

# SixTen and Associates

## Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President  
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June 23, 2004

**RECEIVED**

JUN 25 2004

**COMMISSION ON  
STATE MANDATES**

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

Re: Test Claim 00-TC-16  
Modesto City School District  
California English Language Development Test

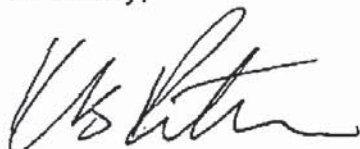
Test Claim 03-TC-06  
Castro Valley Unified School District  
California English Language Development Test II

Dear Ms. Higashi:

Please find enclosed the original (unbound) and seven copies of the Notice of Appeal and Appeal of Decision of Executive Director Severing Portion of Test Claim and Consolidating That Portion With Another Test Claim. As requested in the body of the instrument, a hearing on the appeal is requested for July 29, 2004.

Pursuant to Title 2, California Code of Regulations, section 1181.2(b)(c), I have served a copy by first-class mail on the other parties and interested parties to the claims who are identified on the mailing lists provided by the Commission.

Sincerely,



Keith B. Petersen

1 Prepared By:  
2 Keith B. Petersen  
3 SixTen and Associates  
4 5252 Balboa Avenue, Suite 807  
5 San Diego, CA 92117  
6 Voice: (858) 514-8605  
7

8  
9  
10 BEFORE THE  
11 COMMISSION ON STATE MANDATES  
12 STATE OF CALIFORNIA  
13

14 Test Claim of: )  
15 )  
16 ) No. CSM 03-TC-06  
17 )  
18 ) California English Language  
19 ) Development Test II (CELDT II)  
20 )  
21 Castro Valley Unified School District, )  
22 ) Notice of Appeal  
23 ) and  
24 ) Appeal of Decision  
25 ) of  
26 ) Executive Director  
27 ) Severing Portion of Test Claim  
28 ) And Consolidating That Portion  
29 ) With Another Test Claim  
30 )  
31 ) Date of Hearing: \_\_\_\_\_  
Time of Hearing: \_\_\_\_\_

32 **To: Commission on State Mandates and to all parties listed on the attached**  
33 **Mailing List:**  
34

35 Test Claimant Castro Valley Unified School District hereby appeals the decision of your  
36 Executive Director wherein she severed Sections 11510 through 11517 of Title 5,  
37 California Code of Regulations, from its Test Claim 03-TC-06 ("California English  
38 Language Development Test II" - "CELDT II") and consolidated only those sections with  
39 Test Claim 00-TC-16 ("California English Language Development Test" - "CELDT").

1 Since the hearing on "CELDT" is tentatively set for hearing on September 30, 2004,  
2 Test Claimant requests that this appeal be heard by the Commission at its regularly  
3 scheduled hearing on July 29, 2004.

4  
5 Statement of Facts  
6

7 1. On June 13, 2001, Modesto City School District filed test claim 00-TC-16,  
8 "California English Language Development Test" ("CELDT"), alleging that activities  
9 mandated by Education Code sections 313, 60810, 60811 and 60812 required school  
10 districts and county offices of education to incur costs which are reimbursable by the  
11 California Constitution, Article XIII B, section 6.

12 2. On September 22, 2003, Test Claimant, Castro Valley Unified School District,  
13 filed test claim 03-TC-06, "California English Language Development Test II" ("CELDT  
14 II"), alleging that activities mandated by Education Code sections 48985, 52164,  
15 52164.1, 52164.2, 52164.3, 52164.5 and 52164.6 and by Title 5, California Code of  
16 Regulations, sections 11301 through 11316 and 11510 through 11517 (not  
17 consecutive) required school districts and county offices of education to incur costs  
18 which are reimbursable by the California Constitution, Article XIII B, section 6.

19 3. Both test claims, CELDT and CELDT II, have the California English Language  
20 Development Test as their legal and factual nexus.

21 4. On June 3, 2004, the Executive Director of this Commission mailed a notice of  
22 her intention to sever sections 11510 through 11517 of Title 5, California Code of

1 Regulations, from test claim 03-TC-06 and consolidate only those severed sections with  
2 test claim 00-TC-16. A copy of the notice of the Executive Director is attached hereto  
3 as Exhibit "A" and is incorporated herein by reference.

4 5. The Exhibit "A" letter states, in part: "If the parties in interest do not object, this  
5 consolidation would be effective June 15, 2004."

6 6. By letter dated June 7, 2004, test claimant objected to the proposed severance  
7 and consolidation. A copy of the letter of objection dated June 7, 2004 is attached  
8 hereto as Exhibit "B" and is incorporated herein by reference.

9 7. Since your Executive Director has not responded to test claimant's letter of  
10 objection, test claimant must assume that the objection has been overruled.

11 8. Therefore, test claimant must make this appeal to the Commission.

12 II  
13 Regulatory Authority  
14

15 Title 2, California Code of Regulations, Section 1183.06<sup>1</sup>, subdivision (a),

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<sup>1</sup> Title 2, California Code of Regulations, Section 1183.06:

"(a) The executive director may consolidate part or all of any test claim with another test claim, if necessary to ensure the complete, fair, or timely consideration of any test claim.

(b) At least ten (10) days before the action is taken, the executive director shall simultaneously serve on the parties and interested parties notice of any proposed action to consolidate.

(c) Test claims may be consolidated if submitted by two or more claimants and if the following exist in the filings: the test claimants allege state mandated costs resulting from the same statute or executive order; and the claimants have designated one contact person to act as the resource for information regarding the test claim.

(d) Any party may appeal to the commission for review of the actions and

1 provides that the Executive Director may consolidate part or all of any test claim with  
2 another test claim, if necessary to ensure the complete, fair, or timely consideration of  
3 any test claim. Subdivision (b) provides that the Executive Director shall simultaneously  
4 serve on the parties and interested parties a notice of any proposed action to  
5 consolidate at least ten (10) days before the action is taken. Subdivision (d) provides  
6 that any party may appeal the actions and decisions of the Executive Director to the  
7 commission, pursuant to Section 1181 of these regulations. Section 1181<sup>2</sup>, subdivision

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decisions of the executive director under this Section pursuant to Section 1181 of these regulations."

1. New section filed 7-23-96; operative 7-23-96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsection (c) and new subsection (d) filed 9-13-99; operative 9-13-99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).

<sup>2</sup> Title 2, California Code of Regulations, Section 1181:

"(a) Whenever it is stated in these rules that the "commission" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, the Commission on State Mandates specifically has reserved the same for its own exclusive action.

(b) Whenever it is stated the "executive director" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, or it is not expressly stated that the commission itself shall so act, the executive director of the commission has the authority to act thereon.

(c) Any party in interest may appeal to the commission for review of the actions and decisions of the executive director.

(d) Nothing herein prohibits the executive director from delegating to his/her subordinates as provided in Section 18572 of the Government Code."

1. New Chapter 2.5 (Articles 1-4 and 6-8, Sections 1181-1189.5, not consecutive) filed 7-8-85; effective thirtieth day thereafter. Submitted to OAL for filing and printing only

1 (c), provides that any party in interest may appeal the actions and decisions of the  
2 Executive Director directly to the Commission for review,

3  
4 **III**  
5 **Statement of Grounds**

6 The executive director is empowered to consolidate part or all of any test claim  
7 with another test claim to ensure the complete, fair, or timely consideration of any test  
8 claim. Test claimant appeals the decision of the Executive Director on the grounds that  
9 the proposed severance and consolidation is not complete, fair or timely.

10 Both test claims have, as a nexus, the California English Language Development  
11 Test. Neither test claim can stand alone without reference to the California English  
12 Language Development Test. Test claimant requests the Commission to take notice of  
13 the following:

14 1. A hearing and decision on "CELDT", as proposed by the Executive Director,  
15 without a concurrent hearing and decision on "CELDT II", would be a waste of the  
16 Commission's valuable time and limited resources as it would then be required to hear  
17 and consider some of the same issues twice.

18 2. A hearing and decision on "CELDT", as proposed by the Executive Director,  
19 without a concurrent hearing and decision on "CELDT II" would deny this test claimant  
20 substantive due process of law in that issues common to both test claims would be

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pursuant to Government Code Section 17517(g) (Register 85, No. 28). For history of former Chapter 2.5, see Registers 80, No. 17 and 77, No. 2).

1 heard and decided without the participation of this test claimant. Test claimant would  
2 be estopped or barred from asserting or arguing those issues at a second hearing on its  
3 test claim.

4 3. A hearing and decision on "CELDT", as proposed by the Executive Director,  
5 without a concurrent hearing and decision on "CELDT II" would deny this test claimant  
6 substantive and procedural due process of law in that issues raised only by this test  
7 claimant would be severed and thereby heard and decided without the participation of  
8 this test claimant.

9 4. The best and most efficient way of ensuring the complete, fair and timely  
10 consideration of these matters would be to consolidate both test claims in their entirety  
11 and have the heard and considered concurrently.

12 **IV**  
13 **Requested Action**  
14

15 Wherefore, this test claimant requests the Commission to issue its order that the  
16 decision of the Executive Director to sever and consolidate, as proposed in her notice  
17 dated June 3, 2004, be vacated and that she be instructed instead to consolidate both  
18 test claims for hearing and decision.


19 Dated: June 23, 2004

20 **V**  
21 **CERTIFICATION**  
22

23 I certify by my signature below, under penalty of perjury under the laws of the State of  
24 California, that the statements made in this document are true and complete to the best

1 of my own personal knowledge or information and belief.

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6  
7  
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9  
10  
11

Sincerely,  


Keith B. Petersen

C: Per Mailing List Attached



## DECLARATION OF SERVICE

RE: California English Language Development Test II 03-TC-06  
CLAIMANT: Castro Valley Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of June 23, 2004, addressed as follows:

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

AND per mailing list attached

FAX: (916) 445-0278

- U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.
- OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:  
\_\_\_\_\_(Describe)
- FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.
- A copy of the transmission report issued by the transmitting machine is attached to this proof of service.
- PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 6/24/04, at San Diego, California.

  
Diane Bramwell

Commission on State Mandates

Original List Date: 6/15/2001 Mailing Information: Other  
Last Updated: 6/1/2004  
List Print Date: 06/03/2004 Mailing List  
Claim Number: 00-TC-16  
Issue: California English Language Development Test (CELDT)

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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# Commission on State Mandates

Original List Date: 9/30/2003  
Last Updated: 6/3/2004  
List Print Date: 06/03/2004  
Claim Number: 03-TC-06  
Issue: California English Language Development Test - 2

Mailing Information: Other

## Mailing List

### TO ALL PARTIES AND INTERESTED PARTIES:

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**EXHIBIT "A"**  
**NOTICE DATED JUNE 3, 2004**

## COMMISSION ON STATE MANDATES



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SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov

June 3, 2004

Keith Petersen, President  
SixTen and Associates  
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San Diego, CA 92117

Deborah S. Bailey  
Associate Superintendent of Business  
Services  
Modesto City School District  
426 Locust Street  
Modesto, CA 95351

*And interested parties – see enclosed mailing list*

Re: Notice to sever Title 5, California Code of Regulations sections 11510 – 11517 from 03-TC-06, *California English Language Development Test II* and consolidate them with 00-TC-16, *California English Language Development Test*

On June 13, 2001, claimant Modesto City School District filed test claim 00-TC-16, *California English Language Development Test* ("CELDT"). Claimant did not plead the regulations implementing the program: California Code of Regulations, title 5, sections 11510 - 11517. The CELDT claim is tentatively scheduled for hearing on September 30, 2004.

On September 22, 2003, claimant Castro Valley Unified School District filed test claim 03-TC-06, *California English Language Development Test II* ("CELDT II"). In its claim, claimant included sections 11510 - 11517 of the title 5 regulations, which implement the program pled in CELDT.

Therefore, California Code of Regulations, title 5, sections 11510 – 11517 are being severed from the CELDT II test claim and consolidated with the CELDT test claim. This is pursuant to the Executive Director's authority to consolidate all or part of a claim "to ensure the complete, fair, or timely consideration" of the claim. (Cal. Code Regs., tit. 2, § 1183.06, subd. (a)). If the parties in interest do not object, this consolidation would be effective June 15, 2004.

The parties in interest may appeal any decision of the Executive Director pursuant to California Code of Regulations, title 2, section 1181, subdivision (c).

Please contact Eric Feller, (916) 323-8221, if you have any questions.

Sincerely,

PAULA HIGASHI  
Executive Director

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# Commission on State Mandates

Original List Date: 9/30/2003  
Last Updated: 6/3/2004  
Last Print Date: 06/03/2004  
Claim Number: 03-TC-06  
Issue: California English Language Development Test - 2

Mailing Information: Other

## Mailing List

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#### Claimant

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# Commission on State Mandates

Original List Date: 6/15/2001 Mailing Information: Other  
Last Updated: 6/1/2004  
Last Print Date: 06/03/2004 Mailing List  
Claim Number: 00-TC-16  
Issue: California English Language Development Test (CELDT)

## TO ALL PARTIES AND INTERESTED PARTIES:

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**EXHIBIT "B"**  
**LETTER DATED JUNE 7, 2004**

# SixTen and Associates

## Mandate Reimbursement Services

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June 7, 2004

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

Re: Test Claim 00-TC-16  
Modesto City School District  
California English Language Development Test

Test Claim 03-TC-06  
Castro Valley Unified School District  
California English Language Development Test II

Dear Ms. Higashi:

I have received your letter dated June 3, 2004 which proposes to sever a portion (certain Title 5 Regulations) of the Castro Valley test claim and consolidate only that portion with the test claim of Modesto City School District.

Castro Valley Unified School District objects to this procedure. Castro Valley believes that it would be a better procedure to consolidate the two test claims in their entirety, or not at all.

Both test claims allege identical portions of the Education Code and a ruling on those Education Code sections should be made at the same time. The proposed severance would also deprive Castro Valley of being a party to the proceedings on regulations which it has alleged as part of its test claim.

Sincerely,



Keith B. Petersen

Commission on State Mandates

Original List Date: 9/30/2003 Mailing Information: Other  
Last Updated: 6/3/2004  
List Print Date: 06/03/2004 Mailing List  
Claim Number: 03-TC-06  
Issue: California English Language Development Test - 2

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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Commission on State Mandates

Original List Date: 6/15/2001      Mailing Information: Other  
Last Updated: 6/1/2004  
List Print Date: 06/03/2004      Mailing List  
Claim Number: 00-TC-16  
Issue: California English Language Development Test (CELDT)

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