174.7, 25187, 25198, 25208.17, 25249.11, 25298.5, 25358.4, 32121, 32127.2, 32132, 32221, 38072, 38079, 39660.5, 100125, 100450, 100700, 100725, 100865, 100880, 101095, 101140, 101185, 101225, 101275, 101280, 101300, 101310, 101325, 101405, 101425, 101460, 101625, 101800, 101805, 101815, 101820, 102310, 102585, 102960, 103175, 104420, 104580, 105250, 106690, 113200, 113270, 113275, 113280, 120250, 120295, 121575, 123400, 127015, 127020, 127040, 127045, 127580, 127760, 127780, 128030, 128782, 129295, 129725, 129730, 129787, 129895, and 129905, to amend the heading of Article 3.8 (commencing with Section 349.100) of Chapter 2 of Part 1 of Division 1 of, to amend the heading of Article 12 (commencing with Section 429) of Chapter 2 of Division 1 of, to amend the heading of Article 3 (commencing with Section 3396) of Chapter 7 of Division 4 of, to amend the headings of Article 2 (commencing with Section 115725) of, and Article 3 (commencing with Section 115775) of, Chapter 4 of Part 10 of Division 104 of, to amend the heading of Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of, to amend the heading of Chapter 4 of Part 10 of Division 104 of, to amend the heading of Chapter 8 (commencing with Section 108800) of Part 3 of Division 104 of, to amend the heading of Chapter 3 (commencing

data necessary to make scientifically valid estimates of the nature and extent of lead hazards. Risk factors shall include, but are not limited to, location in relation to high-risk areas, age of the facility, likely use of lead paint in or around the facility, numbers of children enrolled under the age of six, and results of lead screening programs established pursuant to Chapter 5 (commencing with Section 105275) of Part 5 of Division 103 of the Health and Safety Code.

(b) For purposes of this article, "schools" mean public elementary schools, public preschools, and public day care facilities.

(c) For purposes of this article, "public preschools" and "public day care facilities" mean preschools and day care facilities, respectively, located on public school property.

SEC. 34. Section 32243 of the Education Code is amended to read:

32243. (a) When a school subject to this article has been determined to have significant risk factors for lead, the school shall be advised of this finding, and the school shall notify parents of the provisions of the Childhood Lead Poisoning Prevention Act of 1991 (pursuant to Chapter 5 (commencing with Section 105275) of Part 5 of Division 103 of the Health and Safety Code). Within 45 days of receiving this finding, the school principal or the director of the schoolsite shall notify the teachers, other personnel, and the parents of the finding.

(b) Subsequent to the implementation by the state of a certification and training program for environmental lead testing and abatement, any school that undertakes any action to abate existing risk factors for lead shall utilize trained and state certified contractors, inspectors, and workers.

SEC. 35. Section 33319 of the Education Code is amended to read:

33319. The State Department of Education shall encourage and assist school districts to improve and monitor the health of their pupils. The department shall provide guidance and assist school districts to secure the voluntary assistance of local health professionals, schools of medicine, schools of public health, schools of nursing, voluntary health agencies, and other appropriate entities in order to provide pupil health screening and appropriate medical referrals as well as to provide valuable health information to pupils and their parents. The department shall encourage school districts to contact and cooperate with the State Maternal, Child, and Adolescent Health Board, with local maternal, child, and adolescent health boards, and child health and disability prevention programs established pursuant to Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code.

As part of this assistance, the State Department of Education shall provide information and guidance to schools that request the information and guidance, to establish "Health Days" in order to provide screenings for common health problems among pupils as well as to provide information to pupils and parents on prevention

CHAPTER 1172

An act to amend Sections 8208, 8250.5, 8263, 42267, 46010, 46010.2, 46010.5, and 52048 of, to add Section 52335.8 to, to add Article 4.5 (commencing with Section 48987) to Chapter 6 of Part 27 of, to repeal Sections 37673 and 56366.1 of, and to repeal and add Sections 2550.4, 42238.8, 56365, 56366, 56366.2, and 56740 of, the Education Code, to amend Section 11008.19 of the Welfare and Institutions Code, and to amend Items 6110-161-001 and 6110-230-001 of Section 2.00 of the Budget Act of 1994, relating to education, and making an appropriation therefor.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

The people of the State of California do enact as follows:

SECTION 1. Section 2550.4 of the Education Code is repealed.

SEC. 2. Section 2550.4 is added to the Education Code, to read:

2550.4. Any county superintendent of schools may request permission from the Superintendent of Public Instruction to calculate the days of attendance in schools and classes maintained by that county superintendent of schools, for the 1994-95 fiscal year, or any later fiscal year, and the succeeding fiscal years thereafter, as provided in Section 46010.2. The Superintendent of Public Instruction shall, subject to the approval of the Director of Finance, approve the request and verify the percentages that are determined pursuant to subdivision (b) of Section 46010.2 for schools and classes maintained by the county superintendent that has made the request.

SEC. 3. Section 8208 of the Education Code is amended to read:

8208. As used in this chapter:

(a) "Assigned reimbursement rate" is that rate established by the contract with the agency and is derived by dividing the total dollar amount of the contract by the minimum child day of average daily enrollment level of service required.

(b) "Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services.

(c) "Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private non-tax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

guardian of the pupil that they have two weeks to supply evidence either that the pupil has been properly immunized, or that the pupil is exempted from the immunization requirement pursuant to Section 3385 or Section 3386 of the Health and Safety Code.

(b) The governing board of the district, in that notice, refers the parent or guardian of the pupil to the pupil's usual source of medical care to obtain the immunization, or if no usual source exists, either refers the parent or guardian to the county health department, or notifies the parent that the immunizations will be administered at a school of the district.

SEC. 13. Article 4.5 (commencing with Section 48987) is added to Chapter 6 of Part 27 of the Education Code, to read:

Article 4.5. Guidelines for Filing Complaint of Child Abuse

48987. The governing board of a school district or county office of education shall upon request disseminate the guidelines adopted by the State Department of Education pursuant to Section 33308.1 to parents or guardians of minor pupils in the primary language of the parent or guardian. The governing board of a school district or county office of education is encouraged to inform a parent or guardian, that desires to file a complaint against a school employee or other person that commits an act of child abuse as defined in Section 11165.6 of the Penal Code against a pupil at a school site, of the procedures for filing the complaint with local child protective agencies pursuant to the Child Abuse and Neglect Reporting Act, established pursuant to Chapter 1444 of the Statutes of 1987. In the case of oral communications with the parent or guardian whose primary language is other than English, concerning that guideline or the procedures for filing child abuse complaints, the governing board shall provide an interpreter for that parent or guardian.

SEC. 14. Section 52048 of the Education Code is amended to read:

52048. (a) It is the intent of the Legislature that the funding system for school improvement programs, as prescribed by Section 52046, be simplified and equalized to the end that all districts have available for ongoing efforts one hundred six dollars (\$106) per pupil enrolled in kindergarten and grades 1 to 6, inclusive, adjusted in the 1985-86 fiscal year and each fiscal year thereafter by the same percentage increase made in base revenue limits for unified school districts with over 1,500 units of average daily attendance.

(b) In order to promote this intent, the Superintendent of Public Instruction shall allocate any cost-of-living adjustment for school improvement programs in a kindergarten and grades 1 to 6, inclusive, as follows:

(1) For any school district which received an allocation in the prior year, compute the product of one hundred six dollars (\$106), adjusted for increases in base revenue limits as specified in subdivision (a), multiplied by 80 percent of the prior year enrollment in kindergarten and grades 1 to 6, inclusive.

any action taken by the authority. A vacancy in the membership of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Each meeting of the authority shall be open to the public and shall be held in accordance with Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code. Resolutions of the authority need not be published or posted. The authority may delegate by resolution to one or more of its members or its executive director any powers and duties as it may deem proper.

SEC. 35. Section 32241 of the Education Code is amended to read:

32241. (a) The State Department of Health Services shall conduct a sample survey of schools in this state for the purpose of developing risk factors to predict lead contamination in public schools. The survey shall include schools that are representative of the state by geographical region and size of enrollment. The schools to be surveyed shall be selected on the basis of their ability to provide data necessary to make scientifically valid estimates of the nature and extent of lead hazards. Risk factors shall include, but are not limited to, location in relation to high-risk areas, age of the facility, likely use of lead paint in or around the facility, numbers of children enrolled under the age of six, and results of lead screening programs established pursuant to Article 4.6 (commencing with Section 372) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.

(b) For purposes of this article, "schools" mean public elementary schools, public preschools, and public day care facilities.

(c) For purposes of this article, "public preschools" and "public day care facilities" mean preschools and day care facilities, respectively, located on public school property.

SEC. 36. Section 32242 of the Education Code is amended to read:

32242. The department shall do all of the following:

(a) Design and implement a strategy for identifying the characteristics of high-risk schools and provide a basis for statewide estimates of the presence of lead in schools attended by young children.

(b) Conduct a sample survey, as described in Section 32241, to determine the likely extent and distribution of lead exposure to children from paint on the school, soil in play areas at the school, drinking water at the tap, and other potential sources identified by the department for this purpose. To the maximum extent possible, limited sample testing shall be used to validate survey results. The department shall compile and summarize the results of that survey and report those results to the Legislature and the State Department of Education.

(c) Within 60 days of the completion of testing a schoolsite, the department shall notify the principal of the school or director of the schoolsite of the survey results. Within 45 days of receiving the survey results, the principal or director, as the case may be, shall notify the teachers and other school personnel and parents of the

survey results.

(d) Make recommendations to the Legislature and the State Department of Education, based on the survey results and consideration of appropriate federal and state standards, on the feasibility and necessity of conducting statewide lead testing and any additional action needed relating to lead contamination in the schools.

(e) As deemed necessary and appropriate in view of the survey results, develop environmental lead testing methods and standards to ensure the scientific integrity of results, for use by schools and contractors designated by schools for that purpose.

(f) Evaluate the most current cost-effective lead abatement technologies.

(g) Work with the State Department of Education to develop voluntary guidelines for distribution to requesting schools to ensure that lead hazards are minimized in the course of school repair and maintenance programs and abatement procedures.

SEC. 37. Section 32243 of the Education Code is amended to read:

32243. (a) When a school subject to this article has been determined to have significant risk factors for lead, the school shall be advised of this finding, and the school shall notify parents of the provisions of the Childhood Lead Poisoning Prevention Act of 1991 (pursuant to Article 4.6 (commencing with Section 372) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code). Within 45 days of receiving this finding, the school principal or the director of the schoolsite shall notify the teachers, other personnel, and the parents of the finding.

(b) Subsequent to the implementation by the state of a certification and training program for environmental lead testing and abatement, any school that undertakes any action to abate existing risk factors for lead shall utilize trained and state certified contractors, inspectors, and workers.

SEC. 38. Section 32244 of the Education Code is amended to read:

32244. Lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility.

SEC. 39. Section 32245 of the Education Code is amended to read:

32245. Funding to implement this article shall be provided from the Child Health and Safety Fund created under Chapter 4.6 (commencing with Section 18285) of Part 6 of Division 9 of the Welfare and Institutions Code, upon appropriation by the Legislature pursuant to Section 18285 of the Welfare and Institutions Code.

SEC. 40. Section 41320.1 of the Education Code is amended to read:

41320.1. Acceptance by the district of the apportionments made pursuant to Section 41320 shall constitute agreement by the district to all of the following conditions:

| | |
|--------------|--|
| 40 and above | Brain and nerve damage Reproductive failure Kidney impairment High blood pressure |
| 70 | Severe anemia Numbing fingers and toes Inability to grip |
| 80-100 | Brain damage Liver/kidney failure |

SEC. 2. Article 4 (commencing with Section 32240) is added to Chapter 2 of Part 19 of the Education Code, to read:

Article 4. Lead-Safe Schools Protection Act

32240. This article shall be known, and may be cited, as the "Lead-Safe Schools Protection Act."

32241. (a) The State Department of Health Services shall conduct a sample survey of schools in this state for the purpose of developing risk factors to predict lead contamination in public schools. The survey shall include schools that are representative of the state by geographical region and size of enrollment. The schools to be surveyed shall be selected on the basis of their ability to provide data necessary to make scientifically valid estimates of the nature and extent of lead hazards. Risk factors shall include, but are not limited to, location in relation to high-risk areas, age of the facility, likely use of lead paint in or around the facility, levels of children enrolled under the age of six, and results of lead screening programs established pursuant to Article 4.6 (commencing with Section 372) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.

(b) For purposes of this article, "schools" mean public elementary schools, public preschools, and public day care facilities.

(c) For purposes of this article, "public preschools" and "public day care facilities" mean preschools and day care facilities located on public school property.

32242. The department shall do all of the following:

(a) Design and implement a strategy for identifying the characteristics of high-risk schools and provide a basis for statewide estimates of the presence of lead in schools attended by young children.

(b) Conduct a sample survey, as described in Section 32241 to determine the likely extent and distribution of lead exposure to children from paint on the school, soil in play areas at the school, drinking water at the tap, and other potential sources identified by the department for this purpose. To the maximum extent possible,

limited sample testing shall be used to validate survey results. The department shall compile and summarize the results of that survey and report those results to the Legislature and the State Department of Education.

(c) Within 60 days of the completion of testing a schoolsite, the department shall notify the principal of the school or director of the schoolsite of the survey results. Within 45 days of receiving the survey results, the principal or director, as the case may be, shall notify the teachers and other school personnel and parents of the survey results.

(d) Make recommendations to the Legislature and the State Department of Education, based on the survey results and consideration of appropriate federal and state standards, on the feasibility and necessity of conducting statewide lead testing and any additional action needed relating to lead contamination in the schools.

(e) As deemed necessary and appropriate in view of the survey results, develop environmental lead testing methods and standards to ensure the scientific integrity of results, for use by schools and contractors designated by schools for that purpose.

(f) Evaluate the most current cost-effective lead abatement technologies.

(g) Work with the State Department of Education to develop voluntary guidelines for distribution to requesting schools to ensure that lead hazards are minimized in the course of school repair and maintenance programs and abatement procedures.

32243. (a) When a school subject to this article has been determined to have significant risk factors for lead, the school shall be advised of this finding, and the school shall notify parents of the provisions of the Childhood Lead Poisoning Prevention Act of 1991 (pursuant to Article 4.6 (commencing with Section 372) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code). Within 45 days of receiving this finding, the school principal or the director of the schoolsite shall notify the teachers, other personnel, and the parents of the finding.

(b) At such time that the state implements a certification and training program for environmental lead testing and abatement, any school that undertakes any remedial action shall utilize trained and state certified contractors, inspectors, and workers.

32244. New school facilities under construction, or school facilities undergoing a modernization or renovation program, shall not utilize lead-based paint, lead plumbing and solders, or other potential sources of lead contamination.

32245. Funding to implement the provisions of this article shall be provided from the Child Health and Safety Fund, to be created by Chapter 4.6 (commencing with Section 18285) of Part 6 of Division 9 of the Welfare and Institutions Code pursuant to the proposed provisions of Assembly Bill 3087 of the 1992-93 Regular Session upon appropriation by the Legislature pursuant to Section

18285 of the Welfare and Institutions Code.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1318

An act to amend Section 5077.6 of, and to add Chapter 1.1 (commencing with Section 5078) to Division 5 of, the Public Resources Code, and to add Article 8.4 (commencing with Section 5060) to Chapter 1 of Division 3 of, the Vehicle Code, relating to the state heritage network.

[Approved by Governor September 30, 1992. Filed with Secretary of State September 30, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 5077.6 of the Public Resources Code is amended to read:

5077.6. Because of its clear function as the interpretive highway of the Gold Rush, and because of outstanding efforts of public agencies and the private sector to increase accessibility to physically disabled persons along parts of its route, State Highway Route 49 is hereby designated as a heritage corridor, including all sections which link the Counties of Sierra, Nevada, Placer, El Dorado, Amador, Calaveras, Tuolumne, Mariposa, and Madera, known collectively as California's Gold Country, and shall be recognized by the Department of Transportation and officially known as the Golden Chain Highway.

SEC. 2. Chapter 1.1 (commencing with Section 5078) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 1.1. STATE HERITAGE NETWORKS

5078. As used in this chapter:

(a) "Department" means the Department of Parks and Recreation.

(b) "Fund" means the Heritage Network Decal Fund created

both determining mobility and achieving the reductions in motor vehicle emissions required under state and federal law.

(2) Consideration of the most efficient, simple, and cost-effective institutional structure and roles necessary to implement any recommendations, including, but not limited to, a review of existing requirements to implement transportation control measures pursuant to state and federal air quality requirements.

(b) The authority may accept public and private contributions to fund the study.

(c) If a study is conducted, a study steering committee shall be selected by the executive director of the authority, that includes all of the following:

(1) A representative of a national environmental organization.

(2) Two persons representing air quality management or pollution control districts, one of which shall be the South Coast Air Quality Management District.

(3) A representative of the California Building Industry Association.

(4) A representative of Californians for Better Transportation.

(5) Two persons representing multicounty regional transportation planning agencies, one of which is located in southern California and one of which is located in northern California.

(6) A person representing cities.

(7) A person representing counties.

(8) A person representing transit operators.

(9) Two persons representing agencies designated to develop a congestion management program, including one representative of an agency in northern California, and one representative of an agency in southern California.

(10) A representative of the Department of Transportation designated by the Governor.

(11) A representative of the Governor's Office of Planning and Research designated by the Governor.

(12) A representative of the State Air Resources Board designated by the Governor.

CHAPTER 445

An act to amend Sections 48904 and 48980 of the Education Code, relating to schools.

[Approved by Governor August 4, 1992. Filed with
Secretary of State August 5, 1992.]

The people of the State of California do enact as follows:

SECTION 1. Section 48904 of the Education Code is amended to read:

48904. (a) (1) Notwithstanding Section 1714.1 of the Civil Code, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by, or performing volunteer services for, a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee, shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed ten thousand dollars (\$10,000). The parent or guardian shall also be liable for the amount of any reward not exceeding ten thousand dollars (\$10,000) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district or private school for all property belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to make the demand.

(2) The Superintendent of Public Instruction shall compute an adjustment of the liability limits prescribed by this subdivision at a rate equivalent to the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year.

(b) (1) Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned upon demand of an employee of the district or private school authorized to make the demand may, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a).

(2) The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

(3) The governing board of each school district or governing body of each private school shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils.

SEC. 2. Section 48980 of the Education Code is amended to read:

48980. (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall

in writing.

(o) To provide the University of California Retirement System with information in its possession relating to the earnings of any person who has applied for or is receiving disability income from the system. The earnings information shall be disclosed only upon written request from the system specifying that the person has applied for or is receiving disability income from the system. The request may be made by the chief administrative officer of the system or by an employee so authorized and identified by name and title by the chief administrative officer in writing. The system shall notify applicants for and recipients of disability income that earnings information from the department's records will be released upon the system's request. The information obtained pursuant to this subdivision shall be used or disclosed by the system only to determine or to verify entitlement to, or continuing eligibility for, disability income. The system shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(p) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code. The Division of Labor Standards Enforcement shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

CHAPTER 332

An act to add Section 48904.3 to the Education Code, relating to school districts.

[Approved by Governor July 15, 1986. Filed with
Secretary of State July 15, 1986.]

The people of the State of California do enact as follows:

SECTION 1. Section 48904.3 is added to the Education Code, to read:

48904.3. (a) Upon receiving notice that a school district has withheld the grades, diploma, or transcripts of any pupil pursuant to Section 48904, any school district to which the pupil has transferred shall likewise withhold the grades, diploma, or transcripts of the pupil as authorized by that section, until such time as it receives notice, from the district that initiated the decision to withhold; that the decision has been rescinded under the terms of that section.

(b) Any school district that has decided to withhold a pupil's

grades, diploma, or transcripts pursuant to Section 48904 shall, upon receiving notice that the pupil has transferred to any school district in this state, notify the parent or guardian of the pupil in writing that the decision to withhold will be enforced as specified in subdivision (a).

(c) For purposes of this section and Section 48904, "school district" is defined to include any county superintendent of schools.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 333

An act to amend Section 6812 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor July 15, 1986. Filed with
Secretary of State July 15, 1986.]

The people of the State of California do enact as follows:

SECTION 1. Section 6812 of the Revenue and Taxation Code is amended to read:

6812. (a) If the purchaser of a business or stock of goods fails to withhold purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money.

(b) (1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice, to the purchaser at his or her address as it appears on the records of the board, of the amount that must be paid as a condition of issuing the certificate,

(2) For purposes of paragraph (1), the latest of the following dates shall apply:

(A) The date the board receives a written request from the purchaser for a certificate.

(B) The date of the sale of the business or stock of goods.

(C) The date the former owner's records are made available for audit.

(c) Failure of the board to mail the notice referred to in subdivision (b) will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the person sells out his or her business or stock of goods or at the time that the determination against the person becomes final whichever event occurs the later.

Any work may extend across, through, or within any city, county, joint highway district, or other district, ~~if the work is an extension of an approach to a bridge operated by the district and connects the bridge as a main or alternate route with state highways or other through routes leading to or from the bridge.~~

CHAPTER 196

An act to add Section 46010.1 of the Education Code, relating to schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 26, 1986. Filed with
Secretary of State June 27, 1986.]

The people of the State of California do enact as follows:

SECTION 1. Section 46010.1 is added to the Education Code, to read:

46010.1. Commencing in the fall of the 1986-87 academic year, the governing board of each school district shall, each academic year, notify pupils in grades 7 to 12, inclusive, and the parents or guardians of all pupils enrolled in the district, that school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services without the consent of the pupil's parent or guardian.

The notice required pursuant to this section may be included with any other notice given pursuant to this code.

SEC. 2. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars (\$500,000), shall be made from the State Mandates Claims Fund.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to apply with the commencement of the 1986-87 academic year, it is necessary for this act to take effect immediately.

~~in this state it is necessary that this act take effect immediately.~~

CHAPTER 948

An act to amend Section 48904 of the Education Code, relating to schools.

[Approved by Governor September 7, 1984. Filed with Secretary of State September 10, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 48904 of the Education Code is amended to read:

48904. (a) Notwithstanding Section 1714.1 of the Civil Code, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by, or performing volunteer services for, a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee, shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed seven thousand five hundred dollars (\$7,500). The parent or guardian shall also be liable for the amount of any reward not exceeding seven thousand five hundred dollars (\$7,500) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district or private school for all property belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to make the demand.

The Superintendent of Public Instruction shall compute an adjustment of the liability limits prescribed by this subdivision at a rate equivalent to the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year.

(b) Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned upon demand of an employee of the district or private school authorized to make the demand may, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a).

The school district or private school shall notify the parent or

guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

The governing board of each school district or governing body of each private school shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils.

CHAPTER 949

An act to amend Section 502 of the Penal Code, relating to computers.

[Approved by Governor September 7, 1984. Filed with Secretary of State September 10, 1984.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature recognizes that the computer has now become an integral part of society. Because of the pervasiveness, the Legislature recognizes the need to protect the rights of owners and legitimate users of computer systems, as well as the privacy interests of the general public, from those who abuse these systems.

The Legislature finds that with the increased availability and use of computers by private individuals and by both public and private sectors, there has been a corresponding increase in the incidence of misuse and intrusions by unauthorized individuals. In order to discourage "browsing," which has led to significant destruction of property and numerous instances of invasion of privacy, as well as to punish the more serious offenders, it is the intent of the Legislature to establish a range of penalties to correspond with the level of culpability of individuals who abuse computer systems.

In an effort to protect the rights of the general public and the rights of legitimate users of computer systems, the Legislature hereby declares its intent to establish sanctions against unauthorized intrusions into computer systems which are not intended for general public use or for which access is limited by the owner or lessee.

SEC. 2. Section 502 of the Penal Code is amended to read:

502. (a) For purposes of this section:

(1) "Access" means to instruct, communicate with, store data or retrieve data from, a computer system or computer network.

be served at least 24 hours prior to the time set for the hearing.

(c) If the minor is not detained, the clerk of the juvenile court shall cause the notice and copy of the petition to be served on all persons required to receive such notice and copy of the petition, either personally or by first-class mail, at least 10 days prior to the time set for hearing. If such person is known to reside outside of the county, the clerk of the juvenile court shall mail the notice and copy of the petition, by first-class mail, to such person, as soon as possible after the filing of the petition and at least 10 days before the time set for hearing. Failure to respond to the notice shall in no way result in arrest or detention. In the instance of failure to appear after notice by first-class mail, the court shall direct that the notice and copy of the petition is to be personally served on all persons required to receive such notice and copy of the petition. Personal service of the notice and copy of the petition outside of the county at least 10 days before the time set for hearing is equivalent to such service by first-class mail. Service may be waived by any person by a voluntary appearance entered in the minutes of the court or by a written waiver of service filed with the clerk of the court at or prior to the hearing.

(d) For purposes of this section, service on the minor's attorney shall constitute service on the minor's parent or guardian.

SEC. 7. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 482

An act to amend Sections 1294, 1296, 1909, 1981, 2550, 33420, 33602, 33603, 35168, 42284, 42647, 44252, 44325, 44327, 44328, 44492, 44830.3, 45023.4, 46200, 48904, 48918, 52048, 54060, 54120, 62000, 64000, 69601, 69601.5, 69606, 69607, 69608, and 69609 of, to amend and renumber Section 60247 of, to add Section 33604 to, to repeal Section 69604 of, to repeal and add Sections 8222.1, 8278, and 52049 of, and to repeal Article 7 (commencing with Section 33600) of Chapter 4 of Part 20 of, the Education Code; to amend Section 3 of Chapter 46 of the Statutes of 1984, and to amend Provision (3) of Item 6100-101-001 of Chapter 324 of the Statutes of 1983, relating to education, and declaring the urgency thereof; to take effect immediately.

Superintendent of Public Instruction that the increase of teachers' salaries pursuant to this section does not require the district or county office of education to increase the salaries of other teachers.

(e) The adjustment to the district's revenue limit specified in paragraph (6) of subdivision (c) shall continue so long as the increase in the salary schedule made pursuant to paragraph (2) of subdivision (b) is maintained.

SEC. 12. Section 46200 of the Education Code is amended to read:

46200. (a) In the 1984-85 fiscal year, for each school district which certifies to the Superintendent of Public Instruction that it offers 180 days or more of instruction per school year, the Superintendent of Public Instruction shall apportion thirty-five dollars (\$35) per unit of average daily attendance, exclusive of adult average daily attendance and average daily attendance for pupils attending summer school. A year-round school shall be deemed to be in compliance with the 180-day requirement if it certifies to the Superintendent of Public Instruction that it is a year-round school and maintains its school for five more days, or the equivalent thereof, than maintained in the 1982-83 fiscal year not to exceed 180 days. Each school district which received an apportionment pursuant to this subdivision in the 1984-85 fiscal year shall add thirty-five dollars (\$35) to the district's base revenue limit per unit of average daily attendance for the 1985-86 fiscal year.

(b) For any school district which received an apportionment pursuant to subdivision (a) and which offers less than 180 days of instruction in the 1985-86 fiscal year or any fiscal year thereafter, and which does not provide the minimum number of instructional minutes specified in subdivision (a) of Section 46201 for that fiscal year, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for that fiscal year by an amount attributable to the increase received pursuant to subdivision (a), as adjusted in fiscal years subsequent to the 1984-85 fiscal year.

SEC. 13. Section 48904 of the Education Code is amended to read:

48904. (a) Notwithstanding Section 1714.1 of the Civil Code, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by or performing volunteer services for a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed five thousand dollars (\$5,000). The parent or guardian shall also be liable for the amount of any reward not exceeding five thousand dollars (\$5,000) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district or private school for all property belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to make the demand.

(b) Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned upon demand of an employee or the district or private school authorized to make the demand may, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage, except transfer transcripts as provided in Section 49068, until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a).

The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

The governing board of each school district or governing body of each private school shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils.

SEC. 13.5. Section 48918 of the Education Code is amended to read:

48918. The governing board of each school district shall establish rules and regulations governing procedures for the expulsion of pupils. These procedures shall include, but are not necessarily limited to, the following:

(a) The pupil shall be entitled to a hearing to determine whether the pupil should be expelled. An expulsion hearing shall be held within 30 schooldays of the date the principal or the superintendent of schools determines that the pupil has committed any of the acts enumerated in Section 48900, unless the pupil requests, in writing, that the hearing be postponed. The adopted rules and regulations shall require that the pupil shall be entitled to at least one postponement for a period of not more than 30 calendar days of an expulsion hearing. Thereafter, any additional postponement may be granted at the discretion of the governing board.

In the event that compliance by the governing board with the time requirements for the conducting of an expulsion hearing under this subdivision is impracticable, the superintendent of schools or the superintendent's designee may, for good cause, extend the time period for the holding of the expulsion hearing for an additional five schooldays. Reasons for the extension of the time for the hearing shall be included as a part of the record at the time the expulsion hearing is conducted. Upon the commencement of the hearing, all matters shall be pursued and conducted with reasonable diligence and shall be concluded without any unnecessary delay.

CHAPTER 498

An act to amend Sections 1296, 2557, 8152, 8153, 17717.5, 17722, 17749, 17780, 35031, 39363, 41972, 44251, 44662, 44663, 44664, 44682, 44683, 44684, 44685, 44687, 44688, 44689, 44882, 44884, 44901, 44932, 44933, 44934, 44935, 44936, 44937, 44938, 44943, 44944, 44948, 44949, 44955, 44956, 44957, 46142, 46144, 46147, 48430, 49067, 52302.5, 52853, 52858, 54060, 56723, 56782, 60240, 60246, 60602, 60603, 60604.5, and 62000 of, to amend the heading of Article 3 (commencing with Section 44681) of Chapter 3.1 of Part 25 of, to amend and renumber Section 48438 of, to amend and repeal Sections 42241.4, 44255, and 51225 of, to add Sections 8154, 14002.1, 14002.2, 17717.7, 17751, 33308.5, 35160.5, 41301.3, 41868, 42238.9, 42250, 44227.5, 44277, 44278, 44279, 44830.3, 44885.5, 44948.3, 44948.5, 44955.5, 44956.5, 45023.4, 45100.5, 45104.5, 45108.5, 45108.7, 45256.5, 48260.5, 48431.6, 48431.7, 48438, 48440, 51225.3, 51225.4, 51226, 51228, 52048, 52049, 52304.1, 52333, 54029, 56774.5, 60247, 60603.5, 62048, 60249, 60604.7, and 76006 to, to add and repeal Sections 42238.1, 42238.2, 42238.4, 42238.7, and 42238.8 of, to add Chapter 11 (commencing with Section 11000) to Part 7 of, Article 7 (commencing with Section 33600) to Chapter 4 of Part 20 of, Article 4.5 (commencing with Section 42290) to Chapter 7 of Part 24 of, Article 7.5 (commencing with Section 44325) and Article 9 (commencing with Section 44360) to Chapter 2 of Part 25 of, Chapter 3.15 (commencing with Section 44689.5) to Part 25 of, Chapter 3.3 (commencing with Section 44700) to Part 25 of, Article 8 (commencing with Section 46200) to Chapter 2 of Part 26 of, Article 7 (commencing with Section 48070) to Chapter 1 of Part 27 of, Article 2.3 (commencing with Section 48643) to Chapter 4 of Part 27 of, Article 7.5 (commencing with Section 52460) to Chapter 9 of Part 28 of, Article 2.5 (commencing with Section 54650) to Chapter 9 of Part 29 of, Chapter 6 (commencing with Section 58800) to Part 31 of, Article 8 (commencing with Section 60700) to Chapter 5 of Part 33 of, Part 35 (commencing with Section 63000) to, and Article 6 (commencing with Section 69600) to Chapter 2 of Part 42 of, to add and repeal Chapter 3.4 (commencing with Section 44750) of Part 25 of, to repeal Sections 1275, 42237, 42239.1, 42239.5, and 42239.8 of, to repeal Chapter 2 (commencing with Section 44200) of Part 25 of, and Article 8 (commencing with Section 56770) of Chapter 7 of Part 30 of, to repeal and add Sections 42238, 42238.5, 42238.6, 42239, 46145, and 52616 of, to repeal and add Article 4 (commencing with Section 42280) of Chapter 7 of, and Article 10 (commencing with Section 41850) of Chapter 8 of, Part 24 of, Article 4 (commencing with Section 44490) of Chapter 3 of, and Article 2 (commencing with Section 44680) to Chapter 3.1 of, Part 25 of, and Article 1 (commencing with Section 48900) of Chapter 6 of Part 27 of, the Education Code, to amend Sections 3543.2, 3543.4, 35040, and 66493 of the Government Code, to amend Sections 72, 17024.5, 17048, 17053.7, 17063, 17137, 17932, 18033, 18681.1, 18684, 18685, 18685.07, 18699, 18802, 18934, 19062.11, 19405, 19414, 23701d, 23701q, 24305,

SEC. 89. Article 2.3 (commencing with Section 48643) is added to Chapter 4 of Part 27 of the Education Code, to read:

Article 2.3. Reimbursement for Increasing Availability of Opportunity Classes and Programs

48643. It is the intent of the Legislature in enacting this article to increase the availability of opportunity classes and programs operated pursuant to Article 2 (commencing with Section 48630) of this chapter for pupils enrolled in grades 7 to 9, inclusive.

48643.5. Upon application to the Superintendent of Public Instruction, the governing board of any school district which maintains opportunity classes or programs for pupils enrolled in grades 7 to 9, inclusive, shall be eligible to receive reimbursement pursuant to Section 48644 for those costs of increasing the availability of such classes or programs which are in excess of reimbursements provided in the regular apportionment to the school district.

48644. (a) Beginning with the 1984-85 fiscal year, and each fiscal year thereafter, the Superintendent of Public Instruction shall, on a priority basis, allocate to each school district which is eligible under Section 48643.5 and which meet the requirements of subdivision (b) an amount not to exceed four hundred dollars (\$400) per pupil for each additional pupil enrolled in the opportunity classes or programs maintained by the district for grades 7 to 9, inclusive, over the number of pupils so enrolled in the 1982-83 fiscal year.

(b) In order to receive reimbursement pursuant to subdivision (a), a school district shall do all of the following:

(1) Demonstrate that the increased opportunity programs or classes will be operated in compliance with law and for the purpose of returning pupils to the regular educational program of the district.

(2) Demonstrate the need for funds allocated pursuant to subdivision (a) and the purposes for which the funds will be used.

(3) Demonstrate that the instructional and counseling services provided by the increased opportunity programs or classes will result in costs in excess of reimbursement provided in the regular apportionment to the school district.

48644.3. The State Department of Education shall evaluate the program established pursuant to this article and report its findings to the Legislature on or before June 30, 1987.

48644.5. The provisions of this article shall become operative July 1, 1984.

SEC. 90. Article 1 (commencing with Section 48900) of Chapter 6 of Part 27 of the Education Code is repealed.

SEC. 91. Article 1 (commencing with Section 48900) is added to Chapter 6 of Part 27 of the Education Code, to read:

Article 1. Suspension or Expulsion

48900. A pupil shall not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has:

(a) Caused, attempted to cause, or threatened to cause physical injury to another person.

(b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object unless, in the case of possession of any such object, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance, as defined in Section 11007 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell any controlled substance, as defined in Section 11007 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stolen or attempted to steal school property or private property.

(h) Possessed or used tobacco, except as provided in Section 48901.

(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

(j) Unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11364 of the Health and Safety Code.

(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

No pupil shall be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance. A pupil may be suspended or expelled for acts which are enumerated in this section and related to school activity or attendance which occur at any time, including, but not limited to, any of the following:

(1) While on school grounds.

(2) While going to or coming from school.

(3) During the lunch period whether on or off the campus.

(4) During, or while going to or coming from, a school sponsored activity.

It is the intent of the Legislature that alternatives to suspensions or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities.

48900.5. Suspension shall be imposed only when other means of correction fail to bring about proper conduct. However, a pupil may be suspended for any of the reasons enumerated in Section 48900 upon a first offense, if the principal or superintendent of schools determines that the pupil violated subdivision (a), (b), (c), (d), or (e) of Section 48900 or that the pupil's presence causes a danger to persons or property threatens to disrupt the instructional process.

48901. (a) The governing board of any school district maintaining a high school may adopt rules and regulations permitting the smoking and possession of tobacco on the campus of a high school or while under the authority of school personnel by pupils of the high school. However, those rules and regulations shall not permit pupils to smoke in any classroom or other enclosed facility which any student is required to occupy or which is customarily occupied by nonsmoking students.

(b) The governing board of any school district maintaining a high school shall take all steps it deems practical to discourage high school students from smoking.

48902. The principal of a school or the principal's designee shall, prior to the suspension or expulsion of any pupil, notify the appropriate law enforcement authorities of the county or city in which the school is situated, of any acts of the student which may be violative of Section 245 of the Penal Code.

48903. Except as provided in subdivision (g) of Section 48911 and in Section 48912, the total number of days for which a pupil may be suspended from school shall not exceed 20 schooldays in any school year, unless for purposes of adjustment, a pupil enrolls in or is transferred to another regular school, an opportunity school or class, or a continuation education school or class, in which case the total number of schooldays for which the pupil may be suspended shall not exceed 30 days in any school year.

48904. (a) Notwithstanding Section 1714.1 of the Civil Code, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by or performing volunteer services for a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed five thousand dollars (\$5,000). The parent or guardian shall also be liable for the amount of any reward not exceeding five thousand dollars (\$5,000) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district or private school for all property

belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to make the demand.

(b) Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned upon demand of an employee of the district or private school authorized to make the demand may, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a).

The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

The governing board of each school district or governing body of each private school shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils.

48905. An employee of a school district whose person or property is injured or damaged by the willful misconduct of a pupil who attends school in such district, when the employee or the employee's property is (1) located on property owned by the district, (2) being transported to or from an activity sponsored by the district or a school within the district, (3) present at an activity sponsored by such district or school, or (4) otherwise injured or damaged in retaliation for acts lawfully undertaken by the employee in execution of the employee's duties, may request the school district to pursue legal action against the pupil who caused the injury or damage, or the pupil's parent or guardian pursuant to Section 48904.

48906. When a principal or other school official releases a minor pupil to a peace officer for the purpose of removing the minor from the school premises, the school official shall take immediate steps to notify the parent, guardian, or responsible relative of the minor regarding the release of the minor to the officer, and regarding the place to which the minor is reportedly being taken.

48907. Students of the public schools shall have the right to exercise freedom of speech and of the press including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, the wearing of buttons, badges, and other insignia, and the right of expression in official publications, whether or not such publications or other means of expression are supported

becomes evident to the teacher that the pupil is in danger of failing a course. The refusal of the parent to attend the conference, or to respond to the written report, shall not preclude failing the pupil at the end of the grading period.

(b) The governing board of any school district may adopt regulations authorizing a teacher to assign a failing grade to any pupil whose unexcused absences from the teacher's class equal or exceed a maximum number which shall be specified by the board. Regulations adopted pursuant to this subdivision shall include, but not be limited to, the following:

(1) A reasonable opportunity for the pupil or the pupil's parent or guardian to explain the absences.

(2) A method for identification in the pupil's record of the failing grades assigned to the pupil on the basis of excessive unexcused absences.

(c) Notwithstanding the provisions of subdivision (a) of Section 49061, the provisions of this section shall apply to the parent or guardian of any pupil without regard to the age of the pupil.

SEC. 93. Section 51225 of the Education Code is amended to read:

51225. No pupil shall receive a diploma of graduation from high school who has not completed the course of study prescribed by the governing board. Requirements for graduation shall include:

(a) English.

(b) American history.

(c) American government.

(d) Mathematics.

(e) Science.

(f) Physical education, unless the pupil has been exempted pursuant to the provisions of this code.

(g) Such other subjects as may be prescribed.

The governing board, with the active involvement of parents, administrators, teachers, and students, shall, by January 1, 1979, adopt alternative means for students to complete the prescribed course of study which may include practical demonstration of skills and competencies, work experience or other outside school experience, interdisciplinary study, independent study, and credit earned at a postsecondary institution. Requirements for graduation and specified alternative modes for completing the prescribed course of study shall be made available to students, parents, and the public.

This section shall remain in effect until July 1, 1986, and as of that date is repealed unless a later enacted statute which is chaptered before July 1, 1986, deletes or extends that date.

SEC. 94. Section 51225.3 is added to the Education Code, to read:

51225.3. (a) Commencing with the 1986-87 school year, no pupil shall receive a diploma of graduation from high school who, while in grades 9 through 12, has not completed:

(1) At least the following numbers of courses in the subjects specified, each course having a duration of one year.

(A) Three courses in English.

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

Education Code

§ 32241

GENERAL PROVISIONS

(c) For purposes of this article, "public preschools" and "public day care facilities" mean preschools and day care facilities, respectively, located on public school property.

(Added by Stats.1992, c. 1317 (A.B.1659), § 2. Amended by Stats.1993, c. 589 (A.B.2211), § 35; Stats.1996, c. 1023 (S.B.1497), § 33, eff. Sept. 29, 1996.)

Historical and Statutory Notes

The 1996 amendment, in subd. (a), substituted "Chapter 5 (commencing with Section 105275) of Part 5 of Division 103" for "Article 4.6 (commencing with Section 372) of Chapter 2 of Part 1 of Division 1".

Legislative findings, declaration and intent relating to Stats.1996, c. 1023 (S.B.1497), see

Historical and Statutory Notes under Business and Professions Code § 690.

Subordination of legislation by Stats.1996, c. 1023 (S.B.1497), see Historical and Statutory Notes under Business and Professions Code § 690.

Cross References

Department of Health Services, generally, see Health and Safety Code § 100100 et seq.

§ 32242. Department duties

The department shall do all of the following:

(a) Design and implement a strategy for identifying the characteristics of high-risk schools and provide a basis for statewide estimates of the presence of lead in schools attended by young children.

(b) Conduct a sample survey, as described in Section 32241, to determine the likely extent and distribution of lead exposure to children from paint on the school, soil in play areas at the school, drinking water at the tap, and other potential sources identified by the department for this purpose. To the maximum extent possible, limited sample testing shall be used to validate survey results. The department shall compile and summarize the results of that survey and report those results to the Legislature and the State Department of Education.

(c) Within 60 days of the completion of testing a schoolsite, the department shall notify the principal of the school or director of the schoolsite of the survey results. Within 45 days of receiving the survey results, the principal or director, as the case may be, shall notify the teachers and other school personnel and parents of the survey results.

(d) Make recommendations to the Legislature and the State Department of Education, based on the survey results and consideration of appropriate federal and state standards, on the feasibility and necessity of conducting statewide lead testing and any additional action needed relating to lead contamination in the schools.

(e) As deemed necessary and appropriate in view of the survey results, develop environmental lead testing methods and standards to ensure the scientific integrity of results, for use by schools and contractors designated by schools for that purpose.

(f) Evaluate the most current cost-effective lead abatement technologies.

(g) Work with the State Department of Education to develop voluntary guidelines for distribution to requesting schools to ensure that lead hazards are

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§ 32243

minimized in the course of school repair and maintenance programs and abatement procedures.

(Added by Stats.1992, c. 1317 (A.B.1659), § 2. Amended by Stats.1993, c. 589 (A.B. 2211), § 36.)

Cross References

Computation of time,

Generally, see Code of Civil Procedure §§ 12 and 12a and Government Code § 6800 et seq.

Time in which any act provided by the Education Code is to be done, see Education Code § 9.

Continuation of statutes relating to subjects covered by provisions of this Code, see Education Code § 3.

§ 32243. School with significant risk factors for lead; notification to personnel and parents; utilization of trained and state certified workers for remedial action

(a) When a school subject to this article has been determined to have significant risk factors for lead, the school shall be advised of this finding, and the school shall notify parents of the provisions of the Childhood Lead Poisoning Prevention Act of 1991 (pursuant to Chapter 5 (commencing with Section 105275) of Part 5 of Division 103 of the Health and Safety Code). Within 45 days of receiving this finding, the school principal or the director of the school site shall notify the teachers, other personnel, and the parents of the finding.

(b) Subsequent to the implementation by the state of a certification and training program for environmental lead testing and abatement, any school that undertakes any action to abate existing risk factors for lead shall utilize trained and state certified contractors, inspectors, and workers.

(Added by Stats.1992, c. 1317 (A.B.1659), § 2. Amended by Stats.1993, c. 589 (A.B. 2211), § 37; Stats.1996, c. 1023 (S.B.1497), § 34, eff. Sept. 29, 1996.)

Historical and Statutory Notes

The 1996 amendment, in subd. (a), substituted "Chapter 5 (commencing with Section 105275) of Part 5 of Division 103" for "Article 4.6 (commencing with Section 372) of Chapter 2 of Part 1 of Division 1".

Legislative findings, declaration and intent relating to Stats.1996, c. 1023 (S.B.1497), see

Historical and Statutory Notes under Business and Professions Code § 690.

Subordination of legislation by Stats.1996, c. 1023 (S.B.1497), see Historical and Statutory Notes under Business and Professions Code § 690.

Cross References

Computation of time,

Generally, see Code of Civil Procedure §§ 12 and 12a and Government Code § 6800 et seq.

Time in which any act provided by the Education Code is to be done, see Education Code § 9.

Continuation of statutes relating to subjects covered by provisions of this Code, see Education Code § 3.

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§ 32244

GENERAL PROVISIONS

Div. 1

§ 32244. Construction, modernization, or renovation of school facilities; prohibition on use of potential sources of lead contamination

Lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility.

(Added by Stats.1992, c. 1317 (A.B.1659), § 2. Amended by Stats.1993, c. 589 (A.B. 2211), § 38.)

Cross References

Blood-borne diseases, safer medical devices, see Health and Safety Code § 105325.

Lead-related construction work, definitions and standards for safety in employment, see Labor Code § 6716 et seq.

School facilities,

Generally, see Education Code § 17211 et seq.

Construction of school buildings, see Education Code § 17251 et seq.

Property maintenance and control, see Education Code § 17565 et seq.

Property, sale, lease or exchange, see Education Code § 17385 et seq.

Water systems,

Adoption of building standards for use of lead materials, see Health and Safety Code § 116880.

Use of lead solder or pipe, see Health and Safety Code § 116875.

§ 32245. Funding

Funding to implement this article shall be provided from the Child Health and Safety Fund created under Chapter 4.6 (commencing with Section 18285) of Part 6 of Division 9 of the Welfare and Institutions Code, upon appropriation by the Legislature pursuant to Section 18285 of the Welfare and Institutions Code.

(Added by Stats.1992, c. 1317 (A.B.1659), § 2. Amended by Stats.1993, c. 589 (A.B. 2211), § 39.)

Article 5

SCHOOL SAFETY AND SECURITY

Section

32250. Legislative recognition.

32251. Creation of resource unit.

32252. Functions of resource unit.

32253. Evaluation of resource unit; report to legislature.

32254. Funding; effect on departmental duties, obligations and responsibilities.

Article 5 was added by Stats.1980, c. 788, p. 2386, § 1.

Cross References

Crimes, miscellaneous crimes in school buildings or upon school grounds, see Penal Code §§ 626.2 et seq.

Gang violence suppression program, generally, see Penal Code § 13826.1 et seq.

Interagency safe school model programs, see Education Code § 32270 et seq.

Interagency school safety cadre, establishment and purpose, see Education Code § 32290.

Local educational agencies, development of school safety plans, see Education Code § 35294 et seq.

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§ 46010.1. Confidential medical services; excuse to obtain without consent of parent or guardian; notice to pupils and parents

Commencing in the fall of the 1986-87 academic year, the governing board of each school district shall, each academic year, notify pupils in grades 7 to 12, inclusive, and the parents or guardians of all pupils enrolled in the district, that school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services without the consent of the pupil's parent or guardian.

The notice required pursuant to this section may be included with any other notice given pursuant to this code.

(Added by Stats.1986, c. 196, § 1, eff. June 27, 1986.)

§ 48904. Liability of parent or guardian for willful pupil misconduct; withholding of grades, diplomas and transcripts; voluntary work program

(a) (1) Notwithstanding Section 1714.1 of the Civil Code, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by, or performing volunteer services for, a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee, shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed ten thousand dollars (\$10,000). The parent or guardian shall also be liable for the amount of any reward not exceeding ten thousand dollars (\$10,000) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district or private school for all property belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to make the demand.

(2) The Superintendent of Public Instruction shall compute an adjustment of the liability limits prescribed by this subdivision at a rate equivalent to the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year.

(b) (1) Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned upon demand of an employee of the district or private school authorized to make the demand may, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a).

(2) The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

(3) The governing board of each school district or governing body of each private school shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils.

(Added by Stats.1983, c. 498, § 91, eff. July 28, 1983. Amended by Stats.1984, c. 482, § 13, eff. July 17, 1984; Stats.1984, c. 948, § 1; Stats.1992, c. 445 (A.B.3257), § 1.)

§ 48904.3. Withholding grades, diplomas, or transcripts of pupils causing property damage or injury; transfer of pupils to new school districts; notice to rescind decision to withhold

(a) Upon receiving notice that a school district has withheld the grades, diploma, or transcripts of any pupil pursuant to Section 48904, any school district to which the pupil has transferred shall likewise withhold the grades, diploma, or transcripts of the pupil as authorized by that section, until such time as it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section.

(b) Any school district that has decided to withhold a pupil's grades, diploma, or transcripts pursuant to Section 48904 shall, upon receiving notice that the pupil has transferred to any school district in this state, notify the parent or guardian of the pupil in writing that the decision to withhold will be enforced as specified in subdivision (a).

(c) For purposes of this section and Section 48904, "school district" is defined to include any county superintendent of schools.

(Added by Stats.1986, c. 332, § 1.)

Education Code

§ 48987. Dissemination of guidelines; information regarding procedures for filing complaint; interpreters

The governing board of a school district or county office of education shall upon request disseminate the guidelines adopted by the State Department of Education pursuant to Section 88308.1 to parents or guardians of minor pupils in the primary language of the parent or guardian. The governing board of a school district or county office of education is encouraged to inform a parent or guardian, that desires to file a complaint against a school employee or other person that commits an act of child abuse as defined in Section 11165.5 of the Penal Code against a pupil at a school site, of the procedures for filing the complaint with local child protective agencies pursuant to the Child Abuse and Neglect Reporting Act, established pursuant to Chapter 1444 of the Statutes of 1987. In the case of oral communications with the parent or guardian whose primary language is other than English, concerning that guideline or the procedures for filing child abuse complaints, the governing board shall provide an interpreter for that parent or guardian.

(Added by Stats.1994, c. 1172 (A.B.2971), § 18.)

MISCELLANEOUS PROVISIONS

§ 18285

Pt. 6

Section 18281, added by Stats.1975, c. 1234,
§ 1, amended by Stats.1978, c. 429, § 257.3,
required period reports to the legislature.

Chapter 4.6

CHILD HEALTH AND SAFETY FUND

Section

18285. Creation of fund; allocation of funds.

18285.5. Legislative intent.

18286 to 18289. Repealed.

Chapter 4.6 was added by Stats.1992, c. 1316 (A.B.3087), § 15.

*Former Chapter 4.6, added by Stats.1976, c. 435, § 1, was repealed by
Stats.1977, c. 550, p. 1769, § 2, operative July 1, 1980.*

Cross References

Lead-Safe Schools Protection Act, funding, see Education Code § 32245.

Special license plates to fund child health and safety programs, see Vehicle Code § 5072.

§ 18285. Creation of fund; allocation of funds

(a) There is hereby created in the State Treasury the Child Health and Safety Fund for the purposes specified in this section.

(b) Moneys for this fund shall be derived from the license plate program provided for pursuant to Section 5028 of the Vehicle Code and from civil penalties on family day care providers pursuant to Sections 1596.893 and 1597.62 of the Health and Safety Code.

(c) Moneys in the fund shall be expended, upon appropriation by the Legislature, for the purposes specified in subdivisions (d), (e) and (f).

(d) Fifty percent of moneys derived from the license plate program pursuant to Section 5072 of the Vehicle Code shall be available, upon appropriation, to the State Department of Social Services for the purpose of administering provisions of Sections 1596.816, 1596.87, 1596.872, 1596.8725, 1596.893, 1596.895, 1596.95, 1597.091, 1597.54, 1597.541, 1597.542, 1597.55, and 1597.62 of the Health and Safety Code, as added or amended by this bill in the 1991-92 Regular Session, that are either not funded or insufficiently funded in the 1991-92 Budget Act, as determined by the State Department of Social Services. The State Department of Social Services shall allocate these special funds according to the following priorities:

- (1) Site visits performed pursuant to Sections 1597.091 and 1597.55.
- (2) The monitoring responsibility of the child care advocate program performed pursuant to Section 1596.8725.
- (3) Training for investigative and licensing field staff.
- (4) Other aspects of the child care advocate program performed pursuant to Section 1596.872.

§ 18285

PUBLIC SOCIAL SERVICES

Div. 9

(5) The salary of the chief of the child care licensing branch.

In order to implement the list of priorities set forth in this subdivision, and to complete implementation of subdivision (a) of Section 1596.816 of the Health and Safety Code, the State Department of Social Services may, as necessary, fund appropriate administrative support costs.

(e) Fifty percent of moneys derived from the license plate program pursuant to Section 5072 of the Vehicle Code shall be available, upon appropriation, for programs which address any of the following child health and safety concerns and that are either to be carried out within a two-year period or whose implementation is dependent upon one-time initial funding:

(1) Child abuse prevention, except that not more than 25 percent of the moneys in this fund shall be used for this purpose. Ninety percent of the 25 percent shall be deposited in the county children's trust fund, established pursuant to Section 18966 of the Welfare and Institutions Code, for the support of child abuse prevention services in the community, and 10 percent of the 25 percent shall be deposited in the State Children's Trust Fund, established pursuant to Section 18969, for public education, training, and technical assistance.

(2) Vehicular safety, including restraint warnings and education programs.

(3) Drowning prevention.

(4) Playground safety standards.

(5) Bicycle safety.

(6) Gun safety.

(7) Fire safety.

(8) Poison control and safety.

(9) In-home safety.

(10) Childhood lead poisoning.

(11) Sudden infant death syndrome.

(f) Moneys derived from civil penalties imposed on family day care providers shall be available, upon appropriation, to the State Department of Social Services exclusively for orientation, training, and education of family day care providers.

(Added by Stats.1992, c. 1316 (A.B.3087), § 15. Amended by Stats.1993, c. 726 (A.B.1486), § 15, eff. Oct. 4, 1993.)

Historical and Statutory Notes

Former Section 18285, relating to legislative findings, was added by Stats.1976, c. 435, § 1 and repealed by Stats.1977, c. 550, p. 1769, § 2, operative July 1, 1980.

Cross References

Children's Trust Fund, establishment, see Welfare and Institutions Code § 18969.

Children's Trust Fund, generally, see Welfare and Institutions Code § 18966.

Department of Social Services, generally, see Welfare and Institutions Code § 10550 et seq.

Lead-Safe Schools Protection Act, funding, see Education Code § 32245.

EXHIBIT 4
COPIES OF REGULATIONS CITED

- (b) The date of issuance of a certificate of proficiency.
- (c) The signature of the parent and the date.
- (d) The signature of a school administrator who has personally confirmed the authenticity of the parent's signature and the date.

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
2. Amendment filed 7-18-78; effective thirtieth day thereafter (Register 78, No. 29).

§ 11523. Examination Announcements.

The school district superintendent shall require the principal of each school maintaining either or both of grades 11 and 12 to distribute to each pupil in those grades an announcement explaining the California High School Proficiency Examination provided for under Education Code Section 48412. Upon receipt of the announcements from the State Department of Education or its contractor, distribution shall be made in time sufficient to enable interested pupils to meet all examination registration requirements for the fall test of that year.

NOTE: Authority cited: Sections 33031 and 48412, Education Code. Reference: Sections 48410(e) and 48412, Education Code.

HISTORY

1. New section filed 9-15-78 as an emergency; effective upon filing (Register 78, No. 37).
2. Certificate of Compliance filed 11-16-78 (Register 78, No. 46).

Article 2. High School Equivalency Certificate (G.E.D.)—for Persons 18 Years of Age or Older

§ 11530. Definitions.

(a) "Resident of this State" means a person who either presently lives in the State of California, or who has his domicile in California in accordance with the criteria established in Government Code section 244.

(b) "A general educational development test" means a specific series of the General Educational Development Test adopted by the General Educational Development Testing Service of the American Council on Education.

(c) "A score equal to the standard of performance expected" means the following: For examinees that take the GED in the English Language prior to January 1, 2002 and for examinees that take the GED in the Spanish language prior to January 1, 2003, the standard for passage is a standard score of not less than 40 on each of the 5 tests and a total standard score of not less than 225 on the 5 tests of the battery. Beginning January 1, 2002, the standard for passage for the English Language version of the battery is a standard score of not less than 410 on each of the 5 tests and a total average standard score of not less than 450 for the entire battery. Beginning January 1, 2003, the standard for passage for the Spanish language version of the GED is a standard score of not less than 410 on each of the 5 tests and a total average standard score of not less than 450 for the entire battery.

(d) "Testing center approved by the Department of Education" means a testing center recognized as an official testing facility by the American Council on Education, General Educational Development Testing Service and its Overseas Branch.

(e) "Fee" to accompany each application for an equivalency certificate shall be \$12.00 and shall be nonrefundable irrespective of whether or not a California High School Equivalency Certificate is granted. This fee shall be charged only once for a given series of the General Educational Development Test.

(f) "Certificate" means a document containing the words "California High School Equivalency Certificate."

NOTE: Authority cited: Section 51426, Education Code. Reference: Sections 51420, 51421 and 51425, Education Code.

HISTORY

1. New chapter 10 (sections 11530 through 11532) filed 1-18-74; effective thirtieth day thereafter (Register 74, No. 3).
2. Heading and designation of sections 11530-11532 as article 2 filed 11-21-75; effective thirtieth day thereafter (Register 75, No. 47).

3. Amendment of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Amendment of subsection (b) filed 5-21-82; effective thirtieth day thereafter (Register 82, No. 21).
5. Amendment of subsection (c) filed 6-21-84; effective thirtieth day thereafter (Register 84, No. 25).
6. Amendment of subsection (e) filed 5-27-86 as an emergency; effective upon filing (Register 86, No. 22). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-24-86.
7. Certificate of Compliance filed 8-7-86 (Register 86, No. 32).
8. Amendment of subsection (e) filed 6-8-90; operative 7-1-90 pursuant to Education Code section 51421 (Register 90, No. 31).
9. Amendment of subsection (c) filed 11-6-91; operative 12-6-91 (Register 92, No. 8).
10. Amendment of subsection (e) filed 4-10-96; operative 5-10-96 (Register 96, No. 15).
11. Amendment filed 1-24-2002 as an emergency; operative 1-24-2002 (Register 2002, No. 4). A Certificate of Compliance must be transmitted to OAL by 5-24-2002 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1-24-2002 order, including amendment of subsection (e), transmitted to OAL 5-1-2002 and filed 6-11-2002 (Register 2002, No. 24).

§ 11531. Approval of General Educational Development Testing Centers.

(a) A General Educational Development Testing Center may be approved by the Superintendent of Public Instruction to administer tests for purposes of Education Code Section 51420 provided it has complied with all of the following:

- (1) Fulfilled the requirements of the General Educational Development Testing Service.
- (2) Provided the State Department of Education with all required information indicating:
 - (A) Name of Institutional Chief Administrative Officer and title,
 - (B) Name of Chief Examiner and Alternate Examiner(s) and their titles,
 - (C) Name of testing facility,
 - (D) Contracting agency or school district,
 - (E) Address of the testing center.
- (3) Agreed to comply with all test security requirements provided by the State Department of Education and to maintain all required records regarding tests and testing activities.
- (4) Agreed to provide each examinee with his or her test scores.
- (5) Agreed to inspection by authorized representatives of the State Department of Education or other agency performing the same function outside of California.

(b) The Superintendent of Public Instruction may suspend or revoke the approval, or deny renewal of an approval, of any center for failure or refusal to maintain any one or more of the standards described in subdivision (a) of this section.

NOTE: Authority cited: Section 51426, Education Code. Reference: Sections 51420, 51422 and 51423, Education Code.

HISTORY

1. Amendment filed 5-21-82; effective thirtieth day thereafter (Register 82, No. 21).
2. Amendment filed 1-24-2002 as an emergency; operative 1-24-2002 (Register 2002, No. 4). A Certificate of Compliance must be transmitted to OAL by 5-24-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1-24-2002 order transmitted to OAL 5-1-2002 and filed 6-11-2002 (Register 2002, No. 24).

§ 11532. Eligibility to Take a GED Test.

(a) A person is eligible to take a general educational development test no sooner than 60 days prior to the date he or she is eligible to receive a certificate pursuant to Education Code Section 51420(c).

(b) The 60 day limitation in subdivision (a) does not apply to any person who is 17 years of age or older who has been out of school for at least 60 days and who submits a letter of request for the test from the military, a postsecondary educational institution or a prospective employer.

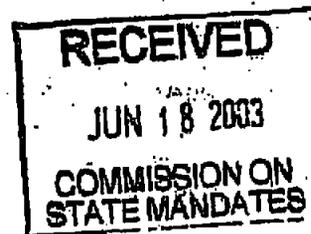

**DEPARTMENT OF
FINANCE**

GRAY DAVIS, GOVERNOR

915 L STREET ■ SACRAMENTO, CA ■ 95814-3705 ■ WWW.DOF.CA.GOV

June 13, 2003

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



Dear Ms. Higashi:

As requested in your letter of February 28, 2003, the Department of Finance has reviewed the test claim submitted by the San Jose Unified School District (claimant) asking the Commission to determine whether specified costs incurred under various statutes are reimbursable state mandated costs (Claim No. CSM-02-TC-13 "Pupil Safety Notices"). Commencing with page 18, of the test claim, the claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- Section 1: High School Proficiency Examination
- Section 2: Withholding Grades, Diplomas and Transcripts
- Section 3: Confidential Medical Services
- Section 4: Child Abuse Complaint Procedures
- Section 5: Lead Risk Factors

As the result of our review, we have concluded that parts D, E, and G of Section 2: Withholding Grades, Diplomas and Transcripts, do not constitute reimbursable costs because these actions are required only if a school district chooses to withhold a pupil's grades, diploma, or transcripts. Section 48904 (b) (1) of the California Education Codes states:

"Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned upon demand of an employee of the district or private school authorized to make the demand *may*, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a)." *(emphasis added)*

Therefore, withholding grades, diplomas and transcripts is permissive and any activities required as a result are non-reimbursable.

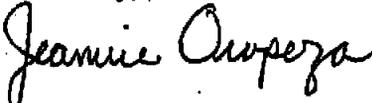
Part B of Section 2 seeks reimbursement for costs associated with adopting and implementing rules and regulations, and periodically updating those rules and regulations governing: (1) notices to parents when school property has been damaged by a student, (2) providing due process rights to those students, (3) the provision of voluntary work programs, and (4) the

withholding of grades, diplomas and transcripts, pursuant to Education Code 48904, subdivision (b). All of these provisions are conditioned on districts' decisions to seek payment for damages or return of property and the withholding of grades. Thus, all activities are discretionary and not reimbursable. We concur with claimants that Sections 1, 3, 4, and 5 identify changes that impose new notice requirements.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your February 28, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Michael Wilkening, Principal Program Budget Analyst, at (916) 445-0328 or Keith Gmelnder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Jeannie Oropéza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF MICHAEL WILKENING
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-13

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the various statutes sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information of belief and, as to those matters, I believe them to be true.

June 13, 2003

at Sacramento, CA

Michael Wilkening

Michael Wilkening

PROOF OF SERVICE

Test Claim Name: Pupil Safety Notices
Test Claim Number: CSM-02-TC-13

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On June 13, 2003, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

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

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

B-8

State Controller's Office
Division of Audits
Attention: Jim Spano
300 Capitol Mall, Suite 518
Sacramento, CA 95814

E-8

Department of Education
Fiscal and Administrative Services Division
Attention: Gerry Shelton
1430 N Street, Suite 2213
Sacramento, CA 95814

Shields Consulting Group, Inc.
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

Centration, Inc.
Attention: Beth Hunter
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

Mandate Resource Services
Attention: Harriet Barkschat
5325 Elkhorn Blvd., Suite 307
Sacramento, CA 95842

Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds, President
P.O. Box 987
Sun City, CA 92586

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Mandated Cost Systems, Inc.
Attention: Steve Smith
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

San Jose Unified School District
Attention: Patrick Day
855 Lenzen Avenue
San Jose, CA 95126-2736

Cost Recovery System
Attention: Annette Chinn
705-2 East Bidwell Street, #294
Folsom, CA 95630

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 13, 2003, at Sacramento, California.

Clad for

Jennifer Nelson

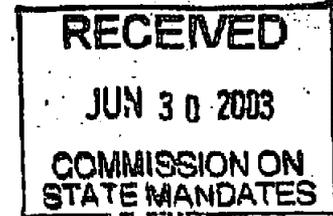
SixTen and Associates Mandate Reimbursement Services

EXHIBIT C

KEITH B. PETERSEN, MPA, JD, President
52 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

June 27, 2003



Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-13
San Jose Unified School District
Pupil Safety Notices

Dear Ms. Higashi:

I have received the comments of the Department of Finance ("DOF") dated June 13, 2003, to which I now respond on behalf of the test claimant.

Although none of the objections generated by DOF are included in the statutory exceptions set forth in Government Code Section 17556, the objections stated additionally fail for the following reasons:

1. The Comments of the DOF are Incompetent and Should be Excluded

Test claimant objects to the Comments of the DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The DOF comments do not comply with this essential requirement.

2. The Test Claim Legislation and Regulations Create New Mandated Duties

DOF concurs with test claimant that Sections 1 (High School Proficiency Examination), 3 (Confidential Medical Services), 4 (Child Abuse Complaint Procedures) and 5 (Lead Risk Factors) of the new duties alleged (commencing at page 18 of the test claim) identify changes that impose new notice requirements.

DOF does not agree that Section 2 (Withholding Grades, Diplomas and Transcripts) alleges any new duties or higher levels of service, arguing that these activities are permissive and any activities required as a result are non-reimbursable. The "permissive" argument is based upon DOF's interpretation of Education Code Section 48904 that all of its provisions are conditioned on districts' voluntary decisions to seek payment for damages or the return of property and the withholding of grades.

Education Code Section 48904¹, subdivision (a)(1), provides that the parent or guardian

¹ Education Code Section 48904, added by Chapter 498, Statutes of 1983, Section 91, as added by Chapter 445, Statutes of 1992, Section 1:

"(a)(1) Notwithstanding Section 1714.1 of the Civil Code, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by, or performing volunteer services for, a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee, shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed ten thousand dollars (\$10,000). The parent or guardian shall also be liable for the amount of any reward not exceeding ten thousand dollars (\$10,000) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district or private school for all property belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to make the demand.

(2) The Superintendent of Public Instruction shall compute an adjustment of the liability limits prescribed by this subdivision at a rate equivalent to the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year.

(b)(1) Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil

of a minor shall be liable for all damages caused by the minor. Subdivision (b) allows school districts to withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages, "after affording the pupil his or her due process rights". Therefore, as to the withholding of grades, diploma and transcripts, DOF has the cart before the horse as to the alleged duty of affording a pupil of his or her due process rights. The decision to withhold comes after the due process rights have been afforded and, therefore DOF's argument is without merit.

The second paragraph of subdivision (b) requires a school district to notify the parent or guardian of the pupil's misconduct "before withholding the pupil's grades, diplomas and transcripts. Again, DOF has the cart before the horse. The required notification is made before the decision to withhold and not as a result of the withholding.

The second paragraph of subdivision (b) also requires the district to provide a program of voluntary work in lieu of payment of monetary damages. This requirement exists independently of any decision to withhold grades, diplomas and transcripts. It exists because damages have been sustained, not because any decision to withhold has been made. The "in lieu of" work arrangement can be made before any decision to withhold.

The third paragraph of subdivision (b) requires each school district to establish rules and regulations governing procedures for the implementation of the subdivision. This requirement to establish rules and regulations is imposed on school districts before the damage is sustained and the option to withhold exists.

and willfully not returned upon demand of an employee of the district or private school authorized to make the demand may, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a).

(2) The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

(3) The governing board of each school district or governing body of each private school shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils.

Paula Higashi
June 27, 2003

DOF does not cite Education Code Section 48904.3². Subdivision (a) requires the *transferee* school district to which a pupil has transferred to also withhold the grades, diploma and transcripts of that pupil when the *transferor* school district gives it notice that the *transferor* school district has made a decision to withhold. The *transferee* school district has no decision to make, it must withhold upon receipt of the notice.

Therefore, the response of the DOF should be ignored as legally incompetent for its failure to comply with Section 1183.02 of Title 5, California Code of Regulations and its response is both legally and factually incorrect.

CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

² Education Code Section 48904.3, added by Chapter 332, Statutes of 1986, Section 1, as amended by Chapter 492, Statutes of 2002, Section 2:

"(a) Upon receiving notice that a school district has withheld the grades, diploma, or transcripts of any pupil pursuant to Section 48904, any school district to which the pupil has transferred shall likewise withhold the grades, diploma, or transcripts of the pupil as authorized by that section, until such time as it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section.

(b) Any school district that has decided to withhold a pupil's grades, diploma, or transcripts pursuant to Section 48904 shall, upon receiving notice that the pupil has transferred to any school district in this state, notify the parent or guardian of the pupil in writing that the decision to withhold will be enforced as specified in subdivision (a).

(c) For purposes of this section and Section 48904, "school district" is defined to include any county superintendent of schools.

(d) This section and Section 48904 shall also apply to the state special schools, as described in subdivision (a) of Section 48927. "

Original List Date: 2/24/2003
Last Updated: 3/5/2003
Next Print Date: 05/21/2003
Claim Number: 02-TC-13
Issue: Pupil Safety Notices

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825
Tel: (916) 646-1400
Fax: (916) 646-1300

Ms. Harneet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842
Tel: (916) 727-1350
Fax: (916) 727-1734

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City, CA 92586
Tel: (909) 672-9984
Fax: (909) 672-9963

Mr. Steve Smith
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670
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Fax: (916) 669-0889

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Fax: (858) 514-8645

Mr. Patrick Day
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San Jose, CA 95126-2738
Claimant
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Fax: (408) 535-6142

Dr. Carol Berg
Education Mandated Cost Network
1121 L Street, Suite 1080
Sacramento, CA 95814

Tel: (916) 446-7517
Fax: (916) 446-2011

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September 5, 2006

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

And Interested Parties and Affected State Agencies (See enclosed mailing list)

Re: Draft Staff Analysis and Hearing Date
Pupil Safety Notices (02-TC-13)
San Jose Unified School District, Claimant
Education Code Sections 32242, 32243, 32245, 46010.1; 48904, 48904.3, 48987
Welfare and Institutions Code section 18285
Title 5, California Code of Regulations, Section 11523
As Added and Amended by Statutes 1983, Chapter 498; Statutes 1984, Chapter 482;
Statutes 1984, Chapter 948; Statutes 1986, Chapter 196; Statutes 1986, Chapter 332;
Statutes 1992, Chapter 445; Statutes 1992, Chapter 1317; Statutes 1993, Chapter 589;
Statutes 1994, Chapter 1172; Statutes 1996, Chapter 1023; Statutes 2002, Chapter 492

Dear Mr. Petersen:

The draft staff analysis of this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **Thursday, September 27, 2006**. You are advised that comments filed with the Commission are required to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2 § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c) (1), of the Commission's regulations.

Hearing

This test claim is set for hearing on **Thursday, October 26, 2006 at 9:30 a.m.** We will notify you of the location of the hearing when a hearing room has been confirmed. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c) (2) of the Commission's regulations.

Mr. Keith Petersen
Page 2

Please contact Kelly Loyer, Staff Counsel at (916) 445-3237 with any questions regarding this matter.

Sincerely,



PAULA HIGASHI
Executive Director
Enc. Draft Staff Analysis and attachments

WORKING BINDER:

FILE:

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9/5/00

INITIAL: LD

MAILED:

ITEM _____
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 32242, 32243, 32245, 46010.1; 48904, 48904.3, 48987
Welfare and Institutions Code Section 18285
Statutes 1983, Chapter 498; Statutes 1984, Chapter 482; Statutes 1984, Chapter 948;
Statutes 1986, Chapter 196; Statutes 1986, Chapter 332; Statutes 1992, Chapter 445;
Statutes 1992, Chapter 1317; Statutes 1993, Chapter 589; Statutes 1994, Chapter 1172;
Statutes 1996, Chapter 1023; Statutes 2002, Chapter 492
Title 5, California Code of Regulations, Section 11523

Pupil Safety Notices

(02-TC-13)

San Jose Unified School District, Claimant.

EXECUTIVE SUMMARY

Staff will insert the Executive Summary in the Final Analysis.

STAFF ANALYSIS

Claimant

San Jose Unified School District (Claimant)

Chronology

02/21/03 Claimant files test claim with the Commission¹
05/20/03 DOF requests an extension of time to file comments
05/21/03 Commission staff grants extension request
06/13/03 DOF files comments on the test claim
06/27/03 Claimant files rebuttal to state agency comments
08/17/06 Commission staff issues the draft staff analysis

Background

This test claim consolidates legislation concerning school districts' obligations to provide notices and information regarding health, safety and legal issues to staff, parents, guardians and students. For purposes of this analysis the test claim legislation has been separated into two categories designated and discussed below as the "Notice Legislation" and the "Due Process Legislation."

"Notice Legislation"

The "Notice Legislation" generally requires school districts for the first time, to provide notices to parents, staff, and pupils regarding:

- Lead contamination risk factors in public schools.²
- Excused absences for confidential medical procedures.³
- Child abuse guidelines and notification procedures.⁴
- The high school proficiency exam.⁵

¹ Pursuant to Government Code section 17557, if claimant's test claim is approved, school districts may be reimbursed for the period beginning July 1, 2001.

² Education Code sections 32242, 32243 and 32245 added by Statutes 1992, chapter 1317 and amended by Statutes of 1993, chapter 589, Assem. Bill No. 2211, (AB 2211) section 37.

³ Education Code section 46010.1 added by Statutes 1986, chapter 196, effective June 27, 1986.

⁴ Education Code section 48987 added by Statutes 1994, chapter 1172, Assem. Bill No. 2971 (AB 2971), section 13.

⁵ Title 5, California Code of Regulations, section 11523, filed September 15, 1978 as an emergency, effective upon filing (Register 78, No. 37.)

"Due Process Legislation" (Ed. Code, § 48904 and 48904.3)

This test claim also addresses legislation permitting school districts to withhold a student's transcripts, grades and diploma if the student has willfully damaged or failed to return school property. For purposes of this analysis this legislation is referred to collectively as the "Due Process Legislation." The "Due Process Legislation" provides as follows:

- Education Code section 48904, subdivision (a)(1) states that:

Notwithstanding Section 1714.1 of the Civil Code⁶, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by, or performing volunteer services for, a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee, shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed ten thousand dollars (\$10,000). The parent or guardian shall also be liable for the amount of any reward not exceeding ten thousand dollars (\$10,000) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district or private school for all property belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to make the demand.

- Education Code section 48904, subdivision (b)(1) states that:

Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned...*may* after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a). (Emphasis added.)

- Education Code section 48904, subdivision (b)(2) states that if the school decides to withhold grades:

The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school

⁶ California Civil Code section 1714.1 imposes joint and several liability upon a minor and his or her parents or guardians for willful misconduct of the minor. The liability imposed by this section is in addition to any liability now imposed by law.

shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

- Education Code section 48904 subdivision (b)(3) states that:

The governing board of each school district or governing body of each private school shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils.

- Education Code section 48904.3, subdivision (a) states that:

Upon receiving notice that a school district has withheld the grades, diploma, or transcripts of any pupil pursuant to Section 48904, any school district to which the pupil has transferred shall likewise withhold the grades, diploma, or transcripts of the pupil as authorized by that section, until the time that it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section.

- Education Code section 48904.3, subdivision (b) states that:

Any school district that has decided to withhold a pupil's grades, diploma, or transcripts pursuant to Section 48904 shall, upon receiving notice that the pupil has transferred to any school district in this state, notify the parent or guardian of the pupil in writing that the decision to withhold will be enforced as specified in subdivision (a).

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program and is seeking reimbursement for the following activities:

Lead Notice

- "For public elementary schools to notify teachers, other school personnel and parents of the results of surveys developing risk factors to predict lead contamination conducted by the State Department of Health Services pursuant to Education Code section 32242, subdivision(c)."⁷
- "For public elementary schools to notify parents of the provisions of the Childhood Lead Poisoning Prevention Act of 1991 upon receiving a finding that a school site has significant risk factors for lead, pursuant to Education Code section 32243, subdivision (a)."⁸

⁷ Test Claim of San Jose Unified School District, page 20.

⁸ Test Claim of San Jose Unified School District, page 20. The Lead Poisoning Prevention Act of 1991, (Health & Saf. Code § 105272) provides in pertinent part that the

- "For public elementary principals or the director of the school site to notify teachers, other personnel and the parents of a finding of significant risk factors for lead, within 45 days of receiving the finding, pursuant to Education Code section 32243, subdivision (a)."⁹

Medical Services Notice

- "For the governing board of each school district to "notify pupils in grades 7-12 and the parents or guardians of all pupils enrolled in the district that the school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services pursuant to Education Code section 46010.1."¹⁰

Notice of Child abuse Complaint Guidelines

- "To disseminate guidelines upon request, that describe complaint procedures adopted by the State Department of Education, to parents or guardians of minor pupils in the primary language of the parent or guardian which he or she can follow in filing a complaint of child abuse by a school employee or other person committed against a pupil at a school site, pursuant to Education Code section 48987."¹¹
- "To provide an interpreter for a parent or guardian, whose primary language is other than English, in the case of any communications concerning the guidelines and procedures for filing child abuse complaints committed against a pupil at a school site, pursuant to Education Code section 48987."¹²

High School Proficiency Exam Notice

- "To distribute to each pupil in grades 11 and 12 an announcement explaining the High School Proficiency Exam in sufficient time to meet registration requirements pursuant to Title 5, California Code of Regulations, Section 11523."¹³

Due Process/ Withholding of Grades, Transcripts and Diplomas for Student Misconduct

- "To adopt and implement rules and regulations, and to periodically update those rules and regulations governing notices to parents when school property has been damaged by a student, providing due process rights to those students, the

Department of Health Services , before July 1, 1993, shall adopt regulations establishing a standard of care for evaluation, treatment, and monitoring of lead poisoning in children.

⁹ *Ibid.*

¹⁰ *Id.* at page 19.

¹¹ *Id.* at page 20.

¹² *Ibid.*

¹³ *Id.* at page 18.

provision of voluntary work programs, and the withholding of grades, diplomas and transcripts pursuant to Education Code section 48904, subdivision (b)."¹⁴

- "To provide a program of voluntary work for a minor pupil in lieu of the payment of monetary damages in the event the minor and the parent are unable to pay for the damage caused by the student, pursuant to Education Code section 48904, subdivision (b)."¹⁵
- "To notify the parent or guardian of a pupil, in writing, of the pupil's alleged misconduct before withholding the pupil's grades, diploma or transcripts pursuant to Education Code section 48904, subdivision (b)."¹⁶
- "To afford a pupil his or her due process rights before withholding grades, diplomas or transcripts, pursuant to Education Code section 48904, subdivision (b)."¹⁷
- "To continue to withhold grades, diploma or transcripts of any transfer student whose grades were previously withheld by a transfer school as a result of his or her misconduct, pursuant to Education Code Section 48904.3, subdivision (a)."¹⁸
- "Upon receiving notice that a pupil, whose grades, diploma or transcripts are currently withheld, has transferred to another school district in this state to notify the parent or guardian that a decision to withhold a pupil's grades diploma or transcripts will be enforced by his or her new school district, pursuant to Education Code section 48904.3, subdivision (b)."¹⁹

Position of the Department of Finance

The Department of Finance (DOF) concurs with claimant's position regarding the "Notice Legislation" but disagrees with regard to the "Due Process Legislation."²⁰ For example, the DOF letter dated June 13, 2003,²¹ states that:

As a result of our review we have concluded that parts D, E and G of Section 2: Withholding Grades, Diplomas, or Transcripts do not constitute reimbursable costs because these actions are required only if a school district chooses to withhold a pupil's grades, diploma, or transcripts... Therefore withholding grades, diplomas and transcripts is permissive and any activities required are non-reimbursable.

¹⁴ Test Claim of San Jose Unified School District, page 18.

¹⁵ *Ibid.*

¹⁶ Test Claim of San Jose Unified School District, page 19.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Letter from the Department of Finance, June 13, 2003.

²¹ *Ibid.*

The June 13, 2003 letter from the DOF further states that:

Part B of Section 2 seeks reimbursement for costs associated with adopting and implementing rules and regulations, and periodically updating those rules and regulations governing: (1) notices to parents when school property has been damaged by a student, (2) providing due process rights to those students, (3) the provision of voluntary work programs, and (4) the withholding of grades, diplomas, and transcripts, pursuant to Education Code 48904, subdivision (b). All of these provisions are conditioned upon districts' decisions to seek payment for damages and return of property and the withholding of grades. Thus all activities are discretionary and not reimbursable. We concur with claimants that Sections 1, 3, 4, and 5 identify changes that impose new requirements.

No further comments have been filed by interested parties regarding this claim.

Discussion

The courts have found that article XIII B, section 6, of the California Constitution²² 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

²² Article XIII B, section 6, subdivision (a) of the California Constitution provides that:

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* (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,

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.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 legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.²⁸ A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."²⁹

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

174.

²⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878. *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

²⁷ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; See also *Lucia Mar Unified School Dist. v. Honig* (1988) 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.

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 and 17552.

³² *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Thus this test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Do the test claim statutes and executive order constitute a "new program or higher level of service" for school districts within the meaning of Article XIII B, section 6 of the California Constitution?
- Do the test claim statutes and executive order "cost mandated by the state" within the meaning of Government Code sections 17514 and 17556?

These issues are addressed below:

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

Does the Test Claim Legislation Impose State-Mandated Activities?

In order for test claim legislation 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 entities. If the statutory language does not mandate or require the school district to perform a task then article XIII B, section 6, does not apply.

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute....If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs.
[Citations omitted.]³³

The "Notice Legislation"

Notice of Lead Contamination Risk Factors

The test claim legislation involving notice of lead contamination risk factors arises in the context of the "Lead-Safe Schools Protection Act"(1992) (the "Act") (Ed. Code §§ 32240-32245). The "Act" provides for sample surveys by the state Department of Health Services (DHS) to develop risk factors to predict lead contamination in public schools and then requires DHS to notify local school districts of the results.³⁴ Then, when notified by DHS, local school districts must in turn notify school employees, pupils and parents of both the DHS lead survey results and/or of the Childhood Lead Poisoning Prevention Act of 1991.³⁵ Relevant portions of this legislation are discussed below.

³³ *Whitcomb v. California Employment Commission* (1944) 24 Cal. 2d 753,757.

³⁴ For purposes of the Act "schools" means public elementary schools as well as preschools, and day care facilities located on school property. (Ed. Code, § 32241 subds. (b)-(c).)

³⁵ Health and Safety Code, section 105272.

Education Code section 32242, subdivision (c) states that:

Within 60 days of the completion of testing of a school site, the Department shall notify the principal of the school or the director of the school site of the survey results. Within 45 days of receiving the survey results, the principal or director, as the case may be, shall notify the teachers and other school personnel and parents of the survey results.

Education Code section 32243, subdivision (a) states that:

When a school subject to this article has been determined to have significant risk factors for lead...the school shall notify parents of the provisions of the Childhood Lead Poisoning Prevention Act of 1991 (pursuant to Chapter 5 (commencing with Section 105275) of Part 5 of Division 103 of the Health and Safety Code). Within 45 days of receiving this finding, the school principal or the director of the school site shall notify the teachers, other personnel, and the parents of the finding.

Here, based upon the plain language of Education Code section 32242, subdivision (c) and Education Code section 32243, subdivision (a) staff finds that the following are mandated activities subject to article XIII B, section 6, of the California Constitution:

- For the principal of the school site to, within 45 days of receiving lead test survey results from the Department of Health Services to notify the teachers and other school personnel and parents of the survey results pursuant to Education Code section 32242, subdivision (c).
- For schools to notify parents of the Childhood Lead Poisoning Prevention Act of 1991 upon receiving a finding that a school site has significant risk factors for lead, pursuant to Education Code Section 32243, subdivision (a).
- For schools to, within 45 days of receiving a finding by the Department of Health Services that a school subject to the Lead-Safe Schools Act has a significant risk factors for lead, to notify the teachers, other personnel, and the parents of the finding.

Notice/Confidential Medical Services:

Education Code section 46010.1 is a stand alone provision of the Education Code in that it is not part of a larger act.

Education Code section 46010.1 states that:

Commencing in the fall of 1986-87 academic year, the governing board of each school district shall, each academic year, notify pupils in grades 7-12, inclusive, and the parents or guardians of all pupils enrolled in the district, that school authorities may excuse any pupil from the school for the purpose of obtaining confidential medical services without the consent of the pupil's parent or guardian. The notice required pursuant to this section may be included with other notices.

Based upon the plain language of Education Code section 46010.1, staff finds that the following is a mandated activity subject to article XIII B, section 6, of the California Constitution:

- For the governing board of each school district to, each academic year, notify pupils in grades 7-12 and the parents or guardians of all pupils enrolled in the district; inclusive that school authorities may excuse any pupil for the purpose of obtaining confidential medical services pursuant to Education Code section 46010.1. The notice may be included with other notices.

Therefore, the state-mandated activity is a one-time activity to amend an existing notice to add the provision.

Notice/Child Abuse Reporting/ Interpreters

Education Code section 48987 states in pertinent part that:

The governing board of a school district or county office of education shall *upon request* disseminate the guidelines adopted by the State Department of Education pursuant to Section 33308.1 [Describing procedures a parent or guardian can follow in filing a complaint of child abuse] to parents or guardians of minor pupils in the primary language of the parent or guardian... In the case of oral communications with the parent or guardian whose primary language is other than English, concerning that guideline or the procedures for filing child abuse complaints, the governing board shall provide an interpreter for that parent or guardian. (Emphasis added.)

The language omitted from the quotation of Section 48987 above, is indicated by the ellipsis. It reads:

The governing board of a school district or county office of education is *encouraged* to inform a parent or guardian, that desires to file a complaint against a school employee or other person that commits an act of child abuse as defined in Section 11165.6 of the Penal Code against a pupil at a school site, of the procedures for filing the complaint with local child protective agencies pursuant to the Child Abuse and Neglect Reporting Act, established pursuant to Chapter 1444 of the Statutes of 1987. (Emphasis added.)

In this case, Claimant claims no entitlement to reimbursement for the "encouraged" activity. Nor is there any dispute that this language does not impose a state-mandated activity.³⁶

Thus, based upon the plain language of Education Code section 48987 staff finds that the following are mandated activities subject to article XIII B, section 6, of the California Constitution:

- To disseminate guidelines, upon request, that describe complaint procedures adopted by the State Department of Education, to parents or guardians of minor pupils in the primary language of the parent or guardian which he or she can

³⁶ See Test Claim of San Jose Unified School District at page 11. See also Declaration of Don Iglesias, Associate Superintendent of Instruction, San Jose Unified School District, February 2, 2003, at pages 3 and 4.

follow in filing a complaint of child abuse by a school employee or other person committed against a pupil at a school site, pursuant to Education Code section 48987.

- To provide an interpreter for a parent or guardian, whose primary language is other than English, in the case of any communications concerning the guidelines and procedures for filing child abuse complaints committed against a pupil at a school site, pursuant to Education Code section 48987.

Notice/High School Proficiency Exam

Title 5, California Code of Regulations, section 11523, references section 48410 subdivision (e) and 48412 of the Education Code. These sections exempt students age 16 or older from compulsory continuing education if the pupils have demonstrated the required proficiency by passing the High School Proficiency Exam. Students who pass this exam receive a certification of proficiency. This certification is not a high school diploma, and requirements for this certification are not related to the requirements for the High School Exit Exam.³⁷

California Code of Regulations, section 11523 implements provisions of the Education Code pertaining to the High School Proficiency Exam by requiring notices to be sent out as specified in this regulation.

Title 5, California Code of Regulations section 11523 states that:

The school district superintendent shall require the principal of each school maintaining either or both of grades 11 and 12 to distribute to each pupil in those grades an announcement explaining the California High School Proficiency Examination provided for under Education Code section 48412. Upon receipt of the announcements from the State Department of Education or its contractor, distribution shall be made in time sufficient to enable interested pupils to meet all examination registration requirements for the fall test of that year.

Here, based upon the plain language of California Code of Regulations, section 11523 staff finds that the following is a mandated activity subject to article XIII B, section 6, of the California Constitution:

- For the principal of each school maintaining either or both grades 11 and 12 to distribute to each pupil in those grades an announcement explaining the California High School Proficiency Exam provided for under Education Code section 48412 in time to meet registration requirements for the fall test of that year pursuant to Title 5, California Code of Regulations, section 11523.

The "Due Process" Test Claim Legislation:

In addition to the "Notice Legislation," this test claim also addresses legislation permitting school districts as well as private schools to withhold the transcripts, grades and diploma of a student who has willfully damaged or failed to return school property,

³⁷ Education Code section 60851.

after affording the student certain due process rights.³⁸ These provisions, collectively referred to in this analysis as the "Due Process Legislation," are codified in Education Code sections 48904 and 48904.3 and are located within the same section of the Education Code containing statutory provisions concerning student suspension and expulsion.³⁹

Claimant is requesting reimbursement for the following six activities based upon the "Due Process" test claim legislation:⁴⁰

- "To notify the parent or guardian of a pupil, of the pupil's alleged misconduct before withholding the pupil's grades, diploma or transcripts pursuant to Education Code section 48904, subdivision (b)."
- "To afford a pupil his or her due process rights before withholding grades, diplomas or transcripts, pursuant to Education Code section 48904, subdivision (b)."
- "To provide a program of voluntary work under specified circumstances pursuant to Education Code section 48904, subdivision (b)."
- "To notify the parent or guardian that a decision to withhold a pupil's grades diploma or transcripts will be enforced by the pupil's new school district, pursuant to Education Code section 48904.3, subdivision (b)."
- "To adopt and implement rules and regulations, and to periodically update those rules and regulations governing notices to parents when school property has been damaged by a student, providing due process rights to those students, the provision of voluntary work programs, and the withholding of grades, diplomas and transcripts pursuant to Education Code section 48904, subdivision (b)(3)."
- "To continue to withhold grades, diploma or transcripts of any transfer student whose grades were previously withheld by a transfer school pursuant to Education Code Section 48904.3, subdivision (a)."

In order for the test claim legislation 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.

³⁸ Statutes 2002, chapter 492, added subdivisions (c) and (d) to Education Code section 48904.3. Subdivision (c) of section 48904.3 now states that: "For purposes of this section and Section 48904, "school district" is defined to include any county superintendent of schools." And subdivision (d) of this section now states that: "This section and section 48904 shall also apply to state special schools, as described in Subdivision (a) of section 48927." Education Code section 48927, subdivision (a) describes state special schools and states: "This chapter shall also apply to pupils attending the California School for the Blind and the two California Schools for the Deaf, which shall be referred to as the "state special schools."

³⁹ Article 1, chapter 6, part 27, division 4, title 2 of the Education Code.

⁴⁰ See Test Claim of San Jose Unified School District, pages 18-19.

In 2003, the California Supreme court decided the case, *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. 4th 727 (*Kern High School District*) and considered the meaning of "state-mandate" pursuant to article XIII B, section 6 of the California Constitution.⁴¹ In *Kern High School Dist.*, school districts requested reimbursement for notice and agenda costs for meetings of their school site counsels and advisory bodies. These bodies were established as a condition of various education-related programs that were funded by the state and federal government.

When analyzing the term "state-mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is forced to do."⁴² The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislative or executive orders."⁴³

The court also reviewed and affirmed the holding in *City of Merced v. State of California* (1984) 153 Cal. App. 3d 777, determining that, when analyzing state-mandated claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.⁴⁴ The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain, but when it elected to employ that means of acquiring property; its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable mandate. (Emphasis in original.)⁴⁵

Thus, the Supreme Court held as follows:

[W]e 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 notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's*

⁴¹ *Kern High School Dist.* (2003) 30 Cal. 4th 727, 734.

⁴² *Id.* at page 737.

⁴³ *Ibid.*

⁴⁴ *Id.* at page 743.

⁴⁵ *Ibid.*

participation in the underlying program is voluntary or compelled.
[Emphasis added.]⁴⁶

Based upon the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled to participate in eight of the nine underlying programs.⁴⁷

In *San Diego School District v. Commission on State Mandates* (2004) 33 Cal 4th 859, 880, the Supreme Court stated that when determining if there is a state mandate the focus is on who made the decision to incur the cost:

[I]n its mandatory aspect, Education Code section 48915 appears to constitute a state mandate, in that it establishes conditions under which the state, rather than local officials, has made the decision requiring a school district to incur the cost of an expulsion hearing.

In this test claim claimant requests reimbursement:

- To notify the parent or guardian of a pupil, of the pupil's alleged misconduct before withholding the pupil's grades, diploma or transcripts pursuant to Education Code section 48904, subdivision (b).⁴⁸
- To afford a pupil his or her due process rights before withholding grades, diplomas or transcripts, pursuant to Education Code section 48904, subdivision (b).⁴⁹

However Education Code section 48904, subdivision (b) (1) reads:

Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured; or whose property is loaned to a pupil and willfully not returned upon demand of an employee of the district or private school authorized to make the demand *may*, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a). (Emphasis added.)

This statute states that the school district:

...*may*, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts ... (Emphasis added.)

The plain use of the term "may" in this context indicates that the initial decision to withhold a student's grades, diploma, or transcripts is wholly within the discretion of the

⁴⁶ *Id.* at page 731.

⁴⁷ *Id.* at pages 744-745.

⁴⁸ Test Claim of San Jose Unified School District, page 19.

⁴⁹ *Ibid.*

school district and not the state.⁵⁰ Thus, the downstream required activities of providing notice and due process rights are not mandated by the state. For this reason staff finds that the following activities are *not* state-mandated activities within the meaning of article XIII B, section 6 of the California Constitution:

- To notify the parent or guardian of a pupil, of the pupil's alleged misconduct before withholding the pupil's grades, diploma or transcripts pursuant to Education Code section 48904, subdivision (b).
- To afford a pupil his or her due process rights before withholding grades, diplomas or transcripts, for student misconduct pursuant to Education Code section 48904, subdivision (b).

Claimant also requests reimbursement for the following activity:

- "To provide a program of voluntary work under specified circumstances pursuant to Education Code section 48904, subdivision (b)."⁵¹

Education Code section 48904, subdivision (b) (2) states that:

The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

Although this statute uses the phrase "shall" it does so in the context of a statutory obligation that is triggered only if the claimant undertakes the activities described in Education Code section 48904, subdivision (b)(1), to withhold a student's grades transcripts or diploma. Thus, because the activity described in this subdivision is a downstream obligation triggered by claimant's own discretionary act of deciding to withhold grades, transcripts, or a diploma from a student, it cannot be said that these obligations are "mandated" by the state.⁵² Instead, they are obligations that directly flow from the discretionary action of the school district.

Thus staff finds that Education Code section 48904, subdivision (b)(2) does not impose a state-mandated activity upon the claimant to provide a program of voluntary work pursuant to article XIII B, section 6 of the California Constitution.

⁵⁰ Education Code section 75 states that "may" is discretionary and "shall" is mandatory.

⁵¹ *Id.* at page 18.

⁵² See *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal 4th 859, 880.

Claimant also requests reimbursement for the following activity:

- "Upon receiving notice that a pupil, whose grades, diploma, or transcripts are currently withheld, has transferred to another school district in this state, to notify the parent or guardian that a decision to withhold a pupil's grades, diploma or transcript will be enforced by his or her new district, pursuant to Education Code section 48904.3, subdivision (b)."⁵³

Education Code section 48904.3, subdivision (b) states that:

Any school district that has decided to withhold a pupil's grades, diploma, or transcripts pursuant to Section 48904 shall, upon receiving notice that the pupil has transferred to any school district in this state, notify the parent or guardian of the pupil in writing that the decision to withhold will be enforced as specified in subdivision (a).

Here again, despite the use of the word "shall," in Education code section 48904, subdivision (a), the obligation to perform the activity described by this subdivision (to notify the student's parent or guardian) is triggered only if the claimant exercises its discretion to withhold the grades, diploma and transcripts of a pupil pursuant to Education Code section 48904, subdivision (b)(1).⁵⁴

Thus staff finds that Education Code section 48904.3, subdivision (b) does not impose a state-mandated activity upon the school district.

Claimant further requests reimbursement for the following activities:

- To adopt and implement rules and regulations, and to periodically update those rules and regulations governing notices to parents when school property has been damaged by a student, providing due process rights to those students, the provision of voluntary work programs, and the withholding of grades, diplomas and transcripts pursuant to Education Code section 48904, subdivision (b).⁵⁵
- To continue to withhold grades, diploma or transcripts of any transfer student whose grades were previously withheld by a transfer school pursuant to Education Code Section 48904.3, subdivision (a).⁵⁶

Education Code section 48904.3, subdivision (a) states that:

Upon receiving notice that a school district has withheld the grades, diploma, or transcripts of any pupil pursuant to Section 48904, any school district to which the pupil has transferred shall likewise withhold the grades, diploma, or transcripts of the pupil as authorized by that section, until the time that it receives notice, from the district that initiated the

⁵³ Test Claim of San Jose Unified School District, page 18.

⁵⁴ See *San Diego Unified School District supra* 33 Cal. 4th 859, 880.

⁵⁵ Test Claim of San Jose Unified School District, page 18.

⁵⁶ *Id.* at page 19.

decision to withhold, that the decision has been rescinded under the terms of that section."

And Education Code section 48904, subdivision (b) (3) states that:

The governing board of each school district...shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not necessarily limited to, those procedures established in this code for the expulsion of pupils.

These activities are not triggered by the local decision to withhold a pupil's grades, transcripts or a diploma, but are instead mandated by the state. The district is required to comply with these requirements even if that district has not made a decision to withhold grades, transcripts or a diploma. Thus staff finds that the following are state-mandated activities subject to article XIII B, section 6, of the California Constitution:

- To establish rules and regulations governing procedures for withholding grades, transcripts, and diplomas pursuant to Education Code section 48904, subdivision (b) (3).
- For a transferee school to, upon notice that a school district has withheld the grades, diploma or transcripts of any pupil pursuant to Education code section 48904, to continue to withhold the grades, diploma or transcripts of any transfer student as authorized by that section, until such time as it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section.⁵⁷

Thus, to recap, in the instant case, staff has determined that the following eight (8) activities impose state-mandated activities upon school districts within the meaning of article XIII B, section 6 of the California Constitution:

1. For the principal of the school site to, within 45 days of receiving lead test survey results from the Department of Health Services to notify the teachers and other school personnel and parents of the survey results pursuant to Education Code section 32242, subdivision (c).
2. For schools to notify parents of the Childhood Lead Poisoning Prevention Act of 1991 upon receiving a finding that a school site has significant risk factors for lead, pursuant to Education Code Section 32243, subdivision (a).
3. For schools to, within 45 days of receiving a finding by the Department of Health Services that a school subject to the Lead-Safe Schools Act has a significant risk factors for lead, to notify the teachers, other personnel, and the parents of the finding.
4. For the governing board of each school district to, each academic year, notify pupils in grades 7-12 and the parents or guardians of all pupils enrolled in the

⁵⁷ Education Code section 48904.3, subdivision (a).

district, inclusive, that school authorities may excuse any pupil for the purpose of obtaining confidential medical services pursuant to Education Code section 46010.1.

5. To disseminate guidelines, upon request, that describe complaint procedures, adopted by the State Department of Education, to parents or guardians of minor pupils in the primary language of the parent or guardian which he or she can follow in filing a complaint of child abuse by a school employee or other person committed against a pupil at a school site, pursuant to Education Code section 48987.
6. To provide an interpreter for a parent or guardian, whose primary language is other than English, in the case of any communications concerning the guidelines and procedures for filing child abuse complaints committed against a pupil at a school site, pursuant to Education Code section 48987.
7. For the principal of each school with students in grades 11 and/or 12 to distribute to each pupil in those grades an announcement explaining the California high School Proficiency Exam provided for under Education Code section 48412 in time to meet registration requirements for the fall test of that year pursuant to Title 5, California Code of Regulations, section 11523.
8. To establish rules and regulations governing procedures for withholding grades, transcripts, and diplomas pursuant to Education Code section 48904, subdivision (b) (3).
9. For a transferee school to, upon notice that a school district has withheld the grades, diploma or transcripts of any pupil pursuant to Education code section 48904, to continue to withhold the grades, diploma or transcripts of any transfer student as authorized by that section, until such time as it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section.⁵⁸

Do the State-Mandated Activities constitute "Programs" subject to Article XIII B, section 6 of the California Constitution?

In addition to being state-mandated, the test claim statutes and executive order must also constitute a "program" in order to be subject to article XIII B, section 6 of the California Constitution.

The relevant test is set forth in case law. The California Supreme Court, in the case of *County of Los Angeles v. State of California* (1987) 43 Cal 3d 46, defined the word "program" within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not

⁵⁸ Education Code section 48904.3, subdivision (a).

apply generally to all residents and entities in the state.⁵⁹ The court has held that only one of these findings is necessary.⁶⁰

In the instant case each of the above state-mandated activities meet this test to qualify as a program within the meaning of article XIII B, section 6 of the California Constitution.

Mandated activity numbers 1-7 and 9 (notices, child abuse guidelines, interpreters, and the withholding of grades, transcript, or diploma by a transferee school) meet this test by providing a service to members of the public who work in or whose children attend public schools.

And although mandated activity number 8 (adopting rules and regulations pertaining to withholding of grades, transcripts and diplomas) applies to both public and private schools, this distinction does not affect the outcome based upon the court's decision in *Long Beach Unified School District v. The State of California* (1990) 225 Cal. App. 3d 155, 172.

In *Long Beach* the appellate court stated that:

[A]lthough numerous private schools exist, education in our society is considered to be a peculiarly governmental function. [Citations] Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a "program" within the meaning of section 6.

Thus, staff finds that mandated activities 1-9 above constitute state-mandated programs subject to Article XIII B, section 6 of the California Constitution.

Issue 2: Do the (remaining) test claim statutes and executive order constitute a "new program or higher level of service" for school districts within the meaning of article XIII B, section 6 of the California Constitution?

The courts have held that legislation imposes a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution when: (a) the requirements are new in comparison with the pre-existing scheme and (b) the requirements were intended to provide an enhanced service to the public.⁶¹

To make this determination, the test claim legislation must initially be compared with the legal requirements in effect immediately prior to its enactment.⁶²

In this case the test claim legislation in state-mandated programs numbers 1-9 did not exist in prior law.⁶³ And, as discussed above, each of these activities provides a service

⁵⁹ *County of Los Angeles, supra*, 43 Cal.3d, 56.

⁶⁰ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

⁶¹ *San Diego Unified School District v. Commission on State Mandates* 33 cal. 4th 859,878; *Lucia Mar Unified School District v. Bill Honig* (1988) 44 Cal 3d 830, 835.

⁶² *Ibid.*

to members of the public who work in or whose children attend public schools. Therefore staff concludes that these eight state-mandated activities are programs constituting a "new program or higher level of service" on school districts within the meaning of article XIII B, section 6 of the California Constitution.

Issue 3: Do the (remaining) test claim statutes and executive order impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

Government Code section 17514, states that:

Cost mandated by the state means any increased cost which a local agency or school district is required to incur after July 1, 1980 as a result of any statute enacted after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

However, Government Code section 17556 prohibits the Commission from finding costs mandated by the state as defined in Government Code 17514 under certain circumstances such as when a statute covers the cost of the mandated activity. Government Code section 17556, subdivision (e) states in pertinent part that:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that... (e) The statute... or an appropriation in [another] bill provides for offsetting savings to... school districts that result in no net costs to the... school districts, or includes additional revenue that was specifically intended to fund the costs of the state-mandate in an amount sufficient to fund the cost of the state mandate...

In this case there is an issue as to whether or not the Commission can find "costs mandated by the state," for providing notices to parents, teachers and other school personnel pursuant to the Lead-Safe Schools Protection Act. This is because part of this Act, Education Code Section 32245, on its face, provides for funding of those state-mandated activities. Education Code section 32245 states that:

Funding to implement this article [The Lead-Safe Schools Act]
shall be provided from the Child Health and Safety Fund... upon

⁶³ In addition, subsequent amendments to state-mandated programs 1-6 during the test claim period have been technical in nature and effected no substantive changes. See Statutes of 1983, chapter 589, section 36; Statutes of 1993, chapter 589, section 37; Statutes of 1993, chapter 589, section 39; Statutes of 1993, chapter 726, section 15; Statutes of 1996, chapter 1023, section 34; Statutes of 1993, chapter 726, section 15. Likewise although subdivision (a) of Education Code section 48904.3 was effectively broadened to include state special skills when Education Code section 48904.3 was amended by Statutes of 2002, chapter 492 these provisions do not apply to local school districts and thus do not affect this analysis.

appropriation by the Legislature pursuant to Section 18285 of the Welfare and Institutions Code. (Emphasis added.)

Thus Education Code section 32245 appears to trigger the provisions of Government Code section 17556 by providing for funding of a mandated activity (lead risk notices).

However, in order for Government Code section 17556, subdivision (e) to prohibit the Commission from finding costs mandated by the state, two elements must be satisfied.

First, the funding provisions of Education Code section 32245 and Welfare and Institutions Code section 18285 would have to be implemented through Budget Act appropriation to include revenue specifically intended to fund the costs of these state-mandated lead risk notices.

And second, this revenue would have to be in an amount sufficient to fund the cost of the state mandate.

Education Code section 32245 states that it was intended to fund the Lead Safe Schools Act; (which includes the lead risk notices). Thus the first element (specific intent to fund the mandate) is met with regard to the lead risk notices.

However, the second element which would require that Education Code section 32245 and Welfare and Institutions Code section 18285 be implemented through Budget Act appropriation in an amount *sufficient* to fund the cost of the lead risk notices, must also be met.

Welfare and Institutions Code section 18285, which is incorporated by reference into Education Code section 32245, creates in the State Treasury the Child Health and Safety Fund. Section 18285 states that the Child Health and Safety Fund shall be created from money collected by the state pursuant to the license plate program and from civil penalties on family day care providers. It further provides that monies in the fund shall be expended, for up to any of eleven different programs having to do with child health and safety upon appropriation by the Legislature. Subdivision (e) of Section 18285 states in pertinent part that:

(e) Fifty percent of moneys derived from the license plate program pursuant to Section 5072 of the Vehicle Code ... shall be available, *upon appropriation*, for programs which address *any* of the following [eleven] child health and safety concerns ... that are either to be carried out within a two-year period or whose implementation is dependent upon one-time initial funding: ... (10) *Childhood lead poisoning*.... (Emphasis added.)

The language of subdivision (e) provides that the Legislature *may* appropriate up to 50% of the Child Health and Safety Fund to fund any of eleven different programs. Only one of which includes prevention of childhood lead poisoning. However, there is no evidence in the law or record that any amount was appropriated pursuant to Education Code section 32245 sufficient to cover the cost of the lead notices.

Claimant states that:

It is estimated that the San Juan Unified School District incurred approximately in excess of \$1000.00, annually in staffing and other costs in excess of the funding provided to school districts and the state for the period of July 1, 2000 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency.⁶⁴

There is no evidence that this is not the case.

Therefore Staff concludes that the lead risk notices are "costs mandated by the state" within the meaning of Government code sections 17514 and 17556.

However to the extent, and in the event, that funds are appropriated from the Child Health and Safety Fund pursuant to Education Code section 32245 or Welfare and Institutions Code section 18285(e), they will be identified in the parameters and guidelines as offsetting revenue.

Staff further finds that none of the exceptions in Government Code section 17556 apply to the remaining test legislation. Thus these activities also constitute "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556.

CONCLUSION

Staff concludes that the test claim statutes and executive order constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

1. For the principal of the school site to, within 45 days of receiving lead test survey results from the Department of Health Services to notify the teachers and other school personnel and parents of the survey results. (Ed. Code, § 32242, subd. (c).)
2. For schools to notify parents of the Childhood Lead Poisoning Prevention Act of 1991 upon receiving a finding that a school site has significant risk factors for lead. (Ed. Code, § 32243, subd. (a).)
3. For schools to, within 45 days of receiving a finding by the Department of Health Services that a school subject to the Lead-Safe Schools Act has a significant risk factors for lead, to notify the teachers, other personnel, and the parents of the finding. (Ed. Code, § 32243, subd. (a).)
4. For the governing board of each school district to, each academic year, notify pupils in grades 7-12 and the parents or guardians of all pupils enrolled in the

⁶⁴ Declaration of Don Iglesias, Associate Superintendent of Instruction, San Jose Unified School District; dated February 19, 2003; pages 4-5, lines 18 -21 and 1-2, respectively.

district, inclusive, that school authorities may excuse any pupil for the purpose of obtaining confidential medical services. (Ed. Code, § 46010.1.)

5. To disseminate guidelines, upon request, that describe complaint procedures, adopted by the State Department of Education, to parents or guardians of minor pupils in the primary language of the parent or guardian which he or she can follow in filing a complaint of child abuse by a school employee or other person committed against a pupil at a school site. (Ed. Code, § 48987.)
6. To provide an interpreter for a parent or guardian, whose primary language is other than English, in the case of any communications concerning the guidelines and procedures for filing child abuse complaints committed against a pupil at a school site. (Ed. Code, § 48987.)
7. For the Principal of each school with students in grades 11 and/or 12 to distribute to each pupil in those grades an announcement explaining the California high School Proficiency Exam provided for under Education Code section 48412 in time to meet registration requirements for the fall test of that year. (Cal. Code Regs. tit. 5, § 11523.)
8. To establish rules and regulations governing procedures for withholding grades, transcripts, and diplomas. (Ed. Code, § 48904, subd. (b) (3).)
9. For a transferee school to, upon notice that a school district has withheld the grades, diploma or transcripts of any pupil pursuant to Education code section 48904, to continue to withhold the grades, diploma or transcripts of any transfer student as authorized by that section, until such time as it receives notice, from the district that initiated the decision to withhold, that the decision has been rescinded under the terms of that section. (Ed. Code, § 48904.3, subd. (a).)

Staff finds that:

- Funds appropriated pursuant to Education Code, section 32245, and Welfare and institutions Code, section 18285 shall be an offset in the Parameters and Guidelines for purposes of the lead notice activities.
- Any statutes and or executive orders that were pled in this test claim that are not identified above do not constitute a reimbursable state-mandated program.

Recommendation

Staff recommends that the Commission adopt this staff analysis and approve this claim accordingly.

*Test Claim 02-TC-13
Draft Staff Analysis*

Original List Date: 2/24/2003
 Last Updated: 5/25/2008
 List Print Date: 09/05/2008
 Claim Number: 02-TC-13
 Issue: Pupil Safety Notices

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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From: Kbpsixten@aol.com [mailto:Kbpsixten@aol.com]
Sent: Monday, September 18, 2006 1:37 PM
To: Paula Higashi; Camille Shelton
Cc: Nancy Patton; Djbsixten@aol.com
Subject: Pupil Safety Notices

I won't be providing any written comments in response to the DSA.

At the hearing I will mention our continuing dispute with the Commission application of Merced.

As a point of clarification, I may also refer to the last sentence on the discussion of 46010.1, top of page 11, indicates its a one-time activity. I agree that the notice is one-time, but the distribution of the notice is ongoing and annual, as indicated in the conclusion of the DSA.

Keith B. Petersen, President
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