ITEM __
TEST CLAIM
DRAFT STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Education Code Sections 44225, 44225.7, 44300, 44301, 44326, 44327, 44332, 44830, 44830.3, 44842, 44885.5, 44901, 45037

Statutes 1975, Chapter 228; Statutes 1981, Chapter 1136; Statutes 1982, Chapter 206; Statutes 1982, chapter 434; Statutes 1982, Chapter 471; Statutes 1982, Chapter 1388; Statutes 1983, Chapter 498; Statutes 1983, Chapter 536; Statutes 1983, Chapter 1038; Statutes 1983, Chapter 1302; Statutes 1984, Chapter 482; Statutes 1985, Chapter 747; Statutes 1986, Chapter 989; Statutes 1987, Chapter 1468; Statutes 1988, Chapter 1355; Statutes 1989, Chapter 375; Statutes 1991, Chapter 590; Statutes 1992, Chapter 1050; Statutes 1993, Chapter 378; Statutes 1994, Chapter 673; Statutes 1994, Chapter 922; Statutes 1996, Chapter 303; Statutes 1996, Chapter 948; Statutes 1997, Chapter 934; Statutes 1998, Chapter 533; Statutes 1998, Chapter 547; Statutes 1999, Chapter 281; Statutes 1999, Chapter 381; Statutes 2001, Chapter 585; Statutes 2002, Chapter 1069; and Statutes 2002, Chapter 1087

California Code of Regulations, Title 5, Sections 80005, 80016, 80020.4.1, 80023.1, 80023.2, 80025, 80025.1, 80025.5, 80026, 80026.1, 80026.5, 80026.6, 80027, 80035, 80035.5, 80036, 80036.1, 80036.3, 80037, 80037.5, 80038, 80040, 80043, 80045, 80047.2, 80047.4, 80048.2, 80048.3, 80048.3.1, 80048.4, 80054, 80055.1, 80055.2, 80058.2, 80070.2, 80070.3, 80070.4, 80070.6, 80071.4, 80413.3, 80435, 80441, 80466, 80556, 80556.1, 80601

Register 75, No. 16 (April 16, 1975); Register 75, No. 25 (June 20, 1975); Register 75, No. 27 (Aug. 2, 1975); Register 76, No. 5 (Feb. 27, 1976); Register 76, No. 21 (June 20, 1976); Register 76, No. 49 (Jan. 2, 1977); Register 77, No. 21 (June 19, 1977); Register 77, No. 51 (Jan. 15, 1978); Register 78, No. 10 (April 7, 1978); Register 78, No. 22 (June 29, 1978); Register 78, No. 48 (Dec. 29, 1978); Register 79, No. 23 (July 5, 1979); Register 80, No. 6 (March 7, 1980); Register 80, No 32 (Sept. 5, 1980); Register 81, No. 15 (May 6, 2001); Register 81, No. 23 (July 3, 1981); Register 82, No. 41 (Jan. 1, 1983); Register 82, No. 45 (Dec. 2, 1982); Register 82, No. 48 (Nov. 10, 1982); Register 83, No. 12 (March 15, 1983); Register 83, No 23 (July 3, 1983); Register 83, No. 30 (Aug. 21, 1983); Register 83, No. 31 (Aug. 28, 1983); Register 83, No. 40 (Sept. 27, 1983); Register 84, No. 8 (Mar. 23, 1984); Register 84, No. 40 (Nov. 3, 1984); Register 86, No. 40 (Oct. 31, 1986); Register 86, No. 50 (Jan. 9, 1987); Register 86, No. 52 (Jan. 1, 1987); Register 86, No. 52 (Jan. 1, 1987); Register 89, No. 11 (April 9, 1989); Register 89, No. 12 (April 16, 1989); Register 89, No. 46 (Dec. 13, 1989); Register 90, No. 42 (Sept. 4, 1990); Register 92, No. 39 (Sept. 21, 1992); Register 93, No. 25 (July 15, 1993); Register 94, No. 16 (May 20, 1994); Register 94, No. 19 (June 9, 1994); Register 95, No. 9, (Mar. 3, 1995); Register 95, No. 15 (May 10, 1995); Register 95, No. 32 (Sept. 7, 1995); Register 96, No. 26 (July 27, 1996); Register 96, No. 41 (Nov. 10, 1996); Register 97, No. 39 (Oct. 26, 1997); Register 97, No. 51 (Dec. 16, 1997); Register 98, No. 3 (Jan. 13, 1998); Register 98, No. 12 (April 17, 1998); Register 98, No. 28 (July 6, 1998); Register 98, No. 32 (Sept. 5, 1998); Register 98, No. 49 (Dec. 2, 1998); Register 99, No. 11 (April 10, 1999); Register 99, No. 41 (Nov. 7, 1999); Register 99, No. 46 (Nov. 12, 1999); Register 99, No. 51 (Jan. 15, 2000);

Register 2000, No. 15 (May 14, 2000); Register 2000, No. 16 (May 21, 2000); Register 2000, No. 22 (June 20, 2000); Register 2001, No. 17 (May 25, 2001); Register 2001, No. 24 (June 15, 2001); Register 2001, No. 47 (Oct. 9, 2001); Register 2002, No. 21 (June 20, 2002); Register 2002, No. 50 (Jan. 8, 2002); Register 2002, No. 52 (Jan. 22, 2003); Register 2003, No. 5 (Mar. 1, 2003).

Teacher Credentialing
03-TC-09

San Diego County Office of Education, Claimant

Attached is the draft proposed statement of decision for this matter. This draft proposed statement of decision also functions as the draft staff analysis, as required by section 1183.07 of the Commission's regulations.

EXECUTIVE SUMMARY

Overview

This test claim addresses the teacher credentialing process and employment of K-12 teachers. The claimant requests reimbursement for statutes and regulations enacted and amended from 1975 to 2002.

Generally, teachers must be certified by the California Commission on Teacher Credentialing (CTC) in order to be employed in a California public school district. California's credential structure is organized by subject matter and the classroom setting in which individuals teach rather than school setting or age group. Within this structure, the State has established certification tiers, starting with a preliminary credential that ensures candidates meet the requirements before advancing to the professional clear teaching credential. Clear credentials replaced the life credentials formally issued, and now require continued professional growth and renewal every five years. CTC issues 54 basic types of documents, including 32 types of teaching credentials/certificates/permits, eight different emergency permits, eight service credentials/permits, six child development permits, and waivers. Within each of these categories, CTC issues preliminary, professional, and renewal documents, as well as many different types of authorizations to teach a specific subject.

There are four basic credentials that authorize individuals to teach in California K-12 schools. The credential for single subject instruction authorizes the practice of assigning teachers and students to specified subject matter courses, as is commonly practiced in high schools and junior high schools. The single subject credential authorizes a school district to assign the holder of the credential to courses of study that relate to the credential. The credential for multiple subject instruction allows the "the practice of assignment of teachers and students for multiple subject matter instruction, as is commonly practiced in California elementary schools and in early childhood education." Specialist instruction is defined as any specialty requiring advanced preparation or special competence, including, but not limited to, specialists in reading, math, special education, and early childhood education. The designated subjects credential authorizes the practice of assignment of teachers to designated technical, trade, or career technical courses that may be part of a program of trade, technical, or career technical education. CTC also issues credentials for other educational occupations requiring state certification, including credentials for librarians and administrators.

All credential candidates must obtain a college degree through a regionally accredited college or university and demonstrate academic preparation in the subject matter in which they wish to teach. Candidates must also complete a CTC-approved teacher preparation program, pass a basic skills assessment (currently the California Basic Educational Skills Test or CBEST), and receive a formal recommendation from the college, university, or local educational agency where they completed the teacher preparation program. The State offers multiple routes into teaching including traditional one-year post-baccalaureate teacher preparation programs at institutions of higher education, district or university sponsored intern programs, and four to five year blended programs that allow for the concurrent completion of a baccalaureate degree and professional preparation.

The statutory and regulatory schemes provide many options for school districts to achieve desired staffing needs. Under certain circumstances, the Legislature has authorized CTC to provide a special administration of the basic assessment test, or CBEST, to fill staffing needs. In addition, CTC has the authority, under limited circumstances, to issue certificates, permits, and waivers authorizing persons who are not fully-credentialed, or are not fully credentialed in a particular subject area, to teach and provide educational services to students in public schools. These alternative certifications include district intern certificates, limited assignment permits, emergency permits, and credential waivers.

Since 1961, school districts have been subject to statutory penalties when a school district hires a person, without valid certification documents, to render services as a teacher. However, the Legislature has provided options to avoid this penalty, which include requests for a continuance or extension of service, requests for temporary county certificates, and validation of service requests.

<u>The Test Claim Statutes</u>

This test claim addresses the following credential and employment topics, all of which include activities performed by K-12 school districts:

A. Basic skills assessments, including basic skills proficiency assessments, the special administration of CBEST, and administering a local assessment for applicants of vocational designated subject credentials.

B. The following procedures for obtaining credentials and certificates:

    1. General procedures for applying for a credential;

    2. Single and multiple subject credential requirements for experienced out-of-state credentialed teachers;

    3. Certain special education credential requirements;

    4. Designated subject credentials, including those in vocational education, adult education, aviation flight/ground, basic military drill, ROTC, driver's education, and supervision and coordination;

    5. Administrative service credentials;

    6. Other credentials, including an eminence credential, exchange certificated credential, and a sojourn credential; and

7. Specialized certificates issued for providing services to limited English proficient students and resource services in the classroom for special education students.

C. Authorized assignments of teachers. This includes regulations addressing the assignment of teachers to courses for which no single subject credential exists, and those governing the assignment of teachers to develop and direct reading programs.

D. The following alternative certificates, permits, and credential waiver requests made when a "suitable, fully prepared teacher is not available to a school district":

1. Legislation that establishes a priority in hiring persons not fully credentialed;
2. District intern program;
3. Request for limited assignment permits;
4. Request for emergency permits for single or multiple subjects, and emergency permits for substitute teachers; and
5. Request for credential waivers.

E. Penalties and options for avoiding penalties, including a request for a continuance or extension of service, temporary county certificates, and validation of service requests.

F. Professional growth programs that require professional growth advisors from the district to mentor and assist in the professional growth and renewal of single and multiple subject credentials, and service and specialist credentials.

G. Other employment issues, including procedures for a teacher's failure to declare his or her intent to remain employed in the district and procedures when a teacher is employed in more than one school district.

Procedural History

On September 25, 2003, claimant, San Diego County Office of Education filed this test claim. Comments on the test claim have been filed by the Department of Finance and the California Commission on Teacher Credentialing. These state agencies agree that some of the activities under the professional growth program are required and eligible for reimbursement. However, these agencies contend that the remaining statutes and regulations do not impose a reimbursable state-mandated program because they are either not mandated by the state, or are not newly required.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In

making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.[1]

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

Subject	Description	Staff Recommendation
A. <u>Basic Skills Assessments</u> 1. Basic Skills Proficiency Assessments (Ed. Code, § 44830(a)(b))	Education Code section 44830 governs the employment of certificated individuals in a K-12 school district. The statute requires school districts to employ for positions that require certification qualifications only those persons who possess the qualifications prescribed by law and prohibits school districts from hiring a person unless that person has demonstrated bask skills proficiency by passing the CBEST, or is exempted. The statute also provides authority for school districts to administer the state basic skills test; directs the Superintendent of Public Instruction SPI, in conjunction with CTC and local governing boards, to take steps necessary to ensure the effective implementation of the basic skills requirements.	*Deny*: Education Code section 44830 does not mandate a new program or higher level of service on school districts. The requirement to employ only those persons who possess the qualifications prescribed by law was required by a 1974 statute (former Ed. Code, § 13251) and is, therefore, not new. The remaining provisions do not impose state-mandated duties on school districts. They instead provide authority to districts to administer the state basic skills test, and prohibit school districts from hiring persons who do not demonstrate basic skills proficiency.
2. Special administration of CBEST (Cal. Code Regs., tit. 5, §80071.4)	This regulation authorizes CTC to arrange for a special administration of CBEST for a school district, a group of school districts, a county office of education, or a group of counties in the event of an emergency employment situation. The written request by the school districts must include the minutes of the governing board meeting that shows an emergency, as defined, exists, and that the district or county will assist in the administration and pay the full fee	*Deny*. Section 80071.4 does not impose a state-mandated program on school districts. The plain language of the regulation authorizes, but does not require, a school district to file a written request based on local hiring decisions. Since the activities required are triggered by the school districts' decision to file a request, the downstream requirements are not mandated by the state. Nor is there any evidence in the record that school districts are practically compelled, to file a request for the special

[1] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

	required. The superintendent of the district is also required to provide information as part of the request.	administration of CBEST.
3. Administering a local assessment for candidates of a vocational designated subject credential (Ed. Code, § 44830(h), (i), (j) (as added or amended from 1983 to 1998)	This statute requires school districts, which employ individuals that hold a vocational designated subject credential and provide vocational courses to students, to establish their own basic skills proficiency assessment that is at least equivalent to the district test for high school graduation.	*Deny*. Education Code section 44830(h)(i)(j) does not impose a state-mandated program on school districts. Under the Education Code, career technical education is defined the same as vocational education, and courses in career technical education are courses of study required to be offered for grades 7 to 12. However, school districts are not required to employ persons that hold a vocational credential to comply with this existing law. Rather, school districts have the choice to employ a person that holds a single subject credential in specific single subject areas to comply with the law. In addition, the statute provides fee authority to the district for the costs of developing, administering, and grading the assessment test.
B. <u>Procedures for Obtaining Credentials and Certificates</u> 1. Procedures for Applying for a Credential (Cal. Code Regs., tit. 5, §§ 80435, 80466)	Section 80435 of the regulations requires school districts, with CTC-approved programs of professional preparation, to submit official transcripts of the credential applicant with the application to CTC, or provide a recommendation of the applicant for the credential to CTC. Section 80466 provides an option to credential applicants who have not completed a program of professional preparation to, instead, offer three years of successful full-time teaching experience completed within ten years prior to the date of application for a California credential, verified by the school district employer.	*Deny*. These regulations do not impose a state-mandated program on school districts. With respect to section 80435, school districts have the option under the law, but are not required, to offer a program of professional preparation and, thus, activities to submit transcripts or recommendations to CTC following the applicant's completion of the program and in conjunction with the application for the credential, are not mandated by the state. The activity imposed by 80466 is an activity to be performed by an out-of-state school district employer. Section 80466 does not impose any duties or activities on California school districts.

2. Single and Multiple Subject Credential Requirements for Experienced Out-of-State Credentialed Teachers (Cal. Code Regs., tit. 5, § 80413.3)	This regulation credentialed out of state teachers who wish to teach in California to provide to CTC a signed, written justification and verification of a school district's intention to enroll the out-of-state applicant into an approved program of teacher support.	*Deny*. Section 80413.3 does not impose a state-mandated program on school districts. The plain language of the regulation imposes requirements on an out-of-state teacher who wishes to become credentialed and teach in California. State law does not require school districts to hire out-of-state credentialed teachers. This hiring decision is a voluntary decision made at the local level and, thus, any downstream requirements performed by the employing California school district are not mandated by the state.
3. Special Education Credentials: Authority to provide services to students with serious emotional disturbance and autism (Cal. Code Regs., tit. 5, §§ 80047.2, 80047.4); former specialist credential in Special Education (Cal. Code Regs., tit. 5, §§ 80048.2, and repealed in 2010); preliminary and professional clear education specialist instruction credential (Cal. Code Regs., tit. 5, §§ 80048.3, 80048.4); credentials for out-of-state credentialed special education teachers (Cal. Code Regs., tit. 5, §§ 80048.3(c), 80048.3.1)	These regulations address credentials authorizing holders to provide services to students with serious emotional disturbance and autism; former requirements to obtain preliminary and professional clear specialist instruction credentials in special education; requirements to obtain a preliminary level 1 and professional level II education specialist instruction credential for those who complete a professional preparation program in California and outside California; and requirements for out-of-state credentialed special education teachers. These regulations generally require the applicant for these credentials to submit from the employing California school district, favorable evaluations or recommendations; and verification of an offer of employment or experience.	*Deny*. These regulations do not impose a state-mandated program on school districts. Any requirements imposed to obtain authority to teach special education students are imposed on the holder of the credential and are not imposed on the school district. The decision to provide a favorable evaluation or recommendation, or to employ an out-of-state credentialed special education teacher are local decisions left to the discretion of an employing school district. In addition, the preliminary specialist instruction credentials in special education issued pursuant to section 80048.2(a) ceased to be issued by CTC after June 30, 1998 (before the period of potential reimbursement for this claim) and, thus, are not analyzed for reimbursement.

4. Designated Subjects Credentials: general requirements for programs of personalized preparation (Cal. Code Regs., tit. 5, § 80040,); vocational education teaching credentials (Cal. Code Regs., tit. 5, §§ 80035, 80035.5); adult education credentials (Cal. Code Regs., tit. 5, §§ 80036, 80036.1, 80036.3); designated credentials in aviation flight/ground, basic military drill, ROTC, and driver's education (Cal. Code Regs., tit. 5, §§ 80037, 80037.5); supervision and coordination designated credential (Cal. Code Regs., tit. 5, § 80038)	These regulations address the requirements for obtaining one of the designated subjects credentials that allows the holder to provide services in the designated technical, trade, or career technical courses, including vocation education, adult education, aviation flight/ground, basic military drill, ROTC, and driver's education. An applicant seeking one of these designated subject credentials is required to first participate in a CTC-approved program of personalized preparation for the credential and submit certain verifications to CTC from the employing school district that offered the approved program showing that the applicant has been informed of the requirements for obtaining a professional clear credential in the subject, and that the applicant has completed the requirements of the personalized program.	*Deny*. These regulations do not impose a state-mandated program on school districts. There is no requirement in state law for a school district to offer a program of personalized preparation for a designated subjects credential applicant. In addition, most of the courses that are authorized to be taught by a holder of a designated subjects credential are courses that are provided at the option of the school district and are not mandated by the state to be offered to students. To the extent a school district feels it necessary to hire a teacher with a designated subjects credential, there are numerous programs of personalized preparation approved and offered by other entities and universities where the applicant can obtain the required skills for the credential. Requirements to obtain the credential are, imposed on the applicant: not the school district. Finally, the remaining activities that may be performed by school districts to recommend an applicant for the credential and to verify employment experience and completion of the personalized preparation program are not mandated by the state.
5. Administrative Services Credential (Cal. Code Regs., tit. 5, § 80054)	The administrative services credential authorizes the holder to provide services to develop, coordinate, and assess instructional programs; supervise, evaluate, and discipline certificated and classified employees; provide student discipline; manage the school site; recruit, employ, and assign teachers. To obtain a preliminary credential, the applicant must submit verification to CTC of three years	*Deny*. Section 80054 of the regulations does not impose a state-mandated program on school districts. The plain language of the regulation imposes requirements on the credential applicant. Although the applicant's former and current employers verify the successful experience in the employment of the applicant in order to obtain the credential, this verification is triggered by the district's local hiring decisions. There is no mandate imposed on the district to verify the

	of successful, full-time teaching or service experience from in-state public or private schools. To obtain a professional clear credential, the applicant is required to submit verification of two years of successful experience in a full-time administrative position in a California public or private school.	successful employment of its employees.
6. Other Credentialed Employees: eminence credentials, exchange certificated credentials, sojourn certificated employee credentials (Cal. Code Regs., tit. 5, §§ 80043, 80045, 80055.1, 80055.2)	Other credentials issued by CTC include: Eminence credentials. CTC is authorized by statute to grant an eminence credential to an individual who is eminent in a specific endeavor and is recognized beyond the boundaries of his or her community. Eminence credentials are only available at the recommendation of an employing school district. Exchange certificated credentials. School districts are authorized by statute to enter into agreements with authorities of any foreign country, state or territory, or any other school district for the exchange and employment of regularly credentialed employees. To obtain this credential, the employing school district is required to submit to CTC a verification of proposed employment and other specified information. Sojourn Certificated Employee Credential. School districts are authorized to engage in arrangements with authorities in foreign countries, states, or territories, to hire bilingual teachers employed in public or private schools of the foreign country, etc. To obtain these credentials, the school district is required to submit	*Deny*. These regulations do not impose a state-mandated program on school districts. There is no requirement in state law to hire these individuals or go through the credentialing process, which allows the district to hire these individuals.

	specified information and certifications to CTC.	
7. Specialized Certificates to teach English to limited English proficient students, and to provide services as a resource specialist. (Cal. Code Regs., tit. 5, §§ 80016, 80070.2-80070.4, 80080.6)	Section 80016 of the regulations implements a statute that authorizes the assignment of teachers with a basic teaching credential to provide specially designed content instruction in English to limited English proficient pupils. The regulation clarifies the requirements and authorizations for the certificate of completion of staff development. To obtain the certificate, the holder is required to submit verification from the CTC–approved program offered by a school district, county office of education, college or university, or other approved agency, of completion of staff development programs. Sections 80070.2 et seq. address the requirements to obtain a resource specialist certificate. The holder of this certificate provides, among many services, instruction and services to pupils with an individualized education plan (IEP) assigned to regular classroom teachers for a majority of the school day. To obtain the certificate, the applicant is required to submit employment experience verifications from employing school districts.	*Deny*. Section 80016 of the regulations does not impose a state-mandated program on school districts. The plain language of the regulation imposes requirements on the applicant for the certificate. The verification required to be submitted by the applicant is submitted by "the school district, county office of education, college or university, or other approved agency, *whose program has been approved* by" CTC. In addition, the regulation implements a statute that was enacted to provide an alternative to the certificate requirements for teaching limited English proficient students. Thus, under the law, school districts had the option of hiring an individual with this certificate, or one who held a cross-cultural language and academic development certificate (CLAD) or a bilingual CLAD under existing law. Sections 80070.2 et seq. do not impose a state-mandated program on school districts. The plain language of these regulations imposes requirements on the applicant seeking the resource specialist certificate, and provides various options to obtain those certificates. The experience and employment verifications required by these regulations are triggered by the local hiring decisions of the school district. State law does not require school districts to hire a teacher who does not already have a clear resource specialist certificate.
C. <u>Authorized Assignments of Teachers</u> This includes	Section 80005 states that the holder of a teaching credential based on a baccalaureate degree and a teacher preparation program may be	*Deny*. Section 80005 of the regulations does not impose a state-mandated program on school districts. The plain language of the

regulations addressing the assignment of teachers to courses for which no single subject credential exists, and those governing the assignment of teachers to develop and direct reading programs. (Cal. Code Regs., tit. 5, §§ 80005, 80020.4.1)	assigned, with consent, to teach subject-matter classes that do not fall within or are not directly related to the broad single subjects listed in regulation, if the employing school district has determined the teacher has the requisite knowledge and skills. Examples of these courses include conflict management, study skills, teen skills, leadership, and study hall. Section 80020.4.1 authorizes school districts to maintain the service of a teacher, who does not have a specialist or administrative services credential or a reading certificate, as a school site reading program coordinator if the teacher has completed three years of reading coordinator experience before July 1, 1994. Employing agencies are required to keep verification of these services on file.	regulation does not require school districts to offer these courses or assign a teacher to teach these courses. Section 80020.4.1 of the regulations does not impose a state-mandated program on school districts. Keeping teachers without the specified credentials to coordinate a school site reading program is expressly authorized, but not required by the regulation.
D. <u>Alternative Certificates, Permits, and Waivers</u> 1. Prioritizing the hiring of persons with alternative certificates, permits, or credential waivers (Ed. Code, § 44225.7(a), as enacted in 1999.)	Education Code section 44225.7(a) was enacted in 1999 to specify the relative priority for hiring persons who are not fully credentialed. The statute was intended to reduce the number of emergency credentials and credential waivers issued by CTC and used by school districts. The statute provides that if a suitable fully prepared teacher is not available to a school district, the district under all circumstances shall make reasonable efforts to recruit an individual for the assignment in the following order: (1) a candidate who is qualified to participate and enrolls in an approved internship program in the region of the school district; (2) a candidate who is scheduled to complete preliminary credential	*Deny*. Education Code section 44225.7(a) does not impose a state-mandated new program or higher level of service on school districts. School districts are not mandated by state law to request the approval from CTC for the assignment of persons who are not fully prepared teachers. Moreover, before the enactment of section 44225.7(a), school districts were already required by state law to recruit and employ qualified individuals, and to hire fully credentialed teachers first. This statute simply clarifies the prioritization of hiring, and does not mandate a higher level of service.

	requirements in six months. "If a suitable individual who meets the priorities listed in [subdivision (a)] is not available to the school district, the district, as a last resort, *may* request approval for the assignment of a person who does not meet that criteria."	
2. District Intern Program (Ed. Code, §§ 44326, 44327, 44830.3, 44885.5)	In 1983, the Legislature established the district intern program as an alternative route into teaching. A district internship is a fully paid position where the intern serves as teacher of record for pupils in grades 1 to 12, classes in bilingual education, or for pupils in special education classes, while simultaneously participating in a teacher preparation program. Education Code section 44830.3(a) provides the authority for a school district to offer a district intern program and employ district interns. And, pursuant to Education Code section 44225.7(a), the district may do so, only if a suitable fully prepared teacher is not available to the district. If employed, district interns are required to teach with the assistance and guidance of certificated employees. School districts that participate in the program are required to maintain program records, develop and implement a professional development plan, and classify the district intern as a probationary employee.	*Deny*. These statutes do not impose a state-mandated program on school districts. School districts are not mandated by the state to participate in the district intern program or to hire a district intern to fill a staffing need. The statutory scheme provides options for school districts to consider and use based on local hiring decisions. Moreover, there is no evidence in the record that school districts are practically compelled by state law to participate in the district intern program or hire a district intern. There are no apparent penalties in the law for not participating in the program. While there is a monetary penalty imposed when a school district hires a person to render service as a teacher who does not have any valid certification document issued by CTC, that penalty is not directly related to a school district choosing not to participate in the district intern program. There are many options available to school districts to fill positions with persons with valid certification documents. Nor is there evidence in the record for the relevant period of potential reimbursement that a school district was left with no reasonable alternative but to participate in the district intern program. Nor is there information regarding the types of courses where pupils were served or

		will be served by district interns. For example, school districts are required by state law to offer and provide certain courses of study for grades 1 to 12 (Ed. Code, §§ 51200, et seq.), but have full discretion to provide other courses of study prescribed by the local governing board. (Ed. Code, §§ 51210(h), 51220(k), 51225.3(a)(2).) School districts that participate in the district intern program and fill a discretionary course with a district intern would not be eligible for reimbursement.
3. Limited Assignment Permits (Cal. Code Regs., tit. 5, §§ 80026, 80027)	A limited assignment permit is a permit issued at the request of an employing school district to allow fully credentialed teachers to teach outside their authorized subject areas for one year, while the teacher completes the requirements to earn the additional authorization for that assignment. School districts have had this authority since 1976, but in 2001 a number of amendments were made to the program. School districts seeking to exercise the limited assignment option are required to submit to CTC an annual declaration of need certifying that there is an insufficient number of certificated persons who meet the district's "specified employment criteria" for certain positions in the year covered by the declaration. School districts must also show that the applicant is employed and will be assigned an experienced educator. Districts must also keep on file a written statement verifying consent of the teacher to service on the limited assignment permit.	*Deny*. These regulations do not impose a state-mandated program on school districts. The limited assignment permit is an option available to employing school districts to fill staffing vacancies. In 2001, section 80027 was amended to clarify that a limited assignment multiple or single subject permit is not an "emergency" option for non-fully prepared teachers, but an assignment option for a credentialed teachers. In 2009, CTC amended section 80027 again to clarify that the activities imposed on the school district to obtain a limited assignment multiple or single subject teaching permit is required only if the "employing agency elects to request" the permit. Although the state encourages school districts to use this option before seeking an emergency permit or credential waiver, there is no state-mandated duty imposed on school districts to exercise this option. Moreover, the filing of a declaration of need with CTC seeking the issuance of limited assignment permits for the year when the district finds there is no suitable fully

		prepared teacher available is itself, a discretionary act. In *California Teachers Association v. Commission on Teacher Credentialing,* the court interpreted the filing of a statement of need pursuant to section 80026 and determined that "nothing in title 5, California Code of Regulations, section 80026 [governing the statement of need] provides any limitation on a district's discretion.[2] Thus, school districts are not legally compelled by state law to comply with the limited assignment permit process. Nor is there any evidence of practical compulsion. There are no apparent penalties in the law for not complying with the limited assignment permit process. While there is a monetary penalty imposed on a school district when it hires a person to render service as a teacher who does not have any valid certification document issued by CTC (which includes alternative and emergency permits), that penalty is not directly related to a school district choosing not to comply with the limited assignment process. As evidenced in this claim, there are many options available to school districts to fill positions with persons with valid certification documents. Nor is there evidence in the record that a school district was practically compelled during the relevant period of reimbursement to resort to the limited assignment process in order to carry out the core mandatory function to provide required educational services to K-12 students.

[2] *California Teachers Association v. Commission on Teacher Credentialing* (1992) 7 Cal.App.4th 1469.

		Even if there was evidence that a district filed a statement of need for approval of hiring a person eligible to teach under a limited assignment permit, that evidence would not, by itself, prove practical compulsion. The statement of need required by section 80026 of the regulations to obtain a limited assignment permit is an annual filing by a district that "*estimates*" the number of unprepared teachers the district might need for the year, with a promise from the district that it will first try to recruit fully credentialed teachers and interns. An estimate of need is not "certain" for purposes of practical compulsion, and does not amount to concrete evidence that an emergency in fact existed, or a certain and severe consequence would occur, forcing the district to go through the process and hire an individual eligible for a limited assignment permit for a teaching position. Moreover, there is no evidence in the record that school districts were compelled to use the limited assignment permit process to teach courses required by the state to be offered to K-12 students. For example, school districts are required by state law to offer and provide certain courses of study for grades 1 to 12 (Ed. Code, §§ 51200, et seq.), but have full discretion to provide other courses of study prescribed by the local governing board. (Ed. Code, §§ 51210(h), 51220(k), 51225.3(a)(2).) School districts that go through the limited assignment permit process to fill a staffing need for a discretionary course would not be eligible for reimbursement.

4. Emergency Permits: Emergency Single Subject or Multiple Subject Teaching Permit; Emergency Substitute Permits (Ed. Code, §§ 44300, 44301, 44225.7(a); Cal. Code Regs., tit. 5, §§ 80023.1, 80023,2, 80025, 80025.1, 80025,5, 80026,80026.1, 80026.5, 80026.6.)	Emergency permits or credentials have long been authorized by the Legislature to address the shortage of qualified teachers, and since 1943, the law has evolved to now offer over 17 types of emergency permits. The claimant seeks reimbursement to comply with the process of obtaining an emergency single or multiple subject permits, and three emergency substitute teaching permits (emergency 30-day substitute teaching permit, an emergency career substitute teaching permit, and 30-day emergency substitute designated subjects vocational educational permit.) To obtain an emergency single or multiple subject permit, a school district is required to annually file with CTC a statement of need showing that it has implemented in policy and practice a process for conducting a diligent search for a sufficient number of certificated teachers. The exclusive representative of certificated employees may file statements disagreeing with the school district. The school district must also inform each applicant that it will provide the orientation, guidance and assistance required, and verify that the emergency employee meets ongoing training requirements. These activities, however, are no longer required as of July 1, 2006. CTC, at its December 2003 hearing, voted to phase emergency multiple and single subject permits out, and replace the permit, beginning on July 1, 2006, with a short-term staff permit and provisional internship	*Deny*. These statutes and regulations do not impose a state-mandated program on school districts. School districts are not legally compelled by state law to participate in the underlying program to request emergency permits. Rather, school districts make a local decision to perform the activities in order to ensure staffing. Section 80023.1 of the Title 5 regulations plainly states that school districts and county offices of education "may" submit emergency permit applications for multiple or single subject permits. A local decision requiring a school district to incur costs does not constitute a state-mandated program. Moreover, the filing of a declaration of need with CTC seeking the issuance of emergency permits for the year when the district finds there is no suitable fully prepared teacher available is itself, a discretionary act. In *California Teachers Association v. Commission on Teacher Credentialing,* the court interpreted the filing of a statement of need pursuant to section 80026 and determined that "nothing in title 5, California Code of Regulations, section 80026 [governing the statement of need] provides any limitation on a district's discretion.[3] Claimant argues, however, that school districts are practically compelled to comply with these statutes and regulations to fill positions with emergency credentials and, thus, are entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution based on three CTC

[3] *California Teachers Association, supra*, 7 Cal.App.4th 1469.

	permit for multiple and single subjects, both of which have not been pled in this test claim. Separate process are provided for emergency substitute teaching permits, but generally require that the school district describe the situation that necessitates the use of an emergency permit, state that a credentialed individual is not available, and provide verification of employment.	published reports pointing to enrollment growth fueling a shortage of fully qualified teachers in California classrooms, thereby requiring school districts or county offices of education to rely on emergency permits or waivers in the 2001-2002 school year. However, there are no apparent penalties in the law for not complying with the emergency permit process. While there is a monetary penalty imposed on a school district when it hires a person to render service as a teacher who does not have any valid certification document issued by CTC (which includes alternative and emergency permits), that penalty is not directly related to a school district choosing not to comply with the emergency permit process. As evidenced in this claim, there are many options available to school districts to fill positions with persons with valid certification documents. Teacher shortages have occurred over time in the state of California, and those shortages have been documented. However, there is no concrete evidence in the record that an "emergency" existed in any particular district which left no reasonable alternative and, in fact, practically compelled a school district to resort to the emergency permit process in order to carry out the core mandatory function to provide required educational services to K-12 students. The claimant's evidence of state reports and statistics alone, which show that districts statewide filed statements of need and CTC issued emergency permits during the 2001-2002 school year, does not support the finding of practical compulsion. As stated above, there is

		discretion in those local hiring decisions, and no evidence has been filed showing the type of emergency, the classes that needed to be filled, or the alternatives that may have been available. For example, school districts are required by state law to offer and provide certain courses of study for grades 1 to 12 (Ed. Code, §§ 51200, et seq.), but have full discretion to provide other courses of study prescribed by the local governing board. (Ed. Code, §§ 51210(h), 51220(k), 51225.3(a)(2).) School districts that go through the emergency permit process to fill a staffing need for a discretionary course would not be eligible for reimbursement. Moreover, the statement of need required by section 80026 of the regulations is an annual filing by a district that "*estimates*" the number of unprepared teachers the district might need for the year, with a promise from the district that it will first try to recruit fully credentialed teachers and interns. An estimate of need is not "certain" for purposes of practical compulsion, and does not amount to concrete evidence that an emergency in fact existed forcing the district to go through the process and hire an individual eligible for an emergency permit. Finally, section 80025 of the Title 5 regulations, which governs the emergency 30-day substitute teaching permit, does not mandate a new program or higher level of service, and, in fact, imposes fewer requirements on school districts than what was provided in prior law enacted in 1973.

5. Credential Waivers (Ed. Code, §§ 44225(m), 44225.7)	Credential waivers are a last resort option that allows a school district, which is unable to fill a staffing need with a fully credentialed teacher, an intern, or an individual who is qualified for an emergency permit, to request a credential waiver for the best qualified applicant available. Applications for credential waivers must be filed with CTC and contain information similar to that for emergency permits.	*Deny*. These statutes do not impose a state-mandated program on school districts. School districts are not legally compelled by state law to request a credential waiver. The plain language of the statutes and regulations that implement these statutes provide that a school district "may" request authorization for a credential waiver. The claimant argues that school districts are practically compelled to obtain credential waivers and bases its arguments on state reports and statistics regarding the number of credential waivers issued in fiscal year 2001-2002 (2,803 waivers issued that year). However, a finding of practical compulsion must be based on a concrete showing, with evidence in the record, that a school district faces certain and severe penalties, such as double taxation or other draconian consequences for not complying the test claim statutes and regulations, or that a school district is left with no reasonable alternative but to comply in order to carry out its core mandatory function to provide educational services to K-12 students. Here, there are no apparent penalties in the law for not complying with the credential waiver process. While there is a monetary penalty imposed on a school district when it hires a person to render service as a teacher who does not have any valid certification document issued by CTC (which includes alternative and emergency permits), that penalty is not directly related to a school district choosing not to comply with the credential waiver process. As evidenced in this claim, there are many options available to school districts to fill positions with persons

		with valid certification documents. Nor is there concrete evidence in the record that an "emergency" existed during the relevant period of potential reimbursement, which left no reasonable alternative and, in fact, practically compelled a school district to resort to the credential waiver process in order to carry out the core mandatory function to provide required educational services to K-12 students. There is no information about the classes that needed to be filled, or the alternatives that may have been available from during the relevant period of reimbursement for this claim. School districts are required by state law to offer and provide certain courses of study for grades 1 to 12 (Ed. Code, §§ 51200, et seq.), but have full discretion to provide other courses of study prescribed by the local governing board. (Ed. Code, §§ 51210(h), 51220(k), 51225.3(a)(2).) School districts that go through the credential waiver process to fill a staffing need for a discretionary course would not be eligible for reimbursement.
E. <u>Penalties and Additional Options for Avoiding Penalties</u> 1. Penalty assessments for teachers lacking certification documents (Ed. Code, § 45037, as added in 2002.)	Since 1961, school districts have been subject to penalties imposed by the Education Code when the district hires a person without valid certification documents to render services as a teacher. In 2002, the Legislature enacted section 45037 to establish a single penalty to supersede three prior penalties. The claimant requests reimbursement for the amounts	*Deny*. Although section 45037 may result in increased costs incurred by a school district, increased costs alone do not result in a reimbursement requirement under article XIII B, section 6 of the California Constitution. "Section 6 was not intended to entitle local entities to reimbursement for all increased costs resulting from legislative enactments, but only those costs mandated by a new program or an increased level of

	paid by school districts and county offices of education.	service imposed upon them by the State."[4] Section 45037 does not require school districts to perform any activities; it just assesses penalties for noncompliance. Moreover, school districts have many options for hiring persons who have valid certification documents. School districts also have several options for avoiding penalties when preliminary certification is set to expire, or when a person has completed all requirements and is simply awaiting CTC's approval.
2. Option to request continuance or extension of service (Former Cal. Code Regs., tit. 5, § 80058.2)	Former section 80058.2 of the regulations allowed the employing school district to request a continuance until the end of a school year of any preliminary credentials and substitute teaching permits that lapsed or expired just before the end of the year. Section 80058.2 was repealed in 2004. The claimant requests reimbursement to seek a continuance of the credential or permit.	*Deny*. Section 80058.2 of the regulations does not impose a state-mandated program on school districts. The plain language of the regulation refers to the school district's action as a request, which *may* be provided by the district. The decision to request a continuance is a local hiring decision that is not mandated by the state. In addition, there is no evidence that school districts were practically compelled to comply and was left with no alternative but to request a continuance. Although penalties imposes pursuant to Education Code section 45037 are a possibility, there is no evidence that penalties were in fact imposed or were certain to occur during the period of reimbursement. Nor is there evidence of alternatives available and considered by the district to avoid any penalties.
3. Option to request a temporary county certificate (Ed.	A temporary certificate may be issued by the employing county office of education that authorizes	*Deny*. Education Code section 44332 and section 80441 of the Title 5 regulations do not impose a state-

[4] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816; *Lucia Mar Unified School District v. State of California* (1988) 44 Cal.3d 830, 835; *Department of Finance v. Commission on State Mandates* (2004) (*Kern High School Dist.*) 30 Cal.4th 727, 735; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1189-1190.

Code, § 44332; Cal. Code Regs., § 80441)	employment or salary payment to employees whose credential applications are being processed by CTC.	mandated program on school districts or county offices of education. The requirement imposed on the employing school district to complete portions of the application for a temporary county certificate pursuant to section 80441(a) to identify the certificate and the expiration date of the certificate are not mandated by the state. The decision to hire a candidate whose credential has not been fully processed by CTC is a local, discretionary hiring decision that triggers these downstream requirements. Thus, these downstream activities are not mandated by the state. The activity performed by the county office of education to consider and issue a temporary county certificate is not a new activity. The county has had the authority to issue these certificates since 1970. Moreover, the decision to issue a temporary certificate is a local decision that is not mandated by the state. Thus, the downstream requirements imposed on the county to cancel a certificate upon notice from CTC that the applicant is not qualified or has a disqualifying criminal record and to provide CTC with a listing of all temporary certificates issued are not mandated by the state.
4. Option to request a validation of service (Cal. Code Regs., tit. 5, § 80601)	Since 1961, school districts have been authorized to submit validation of service requests to CTC pursuant to statute when certificated employees are eligible for the appropriate certification required for a position, but did not actually hold the needed credential or temporary county certificate during the period they performed the service. Under this authority,	*Deny.* Section 80601 of the regulations does not impose a state-mandated program on school districts. The decision to request a validation of service is a local decision that is not mandated by the state. In addition, there is no evidence that school districts were practically compelled to comply or left with no alternative but to request a validation of service. Although

	CTC can retroactively validate the service of the person to avoid penalties that may be assessed pursuant to Education Code section 45037. In 1996, section 80601 was added to the regulations to clarify that the district "may" submit a request and the information that must be contained in the request.	penalties imposed pursuant to Education Code section 45037 are a possibility, there is no evidence that penalties were in fact imposed or were certain to occur during the period of reimbursement. Nor is there evidence of alternatives available and considered by the district to avoid any penalties.
F. <u>Professional Growth Program (Cal. Code Regs., tit. 5, §§ 80556, 80556.1)</u>	The Legislature established the professional growth program in 1983 when the authority to issue life credentials was repealed and replaced with clear professional credentials that require renewal every five years. Effective January 1, 2007, the statutes that provide for this program were made optional. These regulations impose various professional growth requirements on school districts related to the renewal of single and multiple subject credentials and service and specialist credentials.	*Partially approve.* Sections 80556 and 80556.1 mandate a new program or higher level of service on school districts from July 1, 2002 until December 31, 2006 for the following activities: <u>Professional growth activities related to renewing clear single or multiple subject credentials</u>: • If a school district employs one or more holders of professional clear credentials, the chief administrative officer of the employing school district, or his or her designee, shall designate one or more certificated persons to be professional growth advisors. • The employing school district shall adopt policies and procedures for the selection of professional growth advisors which contribute the best possible match between the credential holder and the advisor. • The employing school district shall give each credential holder the names and work locations of any professional growth advisors who have been designated by the district. • The chief administrative officer of the employing school district, or

		his or her designee, shall remove any professional growth advisor who has been determined by the district or CTC to have willfully and arbitrarily violated Education Code Section 44227 or Article 4 of the regulations. <u>Professional growth activities related to renewing clear service or specialist credentials</u>: • The school district shall identify professional growth advisors and give each credential holder the names and work locations of any professional growth advisors who have been designated by the agency for these credential areas. All other activities are either discretionary or are not new.
G. <u>Employment Issues Not Relating to Credentialing</u> 1. Procedures for failure to declare intent to remain employed (Ed. Code, § 44842(a))	Education Code section 44842 was initially enacted in 1973 as former section 13260, to outline a procedure for declining employment for permanent employees who fail to notify the school district of the employee's intent to remain in the district's employ if the district requests notice. In 1998, the statute was amended to also govern probationary employees and to add provisions authorizing districts to request notice from its employees regarding the intent to remain employed.	*Deny*. Education Code section 44842 does not impose a state-mandated program on school districts. All of the activities are conditioned on the school district's request to give notice.
2. Probationary employees in two or more districts (Ed. Code § 44901)	This statute provides that school districts are required to notify a probationary employee by March 15 of a decision to reelect or not reelect for the next succeeding school year. In the event that the governing board does not give notice, the employee shall be deemed reelected for the next	*Deny*. Education Code section 44901(b) does not impose a state-mandated program on school districts. The school districts that do not notify these employees in their second year must accept them as permanent employees. Districts that do not want to reelect the employee must provide notice to effect this

	succeeding year. The claimant requests reimbursement to provide this notice on reelection.	decision, but reelection is a discretionary decision of the district. There is no state requirement to reelect or terminate the employee. Because the decision to reelect or terminate an employee is a local decision, rather than made by the state, the ensuing notification is not mandated by the state.

Staff Analysis

As described in the analysis, the statutes and most of the regulations pled in this test claim do not impose a state-mandated program on school districts. Instead, they provide authority for several alternatives for certificating and employing teachers. The plain language of these provisions does not legally compel school districts to act. In addition, with respect to several statutes and regulations designed to remedy "emergency" staffing issues, the claimant has not made any showing of practical compulsion, with evidence in the record, that despite the discretionary nature of the language in the statute or regulation, a school district faces certain and severe penalties, such as double taxation or other draconian consequences for not complying the test claim statute or regulation, or that a school district is left with no reasonable alternative but to comply in order to carry out its core mandatory function to provide educational services to K-12 students.

Some of the activities required by the regulations governing the professional growth program and advisors for credentialed teachers, however, do impose a reimbursable state-mandated program on school districts.

Conclusion

Staff finds that California Code of Regulations, title 5, sections 80556(a)(c)(f)(j) and 80556.1(e), as added and amended in 1986 and 1994,[5] impose a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution on school districts from July 1, 2002 until December 31, 2006, for the following activities:

A. Professional growth activities related to renewing clear single or multiple subject credentials:

- If a school district employs one or more holders of professional clear credentials, the chief administrative officer of the employing school district, or his or her designee, shall designate one or more certificated persons to be professional growth advisors.[6]
- The employing school district shall adopt policies and procedures for the selection of professional growth advisors which contribute the best possible match between the credential holder and the advisor.[7]

[5] Register 86, No. 40; Register 94, No. 19.

[6] California Code of Regulations, title 5, section 80556(a).

[7] California Code of Regulations, title 5, section 80556(c).

- The employing school district shall give each credential holder the names and work locations of any professional growth advisors who have been designated by the district.[8]
- The chief administrative officer of the employing school district, or his or her designee, shall remove any professional growth advisor who has been determined by the district or CTC to have willfully and arbitrarily violated Education Code Section 44227 or Article 4 of the regulations.[9]

B. Professional growth activities related to renewing clear service or specialist credentials:

- The school district shall identify professional growth advisors and give each credential holder the names and work locations of any professional growth advisors who have been designated by the agency for these credential areas.[10]

All other statutes, regulations, and activities pled in this test claim do not constitute reimbursable state-mandated programs subject to article XIII B, section 6 of the California Constitution and are, therefore, denied.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision to partially approve this test claim.

[8] California Code of Regulations, title 5, section 80556(f).

[9] California Code of Regulations, title 5, section 80556(j).

[10] California Code of Regulations, title 5, section 80556.1(e).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 44225, 44225.7, 44300, 44301, 44326, 44327, 44332, 44830, 44830.3, 44842, 44885.5, 44901, 45037 Statutes 1975, Chapter 228; Statutes 1981, Chapter 1136; Statutes 1982, Chapter 206; Statutes 1982, chapter 434; Statutes 1982, Chapter 471; Statutes 1982, Chapter 1388; Statutes 1983, Chapter 498; Statutes 1983, Chapter 536; Statutes 1983, Chapter 1038; Statutes 1983, Chapter 1302; Statutes 1984, Chapter 482; Statutes 1985, Chapter 747; Statutes 1986, Chapter 989; Statutes 1987, Chapter 1468; Statutes 1988, Chapter 1355; Statutes 1989, Chapter 375; Statutes 1991, Chapter 590; Statutes 1992, Chapter 1050; Statutes 1993, Chapter 378; Statutes 1994, Chapter 673; Statutes 1994, Chapter 922; Statutes 1996, Chapter 303; Statutes 1996, Chapter 948; Statutes 1997, Chapter 934; Statutes 1998, Chapter 533; Statutes 1998, Chapter 547; Statutes 1999, Chapter 281; Statutes 1999, Chapter 381; Statutes 2001, Chapter 585; Statutes 2002, Chapter 1069; and Statutes 2002, Chapter 1087 California Code of Regulations, Title 5, Sections 80005, 80016, 80020.4.1, 80023.1, 80023.2, 80025, 80025.1, 80025.5, 80026, 80026.1, 80026.5, 80026.6, 80027, 80035, 80035.5, 80036, 80036.1, 80036.3, 80037, 80037.5, 80038, 80040, 80043, 80045, 80047.2, 80047.4, 80048.2, 80048.3, 80048.3.1, 80048.4, 80054, 80055.1, 80055.2, 80058.2, 80070.2, 80070.3, 80070.4, 80070.6, 80071.4, 80413.3, 80435, 80441, 80466, 80556, 80556.1, 80601 Register 75, No. 16 (April 16, 1975); Register 75, No. 25 (June 20, 1975); Register 75, No. 27 (Aug. 2, 1975); Register 76, No. 5 (Feb. 27, 1976); Register 76, No. 21 (June 20, 1976); Register 76, No. 49 (Jan. 2, 1977); Register 77,	Case No.: 03-TC-09 *Teacher Credentialing* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Proposed for Adoption: April 19, 2013*)

No. 21 (June 19, 1977); Register 77, No. 51 (Jan. 15, 1978); Register 78, No. 10 (April 7, 1978); Register 78, No. 22 (June 29, 1978); Register 78, No. 48 (Dec. 29, 1978); Register 79, No. 23 (July 5, 1979); Register 80, No. 6 (March 7, 1980); Register 80, No 32 (Sept. 5, 1980); Register 81, No. 15 (May 6, 2001); Register 81, No. 23 (July 3, 1981); Register 82, No. 41 (Jan. 1, 1983); Register 82, No. 45 (Dec. 2, 1982); Register 82, No. 48 (Nov. 10, 1982); Register 83, No. 12 (March 15, 1983); Register 83, No 23 (July 3, 1983); Register 83, No. 30 (Aug. 21, 1983); Register 83, No. 31 (Aug. 28, 1983); Register 83, No. 40 (Sept. 27, 1983); Register 84, No. 8 (Mar. 23, 1984); Register 84, No. 40 (Nov. 3, 1984); Register 86, No. 40 (Oct. 31, 1986); Register 86, No. 50 (Jan. 9, 1987); Register 86, No. 52 (Jan. 1, 1987); Register 86, No. 52 (Jan. 1, 1987); Register 89, No. 11 (April 9, 1989); Register 89, No. 12 (April 16, 1989); Register 89, No. 46 (Dec. 13, 1989); Register 90, No. 42 (Sept. 4, 1990); Register 92, No. 39 (Sept. 21, 1992); Register 93, No. 25 (July 15, 1993); Register 94, No. 16 (May 20, 1994); Register 94, No. 19 (June 9, 1994); Register 95, No. 9, (Mar. 3, 1995); Register 95, No. 15 (May 10, 1995); Register 95, No. 32 (Sept. 7, 1995); Register 96, No. 26 (July 27, 1996); Register 96, No. 41 (Nov. 10, 1996); Register 97, No. 39 (Oct. 26, 1997); Register 97, No. 51 (Dec. 16, 1997); Register 98, No. 3 (Jan. 13, 1998); Register 98, No. 12 (April 17, 1998); Register 98, No. 28 (July 6, 1998); Register 98, No. 32 (Sept. 5, 1998); Register 98, No. 49 (Dec. 2, 1998); Register 99, No. 11 (April 10, 1999); Register 99, No. 41 (Nov. 7, 1999); Register 99, No. 46 (Nov. 12, 1999); Register 99, No. 51 (Jan. 15, 2000); Register 2000, No. 15 (May 14, 2000); Register 2000, No. 16 (May 21, 2000); Register 2000, No. 22 (June 20, 2000); Register 2001, No. 17 (May 25, 2001); Register 2001, No. 24 (June 15, 2001); Register 2001, No. 47 (Oct. 9, 2001); Register 2002, No. 21 (June 20, 2002); Register 2002, No. 50 (Jan. 8, 2002); Register 2002, No. 52

(Jan. 22, 2003); Register 2003, No. 5 (Mar. 1, 2003).

Filed on September 25, 2003

By San Diego County Office of Education, Claimant.

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on April 19, 2013. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

Summary of the Findings

This test claim addresses the teacher credentialing process and employment of K-12 teachers. The claimant requests reimbursement for statutes and regulations enacted and amended from 1975 to 2002. This test claim addresses the following credential and employment topics:

A. Basic skills assessments, including basic skills proficiency assessments, the special administration of CBEST, and administering a local assessment for applicants of vocational designated subject credentials.

B. The following procedures for obtaining credentials and certificates:

   1. General procedures for applying for a credential;
   2. Single and multiple subject credential requirements for experienced out-of-state credentialed teachers;
   3. Certain special education credential requirements;
   4. Designated subject credentials, including those in vocational education, adult education, aviation flight/ground, basic military drill, ROTC, driver's education, and supervision and coordination;
   5. Administrative service credentials;
   6. Other credentials, which include an eminence credential, exchange certificated credential, and a sojourn credential; and
   7. Specialized certificates issued for providing services to limited English proficient students and resource specialist certificate for special education services.

C. Authorized assignments of teachers. This includes regulations addressing the assignment of teachers to courses for which no single subject credential exists, and those governing the assignment of teachers to develop and direct reading programs.

D. The following alternative certificates, permits, and credential waiver requests made when a "suitable, fully prepared teacher is not available to a school district":

   1. Legislation that establishes a priority in hiring persons not fully credentialed;
   2. District intern program;
   3. Request for limited assignment permits;
   4. Request for emergency permits for single or multiple subjects, and emergency permits for substitute teachers; and
   5. Request for credential waivers.

E. Penalties and options for avoiding penalties, including a request for a continuance or extension of service, temporary county certificates, and validation of service requests.

F. Professional growth programs that require professional growth advisors from the district to mentor and assist in the professional growth and renewal of single and multiple subject credentials, and service and specialist credentials.

G. Other employment issues, including procedures for a teacher's failure to declare his or her intent to remain employed in the district and procedures when a teacher is employed in more than one school district.

As described in the analysis below, the statutes and most of the regulations pled in this test claim do not impose a state-mandated program on school districts. Instead, they provide authority for several alternatives for certificating and employing teachers. The plain language of these provisions does not legally compel school districts to act. In addition, with respect to several statutes and regulations designed to remedy "emergency" staffing issues, the claimant has not made any showing of practical compulsion, with evidence in the record, that despite the discretionary nature of the language in the statute or regulation, a school district faces certain and severe penalties, such as double taxation or other draconian consequences for not complying the test claim statute or regulation, or that a school district is left with no reasonable alternative but to comply in order to carry out its core mandatory function to provide educational services to K-12 students.

Some of the activities required by the regulations governing the professional growth program and advisors for credentialed teachers, however, do impose a reimbursable state-mandated program on school districts. In this respect, the Commission finds that California Code of Regulations, title 5, sections 80556(a)(c)(f)(j) and 80556.1(e), as added and amended in 1986 and 1994,[11] impose a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution on school districts from July 1, 2002 until December 31, 2006, for the following activities:

[11] Register 86, No. 40; Register 94, No. 19.

Professional growth activities related to renewing clear single or multiple subject credentials:

- If a school district employs one or more holders of professional clear credentials, the chief administrative officer of the employing school district, or his or her designee, shall designate one or more certificated persons to be professional growth advisors.[12]
- The employing school district shall adopt policies and procedures for the selection of professional growth advisors which contribute the best possible match between the credential holder and the advisor.[13]
- The employing school district shall give each credential holder the names and work locations of any professional growth advisors who have been designated by the district.[14]
- The chief administrative officer of the employing school district, or his or her designee, shall remove any professional growth advisor who has been determined by the district or CTC to have willfully and arbitrarily violated Education Code Section 44227 or Article 4 of the regulations.[15]

Professional growth activities related to renewing clear service or specialist credentials:

- The school district shall identify professional growth advisors and give each credential holder the names and work locations of any professional growth advisors who have been designated by the agency for these credential areas.[16]

All other statutes, regulations, and activities pled in this test claim do not constitute reimbursable state-mandated programs subject to article XIII B, section 6 of the California Constitution and are, therefore, denied.

COMMISSION FINDINGS

I. Chronology

09/25/2003	Claimant, San Diego County Office of Education, filed the test claim with the Commission on State Mandates (Commission).[17]
10/31/2003	The Department of Finance (Finance) filed a request for extension of time to file comments on the test claim.
11/07/2003	The Commission on Teacher Credentialing (CTC) filed comments on the test claim.

[12] California Code of Regulations, title 5, section 80556(a).

[13] California Code of Regulations, title 5, section 80556(c).

[14] California Code of Regulations, title 5, section 80556(f).

[15] California Code of Regulations, title 5, section 80556(j).

[16] California Code of Regulations, title 5, section 80556.1(e).

[17] Based on the filing date, the potential period of reimbursement begins on July 1, 2002, the start of the 2002-2003 fiscal year. (Gov. Code section 17557(e).)

03/26/2004	Finance filed a request for extension of time to file comments on the test claim.
04/16/2004	Finance filed a request for extension of time to file comments on the test claim.
09/14/2004	Finance filed a request for extension of time to file comments on the test claim.
12/24/2004	Finance filed a request for extension of time to file comments on the test claim.
03/14/2005	Finance filed a request for extension of time to file comments on the test claim.
09/26/2005	Finance submitted comments on the test claim.
03/18/2008	Claimant filed a supplement (history of regulations) to the test claim filing.
06/06/2008	Claimant filed a supplement (list of registers and section nos.) to the test claim filing.
06/25/2008	Claimant filed a request to postpone action until a new claimant representative could be appointed.
08/29/2012	Claimant filed notice of new claimant representative.

II. Background

This test claim addresses the teacher credentialing process and employment of K-12 teachers. The claimant requests reimbursement for statutes and regulations enacted and amended from 1975 to 2002.

Generally, teachers must be certified by the California Commission on Teacher Credentialing (CTC) in order to be employed in a California public school district. California's credential structure is organized by subject matter and the classroom setting in which individuals teach rather than school setting or age group. Within this structure, the State has established certification tiers, starting with a preliminary credential that ensures candidates meet the requirements before advancing to the professional clear teaching credential. CTC issues 54 basic types of documents, including 32 types of teaching credentials/certificates/permits, eight different emergency permits, eight service credentials/permits, six child development permits, and waivers. Within each of these categories, CTC issues preliminary, professional, and renewal documents, as well as many different types of authorizations to teach a specific subject. [18]

There are four basic credentials that authorize individuals to teach in California K-12 schools. The credential for single subject instruction authorizes the practice of assigning teachers and students to specified subject matter courses, as is commonly practiced in high schools and junior high schools.[19] The single subject credentials issued by the state are listed in Education Code

[18] Office of the Legislative Analyst, "Modernizing the Functions of the Commission on Teacher Credentialing." (April 27, 2006) See < http://www.lao.ca.gov/2006/ctc/ctc_042706.htm> as of March 9, 2012.

[19] Education Code section 44256(a).

section 44257 and section 80005 of the Title 5 regulations. The single subject credential authorizes a school district to assign the holder of the credential to courses of study that relate to the credential. The credential for multiple subject instruction allows the "the practice of assignment of teachers and students for multiple subject matter instruction, as is commonly practiced in California elementary schools and in early childhood education."[20] Specialist instruction is defined as any specialty requiring advanced preparation or special competence, including, but not limited to, specialists in reading, math, special education, and early childhood education.[21] The designated subjects credential authorizes the practice of assignment of teachers to designated technical, trade, or career technical courses that may be part of a program of trade, technical, or career technical education.[22] CTC also issues credentials for other educational occupations requiring state certification, including credentials for librarians and administrators.

All credential candidates must obtain a college degree through a regionally accredited college or university and demonstrate academic preparation in the subject matter in which they wish to teach. Candidates must also complete a CTC-approved teacher preparation program, pass a basic skills assessment (currently the California Basic Educational Skills Test or CBEST), and receive a formal recommendation from the college, university, or local educational agency where they completed the teacher preparation program. The State offers multiple routes into teaching including traditional one-year post-baccalaureate teacher preparation programs at institutions of higher education, district or university sponsored intern programs, and four to five year blended programs that allow for the concurrent completion of a baccalaureate degree and professional preparation.

The statutory and regulatory schemes provide many options for school districts to achieve desired staffing needs. Under certain circumstances, the Legislature has authorized CTC to provide a special administration of the basic assessment test, or CBEST, to fill staffing needs. In addition, CTC has the authority under limited circumstances to issue certificates, permits, and waivers authorizing persons who are not fully-credentialed to teach, or are not fully credentialed in a particular subject area, to teach and provide educational services to students in public schools. These alternative certifications include district intern certificates, limited assignment permits, emergency permits, and credential waivers.

Since 1961, school districts have been subject to penalties imposed by Education Code section 45036 when a school district hires a person, without valid certification documents, to render services as a teacher. The Legislature has provided options to avoid this penalty, however, which include requests for a continuance or extension of service, requests for temporary county certificates, and validation of service requests.

<u>The Test Claim Statutes</u>

This test claim addresses the following credential and employment topics:

A. Basic skills assessments, including basic skills proficiency assessments, the special administration of CBEST, and administering a local assessment for applicants of vocational designated subject credentials.

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[20] Education Code section 44256(b).

[21] Education Code section 44256(c).

[22] Education Code section 44256(d).

B. The following procedures for obtaining credentials and certificates:

   1. General procedures for applying for a credential;
   2. Single and multiple subject credential requirements for experienced out-of-state credentialed teachers;
   3. Certain special education credential requirements;
   4. Designated subject credentials, including those in vocational education, adult education, aviation flight/ground, basic military drill, ROTC, driver's education, and supervision and coordination;
   5. Administrative service credentials;
   6. Other credentials, which include an eminence credential, exchange certificated credential, and a sojourn credential; and
   7. Specialized certificates issued for providing services to limited English proficient students and resource specialist certificate for special education services.

C. Authorized assignments of teachers. This includes regulations addressing the assignment of teachers to courses for which no single subject credential exists, and those governing the assignment of teachers to develop and direct reading programs.

D. The following alternative certificates, permits, and credential waiver requests made when a "suitable, fully prepared teacher is not available to a school district":

   1. Legislation that establishes a priority in hiring persons not fully credentialed;
   2. District intern program;
   3. Request for limited assignment permits;
   4. Request for emergency permits for single or multiple subjects, and emergency permits for substitute teachers; and
   5. Request for credential waivers.

E. Penalties and options for avoiding penalties, including a request for a continuance or extension of service, temporary county certificates, and validation of service requests.

F. Professional growth programs that require professional growth advisors from the district to mentor and assist in the professional growth of single and multiple subject credential holders, and service and specialist credential holders.

G. Other employment issues, including procedures for a teacher's failure to declare his or her intent to remain employed in the district and procedures when a teacher is employed in more than one school district.

As described in the analysis below, the statutes and most of the regulations pled in this test claim do not impose a state-mandated program on school districts. Instead, they are part of several alternatives and options made available for certificating and employing teachers. The plain language of these provisions does not legally compel school districts to act. In addition, with respect to several statutes and regulations designed to remedy "emergency" staffing issues, the claimant has not made any showing of practical compulsion, with evidence in the record, that despite the discretionary nature of the language in the statute or regulation, a school district faces

certain and severe penalties, such as double taxation or other draconian consequences for not complying the test claim statute or regulation, or that a school district is left with no reasonable alternative but to comply in order to carry out its core mandatory function to provide educational services to K-12 students.

Some of the activities required by the regulations governing the professional growth program and advisors for credentialed teachers, however, do impose a reimbursable state-mandated program on school districts.

III. Positions of the Parties and Interested Parties

A. Claimant's Position

The claimant alleges that the test claim statutes and regulations impose a reimbursable state-mandated program under article XIII B, section 6 and Government Code section 17514 for school districts and county offices of education.

The test claim is supported by declarations from the San Diego County Office of Education and the Grossmont Union High School District, both of which allege over $1000 in costs during fiscal year 2002-2003 to comply with the test claim statutes and regulations.

B. State Agencies' Position

CTC filed comments in November 2003, stating that most of the activities claimed are optional or triggered by local hiring decisions. CTC agrees that some of the activities required under the professional growth program (in sections 80556 and 80556.1 of the Title 5 regulations) to renew clear single and multiple subject credentials and service and specialist credentials, impose required activities on school districts.

Finance, in its September 2005 comments, points out that the requirement for school districts to employ only persons who possess qualifications prescribed by law has been required since 1973, and amendments changing credentialing requirements are essentially requirements on teachers themselves. For the most part, Finance asserts that the statutes and regulations either existed prior to 1975 or contain requirements that result from voluntary hiring decisions. Finance does agree that some of the activities under the professional growth program (sections 80556 and 80556.1 of the Title 5 regulations) are required to be performed by school districts. Finance notes that school districts receive base revenue limit funding to perform the basic function of providing public education, which includes staffing classes with teachers.

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> 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 such local government for the costs of such programs or increased level of service.[23]

The purpose of article XIII B, section 6 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

[23] California Constitution, Article XIII B, Section 6 (Adopted Nov. 6, 1979).

articles XIII A and XIII B impose."[24] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[25]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[26]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[27]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[28]
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[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] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[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]

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

[25] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[26] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[27] *Id*. (reaffirming test set out in *County of Los Angeles*, *supra*, (1987) 43 Cal.3d 46, 56.)

[28] *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

[29] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[30] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code sections 17551; 17552.

[31] *County of San Diego*, *supra*, 15 Cal.4th 68, 109.

[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.

Issue I: Do the Test Claim Statutes and Regulations Impose a State-Mandated New Program or Higher Level of Service?

A. <u>Basic Skills Assessments</u>

To teach in California, a person generally needs to complete a bachelor's degree from an accredited institution, must pass the basic skills assessment (CBEST), complete a teacher preparation program at a California college that has a CTC-approved credentialing program, and be recommended to CTC for a preliminary credential.[33] The five-year preliminary or level I teaching credential cannot be renewed or extended. To continue to teach in the public schools of California, the holder must complete all of the requirements for the professional clear or Level II credential before the expiration date of the preliminary credential.

The sections below address the various options for assessing a person's basic skills to teach.

1. The Basic Skills Assessment, CBEST (Ed. Code, § 44830)[34]

Generally, applicants for a credential, certificate, or permit that allows the applicant to work in the public schools of California (either on a permanent, temporary, or substitute basis) must verify basic skills proficiency before the credential, certificate, or permit will be issued. Education Code section 44252(b) states that "The commission shall not issue initially a credential, permit, certificate, or renewal of an emergency credential to a person to service in the public schools unless the person has demonstrated proficiency in basic reading, writing, and mathematics skills …." This basic skills assessment is currently known as the California Basic Education Skills Test, or CBEST. An individual who passes the CBEST shall be considered proficient in the skills of reading, writing, and mathematics, and shall not be required to be retested for purposes of applying for the credential, for the issuance or renewal of the credential, or for employment with a school district.[35], [36]

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[33] Education Code sections 44225(a)(1), 44259.

[34] Statutes 1981, chapter 1136; Statutes 1982, chapter 206; Statutes 1982, chapter 1388; Statutes 1983, chapter 536; Statutes 1983, chapter 1038; Statutes 1985, chapter 747; Statutes 1986, chapter 989; Statutes 1996, chapter 948; Statutes 1998, chapter 547.

[35] Education Code section 44252.5.

[36] The following persons are exempted from the CBEST requirement: those credentialed solely for the purposes of teaching adults in an apprenticeship program, those in adult education who teach non-academic subjects, those credentialed in another state who have passed a basic skills proficiency examination administered in the state where the person is credentialed, those credentialed in another state who have passed a basic skills proficiency exam that has been developed and administered by the school district offering that person employment, applicants for child care center permits or permits authorizing service in a development center for the handicapped if the permit holder is not required to have a baccalaureate degree, holders of a credential permit or certificate (other than an emergency permit) who seek an additional authorization to teach, an applicant for a credential to provide service in the health profession, an applicant who achieves scores on specified tests that are sufficient to waive the English placement test and the entry level mathematics exam administered by the California State University, and an applicant for an eminence credential. (Ed. Code, § 44252(b)(1) – (b)(9)).

With respect to the CBEST, the claimant has pled Education Code section 44830, as amended from 1981 to 1998. These provisions are discussed below.

a) Requirement to employ persons who possess qualifications prescribed by law (Ed Code, § 44830(a)(b)).

Section 44830 governs the employment of certificated persons and generally requires school districts to employ for positions that require certification qualifications only those persons who possess the qualifications prescribed by law, and specifically prohibits school districts from hiring a certificated person unless that person has demonstrated basic skills proficiency by passing the CBEST as provided in section 44252.5 or is exempted from the requirement. As Education Code section 44830 was last amended in 1998, subdivision (a) stated the following:

> The governing board of a school district shall employ for positions requiring certification qualifications, only persons who possess the qualifications therefor prescribed by law. It is contrary to the public policy of this state for any person or persons charged, by the governing boards, with the responsibility of recommending persons for employment by the boards to refuse or to fail to do so for reasons of race, color, religious creed, sex, or national origin of the applicants for that employment.

Subdivision (b), which was initially added to section 44830 in 1981, and as last provided in 1998, stated the following:

> Commencing on February 1, 1983, no school district governing board shall initially hire on a permanent, temporary, or substitute basis a certificated person seeking employment in the capacity designated in his or her credential unless that person has demonstrated basic skills proficiency as provided in Section 44252.5 or unless the person is exempted from the requirement by subdivisions (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), or (m).

Non-substantive amendments have been made to these subdivisions after 1998, but their provisions remain in current law.

The Commission finds that these provisions do not mandate a new program or higher level of service. The requirement in Education Code section 44830(a) to employ persons who possess the qualifications prescribed by law is not new. Former Education Code section 13251 (Stats. 1974, ch. 1009) stated: "Governing boards of school districts shall employ for positions requiring certification qualifications, only persons who possess the qualifications therefor prescribed by law." This was moved to section 44830 in the 1976 Education Code (Stats. 1976, ch. 1010) and remained continually in existence until the 1981 test claim statute. Article XIII B, section 6 of the California Constitution states that "[T]he Legislature may, but need not, provide a subvention of funds for the following mandates: . . . Legislative mandates enacted prior to January 1, 1975 . . . ." Thus, Education Code section 44830(a) does not impose a state-mandated new program or higher level of service.

In addition, Education Code section 44830(b) prohibits a district from hiring a certificated person who has not passed the CBEST, but does not impose any state-mandated duties on school districts.

Thus, the Commission finds that Education Code section 44830(a) and (b) do not impose a state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution.

b) Authority for school districts to administer the state basic skills test (Ed. Code, § 44830(b)(1)).

In 1982, Education Code section 44830 was amended to authorize school districts to administer the basic skills proficiency test as follows:

> The governing board of a school district, with the authorization of the Commission on Teacher Credentialing, may administer the basic skills proficiency test required under Sections 44252 and 44252.5. [37]

This authority remains in current law.

The Commission finds that Education Code section 44830(b)(1) does not impose any state-mandated duties on school districts. The plain language of the statute provides that a district "may administer" the test with the "authorization of CTC. Pursuant to Education Code section 75, the word "may" in a section of the Education Code, shall be read as permissive. Because the plain language of section 44830(b)(1) authorizes, but does not require the district to administer the CBEST, the Commission finds that it does not impose a state-mandated activity on school districts.

c) Alleged requirement to work with the state to implement the basic skills test and developing a pool of emergency substitute teachers by encouraging them to take the basic skills test (Ed. Code § 44830(b)(2)).

Education Code section 44830(b)(2) provides that "The Superintendent, in conjunction with the commission [CTC] and local governing boards, shall take steps necessary to ensure the effective implementation of this subdivision," which addresses the employment of persons for positions requiring a credential who have demonstrated basic skills proficiency by taking the CBEST.

The Commission finds that this language imposes an express requirement on the Superintendent of Public Instruction (SPI) to implement the CBEST, but does not impose any additional state-mandated duties or requirements on school districts other than what is already required by statute or regulation. The phrase "in conjunction with [CTC] and local governing boards" refers to the existing requirement that school districts may employ for positions requiring certification qualifications, only those persons who have passed the CBEST, and to their authority to administer the test.

The second paragraph in section 44830(b)(2) was added by the Legislature in 1982 and describes the following Legislative intent:

> It is the intent of the Legislature that in effectively implementing this subdivision, the governing boards of school districts shall direct superintendents of schools to prepare for emergencies by developing a pool of qualified emergency substitute teachers. This preparation shall include public notice of the test requirements and of the dates and locations of administrations of the tests. The governing board of a school district shall make special efforts to encourage individuals who are

[37] Statutes 1982, chapter 206.

> known to be qualified in other respects as substitutes to take the state basic skills proficiency test at its earliest administration.[38]

The claimant requests reimbursement for the activities described by the Legislature as follows: to prepare for emergencies by developing a pool of qualified emergency substitute teachers, including public notice of the test requirements and of the dates and locations of where the test will be administered; and to make special efforts to encourage individuals who are known to be qualified in other respects as substitutes to take the state basic skills proficiency test at its earliest administration.[39]

The Commission finds that the second paragraph to section 44830(b)(2) does not impose any state-mandated duties on school districts. The paragraph is a declaration of legislative intent. The courts have generally held that statements of legislative intent do not give rise to a mandatory duty.[40] In addition, as shown throughout this analysis, that there are many staffing options available to school districts that may be exercised to prevent "emergencies." Thus, this language does not legally compel school districts to act.

Moreover, there is nothing in the record to show that school districts are practically compelled by state law to develop a pool of substitute teachers, post notices of test requirements and dates, or to make efforts to encourage individuals to take the basic skills proficiency test at the earliest administration. The courts have found that practical compulsion requires a concrete showing, with evidence in the record, that a school district faces certain and severe penalties, such as double taxation or other draconian consequences for not complying the test claim statute, or that a school district is left with no reasonable alternative but to comply with the statute in order to carry out its core mandatory function to provide educational services to K-12 students.[41] The law does not impose any penalties for not performing the activities identified in section 44830(b)(2), and there is no evidence in the record that school districts have no reasonable choice but to perform these activities.

Therefore, the Commission finds that Education Code section 44830(b)(2) does not impose a state-mandated program on school districts.

2. Special administration of CBEST (Cal. Code Regs., tit.2, § 80071.4)[42]

According to CTC, the CBEST is normally offered throughout California as a paper-based test six times a year and nationally as a computer-based test twelve times a year. Since 2011, computer-based CBEST testing has been available by appointment, year-round, Monday through Saturday (excluding holidays), on a first-come, first-served basis at numerous test centers in California and over 225 test centers nationwide.

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[38] Statutes 1982, chapter 206.

[39] Test Claim, Exhibit 1, page 5.

[40] *Shamsian v. Department of Conservation* (2006) 136 Cal.App.4th 621, 633-634.

[41] *Kern High School Dist., supra,* 30 Cal.4th 727, 731, 743, 749-754; *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 884-887; *Department of Finance (POBRA), supra,* 170 Cal.App.4th 1355, 1362-1368.

[42] Register 82, No. 48; Register 83, No. 12; Register 84, No. 40; Register 86, No. 50; Register 89, No. 12; Register 98, No. 49; Register 2000, No. 16.

CTC, however, can arrange for a special administration of CBEST for a school district, a group of school districts, a county office of education, or a group of counties in the event of an emergency employment situation pursuant to section 80071.4 of the Title 5 regulations. That regulation was originally added in 1982 and provides in subdivisions (g) and (h) that:

- The Commission will arrange for a special administration of the test in the event than an emergency occurs. An emergency for this purpose is a reasonably unforeseeable circumstance which cannot be avoided or a foreseeable one that cannot be accommodated because of the special and unique recruitment problems with which a school district or group of districts is faced.
- The written request for a special administration must include a copy of relevant sections of the official minutes of the district or county governing board and documentation by the superintendent of the specific facts of the emergency.
- The minutes of the governing board meeting must show that the board accepts the following conditions:
    - An emergency as defined in subsection (g) exists and is unavoidable.
    - District or county staff will assist in locating or providing space for the special administration and in the identification of qualified examination proctors, if such assistance is requested by the Commission or its designated agents.
    - District or county staff will provide administrative support in accomplishing the registration process in a manner that will be consistent with the CBEST registration and reporting system.
    - The district agrees to pay the full fee required for testing forty persons, even if fewer than forty actually take the test at a special administration.
    - The district or county agrees not to require that the people taking the test pay any of the excess administrative cost incurred by the district or county.
- The superintendent of the district or county shall provide the following information as part of the written request:
    - A detailed statement on the cause of the emergency and the reasons it could not have been anticipated in time to make use of the most recent previous regular administration.
    - Documentation of the numbers of substitute or contract teachers needed, the total number of teachers on contract in the district or county, or the average daily number of substitutes used in the preceding year as appropriate to the definition of an emergency cited in the governing board minutes.
    - A description of the plans for publicizing the special administration to insure that it will be maximally effective in attracting people not previously tested who can meet the emergency needs of the district or county.
    - A definitive statement about whether admission to the special administration will be limited to people who are potential employees of

the district or county requesting the special administration, or will be open to anyone who wishes to take the test.

- Designation of the county or district having primary responsibility for administrative arrangements for the special administration, in the event that two or more counties or districts are participating jointly in the special administration.

The Commission finds that the special administration of the CBEST pursuant to section 80071.4(g)(h) of the Title 5 regulations does not impose a state-mandated program on school districts. The plain language of the regulation states that CTC will administer the test upon the "written request" of a school district or group of school districts that are facing an "emergency" situation recruiting substitute or contract teachers. The regulation does not legally compel a district to request the special administration of the CBEST. The decision to file the request is made at the local level, and thus, is not mandated by the state.[43] Since the activities required by the regulation follow, and are triggered by the school districts' decision to file a request, those requirements are also not mandated by the state.[44]

Nor is there any evidence in the record that school districts, during the period of reimbursement for this claim, are or have been practically compelled to file a request for the special administration of the CBEST under section 80071.4. The courts have found that practical compulsion requires a concrete showing, with evidence in the record, that a school district faces certain and severe penalties, such as double taxation or other draconian consequences for not complying the test claim statute, or that a school district is left with no reasonable alternative but to comply with the statute in order to carry out its core mandatory function to provide educational services to K-12 students.[45] The law does not impose any penalties for not performing the activities identified in section 80071.4, and there is no evidence in the record that school districts have no reasonable choice but to request the special administration of the CBEST and to perform activities under section 80071.4.

Accordingly, the Commission finds that section 80071.4(g)(h) of the Title 5 regulations do not impose a state-mandated program on local school districts.

3. Administering a local assessment for applicants of a vocational designated subject credential (Ed. Code, § 44830(h), (i) and (j))[46]

Until 2007, CTC issued the vocational designated subject credential, which authorized holders to teach subjects named on the credential in grades K-12, and in classes organized primarily for adults, in technical, trade, or vocational education, and authorized substitute teaching in

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[43] See, *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 880, where the California Supreme Court recognized that conditions under which local government, rather than the state, has made a decision requiring a school district to incur costs is not a state mandate.

[44] *Kern High School Dist., supra*, 30 Cal.4th 727, 731.

[45] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 743, 749-754; *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 884-887; *Department of Finance (POBRA), supra*, 170 Cal.App.4th 1355, 1362-1368.

[46] Statutes 1983, chapter 1038; Statutes 1985, chapter 747; Statutes 1986, chapter 989; Statutes 1996, chapter 948; Statutes 1998, chapter 547.

vocational classes for up to 30 days for any one teacher during the school year.[47] CTC stopped issuing new vocational credentials on November 1, 2007, although it continues to renew them.[48] Vocational credentials have been replaced with a Designated Subjects Career Technical Education Teaching credential and the requirements for obtaining that credential have not been pled in this claim.

The 1983 test claim statute added subdivisions (h), (i) and (j) to section 44830. These subdivisions exempted vocational credential holders from passing the CBEST as a condition of employment. However, the statute required local school districts, which employ these individuals, to establish their own basic skills proficiency assessment that is at least equivalent to the district test for graduation from high school. The statute further provides fee authority to the school district to cover the costs of the test, including developing, administering, and grading the test. Subdivision (j) provided the following:

> (j) Nothing in this section shall be construed as requiring the holder of a vocational designated subject credential to pass the state basic skills proficiency test as a condition of employment. The governing board of each school district, or each governing board of a consortium of school districts, or each governing board involved in a joint powers agreement, which employs the holder of a vocational designated subject credential shall establish its own basic skills proficiency for these credentials and shall arrange for those individuals to be assessed. The basic skills proficiency criteria established by the governing board shall be at least equivalent to the test required by the district, or in the case of a consortium or a joint powers agreement, by any of the participating districts, for graduation from high school. The governing board or boards may charge a fee to individuals being tested to cover the costs of the test, including the costs of developing, administering, and grading the test.[49]

Subdivision (h) provided that "If the basic skills proficiency test is not administered at the time of hiring, the holder of a vocational designated subject credential who has not already taken and passed the basic skills proficiency test may be hired on the condition that he or she will take the test at its next local administration."

Subdivision (i) then stated that "[i]f the holder of a vocational designated subject credential does not pass a proficiency assessment in basic skills pursuant to this section, he or she shall be given one year in which to retake and pass the proficiency assessment in basic skills. If at the expiration of the one-year period he or she has not passed the proficiency assessment in basic skills, he or she shall be subject to dismissal under procedures established in Article 3 (commencing with Section 44930) of Chapter 4."

The Commission finds that former section 48300(h), (i), and (j) does not impose state-mandated duties on school districts. Under the Education Code, career technical

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[47] CTC, "Designated Subjects Vocational Education Teaching Credential." <http://www.ctc.ca.gov/credentials/CREDS/adult-voc-ed.html> as of July 1, 2012.

[48] *Ibid*.

[49] Statutes 1983, chapter 1038 placed an identical provision into Education Code section 44252(d).

education is defined the same as vocational education, and courses in career technical education are courses of study required to be offered by school districts for grades 7 to 12.[50] However, school districts are not required by law to employ persons that hold a vocational credential to comply with the requirement to offer career technical education courses. Section 80004(c) of the Title 5 regulations adopted by CTC clarifies that holders of single subject teaching credentials in specific single subject areas (agriculture, business, home economics, industrial arts, and industrial and technology education) are authorized to teach trade, technical, and vocational classes that comply with the required course of study in the Education Code. Single subject credential holders are not subject to the district assessment in Education Code section 48300(h), but are generally required by law to pass the state's CBEST test before being hired.

Thus, school districts have a choice whether to hire a vocational credential holder or a single subject credential holder for career technical education courses and, thus, are not legally compelled by state law to comply with the requirements of Education Code section 48300(h), (i), or (j).

Nor has the claimant demonstrated that it has been practically compelled to hire vocational credential holders, forcing the claimant to comply section 48300(h), (i), and (j). Practical compulsion requires a concrete showing of a "certain and severe" penalty or other adverse consequence, which forces the district to hire a vocational credential holder and comply with section 48300 as "the only reasonable means to carry out their core mandatory functions."[51]

Moreover, as discussed throughout this analysis, state law does not require school districts to credential or pay for credentialing those teachers. Rather, the obligation to get credentialed is on the individual seeking the teaching position.

Finally, school districts have fee authority under subdivision (j) sufficient to fund the costs of developing, administering, and grading the assessment test, and thus, pursuant to Government Code section 17556(d), does not incur any costs mandated by the state for these activities.

Accordingly, the Commission finds that former Education Code section 48300(h), (i), and (j), as added in 1983 does not impose a state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution.

B. <u>Procedures for Obtaining Credentials and Certificates</u>

As indicated in the Background section of the analysis, there are four basic types of teaching credentials issued by the state: single subject instruction, multiple subject instruction, specialist instruction, and designated subjects.

The claimant requests reimbursement for activities related to issuing credentials for the single subject instruction, specialist instruction, and designated subject instruction.

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[50] Education Code sections 51220, 51221.5, and 51224.

[51] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 743, 749-754; *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 884-887; *Department of Finance (POBRA), supra*, 170 Cal.App.4th 1355, 1362-1368.

1. General Procedures for Applying for a Credential

Sections 80400 et seq. of the Title 5 regulations lay out the general procedures for applying for a credential or certificate. The claimant requests reimbursement for two provisions - sections 80435 and 80466.

a) Official Transcript Filed with Application for Credential, Certificate, or Permit (Cal. Code Regs., tit. 5, **§** 80435)[52]

Generally, to obtain a basic teaching credential, the applicant must complete a professional preparation program that includes student teaching, in addition to possessing a baccalaureate degree and passing the basic skills test. If the applicant completes the requirements and obtains the basic teaching credential, that credential meets the prerequisite teaching credential requirements for any other teaching, specialist, or service credential CTC is authorized to issue.[53]

The Legislature has provided several options for developing and offering professional preparation programs. Programs that meet the requirements of professional preparation include integrated programs of subject matter preparation pursuant to Education Code section 44259.1(a), post-baccalaureate programs of professional preparation pursuant to section 44259.1(b), or internship programs of professional preparation developed by or with local school districts and county offices of education pursuant to sections 44321 et seq., 44380 et seq., or 44450 et seq.[54] The program of professional preparation must be accredited on the basis of standards of program quality and effectiveness that have been adopted by CTC.[55]

Once the applicant completes the professional preparation program and the other requirements of the specific credential, the applicant may secure the credential either by obtaining the

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[52] Register 83, No. 30 (eff. August 22, 1983).

[53] Education Code sections 44203, 44259.

[54] Education Code section 44321 is a student internship program. Student internship programs are joint projects of school districts and teacher preparation institutions that are submitted to CTC for approval and periodic review.

Education Code sections 44380 et seq. address alternative certification programs that are designed to lead to a permanent credential for people with work experience and others who already have a bachelor's degree. Section 44381 defines the alternative certification program as "a program operated by a school district, county office of education, college or university, or other public education entity, individually or in collaboration with other public education entities in the region to be served, and designed to provide a concentrated program leading to a permanent teaching credential."

Education Code 44450 et seq. governs the Teacher Education Internship Act of 1967, which was enacted to increase the effectiveness of teachers and school service personnel by placing theory and practice as closely together as possible. Under the Act, "any school district may, in cooperation with an approved college or university, establish a teacher education internship program as provided in Section 44321, and meeting the provisions of the statutes and of the regulations of the Commission on Teacher Credentialing." The Title 5 regulations governing the approval of the professional preparation programs begin at section 80632.

[55] Education Code section 44259(b)(3).

recommendation of the institution approved by CTC to offer the professional preparation program, or upon direct application to CTC.[56] Under these options, the applicant's official transcripts verifying completion of the academic requirements must be provided to CTC before the credential can be issued.

Section 80435 of the Title 5 regulations, adopted in 1983, governs the submittal of an official transcript to CTC. It provides:

(a) For purposes of authenticity and legibility, official transcripts or verification-of-true-copy will be required with each application for a credential, certificate or permit submitted on and after September 1, 1983;

(b) California colleges with approved programs, school districts, county offices, and other state agencies shall meet this requirement either by submitting official transcripts with the application or by verification of the copy as a true-copy of the official transcripts by one of the following means:

  (1) A recommendation by the college for the credential;

  (2) A statement submitted to the Commission, on a one-time basis, by the college, school district, county office or other state agency describing their internal procedure or policy verifying the authenticity of the transcript;

  (3) A statement or stamp signed or initialed by the designated agency representative verifying each set of transcripts, that the copy is an authentic duplicate of the official transcript;

(c) Applicants applying directly to the Commission, for a credential, certificate, or permit shall be required to submit official transcripts with the credential application;

(d) Applications submitted with illegible transcripts, or submitted by colleges, school districts, county offices or other state agencies who have not met the requirements specified in subsection (b) shall be returned to the sender for proper verification or for official transcripts;

(e) An official transcript is defined as one that bears the signature in ink of the registrar and/or the impressed seal of the institution.

The regulation was adopted to avoid the possibility of an applicant seeking a credential, certificate, or permit on the basis of information taken from an altered or fraudulent transcript. The regulation was also intended to assure the public of the strict standards and verification of those standards, by means of official transcripts, to be accurate.[57]

[56] California Code of Regulations, title 5, sections 80406 and 80472.

[57] CTC Memorandum 82-8314, dated December 29, 1982.

Claimant requests reimbursement pursuant to subdivision (b) for the costs of submitting the official transcript, or by verifying a copy of the official transcript by providing:

- A recommendation by the college for the credential;
- A statement submitted to the Commission, on a one-time basis, by the college, school district, county office or other state agency describing their internal procedure or policy verifying the authenticity of the transcript; or
- A statement or stamp signed or initialed by the designated agency representative verifying each set of transcripts, that the copy is an authentic duplicate of the official transcript.

The Commission finds that section 80435 of the Title 5 regulations does not impose a state-mandated program on school districts. These bulleted activities are performed by a school district only when a school district develops and provides an approved internship program of professional preparation. There is no requirement in state law for school districts to provide a program of professional preparation and comply with the downstream options of providing an official transcript or copy of the transcript and recommendation to support the credential.

The Education Code, beginning with sections 44321, 44380, and 44450, describe authorized professional programs of teacher preparation provided by school districts and county offices of education. Education Code section 44321 is a student internship program. Student internship programs are joint projects of school districts and teacher preparation institutions that are submitted to CTC for approval and periodic review. These programs are voluntary.[58] Education Code sections 44380 et seq. address alternative certification programs that are designed to lead to a permanent credential for people with work experience and others who already have a bachelor's degree. Section 44381 defines the alternative certification program as "a program operated by a school district, county office of education, college or university, or other public education entity, individually or in collaboration with other public education entities in the region to be served, and designed to provide a concentrated program leading to a permanent teaching credential." And Education Code 44450 et seq. governs the Teacher Education Internship Act of 1967, which was enacted to increase the effectiveness of teachers and school service personnel by placing theory and practice as closely together as possible. Under the Act, "any school district may, in cooperation with an approved college or university, establish a teacher education internship program as provided in Section 44321, and meeting the provisions of the statutes and of the regulations of the Commission on Teacher Credentialing."[59]

State requirements that are triggered by local discretionary decisions are not mandated by the state.[60]

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[58] See Education Code section 44320, which encourages postsecondary institutions to offer programs of professional preparation to collaborate with school districts and county offices of education.

[59] The Title 5 regulations governing the approval of the professional preparation programs begin at section 80632.

[60] *Kern High School Dist., supra*, 30 Cal.4th 727, 731.

Accordingly, the Commission finds that section 80435 of the Title 5 regulations does not impose a state-mandated program on school districts.

b) Teaching Experience in Lieu of Professional Preparation (Cal.Code Regs., tit. 5, §80466)

Section 80466 of the Title 5 regulations describes how an applicant "who has not completed a program of professional preparation in accordance with sections 80472[61] or 80056[62] may offer three years of successful full-time teaching experience, all of which has been completed within ten years prior to the date of application." The regulation requires the teaching experience to be "verified by appropriate administrative officials in the school district or districts where the experience was acquired." Further, the teaching experience "shall have been accomplished on a full professional certificate based upon a baccalaureate or higher degree of the state in which the experience was acquired." The regulation was adopted to implement 2000 legislation that required CTC to review standards from other states and determine if they are equivalent to the ones established by CTC. If an individual completes a program in a state that has been determined to be equivalent, CTC accepts that program even if student teaching was met through experience. The regulation was repealed in 2004 because CTC now relies solely on the credentialing requirements from other states, rather than verifying if three years of teaching experience in another state is equal to student teaching in California. [63]

Claimant requests reimbursement to verify three years of successful full-time teaching experience, completed within ten years prior to the date of application.

The Commission finds that section 80466 of the Title 5 regulations does not impose a state-mandated program on California school districts. The regulation provides an option to credential applicants who have full-time teaching experience in an out-of-state school district. If the applicant seeks to exercise this option in obtaining a credential, the applicant must submit verification from the out-of-state school district showing three years of full-time teaching experience. Therefore, this regulation does not impose any requirements on California school districts.

Accordingly, the Commission finds that section 80466 does not impose a state-mandated program on school districts.

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[61] Section 80472, cited in section 80466, requires an applicant for a credential to do one of the following (1) obtain certification of completion of an approved program from a California college or university that offers a CTC-approved program of professional preparation, or (2) complete a program in a state with which California has a reciprocity agreement signed pursuant to Section 12509 of the Education Code.

[62] Section 80056, cited in section 80466, was renumbered to section 80406 in 1979 (Register 79, No. 2, Feb. 10, 1979). Section 80406 authorizes a qualified applicant to secure a credential by either (a) the recommendation of a California teacher education institution approved by CTC, or upon direct application to CTC.

[63] CTC Memorandum 04-0004, dated June 16, 2004, which describes the rationale for repealing this and other regulations. Section 80466 was repealed effective July 1, 2004 (Register 2004, No. 23).

2. Single and Multiple Subject Credential Requirements for Experienced Out-of-State Credentialed Teachers (Cal.Code Regs., tit. 5, §§ 80413.3)[64]

Section 80413.3 of the Title 5 regulations lists the requirements and other information pertaining to Preliminary and Professional Clear Multiple and Single Subject Teaching Credentials for out-of-state credentialed teachers. Adopted in 2000, section 80413.3 was intended to implement AB 1620 (Stats. 1998, ch. 547), which in turn was intended to ease the transition for experienced out-of-state teachers who wished to teach in California schools. This regulation originally listed the requirements for individuals who have five years (in § 80413.3(a)) or three years (in § 80413.3(b)) of appropriate teaching experience outside of California.[65]

At the time the test claim was filed, section 80413.3(a)(2)(B) required, for individuals with five or more years of appropriate out-of-state teaching experience, the completion of 150 clock hours of activities addressing one or more of six specified standards.[66] A specified school district representative (an individual at the central office of a California school district or county office of education, or at a California school site who is responsible for curriculum and instruction in the authorization of the teacher's credential) is required to sign a written justification stating how each of the activities claimed by an applicant relates to the specified six standards.[67]

Similarly, section 80413.3(b) lists the requirements for individuals with three years of appropriate out-of-state teaching experience. The requirements include an offer of employment from a California school district that has one of the approved programs listed in (b)(2)(B) of the regulation (a program of beginning teacher support and assessment; or an alternative program of beginning induction that CTC determines, in collaboration with the SPI, meets the state standards for teacher induction) and a statement by the employer verifying intention to enroll the individual into the program.

The Commission finds that section 80413.3 of the Title 5 regulations does not impose a state-mandated program on school districts. The plain language of the regulation imposes requirements on out-of-state teachers who wish to become credentialed and teach in California. State law does not require school districts to hire out-of-state credentialed teachers. The hiring decision is a voluntary decision made at the local level. Thus, activities of the employing school district to sign a written justification and verification of the district's intention to enroll the out-of-state applicant into an approved program of teacher support are not mandated by the state.

The courts have determined that a reimbursable state-mandate does not exist when a local entity incurs costs for activities required by the state as part of a program that the local entity

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[64] Register 99, No. 51, operative January 15, 2000.

[65] Section 80413.3 (as amended in 2010, Register 2010, No. 52) lists the requirement for out-of-state teachers who have two years of teaching experience (in § 80413.3(a)) or less than two years of experience (in § 80413.3(b)).

[66] The six standards are 1) Engaging and supporting all students in learning, 2) creating and maintaining effective environments for student learning, 3) understanding and organizing subject matter for student learning, 4) planning instruction and designing learning experiences for all students, 5) assessing student learning, and 6) developing as a professional educator.

[67] This provision was moved to subdivision (c)(4) in 2010 (Register 2010, No. 52, January 1, 2011).

"voluntarily" participates in, if the participation is without legal compulsion and there is no evidence that the entity is practically compelled to participate in the program.[68]

Accordingly, the Commission finds that section 80413.3 of the Title 5 regulations does not impose a state-mandated program on school districts.

3. Special Education Credentials (Cal. Code Regs., tit. 5, §§ 80047.2, 80047.4, 80048.2, 80048.3, 80048.3.1, 80048.4)

Federal law, through the federal Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA), requires states to guarantee to disabled pupils the right to receive a free and appropriate public education that emphasizes special education and related services designed to meet the pupil's unique educational needs and prepare them for employment and independent living.[69] The mechanism for providing special education services under federal law is the individualized education program, or IEP. An IEP is a written statement developed after an evaluation of the pupil in all areas of suspected disability and provides for the pupil's educational needs and other related services.[70]

IDEA, as reauthorized in 2004, requires that all public elementary and secondary teachers providing services to special education pupils be "highly qualified" as special education teachers. The definition of "highly qualified special education teachers" in the IDEA is aligned with No Child Left Behind's highly qualified requirements under the Elementary and Secondary Education Act (ESEA). IDEA defines highly qualified special education teachers **in general** at section 300.18(b)(1), as one who has full *state* certification as a special education teacher; does not possess an emergency, temporary, or provisional certificate to teach; and has a baccalaureate degree.

To teach a core academic subject, the special education teacher must demonstrate subject matter competency in each subject taught. The claimant requests reimbursement related to two credentials that deal with specific disabilities; serious emotional disturbance and autism.

The remaining special education regulations pled outline the specific requirements to obtain preliminary and professional clear credentials in special education, the preliminary level I special education credential, California credentials for out-of-state special education teachers, and the professional clear level II special education credential.

a) <u>Authorization for Special Education Class with Primary Disability: Serious Emotional Disturbance and Autism</u> (Cal. Code Regs., tit. 5, §§ 80047.2, 80047.4)[71]

Sections 80047.2 and 80047.4 became effective in 1987 and were enacted to "clarify the authorizations of all special education credentials and make it easier for employers to make

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[68] *Kern High School Dist., supra,* 30 Cal.4th 727, 731, 743, 749-754; *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 884-887; *Department of Finance (POBRA), supra,* 170 Cal.App.4th 1355, 1362-1368.

[69] See federal Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

[70] Title 20 United States Code sections 1400 et seq.

[71] Register 86, No. 5; Register 89, No. 46; Register 95, No. 9; Register 97, No. 39.

staffing decisions for special education classes."[72] The regulations were adopted based on a finding by CTC and the CDE that a "majority of individuals in a given special class will, in most cases, be students with the same primary disability" as defined in federal regulations under IDEA. Thus, sections 80047 through 80047.9 describe the credentials that authorize the holder to provide services to the nine different primary disabilities defined in federal law. [73] The claimant requests reimbursement based on two of those regulations relating to students with serious emotional disturbance and autism.

Section 80047.2 of the title 5 regulations, as last amended in 1997, authorizes the following credential holders to teach special education pupils with serious emotional disturbances:

> (a) Holders of the listed credentials, certificates, and authorizations are authorized to teach students with disabilities in which the primary disability is "emotional disturbance" as defined in subsection 300.7(b)(9) of Title 34 Code of Federal Regulations, Subpart A.
>
> (1) Education Specialist Instruction Credential: Mild/Moderate Disabilities
>
> (2) Education Specialist Instruction Credential: Moderate/Severe Disabilities
>
> (3) Special Education Specialist Instruction Credential for the Severely Handicapped
>
> (4) The special education credentials, certificates, and authorizations, other than the credentials, certificates, and authorization in (1), (2), and (3) above, listed in Sections 80047 and 80047.1, provided the following conditions have been met:
>
> > (A) The holder of the special education credential has taught full-time for at least one year prior to September 1, 1991 in a special day class in which the primary disability was emotional disturbance, and
> >
> > (B) *Has received a favorable evaluation or recommendation to teach a special day class with the primary disability of emotional disturbance by the local employing agency*.[74]

Subdivision (b) of the regulation provides alternative authority for those holders that do not meet the requirements of subdivision (a) to teach pupils with serious emotional disturbance if the holder completes a CTC-approved program for children identified with serious emotional disturbance.

Similarly, section 80047.4 authorizes the following credential holders to teach pupils with autism:

> (a) Holders of the listed credentials, certificates, and authorizations are authorized to teach students with disabilities in which the primary disability is "autism" as

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[72] CTC Memorandum 86-8710, dated January 30, 1987; CTC Memorandum 97-9703, dated February 14, 1997.

[73] *Ibid*.

[74] Section 80047.2 was amended in 2011 (Register 2011, No. 31), which is not included in this test claim.

defined in subsection 300.8(b)(1) (autistic) of Title 34 Code of Federal Regulations, Subpart A.

(1) Education Specialist Instruction Credential: Moderate/Severe Disabilities

(2) Clinical or Rehabilitative Services Credential in Language, Speech and Hearing, with Special Class Authorization

(3) Special Education Specialist Instruction Credential for the Severely Handicapped

(4) Special Education Specialist Instruction Credential for the Communication Handicapped provided the following conditions have been met:

(A) The holder has taught full-time for at least one year prior to September 1, 1991 in a special day class in which the primary disability was autism, *and has received a favorable evaluation or recommendation to teach a special day class with the primary disability of autism by the local employing agency*.[75]

Under both regulations, teachers that obtained a special education credential before 1991 and had experience teaching full-time for at least one year in a special day class in which the primary disability was either autism or serious emotional disturbance, could continue to be assigned to those classes provided they show the receipt of a favorable evaluation or recommendation from the employing school district.

Based on these regulations, claimant requests reimbursement to provide a favorable evaluation or recommendation to teach a special day class with the primary disability of serious emotional disturbance and autism.

The Commission finds that sections 80047.2 and 80047.4 of the Title 5 regulations do not impose a state-mandated program on school districts. The plain language of these regulations provides authority to *the holder* of the credential to teach certain special education pupils. Any requirements imposed by the statute to obtain authority to teach these students are imposed on the holder of the credential and not on a school district. The decision to provide a favorable evaluation, like other employment decisions, is one left to the discretion of the employing school district and is not mandated by the state.

Moreover, both regulations provide several options to school districts in the assignment of teachers for pupils with autism and serious emotional disturbance. School districts are not required by law to employ teachers who obtained a special education credential before 1991 in these positions. The authority to teach these pupils is provided to holders of four different types of credentials, only one of which requires the holder to show that he or she has received a favorable evaluation or recommendation to teach by the employing agency.

Accordingly, the Commission finds that sections 80047.2 and 80047.4 do not impose a state-mandated program on school districts.

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[75] In 2010, section 80047.4 was amended to add subdivisions (a)(4)(B)-(a)(7). (Register 2010, No. 22.) In 2011, subdivision (a) and (a)(5) were amended. In addition, (a)(8) was added by Register 2011, No. 31. These amendments have not been pled in this test claim.

b) Specific Requirements to obtain the *Former* Preliminary and Professional Clear Specialist Instruction Credential in Special Education (Cal.Code Regs., tit. 5, § 80048.2)[76]

Former section 80048.2 of the title 5 regulations was adopted in 1990, repealed June 26, 2010, and replaced with a new special education credential.[77] The regulation outlined the minimum requirements for the preliminary and professional clear specialist instruction credential in special education. These credentials authorized the holder to "teach in the special education specialist category named on the credential and as specified in sections 80046.5 and 80047 through 80047.9."[78] As described above, sections 80047 through 80047.9 detail the nine primary disability categories identified in federal law.

Former section 80048.2(a) identifies the minimum requirements for the *preliminary* Specialist Instruction Credential in Special Education. To obtain a preliminary credential, the applicant must have at least a baccalaureate degree from a regionally accredited institution of higher education; complete a professional preparation program in special education specialist category comparable to a CTC approved program; pass the CBEST; and file written acknowledgement from the applicant and the employing school district that the applicant is responsible for completing the requirements for the multiple or single subject teaching credential, including the student teaching requirement, during the five-year term of the preliminary credential.

The claimant requests reimbursement to provide written acknowledgment that an applicant is responsible for completing the requirements for the multiple or single subject teaching credential, including the student teaching requirement, during the five-year term of the preliminary credential, pursuant to section 80048.2(a)(4).

The Commission finds that former section 80048.2(a)(4) does not impose any state-mandated requirements on school districts. Section 80048.2(c)(2) states that "the preliminary specialist instruction credentials in special education shall not be initially issued after June 30, 1998." CTC, in comments filed on this test claim, confirms that CTC stopped issuing these documents on that date. Since the period of reimbursement for this claim begins July 1, 2002, any requirements imposed by former section 80048.2(a) on school districts were performed before the period of reimbursement. Thus, section 80048.2(a) does not impose any state-mandated duties on school districts in the period of potential reimbursement.

The claimant also requests reimbursement based on former section 80048.2(f). Former section 80048.2(f) provided an alternative to applicants completing the requirements for the *professional clear* specialist instruction credential.[79] Instead of completing the requirements for the professional clear credential, holders of a preliminary credential had the option of choosing to

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[76] Register 90, No. 42; Register 92, No. 39; Register 97, No. 39.

[77] Register 2010, No. 22. Replaced with Level I and II Education Specialist Credential pursuant to 80048.3 and 80048.4.

[78] Former California Code of Regulations, title 5, section 80048.2 (e).

[79] Professional clear credentials under former section 80048.2 were last issued by CTC in June 2003, two years after the start of the period of reimbursement. (Former Cal. Code Regs., tit. 5, §80048.2(d)(3).)

pursue completion of the requirements for the five-year preliminary level I education specialist instruction credential instead.[80] These requirements included the completion of the following:

- Subject-matter competence requirement by examination or by completion of a subject matter program as specified in law;
- A minimum of three semester units of coursework in non-special education pedagogy relating to teaching basic academic skills and content areas that are commonly taught in the public school curriculum;
- A minimum of one semester unit of supervised field experience in regular education verified by transcript or a minimum of 45 clock hours with non-special education students verified by the employing agency;
- A minimum of three semester units of coursework covering the study of alternative methods of developing English language skills, including the study of reading as described by law;
- Knowledge of the U.S. Constitution; and
- Verification of employment in a position requiring the education specialist instruction credential by the employing agency.[81]

At the time subdivision (f) was adopted, CTC stated its purpose as follows:

> This proposal establishes an option for current preliminary credential holders to transition to the new structure [e.g., Preliminary Level I Education Specialist in §80048.3] Credential if they wish. The new structure includes regular education pedagogy and experience since the Multiple/Single Subject Credential will no longer be required. Out of state candidates who choose to transition to the new Level I Education Specialist Credential under (f) may apply directly to the CTC.[82]

The claimant requests reimbursement to verify the supervised field experience in regular education verified by transcript or a minimum of 45 clock hours with non-special education students. The claimant also requests reimbursement to verify the employment of the holder in a position requiring the education specialist instruction credential pursuant to former section 80048.2(f)(6).

The Commission finds that former section 80048.2(f) does not impose any state-mandated activities on school districts. The plain language of former section 80048.2(f) provides an option for *holders* of a preliminary specialist instruction credential in special education to complete his or her credential and identifies the requirements of the option exercised by the holder. The regulation does not impose any mandated requirements on the school district. Decisions regarding who to hire for special education services (a credential holder that works towards pursuing a professional clear credential under this regulation, or one who chooses the alternative preliminary level I education specialist instruction credential) are left to the employing school

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[80] See, CTC Memorandum 97-9703, page 17.

[81] CTC, "Verification of Employment as an Education Specialist" Form, (CL-777.1 4/06).

[82] CTC Memorandum 97-9703, page 17.

district and are not mandated by the state. Thus, any downstream requirements imposed that are triggered by a school district's hiring decision are also not mandated by the state.[83]

Accordingly, the Commission finds that former section 80048.2 of the Title 5 regulations does not impose a state-mandated program on school districts.

c) Specific Requirements to Obtain a Preliminary Level I and Professional Level II Education Specialist Instruction Credential (Cal.Code Regs., tit. 5, §§ 80048.3, 80048.3.1, 80048.4)[84]

Sections 80048.3 and 80048.4 of the Title 5 regulations were adopted in 1997 and address the new structure for obtaining a preliminary Level I and professional clear Level II education specialist instruction credential.[85] Section 80048.3.1 of the regulations was adopted in 1999 and addresses the requirements to obtain a Level I and Level II education specialist instruction credential for applicants who are experienced out-of-state credentialed teachers seeking employment in California.

i. Requirements for applicants of a preliminary credential who complete a professional preparation program in California, and for preliminary credential holders to obtain the professional Level II credential (§§ 80048.3(a), 80048.4.)

To obtain a preliminary Level I education specialist instruction credential that authorizes the applicant to teach special education students, the applicant, who completes a professional preparation program in California, must satisfy the requirements listed in section 80048.3(a). One of the requirements is to obtain verification of an offer of employment in a California school district. If the applicant does not have an offer of employment, the applicant may apply for a certificate of eligibility for employment if the other requirements are satisfied. The relevant regulatory language states the following:

> (a) The minimum requirements for the preliminary level I Education Specialist Instruction Credential for applicants who complete a professional preparation program in California shall include (1) through (8):
>
> [¶]
>
> (8) *[V]erification of an offer of employment*. The employment requirement may be met in one of the following ways:
>
> (A) Employment in a position requiring the Education Specialist Instruction Credential in a public school or private school of equivalent status; or
>
> (B) Employment in a position not requiring the Education Specialist Instruction Credential but where duties include providing direct instruction to special education students. The applicant must verify all of the following:

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[83] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 742-743.

[84] Register 97, No. 39; Register 99, No. 41; Register 99, No. 51.

[85] According to CTC, "the new structure includes regular education pedagogy and experience since the Muliple/Single Subject Credential will no longer be required." (CTC Memorandum 97-9703, pg. 17.)

1. possession of a non-special education credential that authorizes employment in the position;
2. the duties of the position are equivalent in nature to special education duties. *A letter from the employing school district, county office or special education local planning area must verify the assignment*, including a description of the duties and explanation as to why the position does not require an Education Specialist Instruction Credential;
3. the Coordinator or Director of the Education Specialist credential program at the college or university in which the applicant is enrolled must verify that experience is appropriate for the requested education specialist category of the preliminary Education Specialist Instruction Credential; and
4. the [CTC] staff confirms that the teaching position would be considered equivalent to a special education position, including a position such as teacher in a regular classroom where special education students are included, but not including position such as curriculum consultant or administrator.

(9) An individual who has completed requirements (1) through (7) above but does not have an offer of employment may apply for a Certificate of Eligibility which verifies completion of all requirements for the preliminary level I credential and authorizes the holder to seek employment. [86, 87]

The preliminary credential is valid for five years, during which time the credential holder works toward obtaining the professional clear Level II education specialist instruction credential required by section 80048.4 to continue providing services to special education students. The minimum requirements to obtain the professional clear Level II credential, for all holders of a preliminary Level I education specialist instruction credential, include the completion of course work, field work, and the following:

- A minimum of ¼ of a unit credit for each candidate's individual preparation program plan "may" consist of electives related to the areas of special education or general education selected from one or more of the following: coursework, fieldwork, or "alternative training that provides knowledge and related skills *presented by agencies approved jointly by the candidate's employing agency and the institution of higher education accredited for this program*.

[86] California Code of Regulations, title 5, sections 80048.3(a)(8-9).

[87] After the test claim filing, section 80048.3 was amended to repeal subdivisions (b)-(d)(1) in 2005 (Register 2005, No. 5, operative March 2, 2005). The remaining regulation was amended again in 2010 (Register 2010, No. 22, operative June 26, 2010), and currently lists only the minimum requirements for the Level I Education Specialist Instruction Credential for applicants who complete a professional preparation program in California.

- A minimum of two years of successful experience in a full-time position in a public school or private school of equivalent status, while holding the preliminary level I Education Specialist Instruction Credential and *verified by the employing agency*.

The claimant requests reimbursement to:

- Verify the offer of employment, or continued employment for applicants seeking the preliminary Level I and professional Level II credentials, and
- Verify and approve alternative training for applicants seeking the professional Level II credential.

The Commission finds that school districts are not mandated by the state to comply with these activities. The plain language of sections 80048.3 and 80048.4 imposes requirements on the applicant seeking the credential. Section 80048.3(a) starts by declaring "the minimum requirements for the preliminary level I Education Specialist Instruction Credential *for applicants* who complete a professional preparation program in California shall include. . . ." (Emphasis added.) Section 80048.4(a) similarly begins by stating "the minimum requirements for the professional clear level II …Credential shall include all of the following . . . ." Thus, in order for the applicant or holder of the credential to continue employment as a special education teacher, the applicant or holder must satisfy these requirements.

Moreover, school districts are not legally compelled by state law to verify an offer of employment or continued employment, or to approve alternative training for a professional credential candidate. These activities are triggered by the school district's local and discretionary hiring decision to employ a new teacher or applicant seeking a preliminary and professional specialist instruction credential, rather than employ a fully credentialed, experienced teacher. Thus, any downstream activities that are triggered by a school district's hiring decision are not mandated by the state.[88] While school districts are required by state and federal law to provide special education and related services designed to meet a pupil's unique educational needs, there is no evidence in the record that the claimant or any other school district has been forced, as a practical matter, to employ only new teachers or applicants seeking a preliminary and professional specialist instruction credential.[89]

Accordingly, the Commission finds that sections 80048.3 as it relates to applicants who complete a professional preparation program in California, and section 80048.4 do not impose a state-mandated program on school districts.

ii. <u>Requirements for applicants of a preliminary credential who complete a professional preparation program outside of California (§ 80048.3(b))</u>

Section 80048.3(b) identifies the minimum requirements for applicants seeking a preliminary Level I education specialist instruction credential who complete a professional preparation program outside of California. These requirements include the following relevant provisions:

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[88] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 742-743.

[89] *Department of Finance (POBRA), supra*, 170 Cal.App.4th 1355, 1362-1368.

- A minimum of one semester unit of supervised field experience in general education verified by transcript or 45 clock hours with non-special education students *verified by the employing agency*.
- *Verification of an offer of employment*. The employment requirement may be met in one of the following ways:

  (A) Employment in a position requiring the Education Specialist Instruction Credential in a public school or private school of equivalent status; or

  (B) Employment in a position not requiring the Education Specialist Instruction Credential but where duties include providing direct instruction to special education students. The applicant must verify all of the following:

    1. Possession of a non-special education credential that authorizes employment in that position;
    2. The duties of the position are equivalent in nature to special education duties. A letter from the employing district, county office or special education local planning area must verify the assignment, including a description of the duties and explanation as to why the position does not require an Education Specialist Instruction Credential;
    3. The Coordinator or Director of the Education Specialist credential program at the college or university in which the applicant is seeking enrollment must verify that experience is appropriate for the requested education specialist category of the preliminary Education Specialist Instruction Credential; and
    4. The [CTC] staff confirms that the teaching position would be considered equivalent to a special education position, including a position such as teacher in a regular classroom where special education students are included, but not including positions such as curriculum consultant or administrator.

The claimant seeks reimbursement to verify field experience and employment as described above.

The Commission finds that school districts are not mandated by the state to comply with these activities. The plain language of sections 80048.3(b) imposes requirements on the applicant seeking the credential, and not on the school district. Subdivision (b) starts by stating that "the minimum requirements for the preliminary level I Education Specialist Instruction Credential *for applicants* who complete a professional preparation program outside of California shall include . . ."

Moreover, school districts are not legally compelled by state law to verify field experience or an offer of employment to applicants of this preliminary credential. These activities are triggered by the school district's local and discretionary hiring decision to employ an applicant that completed a professional preparation program outside of California. Thus, any downstream activities that are triggered by a school district's hiring decision are not mandated by the state.[90]

[90] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 742-743.

While school districts are required by state and federal law to provide special education and related services designed to meet a pupil's unique educational needs, there is no evidence in the record that the claimant or any other school district has been forced, as a practical matter, to employ applicants seeking a preliminary education specialist instruction credential or those who have completed the professional preparation program for this credential outside of California.[91]

Accordingly, the Commission finds that sections 80048.3(b) does not impose a state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution.

iii. Out-of-state credentialed special education teachers (80048.3(c) and 80048.3.1)

Section 80048.3

Section 80048.3(c) of the Title 5 regulations became effective on November 7, 1999, and was repealed in 2005.[92] Section 80048.3(c) lays out the requirements for the preliminary Level 1 education specialist instruction credential to applicants who hold valid equivalent credentials from out of state pursuant to the "Credentialed Out-of-State Teacher Recruitment and Retention Act of 1997." The "Credentialed Out-of-State Teacher Recruitment and Retention Act of 1997" added Education Code section 44205 (later renumbered to 44275.3) in order to "provide flexibility to enable school districts to recruit credentialed out-of-state elementary, secondary, and special education teachers to relocate to California."[93] The statute, which became effective on January 1, 1998, provided that any teacher from a state other than California "may be employed" by a school district if the teacher holds a valid, equivalent credential and meets the following relevant conditions:[94]

- The teacher has an offer of employment from a California school district. At this point, CTC can issue a five-year preliminary credential to the teacher to provide services in California.
- At or before the completion of one school year of teaching, the teacher passes the state basic skills proficiency test (CBEST) in order to be eligible to continue teaching.
- At or before the completion of four school years of teaching, the teacher shall, to the satisfaction of CTC, meet specified requirements for subject matter competence.
- If the teacher fails to meet any of the requirements, CTC shall inactivate the preliminary credential granted until the requirement is met. If a credential is inactivated, the teacher, by law, can no longer provide services.
- CTC shall issue a professional credential if all requirements are satisfied after five years.

Thus, under the Act, out-of-state teachers holding an equivalent special education credential could seek immediate employment without first passing the CBEST and completing other educational requirements.

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[91] *Department of Finance (POBRA), supra*, 170 Cal.App.4th 1355, 1362-1368.

[92] Register 2005, No. 5, effective March 2, 2005.

[93] CTC Memorandum 99-9927, dated November 9, 1999.

[94] The Act became effective on January 1, 1998 and was repealed in 2006 (Stats. 2006, ch. 517).

Section 80048.3(c) of the Title 5 regulations implements this legislation and restates the requirement to have an offer of employment from a California school district. Furthermore, the regulation provides that service on the preliminary credential is restricted to the employing agency listed on the document. If the holder of the preliminary credential changes employing agencies during the five-year period of the preliminary credential, the holder and the new employing agency are required to request a change of restrictions on the document from CTC.

The regulation also requires the holder, on or before the end of the first year following the issuance date of the preliminary credential, to pass the CBEST. If the holder does not have a passing score on file with CTC within one month prior to the year-one deadline, CTC will send a credential inactivation notice to both the employing school district and the credential holder specifying the date on which the document will become inactive. The employing school district is then required to "remove the holder from the teaching position no later than the inactivation date specified in the notification, unless the holder provides the employer with his or her official CBEST verification transcript as proof of passage of the examination prior to the specified inactivation date." If the holder is removed from the teaching position, he or she may be returned to the position as soon as he or she provides the employer with the official CBEST verification transcript as proof of passage of the examination. The employing school district is then required to submit a copy of the CBEST verification transcript to CTC and the county office of education within ten working days of returning the holder to the teaching position.

On or before the end of the fourth year following the issuance date of the preliminary credential, the holder must submit verification that he or she has completed the requirements for continuation of employment to CTC. Those requirements include the option of either completing one semester unit of supervised field experience in general education verified by official transcript or "45 clock hours with non-special education students verified by the employing agency."

If the holder of the preliminary credential does not verify completion of the year-four requirements to CTC at least three months before the four-year deadline, CTC will send a credential inactivation notice to the employer and the credential holder specifying the date on which the document will become inactive. The employing school district is required to remove the holder from the teaching position no later than the inactivation date specified in the notice, unless the holder provides the employer with verification that all year-four requirements have been completed by the inactivation date. If the holder is removed from the teaching position, he or she may be returned to the position as soon as the holder provides the employing school district with official verification that the requirements have been completed. The employing school district is then required to submit verification of completion of the requirements to CTC and the county office of education within ten working days of returning the holder to the teaching position. CTC will send the employing school district and the credential holder a letter indicating the document has been reactivated once verification has been entered into the CTC computer system.

The claimant requests reimbursement for all of the activities required by section 80048.3(c).

Although the regulation imposes some requirements on employing school districts, the Commission finds that the requirements imposed by section 80048.3(c) of the Title 5 regulations do not impose a state-mandated new program or higher level of service on school districts. The regulation does not legally compel school districts to employ out-of-state teachers, but simply

provides school districts the flexibility, in accordance with the 1997 Act, to recruit out-of-state teachers with equivalent credentials for immediate employment, without first requiring the teacher to pass the CBEST and complete the other educational requirements. The decision to hire an out-of-state credentialed teacher remains a local discretionary decision and is not mandated by state law. Thus, the downstream requirements imposed by section 80048(c) of the regulations following the discretionary local decision to hire are not mandated by the state.[95] Moreover, the procedural requirements imposed by the regulation do not provide a higher level of service to the public above that already required by Education Code section 44205 of the Credentialed Out-of-State Teacher Recruitment and Retention Act of 1997. Education Code section 44205 became effective on January 1, 1998, a year and a half before the regulation, and has not been pled in this test claim. Accordingly, the Commission finds that section 80048(c) of the Title 5 regulations does not mandate a new program or higher level of service.

Section 80048.3.1

Section 80048.3.1 of the Title 5 regulations became effective on January 15, 2000, and was adopted to implement former Education Code section 44274.2. Former Education Code section 44274.2 was enacted in 1998, and was repealed and replaced in 2006, to also allow experienced, out-of-state trained teachers to qualify for California certification without completing many of the statutory requirements needed by individuals prepared in California or those inexperienced teachers from outside of California.[96] Individuals qualifying for the five-year Education Specialist Instruction Credential based on Education Code section 44274.2 were exempt from the following requirements: provisions and principles of the U.S. Constitution, subject matter competence, non-special education pedagogy, supervised field experience in general education, and methods of developing English language skills including reading. A five-year preliminary specialist credential authorizing instruction for pupils with disabilities was required to be issued by CTC to an applicant who fulfilled the following requirements:

- A minimum of five years of full-time teaching experience in the subject of the credential sought;
- A valid corresponding special education credential from another state;
- Completion of a professional preparation program in the requested education specialist category;
- A baccalaureate or higher degree from a regionally accredited institution of higher education;
- Submission of evidence of rigorous performance evaluations on which the applicant received ratings of satisfactory or better; and
- Passage of the state basic skills proficiency test.

Former Education Code section 44272.2 also required CTC to issue a professional clear instruction credential to any applicant who fulfilled the requirements for the professional clear

[95] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 742-743.

[96] Added by Statutes 1998, chapter 547, repealed and replaced by Statutes 2006, chapter 517. See also, CTC memorandum 00-0002, dated January 10, 2000.

Level II Education Specialist Instruction Credential, as established by CTC (in section 80048.4 of the Title 5 regulations).

Section 80048.3.1 of the Title 5 regulations restates the minimum requirements for the education specialist instruction credential identified in former Education Code section 44274.2 in subdivision (a) and defines the terms used in the statute for "full-time teaching experience" and "rigorous performance evaluation" in subdivision (c). To show "full-time teaching experience," pursuant to section 80048.3.1(c)(1), the out-of-state applicant must show that all experience is gained in public schools in states other than California while serving on that state's valid teaching credential that is comparable to the authorization sought in California. In addition, this experience must be verified on the official letterhead of the district or districts by the superintendent, assistant superintendent, director of personnel, or director of human resources in which the teacher was employed.

To show evidence of "rigorous performance evaluations," section 80048.3.1(c)(2) requires the applicant to submit evaluation letters, with ratings of satisfactory or better, verified in writing by a personnel officer in the district in which the evaluation took place, that show the applicant of the credential:

- Used teaching strategies that motivated all students to engage in the learning process;
- Had the ability to establish and maintain high standards for student behavior;
- Demonstrated deep knowledge of the subject being taught and the use of appropriate instructional strategies that promote student understanding; and
- Had the ability to plan and implement a sequence of appropriate instructional activities.

The claimant requests reimbursement pursuant to section 80048.3.1(a) to provide "a letter on district letterhead, signed by the individual's principal or personnel officer, verifying five years of full-time teaching experience in the disability area of the credential sought in a state other than California and rigorous performance evaluations. Verification of the authenticity of the evaluation letters must be given in writing by a personnel officer in the district in which the evaluations took place."

Section 80048.3.1(a), however, does not impose any state-mandated activities on California school districts. The verification of five-years of teaching experience and rigorous performance evaluations comes from the applicant's school district employers in states *other than California*. Subdivision (a)(1) plainly states that the five years of full-time teaching experience in the disability area of the credential sought is from "a state other than California." Subdivision (c)(2)(B) further states that the evaluations of the teacher's performance is from a state other than California.

The claimant has not specifically requested in the narrative of the test claim, reimbursement for any activities in
subdivision (e). Section 80048.3.1(e) is relevant to out-of-state individuals having previously been issued a California preliminary Specialist Instruction Credential in Special Education. Subdivision (e) states that the applicant is eligible for a credential issued under this section provided that (1) and (2) are met.

(1) Verification of all provisions of subdivision (a), and

(2) If the individual has California public school teaching experience in the authorization of the credential sought, submission of the most recent rigorous performance evaluation.

Section 80048.3.1(e), however, imposes requirements on applicants of the credential and does not impose a state-mandated program on school districts. Moreover, the procedural requirements imposed on the applicant to verify five years of experience and the receipt rigorous performance evaluations are not new, but were previously required by Education Code section 44274.2 – a statute that has not been pled in this test claim.

Accordingly, the Commission finds that section 80048.3.1 does not impose a state-mandated new program or higher level of service on school districts.

4. Designated Subjects Credentials (Cal. Code Regs., tit. 5, §§ 80035 & 80035.5, 80036, 80036.1, 80036.3, 80037, 80037.5, 80038, 80040)[97]

A designated subject credential allows the holder to teach "designated technical, trade, or career technical courses which courses may be part of a program of trade, technical, or career technical education."[98] The claimant requests reimbursement for activities related to the following designated subjects credentials: vocation education; adult education; special subject teaching credentials in aviation, ROTC, and driver's education; and supervision and coordination of these courses. The claimant also requests reimbursement for the costs of seeking CTC approval to offer a program for personalized preparation to develop the skills and specific needs of the applicant seeking a designated subject credential.

a) General Requirements for Programs of Personalized Preparation for Designated Subject Credentials (Cal. Code Regs., tit. 5, § 80040)[99]

As more fully described in the sections below, an applicant seeking one of the designated subject credentials listed in this section is required to first participate in a CTC-approved program of personalized preparation for the designated credential and submit certain verifications to CTC from the local education agency (LEA) that offered the approved program. In order to be credentialed, the candidate must provide to CTC:

1. A verification from the LEA showing that the applicant has been informed of all the requirements for obtaining a professional clear credential in the designated subject, and that the applicant has completed the requirements of the personalized program; and

2. A recommendation from the CTC-approved LEA that provided the program that the applicant receive the credential.

A "program of personalized preparation" for a designated credential is defined in section 80034 of the regulations to mean "a program submitted by a LEA approved by the Commission on Teacher Credentialing for the purpose of developing pedagogical or andragogical skills and

[97] Register 84, No. 8; Register 89, No. 11; Register 95, No. 15; Register 98, No. 12.

[98] Education Code section 44256(d).

[99] Register 84, No. 8; Register 95, No. 15.

understandings specific to the needs of designated subjects credential holders." Section 80040.1(a) further states that the "purpose of the program of personalized preparation is to ensure that holders of designated subjects credentials possess competencies, skills and knowledge in accordance with Commission-approved standards of program quality and effectiveness." Section 80040.1(b) states that the planning for the program of personalized preparation shall include the applicant, the employing school district, and the LEA, and that great care shall be taken to include those program components that are specific to the background and present assignment needs of the applicant.

Section 80034 of the regulations defines "Local Education Agency (LEA)" as that phrase applies to the designated subjects credentials, to mean the following:

> . . . any of the following categories of agencies which are authorized to develop, submit and implement a CTC approved program of personalized preparation, as listed in Sections 80040.2, 80040.2.5, and 80042:
>
> (1) a California public school district or consortium of school districts;
>
> (2) a California county superintendent of schools;
>
> (3) a California regional occupation program or center;
>
> (4) a California state agency;
>
> (5) a Commission-approved teacher preparation institution.

Section 80040 et seq. of the regulations then identifies the general requirements for an LEA that wishes to offer designated subjects programs of personalized preparation. Section 80040 states the following:

(a) A LEA desiring to offer a program of personalized preparation for the designated subjects teaching credential or for the designated subjects supervision and coordination credential shall file with the Commission on Teacher Credentialing an application for approval, signed by the Chief Administrative Officer of the agency or agencies constituting the LEA. This application shall include a complete description of how the program will meet each standard of program quality and effectiveness with a particular focus upon how the LEA proposes to assure that candidates will acquire the competencies, skills and knowledge required.

(b) The Commission will approve programs after the review of the application, when such application reflects that the program submitted by the LEA meets the requirements. Programs will be monitored by the Commission to determine if the requirements are being met.

The claimant requests reimbursement pursuant to section 80040(a) to file with CTC an application for approval to offer a program of personalized preparation for the designated subjects teaching credentials.

The Commission finds that section 80040 of the Title 5 regulations does not impose a state-mandated program on school districts. The plain language of the regulation states that "a LEA *desiring* to offer a program of personalized preparation" shows that the activity of filing an application with CTC is voluntary and not mandated by the state. Moreover, as more fully

described in the sections below, most of the courses that are authorized to be taught by a holder of a designated subjects credential are courses that are provided at the option of the district and are not mandated by the state. To the extent a school district feels it necessary to hire a teacher with a designated subjects credential, there are numerous programs of personalized preparation approved and offered by other entities and universities where the applicant can obtain the required skills for the designated credential.[100]

Accordingly, the Commission finds that section 80040 of the Title 5 regulations does not impose a state-mandated program on school districts.

b) Vocational Education Teaching Credentials (Cal. Code Regs., tit. 5, §§ 80035, 80035.5)[101]

Sections 80035 and 80035.5 of the Title 5 regulations govern the specific requirements for obtaining a designated subjects preliminary and professional clear full-time credential in vocational education.

The Legislature established these credentials to authorize the holders of the credential to teach subjects named on the credential in grades K-12, and in classes organized primarily for adults, in technical, trade, or vocational education, and to authorize substitute teaching in vocational classes for up to 30 days for any one teacher during the school year.[102] CTC stopped issuing new vocational credentials on November 1, 2007, although it continues to renew them.[103]

Section 80035 of the Title 5 regulations was adopted in 1984 and details the requirements for obtaining preliminary and clear full-time credentials in vocational education. Section 80035(a) requires the applicant, when seeking an initial preliminary full-time vocational credential, to submit the following verifications and recommendations:

- Verification, signed by the CTC-approved LEA that provided the program of personalized preparation, or by an employing school district authorized to do so by a Commission-approved LEA, that the applicant has been fully apprised of the requirements for both the preliminary and clear credentials, including Level I and Level II requirements of the program of personalized preparation.
- A recommendation, signed by a Commission-approved LEA or the employing school district on a form approved by CTC.

Section 80035.5 of the regulations states that "LEAs and or ESDs [employing school districts] shall recommend applicants for designated subjects vocational education teaching credentials in

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[100] CTC document "Professional Preparation Program Matrix" dated January 2, 2012.

[101] Register 84, No. 8 (Mar. 23, 1984), Register 89, No. 11 (April 9, 1989), Register 95, No. 15 (May 10, 1995).

[102] CTC, "Designated Subjects Vocational Education Teaching Credential." <http://www.ctc.ca.gov/credentials/CREDS/adult-voc-ed.html> as of July 1, 2012. See Education Code sections 44260 and 44260.1, as added by Statutes 1982, chapter 1361.

[103] CTC, "Designated Subjects Vocational Education Teaching Credential." <http://www.ctc.ca.gov/credentials/CREDS/adult-voc-ed.html> as of July 1, 2012.

one of the following subjects," and then details a long list of vocational subjects from accounting to welding.

To obtain a continuance of a preliminary full-time vocational education teaching credential, section 80035(b) requires the holder of the preliminary credential to submit verification, by the CTC-approved LEA that is providing the program of personalized preparation to the employing school district, that the holder has successfully completed all Level I requirements of a CTC-approved program of personalized preparation. In the event that the employing school district is not known to the CTC-approved LEA, the "verification shall be provided directly to the candidate."

Section 80035(c) requires the credential holder, when seeking a one-time reissuance of a preliminary full-time vocational education teaching credential, to submit verification by the CTC-approved LEA that the holder of the preliminary credential has completed all Level I and Level II requirements of the CTC-approved program of personalized preparation and a recommendation signed by a CTC-approved LEA and/or the employing school district on a form approved by CTC.

And, finally, to obtain a professional clear full-time vocational education teaching credential, section 80035(d) requires the holder to submit verification of two years of full-time successful teaching in the subject(s) and grade level(s) authorized by the preliminary vocational education teaching credential, and verification of completion of all Level I and Level II requirements of a CTC-approved program of personalized preparation.

The claimant requests reimbursement for CTC-approved LEAs and employing school districts to prepare the verifications listed in section 80035 above, and to recommend applicants for vocational education teaching credentials pursuant to section 80035.5.

The Commission finds, however, that sections 80035 and 80035.5 of the Title 5 regulations do not impose a state-mandated program on school districts. Section 80035 of the regulations identifies the requirements imposed *on the applicant* for a vocational credential. Although the regulation requires the applicant to submit verifications by the CTC-approved LEA or by the employing school district showing that the applicant has the requisite knowledge and meets the requirements, school districts are not required by state law to become a CTC-approved LEA program sponsor for purposes of a designated subjects vocational credential, or to employ persons who do not already have a professional clear vocational credential. As indicated in the section above, school districts are authorized to submit an application to CTC to offer a program of personalized preparation for designated subjects credential candidates.

For the same reasons, school districts are not mandated by section 80035.5 to recommend applicants for vocational credentials. The decision to become a CTC-approved LEA, or to hire an individual in the process of seeking a professional clear vocational credential is made at the local school district level. It is these local discretionary decisions that trigger the requirement to recommend an applicant for one of the vocational credentials.[104]

Moreover, these credentials are intended for courses organized primarily for adults. School districts have the authority to establish vocational classes for adults, but are not required by state

[104] *Kern High School Dist., supra*, 30 Cal.4th 727, 742-743.

law to do so.[105] Thus, to the extent these activities are performed for purposes of hiring a vocational teacher for an adult course, they are not mandated by the state.

Therefore, the activities of preparing verifications and recommending applicants for vocational credentials are not mandated by the state. The Commission finds that sections 80035 and 80035.5 of the Title 5 regulations do not impose a state-mandated program on school districts.

c) Adult Education Credentials (Cal. Code Regs., tit. 5, §§ 80036, 80036.1, 80036.3)[106]

Sections 80036, 80036.1, and 80036.3 of the regulations govern the requirements for obtaining designated subject, full-time and part-time credentials in adult education. Adult education credentials authorize the holder to teach the subjects named on the credential in courses organized primarily for adults. The subjects are listed in section 80036.3 and include academic subjects for English as a second language, elementary and secondary basic skills (which includes citizenship), and other individual subjects. Non-academic subjects that may be listed on an adult education credential include courses for adults with disabilities and older adults, and courses relating to health and safety, home economics, parent education, and vocational education.

Like the regulations for vocational credentials, section 80036.3 of the regulations governing the credentials for adult education provides that the LEA approved by CTC to develop and implement a program of personalized preparation or an employing school district shall recommend an applicant for the designated subjects adult education teaching credential. Sections 80036 and 80036.1 then lay out the requirements imposed on the applicant seeking a full-time or part-time initial and clear credential in adult education. Those regulations require the applicant to submit the following verification and recommendation from the CTC-approved LEA that is providing the program to obtain the preliminary credential for both full-time and part-time credentials:

- Verification showing that the applicant has been fully apprised of the requirements for both the preliminary and clear credentials, including the Level I and II programs of personalized preparation; and
- Recommendation that the applicant receive the credential.[107]

If the holder of the preliminary credential seeks a continuance of the preliminary credential, the CTC-approved LEA for the credential holder must verify to the employing school district that the holder has completed all Level I requirements of the approved personalized preparation program. If the employing school district is not known to the program sponsor, the verification is required to be provided directly to the preliminary credential holder.[108] The same verification requirements are imposed for those holders seeking a one-time reissuance of the preliminary credential, except that the verification from the CTC-approved LEA for the holder of a full-time

[105] Education Code sections 52501 and 52502.

[106] Register 84, No. 8 (Mar. 22, 1984), Register 95, No. 15 (May 10, 1995).

[107] California Code of Regulations, title 5, sections 80036(a)(5)(6), 80036.1(a)(4)(5), 80036.3(a); CTC document entitled "Designated Subjects Adult Education Teaching Credentials (Full-Time/Part-Time)."

[108] California Code of Regulations, title 5, sections 80036(b)(2), 80036.1(b)(2).

preliminary credential must show that the holder has completed all of Level I and Level II requirements of the personalized program.[109]

To obtain the professional clear credential in adult education, the holder must submit the following recommendations and verifications from the holder's CTC-approved LEA and the employing school district:

- Verification from the employing school district of two years successfully teaching adult learners in the subject(s) authorized by the preliminary adult credential.
- Verification from the CTC-approved LEA of completion of all Level I and II requirements of the personalized preparation program.
- A recommendation signed by the CTC-approved LEA and/or the employing school district on a form approved by CTC.[110]

The claimant requests reimbursement for CTC-approved LEAs and employing school districts to prepare the verifications listed above, and to recommend applicants for adult education teaching credentials.

The Commission finds that sections 80036, 80036.1, and 80036.3 do not impose a state-mandated program on school districts. Sections 80036 and 80036.1 of the regulations identify the requirements imposed *on the applicant* for an adult education credential. Although the regulation requires the applicant to submit verifications by CTC-approved LEAs or by employing school districts showing that the applicant has the requisite knowledge and meets the requirements, school districts are not required by state law to become a CTC-approved LEA or to employ persons who do not already have a professional clear adult education credential.

For the same reasons, school districts are not mandated by section 80036.3 to recommend applicants for adult education credentials. The decision to become a CTC-approved LEA or to hire an individual in the process of seeking a professional clear adult education credential is made at the local level. It is these local discretionary decisions that trigger the requirement to recommend an applicant for one of the vocational credentials. Thus, the activity to recommend an applicant for a vocational credential is not mandated by the state.[111]

Moreover, in most circumstances, school districts are not required by state law to provide classes for adults and, thus, school districts are not mandated by state law to ensure their teachers are qualified for these classes. Education Code sections 52501 and 52502 *authorize* school districts to establish and maintain classes for adults for the purpose of providing instruction in civic, vocational, literacy, health, homemaking, technical, and general education. The local decision to establish and provide these courses triggers the district responsibility to hire a qualified teacher.

The only exceptions to this broad authority to provide adult classes are in Education Code sections 52540 and 52552. Section 52540 states that "upon application of 20 or more persons above the age of 18 years residing in a high school district who cannot speak, read, or write the English language to a degree of proficiency equal to that required for the completion of the

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[109] California Code of Regulations, title 5, sections 80036(c)(2), 80036.1(c)(2).

[110] California Code of Regulations, title 5, sections 80036(d), 80036.1(d).

[111] *Kern High School Dist., supra*, 30 Cal.4th 727, 742-743.

eighth grade of the elementary schools, the governing board of the high school district shall establish classes in English." Section 52552 requires the governing board of a high school district to establish classes in citizenship upon application of 25 persons who reside in the district requesting the training. The course of study in training for citizenship is described in Education Code section 52555 and shall consist of the teaching of U.S. history; state and community civics; the U.S. Constitution, with special reference to those sections in the Constitution that relate directly to the duties, privileges, and rights of the individual; and classes in English for foreigners that will properly prepare the student to understand and assume the responsibilities of citizenship.

However, a school district that is required by sections 52540 and 52552 to provide courses in citizenship and English as a second language may satisfy those requirements by hiring a teacher with a valid single subject or multiple subject credential pursuant to Education Code section 44865. Education Code section 44865 states in relevant part that "a valid teaching credential issued by the State Board or the Commission on Teacher Credentialing, based on a bachelor's degree, student teaching, and special fitness as a teacher in [classes organized primarily for adults], shall be deemed qualifying for assignment as a teacher [of] the assignment, provided that the assignment of a teacher to a position for which qualifications are prescribed by this section shall be made only with the consent of the teacher. . . ." Thus, there is no mandate for a school district to hire an employee with an adult education credential, or to ensure that teachers of courses in citizenship and English as a second language meet the standards identified in sections 80036, 80036.1 and 80036.3 of the Title 5 regulations.

Accordingly, the Commission finds that sections 80036, 80036.1 and 80036.3 of the Title 5 regulations do not impose a state-mandated program on school districts.

d) Aviation Flight/Ground, Basic Military Drill, ROTC, and Driver's Education (Cal Code Regs. tit. 5 §§ 80037 & 80037.5)[112]

Sections 80037 and 80037.5 of the regulations identify the requirements to obtain designated subject, preliminary and clear credentials in aviation flight/ground, basic military drill, Reserve Officers' Training Corp (ROTC), driver education and training, and limited driver training in grades 12 and below, and in classes authorized primarily for adults.

To obtain a preliminary credential in these subjects, the applicant is required to obtain verification, from either the employing school district or a CTC-approved LEA, that the applicant is aware of the requirements for a clear credential. In addition, to obtain a preliminary credential in driver education and training, the applicant is required to receive verification by a CTC-approved LEA that the applicant has completed specified units or clock hours in the personalized program of subject matter preparation in driver education and training. Those seeking a preliminary credential in limited driver training are additionally required to submit a written statement from the employing school district attesting to the applicant's ability to actually perform behind the wheel driver instruction and assuring that adequate supervision and appropriate staff development will be provided for the individual receiving the limited driver training authorization. Applicants for these designated subject credentials are also required to

[112] Register 84, No. 8; Register 98, No. 12.

submit a recommendation from a CTC-approved LEA or the employing school district for the credential. [113]

To obtain a clear credential in these subjects, the applicant must obtain the following verifications:

- Verification from the employing school district of two years of successful teaching experience.
- Verification by a CTC-approved LEA that the applicant has completed the requirements of the program of personalized preparation.[114]

Section 80037.5 identifies additional requirements for CTC-approved LEAs that seek the approval to provide preparation programs for driver education and training.

The Commission finds that sections 80037 and 80037.5 of the Title 5 regulations do not impose a state-mandated program on school districts. The plain language of section 80037 imposes requirements on the applicant seeking the designated subjects credential, but not on the school district, and section 80037.5 identifies requirements for those school districts seeking approval to offer personalized programs of training for the driver education credential. These regulations do not require school districts to perform any mandated duties.

Moreover, state law does not require school districts to offer these courses to K-12 students or adults. The Education Code authorizes or encourages, but does not require, school districts to offer courses for K-12 students in driver education and training,[115] aviation education,[116] and military science/ROTC.[117] And, as indicated above, school districts are authorized, but generally not required, to offer courses in adult education.[118] Any school district that employs personnel with credentials to teach these subjects, therefore, is doing so voluntarily.

Therefore, the Commission finds that sections 80037 and 80037.5 of the Title 5 regulations do not impose a state-mandated program on school districts.

e) Supervision and Coordination Credential (Cal. Code Regs., tit. 5, § 80038)[119]

Section 80038 of the Title 5 regulations governs the designated subjects credential in supervision and coordination. The credential authorizes the holder to supervise and coordinate subjects and classes in all types of designated subjects programs.[120]

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[113] California Code of Regulations, title 5, section 80037(a)(2)(E) and (a)(6)(7).

[114] California Code of Regulations, title 5, section 80037(b).

[115] Education Code section 51850.

[116] Education Code section 51791.

[117] Education Code section 51750.

[118] Education Code sections 52501 and 52502.

[119] Register 84, No. 8.

[120] California Code of Regulations, title 5, section 80038(b).

Section 80038 lists the requirements for the designated subjects supervision and coordination credential, to include:

- Verification by the employing school district of three years of full-time teaching experience in the subject named on the designated subjects credential;
- Verification by an LEA of completion of six semester units, or 90 clock hours, in a CTC-approved personalized pre-service program in supervision and coordination as described in Section 80040.3. The program is required to include knowledge of the purposes, characteristics, and activities of vocational and non-vocational designated subjects programs; and planning, organization, and management of designated subjects programs.
- Submission of a completed application form signed by a CTC-approved LEA.

The Commission finds that section 80038 of the Title 5 regulations does not impose a state-mandated program on school districts. The requirements to obtain the credential are imposed on the applicant seeking to supervise and coordinate designated subjects programs. There is no requirement in state law for a school district to hire an employee with a supervision and coordination credential. The claimant acknowledges this fact on its website page for the "Designated Subjects Credential Program, Supervision & Coordination" by stating the following:

> It is important to remember that the Supervision & Coordination credential is not utilized in all districts.
>
> All employment decisions (including but not limited to, hiring, the employment process, and salary schedules) are made locally by individual school districts. [121]

Accordingly, the Commission finds that section 80038 of the Title 5 regulations does not impose a state-mandated program on school districts.

5. Administrative Service Credential (Cal.Code Regs., tit. 5, §80054)[122]

The administrative service credential authorizes the holder to provide the following school services in grades 12 and below, including preschool, and in classes organized primarily for adults:

- Develop, coordinate, and assess instructional programs;
- Evaluate certificated and classified personnel;
- Provide students' discipline;
- Provide certificated and classified employees discipline;
- Supervise certificated and classified personnel;
- Manage school site, district, or county level fiscal services;

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[121] Exhibit __, San Diego County Office of Education, "Designated Subjects Credential Program, Supervision & Coordination."

[122] Register 80, No. 6; Register 2000, No. 15; Register 2002, No. 50.

- Recruit, employ, and assign certificated and classified personnel; and
- Develop, coordinate, and supervise student support services.[123]

The administrative services credential is a two-tiered system that provides initial general preparation for entry into the first administrative position. After that, an individualized plan for targeted professional development that addresses the responsibilities of the educational leadership position that the new administrator is assigned. Generally, the first tier of initial preparation is completed before the applicant assumes full administrative responsibilities. The second tier, or targeted professional development, is completed at the same time as the first few years of administrative experience.[124]

Section 80054(a) lists the requirements for the first tier, preliminary administrative services, which is valid for five years. To obtain the preliminary administrative services credential, the applicant must comply with many requirements, including submitting verification of one of the following:

- Three years of successful, full-time teaching experience in the public schools, including, but not limited to, service in-state or county-operated schools, or in private schools of equivalent status; or
- Three years of successful, full-time experience in the fields of pupil personnel, health, library media teacher, or clinical or rehabilitative services in the public schools, including, but not limited to, service in state or county-operated schools, or in private schools of equivalent status.

CTC clarifies that that the three years of successful, full-time experience may be from teaching, pupil personnel work, librarianship, health services, or clinical or rehabilitative services.[125]

Section 80054(d) lists the minimum requirements to obtain the professional clear administrative services credential. One of the requirements is to submit verification of two years of successful experience in a full-time administrative position in a California public school or California private school of equivalent status, while holding the preliminary administrative services credential. CTC states that these verifications of experience must be on the district or employing agency letterhead and signed by the superintendent, assistant superintendent, director of personnel, or director of human resources. School or district personnel other than the applicant must verify all experience.[126] The claimant requests reimbursement to verify the successful experience of its employees who are seeking the administrative services credential.

The Commission finds that section 80054 of the Title 5 regulations does not impose a state-mandated new program or higher level of service on school districts. The plain language of the regulation imposes requirements on the applicant of the credential. Although the applicant's

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[123] California Code of Regulations, title 5, section 80054.5.

[124] Administrative Services Manual, CTC, pages 8 and 9.

[125] CTC memorandum, "Administrative Services Credential for Administrators Prepared in California."

[126] CTC memorandum, "Administrative Services Credential for Administrators Prepared in California," page 4.

former and current employers are required to verify successful experience in the employment for the applicant to obtain the credential, this verification is triggered by the district's local hiring decision. There is no mandate imposed on the school district to verify the successful employment of its employees.

Accordingly, the Commission finds that section 80054 of the Title 5 regulations does not impose a state-mandated program on school districts.

6. Other Credentialed Employees

a) Eminence Credentials (Cal.Code Regs., tit. 5, § 80043 & 80045) [127]

Sections 80043 and 80045 implement Education Code section 44262, which governs eminence credentials for teaching or service. CTC is authorized by Education Code section 44262 to grant an eminence credential to an individual who is eminent in a specific endeavor and is recognized as such beyond the boundaries of his or her community. Eminence credentials are only available at the recommendation of the employing agency. The employing agency must demonstrate how the individual will enrich the educational quality of the employing agency. Education Code section 44262 states the following:

> Upon the recommendation of the governing board of a school district, the commission may issue an eminence credential to any person who has achieved eminence in a field of endeavor taught or service practiced in the public schools of California. This credential shall authorize teaching or the performance of services in the public schools in the subject or subject area or service and at the level or levels approved by the commission as designated on the credential.
>
> Each credential so issued shall be issued initially for a two-year period and may be renewed for a three-year period by the commission upon the request of the governing board of the school district. Upon completion of the three-year renewal period, the holder of an eminence credential shall be eligible upon application for a professional clear teaching credential.[128]

Section 80043(a) of the regulations defines an eminent individual as follows:

> The eminent individual is recognized as such beyond the boundaries of his or her community, has demonstrably advanced his or her field and has been acknowledged by his or her peers beyond the norm for others in the specific endeavor. The employing school district shall demonstrate how the eminent individual will enrich the educational quality of the school district and not how he or she will fill an employment need.

If a school district recommends a person for an eminence credential, the following items must be submitted by the school district pursuant to section 80043(b):

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[127] Register 82, No. 45; Register 96, No. 41; Register 99, No. 11; Register 2003, No. 5.

[128] Statutes 1976, chapter 1010; amended by Statutes 1996, chapter 1067. The 1996 amendment changed increased the time the credential was valid, and allowed the holder of the credential to seek a professional credential, rather than a life credential, upon completion of the last renewed credential.

- Recommendation from the governing board of the employing agency, verified on a form provided by CTC.
- A letter from the employing school district demonstrating how the eminent individual will enrich the educational quality of the school district and how he or she will fill an employment need.
- A statement of employment in the district, which includes the proposed assignment and a certification of the intention of the district to employ the applicant if granted an eminence credential.
- Verification of the applicant's eminence qualifications, which shall include (1) recommendations from professional associations, former employers, professional colleagues, and other individuals or groups whose evaluations would support eminence; and (2) documentation of achievement, including advanced degrees earned, distinguished employment, evidence of related study or experience, publications, professional achievement, and recognition attained for contributions to his or her field of endeavor.[129]

CTC may assign certification staff to review the application and determine if the individual meets the definition of eminence pursuant to Education Code section 44262. If CTC staff denies an application for eminence, the employing school district may request that CTC staff reconsider the determination upon submission of new evidentiary material relevant to the reason of denial that was not available at the time the application was submitted to CTC.[130]

Section 80045 lists the requirements for renewing an Eminence Credential as follows:

> Applying for renewal of an Eminence Credential with a written statement of support from the governing board of the school district adopted in a public meeting and submission of the fee(s) established in Section 80487.
>
> When requesting issuance of a Professional Clear Eminence Teaching Credential with a written statement of support from the governing board of the school district adopted in a public meeting, and submission of an application and the fee established in Section 80487.

The claimant requests reimbursement to comply with sections 80043 and 80045 of the Title 5 regulations, and argues that the requirements imposed by these regulations are mandated by the state on the ground that school districts are required to "strive for the best educational environment possible."[131]

The Commission finds that sections 80043 and 80045 of the Title 5 regulations do not impose a state-mandated program on school districts. These regulations implement Education Code section 44262, which by the plain language of the statute, authorizes school districts to recommend an individual for an eminence credential. The decision to hire and recommend a person for an eminence credential is a local hiring decision, and is not mandated by the state. This local decision triggers the downstream procedural requirements imposed by sections 80043

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[129] See also, CTC memorandum entitled "Eminence Credential."

[130] California Code of Regulations, title 5, section 80043(c)(2)(A).

[131] Exhibit ___, Claimant's reply comments dated December 9, 2003, page 9.

and 80045. Pursuant to the court's interpretation of a state-mandated program in *Kern High School District*, these downstream requirements are not mandated by the state.[132]

Accordingly, sections 80043 and 80045 of the Title 5 regulations do not impose a state-mandated program on school districts.

b) Exchange Certificated Credential (Cal.Code Regs. tit. 5, §§ 80055.1)[133]

Section 80055.1 of the Title 5 regulations implements Education Code section 44853 and governs the issuance of an exchange certificated employee credential. Education Code section 44853, which originated in the 1959 Education Code, authorizes school districts to enter into agreements with authorities of any foreign country, or any state, territory or possession of the United States or other district within California for the exchange and employment of regularly credentialed employees and other employees of public schools. Certificated persons employed are known as "exchange certificated employees" and require the consent of the employee to be exchanged. The statute authorizes CTC to establish minimum standards for the credential. The following parameters are identified in the statute:

> Due consideration shall be given to the general qualifications and professional status of the exchange employee as compared to the general qualifications and professional status of the employee for whom exchanged. However, it shall not be a requirement that an exchange certificated employee be a teacher of the same subject or grade, or both, as the employee for whom exchanged. If the service authorized is other than teaching, it shall not be a requirement that the service be at the same grade level of that the service be exactly the same as the employee for whom exchanged.

Although exchange agreements cannot exceed three years, the exchange may be made permanent at the end of the assignment period with the consent of all the parties.

The credential requirements for an exchange certificated credential are listed in section 80055.1 of the title 5 regulations, including the following requirements imposed on school districts:

- Inform an applicant for an exchange position that an exchange certificated employee credential may be secured by submitting an application, on the form prescribed by CTC, and personal identification cards.
- Submit a statement to CTC verifying the following information:
  - The position in which the governing board proposes to employ the applicant;
  - The dates of proposed employment;
  - Facts showing that the applicant is an employee of a public school as required by Education Code Section 44853;
  - The district has given due consideration to the general qualifications and professional status of the proposed exchange employee as compared to the

[132] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 742-743.

[133] Register 78, No. 10; Register 82, No. 45; Register 97, No. 31.

general qualifications and professional status of the employee to be exchanged;

- The district has official verification from the proper authorities mentioned in Education Code Section 44853 that the applicant is fit to perform the services required in the position;

- Submit to CTC verification of passage of the CBEST, as specified in Education Code Section 44252(b).[134]

The claimant requests reimbursement for these activities.

The Commission finds that section 80055.1 does not mandate a new program or higher level of service on school districts. School districts are not mandated by state law to participate in the exchange certificated employee program. Section 80055.1 implements Education Code section 44853. Section 44853 begins with the plain language that the "governing board of any school district, subject to the rules and regulations prescribed by the state board, *may enter into an agreement* with the proper authorities of any foreign country, or of any state, territory, or possession of the United States, or other district within the state, for the exchange and employment of regularly credentialed employees. . . ." (Emphasis added.) Thus, the decision to participate in the program offered by section 44853 is voluntary and triggers the downstream procedural requirements imposed by section 80055.1 of the regulations. Pursuant to the court's interpretation of a state-mandated program in *Kern High School District*, these downstream requirements are not mandated by the state.[135]

Moreover, the requirements identified in section 80055.1 are not new and have been in existence since before1975. Former section 6670 of the title 5 regulations (Register 70, No. 27, July 4, 1970) outlines all the same requirements with respect to school districts for the exchange certificated employee credential except for the applicant's passage of the CBEST, which was added later. Former section 6670 was renumbered in 1978 (Register 78, No.10), which was filed in this claim. Thus, section 80055.1 of the Title 5 regulations does not impose a new program or higher level of service.

Accordingly, the Commission finds that section 80055.1 of the Title 5 regulations does not impose a state-mandated new program or higher level of service on school districts.

c) Sojourn Certificated Employee Credentials (Cal.Code Regs. tit. 5, § 80055.2)[136]

Section 80055.2 of the Title 5 regulations implements Education Code section 44856, which originated in the 1959 Education Code, and authorizes school districts to conclude arrangements with authorities in foreign countries, or of states, territories or possessions of the United States, to hire bilingual teachers employed in public or private schools of a foreign country, state, territory or possession, for the purpose of providing bilingual or foreign language instruction, or cultural enrichment. The person is required to hold the necessary valid CTC credential or credentials. Education Code section 44856, as it provided in 1977 and before 2009 clarifying amendments, stated the following:

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[134] See also, CTC memorandum entitled "Exchange Certificated Employee Credential."

[135] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 742-743.

[136] Register 78, No. 22; Register 97, No. 51.

> The governing board of a school district *may*, for the purposes of providing bilingual instruction, foreign language instruction, or cultural enrichment, in the schools of the district, subject to the rules and regulations of the State Board of Education conclude arrangements with the proper authorities of any foreign country, or of any state, territory, or possession of the United States, for the hiring of bilingual teachers employed in public or private schools of any foreign country, state, territory, or possession. To be eligible for employment the teacher must speak English fluently. Any persons so employed pursuant to this section shall be known as a "sojourn certificated employee."
>
> No person may be hired as a sojourn certificate employee by a school district unless he holds the necessary valid credential or credentials issued by the Commission for Teacher Preparation and Licensing authorizing him to serve in a position requiring certification qualifications in the school district proposing to employ him. Such person may be employed only for a period not to exceed two years, except that thereafter such period of employment may be extended from year to year for a total period of not more than five years upon verification by the employing district that termination of such employment would adversely affect an existing bilingual or foreign language program or program of cultural enrichment and that attempts to secure the employment of a certificated California teacher qualified to fill such position have been unsuccessful. The commission shall establish minimum standards for the credentials for sojourn certificated employees.

To obtain a sojourn certificated employee credential, section 80055.2(a) of the regulations requires the school district to submit a completed application to CTC, which includes the following information:

- All information required by the application form provided by CTC, including two personal identification cards with legible fingerprints and the required application fee.
- Transcripts, certificates, or other reasonable evidence of all education above United States high school level or equivalent, and showing at least 90 semester units of collegiate level study or equivalent, and all teaching experience.
- Certification by the governing board that an applicant is a bilingual-biliterate teacher fluent both in English and in the target language and employed as required by Education Code Section 44856 during the calendar year immediately preceding the date of application.
- Certification by the governing board that the applicant will be employed by the school district in a teaching assignment authorized by a sojourn certificated employee credential and that the applicant has been informed in writing of his or her employment status and renewal requirements.
- A statement in writing and signed by the applicant verifying knowledge of the general requirements for a regular credential and agreeing to diligently pursue completion of the said requirements.
- Verification of the passage of the CBEST.

The sojourn credential may be renewed by the sojourn certificated employee. The renewal requires verification by the employing district of the continued need for the services of the employee.[137]

The claimant requests reimbursement for these activities.

The Commission finds that section 80055.2 does not mandate a new program or higher level of service on school districts.

Section 80055.2 implements the authority granted in Education Code section 44856, which by the plain language of the statute is discretionary. School districts are not required by state law to employ a sojourn certificated employee and, thus, are not mandated by the state to comply with the requirements identified in the regulation to obtain a credential for the individual.

Moreover, many of the activities required by section 80055.2 of the regulations are not new. Sojourn credentials have been in existence since before 1975 pursuant to former section 6671 (Register 70, No. 27, July 4, 1970) of the Title 5 regulations. That section also required verification that the applicant is employed by the district and that the applicant is bilingual. Former section 6671 was renumbered to section 80055.2 in 1978 (Register 78, No. 22). Thus, these activities are not new.

Accordingly, the Commission finds that section 80055.2 of the Title 5 regulations does not impose a state-mandated new program or higher level of service on school districts.

7. Specialized Certificates Available to Credentialed Teachers

a) Certificate of Completion of Staff Development to Teach English-Language Development or Specifically Designated Academic Instruction Delivered in English to Limited-English-Proficient Students (Cal. Code Regs. tit. 5 § 80016)[138]

In 1994, the Legislature enacted Education Code section 44253.10 to authorize the assignment of teachers with a basic teaching credential to provide specially designed content instruction delivered in English to limited-English proficient pupils under specified conditions.[139] The statute requires CTC to issue a certificate based on the completion of staff development that authorizes the holder to teach English language development and specially designed academic instruction delivered in English to LEP students. In 1996, school districts and county offices of education were authorized to charge the teacher a fee to "cover the actual costs of the agency in issuing, forwarding a copy of the Commission, and paying any fee charged by the commission for receiving and servicing, the certificate or certificates of completion."[140]

In 2001, CTC adopted section 80016 of the Title 5 regulations to clarify the requirements and authorizations for the certificate of completion of staff development pursuant to Education Code

[137] California Code of Regulations, title 5, section 80055.2(d).

[138] Register 2001, No. 17.

[139] Statutes 1994, chapter 1178.

[140] Education Code section 44253.10(f)(5).

section 44253.10, and to establish the application fee for the certificate.[141] Among several requirements, applicants for the certificate of completion are required by section 80016(a)(3) to complete a staff development program in methods of specially designed content instruction delivered in English or English language development, or both, and to submit verification from the school district, county office of education, college or university, or other approved agency, whose program has been approved by CTC, on a form provided by CTC. To meet the requirement, the program must be determined by CTC to meet the guidelines and standards established by Education Code section 44253.10. The claimant requests reimbursement for the following activity:

> Pursuant to Title 5, California Code of Regulations, Section 80016, subdivision (a)(3), verifying completion of necessary staff development programs for persons applying for a Certificate of Completion of Staff Development to teach English language development and/or specially designated academic instruction delivered in English to limited-English-proficient students.

The Commission finds that section 80016(a)(3) does not impose a state-mandated program on school districts. The plain language of the regulation imposes requirements on "the applicant" for the certificate of completion. The verification required to be submitted by the applicant is submitted by "the school district, county office of education, college or university, or other approved agency, whose program has been *approved* by the Commission." (Emphasis added.) This language implements the provisions of, and is consistent with Education Code section 44253.10. Section 44253.10(a) states that the teacher seeking the certificate of completion is required to complete a staff development program. CTC, in consultation with the SPI, was required to establish guidelines for the provision of staff development pursuant to section 44253.10(b). Subdivision (c) then states that "staff development *may be sponsored* by any school district, county office of education, or regionally accredited college or university that meets the standards included in the guidelines established pursuant to this subdivision or any organization that meets those standards and is approved by the commission." (Emphasis added.) Thus, the plain language of the regulation and the statute it implements do not mandate school districts to sponsor a staff development program, or verify an applicant's completion of a program it is authorized to sponsor.

Moreover, Education Code section 44253.10 and section 80016 of the regulations were enacted as an alternative to certificate requirements for teaching LEP students that were enacted in 1992 (Stats. 1992, ch. 1050, Ed. Code, §§ 44253.1-44253.6). The existing statutes required credentialed teachers to hold a cross-cultural language and academic development certificate (CLAD) or bilingual-CLAD certificate to teach LEP students. Generally, these certificates require the applicant to complete 12 upper division units of college coursework. The purpose of the bill that enacted section 44253.10 was "to make it possible for teachers to acquire the methodology necessary to teach students who are currently becoming English proficient, without having to return to the university and take 12 units of coursework."[142] Thus, school districts

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[141] Notice of Public Hearing and Statement of Reasons for section 80016 (00-0020), issued by CTC on July 21, 2000.

[142] Bill analysis on SB 1969, Senate Third Reading (August 22, 1994); Bill analysis on SB 1969, Ways and Means Committee Analysis (August 8, 1994).

have the option of hiring a teacher for LEP students that completes the additional college coursework and obtains a CLAD or bilingual-CLAD, or one who complies with Education Code section 44253.10 and section 80016 of the regulations. Those hiring decisions are local decisions and are not mandated by the state.

Accordingly, the Commission finds that section 80016 of the Title 5 regulations does not impose a state-mandated program on school districts.

b) Resource Specialist Certificate (Cal.Code Regs., tit. 5, §§ 80070.2, 80070.3, 80070.4 and 80070.6)[143]

The Legislature enacted the resource specialist program in 1980 by enacting Education Code sections 56362 et seq. Pursuant to those statutes, the resource specialist certificate of competence could be issued by CTC to teachers that hold a valid special education credential.[144] The resource specialist:

- Provides instruction and services to pupils with an individualized education plan (IEP) who are assigned to regular classroom teachers for a majority of a school day;
- Provides information and assistance to individuals with exceptional needs and their parents;
- Consults and provides resource information, and materials regarding individuals with exceptional needs to their parents and to regular staff members;
- Coordinates special education services with the regular school programs for each individual with exceptional needs;
- Monitors pupil progress, participates in the review and revision of IEPs, and refers pupils who do not demonstrate appropriate progress to the IEP team; and
- Emphasizes academic achievement, career and vocational development, and preparation for adult life at the secondary level of education.[145]

Education Code section 56362.5, which was enacted in 1980, directs CTC to adopt rules and regulations for a resource specialist certificate of competence. The regulations are required to contain a provision for a system of direct application to CTC for a certificate of competence for each teacher who holds a valid special education credential and satisfies the following requirements:

- Provided instruction and services as specified in "subdivision (a) of Section 80070.1 of Title 5 of the California Administrative Code as it read immediately prior to July 28, 1980, for two years prior to September 1, 1981."
- Provided instruction and services as specified in "subdivision (b) of Section 80070.2 of Title 5 of the California Administrative Code as it read immediately prior to July 28, 1980, for two years prior to June 30, 1983.

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[143] Register 81, No. 23.

[144] Education Code section 56362.5.

[145] Education Code section 56362 (a).

The statute also directed that the regulations establish a system for verification of competencies from CTC-approved institutions of higher education that offer a resource specialist certificate program and approved assessment panels for resource specialist certification.

Sections 80070.2 and 80070.3 govern the resource specialist certificate of competence on direct application to CTC for the preliminary and clear certificate. To obtain the preliminary certificate, section 80070.3 requires the teacher to provide verification of three or more years of teaching experience by the appropriate administrative official of the district, special education services region, or county office of education at which the experience took place.[146] The teacher is also required to submit a written statement of employment as follows:

> The written statement of employment shall be completed and signed by the appropriate administrative official of the employing district, special education services region, or county office operating "local plans" pursuant to Education Code section 56200, and shall include a statement indicating that the candidate shall engage in a course of study at an institution of higher education approved by the Commission, or in an approved program of in-service, as described in the local district's, special education service region's, or county office's approved comprehensive plan, designed to provide the skills/knowledge/experience required to qualify for the clear Certificate of Competence as described in Section 80070.8.[147]

To obtain a clear resource specialist certificate, section 80070.2 requires the teacher to comply with the instruction and services requirements of Education Code section 56362.5, and to submit verification of that experience, on forms provided by CTC, by the appropriate administrative official of the district, special education services region, or county office of education.

Section 80070.4 of the regulations governs the clear resource specialist certificate of competence issued on the recommendation of an institution of higher education that has an approved program of study. A teacher seeking to obtain the resource specialist certificate in this manner must also submit verification of three or more years of teaching experience, including both regular and special education teaching experience, as defined in the regulations. "The experience shall be verified by the appropriate official of the district, special education services region, or county office in which the experience took place."

And finally, section 80070.6 of the regulations governs the clear resource specialist certificate of competence issued on the recommendation of a CTC-approved school district, county office of

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[146] "Three or more years of teaching experience, including both regular and special education teaching experience" is defined in section 80070.1 as full-time experience in one or more of the combinations specified in the regulation. The combinations include experience in both the regular classroom and the special education classroom.

[147] Section 80070.8 of the regulations requires the candidate for the resource specialist certificate to demonstrate the skills, knowledge and performance for each of the following functions: services to consult teachers, students, parents; coordination services to assist the IEP team in the planning and implementation of the student's plan; services to implement the laws, regulations, and other compliance requirements as specified; services to provide staff development and in-service education; providing parent education and counseling.

education, or special education service region with a comprehensive local plan. To obtain the certificate using this option, the teacher must submit the following verifications:

- Verification of three or more years of teaching experience, including both regular and special education experience.
- Verification by the director of the school district, county office, or special education service region with a CTC-approved comprehensive "local plan" that assesses and recommends the applicant for the resource specialist certificate of competence.
- Verification that the applicant has successfully demonstrated all competencies described in section 80070.8.

The claimant requests reimbursement to complete the verifications required by sections 80070.2, 80070.3, 80070.4, and 80070.6.

The Commission finds that sections 80070.2, 80070.3, 80070.4, and 80070.6 of the Title 5 regulations do not impose a state-mandated program on school districts. The plain language of these regulations imposes requirements on the applicant seeking the resource specialist certificates, and provides various options to obtain those certificates. The experience and employment verifications required by these regulations are triggered by the local hiring decisions of the school district. State law does not require school districts to hire a teacher who does not already have a clear resource specialist certificate.

Accordingly, the Commission finds that sections 80070.2, 80070.3, 80070.4 and 80070.6 of the Title 5 regulations do not impose a state-mandated program on school districts.

C. Authorized Assignments of Teachers

Under existing law, teacher assignments made by school districts are annually monitored and reviewed by the county superintendent of schools to ensure that the rate of misassignments remains low.[148]

The claimant requests reimbursement for activities allegedly imposed by two regulations governing the assignment of credentialed teachers to areas of study for which no single subject credential exists, and the assignment of certain teachers to direct and develop reading programs. These are discussed below.

1. Assignment of Teachers to Courses for Which No Single Subject Credential Exists (Cal.Code Regs, tit.5, § 80005)[149]

Section 80005 of the regulations was enacted in June 2000. Section 80005(a) provides that the holder of a single subject teaching credential may be assigned by a school district to teach courses that fall within broad subject areas listed in this subdivision and on their credential. For example, a single subject teaching credential holder in art may teach art appreciation, art history, arts and crafts, art theory, calligraphy, cartooning, ceramics, commercial art, costume design, crafts, design, drawing, humanities, illustration, interior decoration, jewelry, leathermaking, painting, photography, sculpture, stagecraft, and yearbook.[150] The holder of a single subject

[148] Education Code Section 44258.9.

[149] Register 2000, No. 22.

[150] California Code of Regulations, title 5, section 80005(a)(2).

teaching credential in English may teach composition, creative writing, debate, drama, forensics, grammar, humanities, journalism, language arts, language structure, literature, poetry, public speaking, speech, theater arts, and yearbook.[151] Some of the subjects are listed under more than one category. For example, photography is listed under art, but also under Industrial and Technology Education. And yearbook is listed under art, but also under English.

Subdivision (b) states that the holder of a teaching credential based on a baccalaureate degree and a teacher preparation program, including student teaching or the equivalent, may be assigned, with his or her consent, to teach subject-matter classes that do not fall within or are not directly related to the broad subject areas listed in subdivision (a), if the employing agency has determined the teacher has the requisite knowledge and skills. These courses may include, but are not limited to, life skills, conflict management, study skills, leadership, teen skills, and study hall. If the assignment of a teacher is made for one of these courses that do not fall within the subject areas listed in subdivision (a), verification of the decision must be kept on file in the office of the employing agency for purposes of the county superintendent's monitoring of certificated assignments and potential misassignments of teachers pursuant to Education Code section 44258.9(b).

The claimant requests reimbursement for "determining if a teacher has the requisite knowledge and skills to teach subject-matter classes and keep verification of this decision on file" pursuant to section 80005(b) of the Title 5 regulations.[152]

The Commission finds that section 80005(b) does not impose a state-mandated program on school districts.

The example of courses identified in subdivision (b) (life skills, conflict management, study skills, leadership, teen skills, and study hall), are courses that are not directly related to the subject areas identified in section 80005(a) and listed on a single subject teaching credential issued by the state. Thus, the state cannot verify if a teacher assigned to the courses for which no single subject credential exists, is qualified to teach that particular course of study or is properly assigned. And, in those circumstances, section 80005(b) authorizes a school district to assign a teacher to those courses on the condition that the district determines if the teacher has the requisite knowledge and skills. The plain language of section 80005(b), states that the holder of a teaching credential "may" be assigned to teach subject-matter classes that do not fall within or are not directly related to the broad subject areas listed in (a). The use of the word "may" in the regulation makes the activity "permissive," and not mandated by the state.[153] The California Supreme Court stated in the *Kern High School Dist.* case:

> [A]ctivities undertaken at the option or discretion of a local government entity … do not trigger a state mandate and hence do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.[154]

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[151] California Code of Regulations, title 5, section 80005(a)(4).

[152] Exhibit A, Declaration of Brian Smith, page 10.

[153] Education Code section 75.

[154] *Kern High School Dist., supra*, 30 Cal.4th 727, 742.

In addition, state law does not require school districts to offer courses in conflict management, study skills, leadership, and study hall; the example of courses listed in section 80005(b). Nor are school districts required to comply with section 80005(b) when offering the course of study required by law. Education Code section 51220.5, for example, requires school districts to offer a course of study in parenting skills for grades 7 and 8 to the extent funding is provided. The content for the course shall be designed to develop knowledge of child growth and development, parental responsibilities, household budgeting, child abuse and neglect issues, personal hygiene, maintaining healthy relationships, teen parenting issues, and self-esteem.[155] Although these topics may fall within the areas of study identified in section 80005(b) (i.e., life skills, teen skills, and conflict management), state law does not require school districts to offer these areas of study as independent separate courses, as allowed by section 80005(b) of the regulations. Instead, school districts have the choice to meet the course of study requirement of Education Code section 51220.5 within existing single subject courses of study, such as consumer and home economics. [156] Consumer and home economics are areas of study that fall within the single subject credential of home economics and, thus, the qualifications of the holder of that credential is verified by the state.[157]

Therefore, decisions to assign teachers to classes offered by the school district that fall outside the single subject area credentials issued by the state, to verify the qualifications of the teacher for those courses, and to maintain that verification on file pursuant to section 80005(b), are decisions of a local school district and are not mandated by the state.

Accordingly, the Commission finds that California Code of Regulations, title 5, section 80005(b) does not impose a state-mandated program on school districts.

2. Assignment of Teachers to Develop, Direct, Implement, or Coordinate Reading Programs (Cal.Code Regs., tit. 5, § 80020.4.1)[158]

Section 80020.4.1 of the title 5 regulations generally authorizes those holding a multiple or single subject teaching credential, or a designated subjects adult teaching or vocational credential, to develop, direct, implement, or coordinate programs designed to improve instruction and enhance student learning in the subject areas of the credential.

Section 80020.4.1(d) provides, however, that only those persons holding a reading and language arts specialist credential or an administrative services credential may develop, direct, implement, and coordinate school district or county reading programs. And, effective July 1, 2004, only those that hold a reading and language arts specialist credential, a restricted reading specialist credential, a reading certificate, or an administrative services credential, may develop, direct, implement, or coordinate school site reading programs.

Section 80020.4.1(e) is a grandparent clause authorizing school districts to maintain the service of a teacher as a school site reading program coordinator that does not have a specialist or

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[155] Education Code section 51220.5.

[156] Education Code section 51220.5(e); California Code of Regulations, title 5, section 80005(a)(6).

[157] California Code of Regulations, title 5, section 80005(a)(6).

[158] Register 2000, No. 15.

administrative services credential, or a reading certificate, for the program if the individual has completed three years of reading coordinator experience *before* July 1, 2004, and holds a teaching credential based on a bachelor's degree and a teaching preparation program, including student teaching or the equivalent. Employing agencies are required to keep verification of the person's teaching experience on file. Section 80020.4.1(e) of the title 5 regulations states the following:

> An individual who has developed, directed, implemented or coordinated reading programs for a minimum of three years prior to July 1, 2004, on the basis of a California teaching credential based on a baccalaureate degree and a teacher preparation program, including student teaching or the equivalent, shall be *authorized* to continue in such assignment. Verification of this teaching experience must be kept on file in the office of the employing agency for purposes of the monitoring of certificated assignments pursuant to Education Code Section 44258.9(b). (Emphasis added.)

Claimant requests reimbursement for keeping on file verification of the teaching experience for an individual who has developed, directed, implemented or coordinated reading programs for a minimum of three years prior to July 1, 2004.

The Commission finds that section 80020.4.1 does not impose a state-mandated activity on school districts. Keeping assigned teachers without the specified credentials or reading certificate as a program coordinator is expressly "authorized" and not required by the regulation. Thus, the downstream requirement to maintain a verification of the teaching assignment is also voluntary and not mandated by the state. [159]

Therefore, the Commission finds that section 80020.4.1 of the title 5 regulations does not impose a state- mandated program on school districts.

D. <u>Alternative Certificates, Permits, and Waivers</u>

Generally, teachers must be fully credentialed in order to be employed in a California public school or school district.[160] Under limited circumstances, however, the Legislature has authorized CTC or the county office of education to issue certificates, permits, and waivers authorizing persons who are not fully-credentialed to teach in public schools. These alternative certifications include district intern certificates, limited assignment permits, emergency permits, and credential waivers.

These alternative programs allow a school district to hire non-credentialed individuals to temporarily fill vacancies of teacher positions. In the "Annual Report on California Teacher Preparation Programs: 2001-02" prepared by CTC,[161] CTC describes the "teacher shortage" for that time period and the use of these alternative programs as follows:

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[159] *Kern High School Dist., supra*, 30 Cal.4th 727, 742.

[160] Education Code section 44830.

[161] This report stems from the Higher Education Reauthorization Act, passed by Congress in 1998. Title II of the Act included federal grant programs that advance efforts to improve the recruitment, preparation, and support of new teachers. Title II also established reporting requirements for state agencies that certify new teachers for service in public schools. States are

> During the 2001-02 academic year, there were over 300,000 full-time teachers teaching in California's public schools. [Footnotes omitted.] Census 2000 revealed what most Californians already knew – that the state's population had grown dramatically over the past decade. That rapid growth was accompanied by similar growth in enrollment in the state's public school system, such that California public schools now educate approximately 6.1 million school children. Both the rapidity of the growth and the size of the school age population, coupled with natural attrition in the profession, contributed to a teacher shortage in the state. Although California instituted several important initiatives and programs to recruit, prepare and retain qualified teachers, California's teacher shortage created a need for many schools and school districts to meet staffing needs through the employment of individuals who do not hold a teaching credential.[162]

As more fully described below, these programs provide options for school districts to fill vacancies and are not legally mandated by the state to be used. The decision to use these employment options is up to the school district, under specific conditions and, in most cases, with the approval of CTC. The claimant, citing to the CTC report described above, contends however that school districts are practically compelled by state law to comply with these programs and the downstream requirements involved. Although the CTC report may be considered by the Commission,[163] the report provides evidence for only the 2001-2002 year, and only on a statewide level. There is no concrete evidence in the record from school districts showing that a school district faced certain and severe penalties or other "draconian" consequences for not participating in these programs during the eligible period of reimbursement for this test claim (which would begin on July 1, 2002), or that a school district was at any time left with no reasonable alternative but to comply in order to carry out its core mandatory function to provide educational services to K-12 students. Thus, the Commission finds that these programs are not mandated by the state.

A description of the program requirements and the mandate findings are below.

1. Prioritizing the Hiring of Persons with Alternative Certificates, Permits, or Credential Waivers (Ed. Code, § 44225.7)[164]

Education Code section 44225.7(a) was enacted in 1999 to prioritize the hiring of persons who are not fully credentialed. The statute was intended to reduce the number of emergency credentials and credential waivers issued and used in the state. Although this statute must be read with the provisions governing the alternative options available to school districts, which are

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required to collect information and submit annual reports each October to the U.S. Department of Education that include information about teacher certification requirements, accountability and performance information about preparation programs, and a description of efforts to improve teacher quality. ("Annual Report on California Teacher Preparation Programs: 2001-02", p. 1.)

[162] *Id*. at page 34.

[163] The Commission may take official notice of this state agency publication. (Cal. Code Regs., tit. 2, § 1187.5(c).)

[164] Statutes 1999, chapter 381.

discussed more fully below, the statute does contain some general provisions that are analyzed here.

Education Code section 44225.7 provides generally that, if a suitable fully prepared teacher is not available to a school district, the district under all circumstances shall make reasonable efforts to recruit an individual for the assignment, in the following order: (1) a candidate who is qualified to participate and enrolls in an approved internship program in the region of the school district; (2) a candidate who is scheduled to complete preliminary credential requirements in six months. A "fully prepared teacher" is defined in subdivision (e) to mean the following:

> …a "fully prepared teacher" means an individual who has completed a teacher preparation program. For purposes of this subdivision, a "teacher preparation program" means either a set of courses, including supervised field experience, or an equivalent alternative program, that provides a curriculum of systematic preparation for serving as an educator in California public schools.

Section 44225.7(b) then provides that "if a suitable individual who meets the priorities listed in [subdivision] (a) is not available to the school district, the district, as a last resort, *may* request approval for the assignment of a person who does not meet that criteria." (Emphasis added.) The options available to districts who are not able to fill a position with a fully-credentialed teacher, an intern, or a candidate who is scheduled to complete the credential requirements in six months, include the options of obtaining limited assignment permits, emergency permits, and credential waivers.

The claimant requests reimbursement to make reasonable efforts to recruit an individual for the assignment based on the priority in the statute.

The Commission finds that Education Code section 44225.7 does not impose a state-mandated new program or higher level of service on school districts. School districts are not mandated by state law to request the approval from CTC for the assignment of persons who are not fully prepared teachers. The plain language of the statute provides that the district "may" request approval for those assignments. Moreover, school districts were required to recruit and employ qualified individuals before the enactment of section 44225.7.[165] The statute simply prioritizes the hiring under specified situations, and does not mandate a higher level of service. Furthermore, the analysis in the following sections show that many of the alternative permits and waivers discussed in this statute existed before section 44225.7 was enacted, and school districts were also required under prior law to hire fully credentialed teachers first. Accordingly, the Commission finds the establishment of a priority for hiring by section 44225.7 does not impose a state-mandated new program or higher level of service on school districts.

[165] Education Code section 44830(a) as amended in 1996 and as it still exists in current law.

2. District Intern Program (Ed. Code, §§ 44326, 44327, 44830.3, 44885.5)[166]

In 1983, the Legislature established the district intern program (Stats. 1983, ch. 498) as an alternative route into teaching. A district internship is a fully paid position in a public school where the intern serves as teacher of record for pupils in grades 1 to 12, classes in bilingual education, or for pupils in special education classes while simultaneously participating in a teacher preparation program. Each district intern is required to teach with the assistance and guidance of employees that possess a valid certification at the same level or the same type of credential as the district intern. The purpose of the program is to expand the pool of qualified teachers by attracting persons into teaching who might not otherwise enter the classroom, and to enable school districts to fill staffing needs while providing professional preparation for interns.[167]

Education Code section 44830.3(a) provides the authority for a school district to offer a district intern program and employ district interns to teach pupils in grades 1 to 12, bilingual education, or special education as follows:

> The governing board of any school district that maintains kindergarten or grades 1 to 12, inclusive, classes in bilingual education, or special education programs for pupils with mild and moderate disabilities, *may*, in consultation with an accredited institution of higher education offering an approved program of pedagogical teacher preparation, employ persons authorized by the Commission on Teacher Credentialing to provide service as district interns to provide instruction to pupils in those grades or classes as a classroom teacher. The governing board shall require that each district intern be assisted and guided by a certificated employee selected through a competitive process adopted by the governing board . . . . (Emphasis added.)

District intern certificates, issued by CTC, are valid for two years (or longer for special education credentials) and may be renewed for an additional year. They require an applicant to earn a baccalaureate degree, pass the CBEST, and pass a subject matter examination administered by CTC.[168] When the district intern has successfully completed the professional development plan and has received the experience required for the credential, the governing board of the school district employer can recommend the district intern for the appropriate credential issued by CTC.

Pursuant to Education Code section 44225.7, a district intern may only be hired if a "suitable fully prepared teacher is not available to a school district . . . ." If a school district employs district interns, the following requirements must be met:

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[166] Education Code sections 44326 (Stats. 1983, ch. 498, Stats. 1987, ch. 1468, Stats. 1994, ch. 673, Stats. 2002, ch. 1087), 44327 (Stats. 1983, ch. 498, Stats. 1984, ch. 482, Stats. 1987, ch. 1468, Stats. 1994, ch. 673, Stats. 1994, ch. 922), 44830.3 (Stats. 1983, ch. 498, Stats. 1984, ch. 482, Stats. 1987, ch. 1468, Stats. 1994, ch. 673, Stats. 1996, ch. 303, Stats. 1996, ch. 948, Stats. 2002, ch. 1087), and 44885.5 (Stats. 1983, ch. 498, Stats. 1983, ch. 1302, Stats. 1987, ch. 1468)

[167] CTC 2008-2009 report, "Alternative Pathway to Certification," November 2009, page 1.

[168] Education Code section 44325(b) & (c).

- District interns are required "to teach with the assistance and guidance of certificated employees through a competitive process adopted by the governing board after consultation with the exclusive teacher representative unit or by personnel employed by institutions of higher education to supervise student teachers." [169]
- CTC, in consultation with school districts that participate in the district intern program, is required to revise existing standards, and adopt additional standards related to the quality of the training, support, evaluation, and performance of district interns by July 1, 1995. [170]
- School districts that offer a district intern program are required to maintain program records "so that the credit earned by each district intern is transferrable to his or her academic record in the same manner as if the intern had participated in a college or university program."[171]
- Participating school districts are required to develop and implement a professional development plan for district interns in consultation with an accredited institution of higher education to include provisions for an annual evaluation, a description of courses to be completed, pre-service training, and specified instruction if the intern will be providing service for bilingual, special education, or pupils in grades 1 through 6. The statute further provides for district intern and teacher-supervisor compensation, and authorizes the district to recommend to the CTC that the district intern be credentialed upon completion of the program.[172]
- School districts are required to classify district interns as probationary employees. Once the intern has completed service as a district intern, the school district may reelect and employ the teacher as a permanent employee.[173]

The claimant requests reimbursement for these activities.

The Commission finds that school districts are not mandated by the state to participate in the district intern program or to hire a district intern to fill a staffing need and, thereby, comply with these requirements. The plain language of Education Code section 44830.3 states that school districts "may" employ persons authorized by CTC "to provide service as district interns to provide instruction to pupils in those grades or classes as a classroom teacher." The statutory scheme also requires a school district to first hire a fully prepared teacher before even considering the employment of a district intern. Thus, the options provided by these statutes are based on local hiring decisions and are not legally compelled by state law.

Moreover, there is no evidence in the record that school districts are practically compelled by state law to participate in the district intern program or hire a district intern. The courts have found that practical compulsion requires a concrete showing, with evidence in the record, that a

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[169] Education Code sections 44326 and 44830.3, as last amended in 2002 (Stats. 2002, ch. 1087).

[170] Education Code section 44327 (as last amended by Stats. 1994, ch. 673)

[171] *Ibid*.

[172] Education Code section 44830.3 (as last amended by Stats. 2002, ch. 1087).

[173] Education Code section 44885.5.

school district faces certain and severe penalties, such as double taxation or other draconian consequences for not complying the test claim statutes and regulations, or that a school district is left with no reasonable alternative but to comply in order to carry out its core mandatory function to provide educational services to K-12 students.[174]

Here, there are no apparent penalties in the law for not participating in the district intern program. While there is a monetary penalty imposed on a school district when it hires a person to render service as a teacher who does not have any valid certification document issued by CTC (which includes alternative and emergency permits), that penalty is not directly related to a school district choosing not to participate in the district intern program.[175] As evidenced in this claim, there are many options available to school districts to fill positions with persons with valid certification documents.

Nor is there evidence in the record for the relevant period of potential reimbursement that a school district was left with no reasonable alternative but to participate in a district intern program. In addition, there is no information in the record regarding the types of courses where pupils were served or will be served by district interns. For example, school districts are required by state law to offer and provide certain courses of study for grades 1 to 12 (Ed. Code, §§ 51200, et seq.), but have full discretion to provide other courses of study prescribed by the local governing board. (Ed. Code, §§ 51210(h), 51220(k), 51225.3(a)(2).) School districts that participate in the district intern program and fill a discretionary course with a district intern would not be eligible for reimbursement, even if they had no true alternative to fill those positions, since offering the course is itself discretionary. The California Supreme Court has instructed the Commission, when analyzing whether a statute imposes state-mandated activities, to determine if the claimant's participation in the underlying program is voluntary or compelled 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.*[176]

Accordingly, the Commission finds that Education Code sections 44326, 44327, 44830.3, and 44885.5 do not impose a state-mandated program on school districts.

3. Limited Assignment Permits (Cal.Code Regs. tit. 5, §§ 80026, 80027)

A limited assignment permit is a permit issued at the request of an employing school district to allow fully credential teachers to teach outside their authorized subject areas for a one-year period, while the teacher completes the requirements to earn the additional authorization for that assignment. School districts have had the authority to temporarily assign a teacher outside the

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[174] *Kern High School Dist., supra,* 30 Cal.4th 727, 731, 743, 749-754*; San Diego Unified School Dist., supra,* 33 Cal.4th 859, 884-887*; Department of Finance (POBRA), supra,* 170 Cal.App.4th 1355, 1362-1368.

[175] Education Code section 45037.

[176] *Kern High School Dist., supra,* 30 Cal.4th 727, 731. (Emphasis added.)

authorized subject area since 1976, when former section 5920.4 was added to the Title 5 regulations. Former section 5920.4 allowed for limited assignment "emergency" teaching credentials to be issued, following the prior approval of the assignment from the local governing board, as follows:

> An emergency credential authorizing limited teaching service may be granted to teachers currently employed by the district who hold valid clear, partial, or preliminary single or multiple subject teaching credentials or standard elementary or secondary teaching credentials in accordance with the following procedures:
>
> (a) The application is accompanied by a statement signed by the teacher and an appropriate school district official verifying consent of both parties; describing briefly the whole assignment which the emergency credential authorizes; and, verifying prior approval of the assignment by the local governing board.
>
> (b) The emergency credential issued for this purpose will be valid for one year and may be reissued only twice and each time in accordance with the initial issuance requirements. No emergency credential will be issued for more than a total of three years. The assignment outside the regular credential authorization beyond three years may continue only if the teacher has added the authorization either (1) or (2):
>
> 1. Completing the appropriate subject matter program having waiver status, or
>
> 2. Passing the appropriate examination adopted by the Commission
>
> (c) The fee for issuance for each emergency credential for this limited teaching service shall be set at twenty dollars.

This regulation was renumbered in 1977 to section 80027, without substantive change.[177] In 2001, CTC amended the regulations to make a number of changes. The CTC memorandum 01-0009, dated June 20, 2001, describes the changes as follows:

> First, the term "emergency" was dropped from the title because this permit is an assignment option for a credentialed teacher rather than an emergency with a non-fully prepared teacher. Second, an employing agency must submit a Declaration of Need for Fully Qualified Educators by estimating the number of teachers the agency reasonably expects to employ during the school year on a limited assignment permit. Prior to the emergency regulations, an employing agency needed to request governing board approval for each limited assignment permit. Third, the amended regulations have eliminated the need for the applicant to attain permanent status. However, the employing district must now assign an experienced educator in the subject area of the limited assignment permit. The experienced educator must have completed three years of full-time classroom experience in the subject area of the permit.

[177] Register 77, No. 51.

> Fourth, agencies requesting Single Subject Limited Assignment Permits will be restricted to the 13 statutory subjects found in Education Code Section 44257. Those subjects are agriculture, art, business, English, foreign language, health science, home economics, industrial and technology education, mathematics, music, physical education, science . . . and social science. In the past an employing agency could request any subject to be listed on the permit.
>
> Fifth, the consent of the teacher is still required, however the written statement verifying consent of the teacher is now maintained with the employing agency rather than filing it with the [CTC].
>
> These regulations were approved to reduce the number of emergency permits and credential waivers. The [CTC] strongly suggests that employing agencies utilize the limited assignment permit rather than the emergency permit whenever possible. Employing agencies that request credential waivers for individuals that qualify for the limited assignment permit will be asked to resubmit the application and apply for the permit.[178]

Thus, beginning in 2001 and during the period of reimbursement for this claim, the state "strongly" encouraged school districts to utilize limited assignment permits, instead of hiring persons with emergency permits or credential waivers, to fill staffing needs in the following subjects: agriculture, art, business, English, foreign language, health science, home economics, industrial and technology education, mathematics, music, physical education, science, and social science.

To obtain an initial limited assignment permit, the applicant must hold a valid California teaching credential based on a baccalaureate degree and a professional preparation program, including student teaching or the equivalent, and the applicant must submit the application to CTC.[179] In addition, school districts seeking to exercise the limited assignment option are required to perform the following activities before CTC will approve the issuance of a limited assignment permit:

- Submit to CTC an annual declaration of need for fully qualified educators that satisfies the provisions of section 80026 of the Title 5 regulations. The declaration of need is an annual form (CL-500)[180] submitted to CTC from employing agencies, where the governing board of a school district or a superintendent of a county office of education certifies that there is an insufficient number of certificated persons who meet the districts' "specified employment criteria" for certain positions in the year covered by the declaration and that the district estimates it will need to employ persons with limited assignment permits. The declaration of need includes the following information with respect to limited assignment permits:
    1. The district's estimate of the limited assignment permits for each subject needed in the year covered by the declaration. The estimate shall be based on the

[178] Exhibit ___.

[179] California Code of Regulations, title 5, section 80027(a)(7).

[180] Exhibit ___.

previous year actual needs and projections of enrollment. The declaration of need shall be revised when the number of limited assignment permits needed exceeds the estimate by ten percent.

2. A brief description of the efforts taken to locate and recruit individuals who hold the needed credentials. The description may include dated copies of written announcements of vacancies that were mailed to college or university placement centers.
3. A description of the district's efforts to establish alternative training options, including pre-internship and internship programs.[181]
4. A certification that there is an insufficient number of certificated persons who meet the employing agency's specified employment criteria to fill necessary positions.
5. The declaration shall be adopted by the governing board of the school district at a regularly scheduled meeting and shall not be placed on consent. A declaration of need filed by the county office of education shall be adopted by the county superintendent following a public announcement of the intent to adopt a declaration of need.[182]

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[181] The information required to be completed on the Declaration of Need Form CL-500 is consistent with the priorities for hiring identified in Education Code section 44225.7. Form CL-500 states in this respect the following:

"By submitting this annual declaration, the district is certifying the following: A diligent search, as defined below, to recruit a fully prepared teacher for the assignment(s) was made

If a suitable fully prepared teacher is not available to the school district, the district will make reasonable effort to recruit based on the priority stated below."

The form further states the following:

"EFFORTS TO RECRUIT CERTIFIED PERSONNEL

The employing agency declares that it has implemented in policy and practices a process for conducting a diligent search that includes, but is not limited to, distributing job announcements, contacting college and university placement centers, advertising in local newspapers, exploring incentives included in the Teaching as a Priority Block Grant, . . . participating in state and regional recruitment centers and participating in job fairs in California.

If a suitable fully prepared teacher is not available to the school district, the district made reasonable efforts to recruit an individual for the assignment, in the following order:

1. A candidate who qualifies and agrees to participate in an approved internship program in the region of the school district;
2. An individual who is scheduled to complete initial preparation requirements within six months."

[182] California Code of Regulations, title 5, section 80027(a).

- When applying for the initial issuance of a limited assignment multiple or single subject teaching permit, show that the applicant is employed by the school district or county office of education requesting such assignment and that he or she is assigned an experienced educator by the district or county office of education in each subject are of the limited assignment if the applicant has not obtained permanent status;[183]
- Keep on file a written statement verifying consent of the teacher to serve on the limited assignment multiple or single subject teaching permit.[184]

The limited assignment permit can be reissued in any one subject area twice if the holder completes the renewal requirements, including a professional development program in the areas of the limited assignment permit, and the employing agency requests the permit. When submitting an application for renewal of a limited assignment multiple or single subject teaching permit, school districts are required to:

- Include a declaration of need for fully qualified educators that satisfies the provisions of section 80026, and
- When necessary, submit a validation of professional development statement that includes a brief description of:
    - The content of the teacher's professional development program;
    - The means by which the employing agency validated the quality and appropriateness of the teacher's professional development program; and
    - The manner in which the results of the teacher' professional development program were evaluated.
- Keep on file a written statement verifying consent of the teacher to serve on the limited assignment multiple or single subject teaching permit.[185]

The claimant requests reimbursement for these activities.

The Commission finds, however, that school districts are not mandated by state law to request a limited assignment permit and comply with these activities. The limited assignment permit is an option available to employing school districts to fill staffing vacancies. In 2001, section 80027 was amended to clarify that a limited assignment multiple or single subject permit is not an "emergency" option for non-fully prepared teachers, but an assignment option for credentialed teachers.[186] In 2009, CTC amended section 80027 again to clarify that the activities imposed on the school district to obtain a limited assignment multiple or single subject teaching permit is required only if the "employing agency elects to request" the permit.[187] Although the state encourages school districts to use this option before seeking an emergency permit or credential waiver, there is no state-mandated duty imposed on school districts to exercise this option.

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[183] California Code of Regulations, title 5, section 80027(a).

[184] California Code of Regulations, title 5, section 80027(a).

[185] California Code of Regulations, title 5, section 80027(b).

[186] CTC memorandum 01-0009, dated June 20, 2001.

[187] Register 2009, No. 27; CTC Coded Correspondence 09-15, dated July 23, 2009.

Moreover, the filing of a declaration of need with CTC seeking the issuance of limited assignment permits for the year when the district finds there is no suitable fully prepared teacher available is itself, a discretionary act. In *California Teachers Association v. Commission on Teacher Credentialing,* the court interpreted the filing of a statement of need pursuant to section 80026 for obtaining and hiring persons with emergency credentials. [188] Under the law, a statement of need under section 80026 must be filed and approved by CTC for both limited assignment permits and emergency permits and, thus, this case is instructive for this issue. In the case, fully-credentialed teachers, who unsuccessfully applied for teaching jobs, challenged the actions of a school district and CTC for filling those positions with persons holding emergency credentials. The fully-credentialed teachers argued that by virtue of their regular credentials alone, they were "qualified" for the position, that the districts had a ministerial duty to hire credentialed candidates, and that the districts had no discretion to hire persons with emergency credentials when fully-credentialed teachers exist. The court determined that "nothing in title 5, California Code of Regulations, section 80026 [governing the statement of need] provides any limitation on a district's discretion. Rather the phrase "'deemed qualified by the district' expressly provides districts discretion …."[189] At the time the court issued its decision in 1992, section 80026 of the regulations required a school district filing a statement of need to "state either that a credentialed person is not available, *or that one or more credentialed persons are available, but are not deemed qualified by the district* . . . to hold the position." (Emphasis added.) That language in section 80026 has been amended to require school districts filing a statement of need for limited assignment permits to certify that "there is an insufficient number of certificated persons who meet the *employing agency's specified employment criteria* to fill necessary positions." The new phrase that there is "an insufficient number of certified persons who meet the employing agency's specified employment criteria," still provides school districts discretion in the hiring process. The school district's employment criteria are based on local hiring policies, and are not governed by state law. Thus, school districts are not legally compelled by state law to comply with the limited assignment permit process.

Nor is there any evidence of practical compulsion. The courts have found that practical compulsion requires a concrete showing, with evidence in the record, that a school district faces certain and severe penalties, such as double taxation or other draconian consequences for not complying the test claim statutes and regulations, or that a school district is left with no reasonable alternative but to comply in order to carry out its core mandatory function to provide educational services to K-12 students.[190]

Here, there are no apparent penalties in the law for not complying with the limited assignment process. While there is a monetary penalty imposed on a school district when it hires a person to render services as a teacher who does not have any valid certification document issued by CTC (which includes alternative and emergency permits), that penalty is not directly related to a

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[188] *California Teachers Association v. Commission on Teacher Credentialing* (1992) 7 Cal.App.4th 1469.

[189] *Id*. at page 1475.

[190] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 743, 749-754; *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 884-887; *Department of Finance (POBRA), supra*, 170 Cal.App.4th 1355, 1362-1368.

school district choosing not to comply with the limited assignment process.[191] As evidenced in this claim, there are many options available to school districts to fill positions with persons with valid certification documents.

Nor is there evidence in the record that a school district was left with no reasonable alternative and, in fact, was practically compelled during the relevant period of reimbursement to resort to the limited assignment process in order to carry out the core mandatory function to provide required educational services to K-12 students. Even if there was evidence that a district filed a statement of need for approval of hiring a person eligible to teach under a limited assignment permit, that evidence would not be relevant by itself to prove practical compulsion. The statement of need required by section 80026 of the regulations to obtain a limited assignment permit is an annual filing by a district that "*estimates*" the number of unprepared teachers the district might need for the year, with a promise from the district that it will first try to recruit fully credentialed teachers and interns. An estimate of need is not "certain" for purposes of practical compulsion, and does not amount to concrete evidence that an emergency in fact existed, or a certain and severe consequence would occur, forcing the district to go through the process and hire an individual eligible for a limited assignment permit for a teaching position.

Moreover, there is no evidence in the record that school districts were practically compelled to use the limited assignment permit process to teach courses required by the state to be offered to K-12 students. For example, school districts are required by state law to offer and provide certain courses of study for grades 1 to 12 (Ed. Code, §§ 51200, et seq.), but have full discretion to provide other courses of study prescribed by the local governing board. (Ed. Code, §§ 51210(h), 51220(k), 51225.3(a)(2).) Even if school districts could show they were practically compelled to go through the limited assignment permit process, to the extent they did so to fill a staffing need for a discretionary course, they would not be eligible for reimbursement.

Accordingly, the Commission finds that sections 80026 and 80027, with respect to limited assignment permits, do not impose a state-mandated program on school districts.

4. Emergency Permits (Ed. Code, §§ 44300, 44301 & 44225.7(a), Cal. Code Regs., tit. 5, §§ 80023.1, 80023.2, 80025, 80025.1, 80025.5, 80026, 80026.1, 80026.5, 80026.6)[192]

Emergency permits or credentials have long been authorized by the Legislature to address the shortage of qualified teachers, and since 1943, the law has evolved to now offer over 17 types of emergency permits.[193, 194]

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[191] Education Code section 45037.

[192] Statutes 1988, chapter 1355; Statutes 1993, chapter 378; Statutes 1997, chapter 344; Statutes 1997, chapter 934; Statutes 2001, chapter 585; Register 76, No. 21; Register 77, No. 51; Register 81, No. 15; Register 83, No. 31; Register 93, No. 25; Register 94, No. 16; Register 95, No. 15; Register 95, No. 32; Register 98, No. 3; Register 99, No. 46.

[193] See, *California Teachers Association v. Governing Board of the Golden Valley Unified School District* (2002) 98 Cal.App.4th 369, 379-381; *California Teachers Association v. Commission on Teacher Credentialing* (1992) 7 Cal.App.4th 1469, 1472-1474.

[194] California Code of Regulations, title 5, section 80023.

Here, the claimant seeks reimbursement to comply with the process of obtaining an emergency multiple or single subject teaching permit and the following three emergency substitute teaching permits: (1) an emergency 30-day substitute teaching permit;[195] (2) an emergency career substitute teaching permit;[196] and (3) an emergency designated subjects vocational educational permit for 30-day substitute teaching service.[197] As more fully described below, the Commission finds that school districts are not mandated by state law to comply with the provisions governing the issuance of emergency permits.

a) Emergency single subject or multiple subject teaching permit

Section 80023.1 of the Title 5 regulations provides that school districts and county offices of education "may" submit emergency permit applications for multiple or single subject permits. The emergency permit is generally valid for one year and may be extended as specified. The teaching or service authorized by the emergency permit is restricted to schools operated by the employing agency that "requested" the permit. To obtain a single or multiple subject emergency permit, the following requirements and procedures are established:

- School districts are required to submit a justification for the emergency permit to CTC, which shall include,
    1. Annual documentation that the district has implemented in policy and practices a process for conducting a diligent search for a sufficient number of certificated teachers, including teacher candidates pursuing full-certification through internship, district internship, or other alternative routes established by CTC. (Ed. Code, §§ 44300(a)(3) and 44225.7(a); Cal. Code Regs., tit. 5, § 80026.)[198]
    2. An annual declaration of need for fully qualified educators based on the information in (1) above, and made in the form of a motion adopted by the governing board of the district or the county board of education at a regularly scheduled meeting of the governing board or the county board of education. The motion may not be part of the consent agenda and shall be entered in the minutes of the meeting. (Ed. Code, § 44300(a); Cal. Code Regs., tit. 5, §§ 80023.2, 80026.) This is the same annual declaration of need used for obtaining a limited assignment permit.
- The exclusive representative of certificated employees may submit a written statement to CTC agreeing or disagreeing with the justification submitted by the school district. (Ed. Code, § 44300(c).)
- The employing agency shall inform each applicant for an emergency permit that the employing agency will provide the orientation, guidance, and assistance required by section 80026.5 of the regulations; the name of the person providing the guidance; and

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[195] California Code of Regulations, title 5, section 80025.

[196] California Code of Regulations, title 5, section 80025.1.

[197] California Code of Regulations, title 5, section 80025.5.

[198] Education Code section 44225.7(a) phrases the requirement as follows: "the district has certified by an annual resolution of the governing board that it has made *reasonable efforts* to recruit a fully prepared teacher for the assignment." (Emphasis added.)

that in order to reissue an emergency permit, the applicant must complete a minimum of six semester units, or nine quarter units, of approved coursework for the related credential – or, for the first reissuance, be participating in a professional development program, and complete the equivalent as described in the employing agency's "plan to develop fully qualified educators," unless exceptions for reissuance are listed under the specific requirements for the type of emergency permit being issued. (Cal. Code Regs., tit. 5, § 80026.1.)

- The employing agency shall provide, and the person holding an emergency teaching permit shall attend, an orientation to the curriculum and to techniques of instruction and classroom management. (Ed. Code, § 44300(f); Cal. Code Regs., tit. 5, § 80026.5.)
- The emergency permit holder shall teach only with the assistance and guidance of a certificated employee of the district who has completed at least three years of full-time teaching experience, or the equivalent. (Ed. Code, § 44300(f); Cal. Code Regs., tit. 5, § 80026.5.)
- A person holding an emergency teaching permit shall participate in ongoing training, coursework, or seminars designed to prepare the individual to become a fully credentialed teacher in the subject are assigned. The employing agency shall verify that employees applying to renew their emergency permit are meeting these ongoing training requirements. (Ed. Code, § 44300(g); Cal. Code Regs., tit. 5, § 80026.6.)

Education Code sections 44300(a)(3) and (b) and 44225.7(a)(b) authorize CTC to approve the justification for the emergency permits submitted by the school district if the district has certified by an annual resolution of the governing board that it has made reasonable efforts through policy and practice to recruit fully prepared teachers. If a suitable fully prepared teacher is not available to the district, the district under all circumstances has made "reasonable efforts" to first recruit a candidate who is qualified to participate and enrolls in an approved internship program, or one who is scheduled to complete the preliminary credential requirements within six months. If a suitable individual who meets these priorities is not available, the district as a "last resort" may request approval for the emergency assignment.

In addition, Education Code section 44301 requires any person who does not hold a valid California teaching credential to pass the appropriate subject matter competency examination before he or she may be initially issued an emergency multiple or single subject teaching permit. The statute authorizes CTC to issue the emergency permit to an applicant who has not taken the appropriate subject matter competency test, provided the employing school district certifies that the applicant has not had the opportunity to take the test, and that the applicant shall take the appropriate test at the next regularly scheduled administration. The employing school district is required to discontinue employment of the person eight weeks after the date on which the test is administered if he or she does not give the employing school district evidence of having passed the test on that date.

Emergency credentials have been authorized since 1943 and, thus, many of these provisions are not new.[199] For example, immediately before the enactment of Education Code section 44300 (which authorizes CTC to issue emergency multiple or single subject permits), the process was

[199] Statutes 1943, chapter 815.

governed by former Education Code sections 44254, a statute that derives from pre-1975 statutes.[200] Former section 44254, which has not been pled in this claim, provided for the issuance of emergency credentials, which could only be issued when insufficient certified teachers are available. Former section 44254 further stated the following:

> In the event that a school district or a county office of education, after having solicited and reviewed applications for teaching positions, finds that there is an insufficient number of candidates for emergency credentials who hold baccalaureate degrees, the governing board of the district or the county board of education may, until January 1, 1987, make a declaration of insufficiency. The declaration shall be made in the form of a motion adopted by the governing board of the district or the county board of education at a regularly scheduled meeting of the governing board of the district or the county board of education and shall be entered into the minutes of the meeting.

Former sections 5020.1 and 5920.3 of the Title 5 regulations were initially adopted in 1973 and required that a statement of need be submitted and approved before an emergency teaching credential could be issued. The statement of need had to contain the following information: (1) the efforts made to obtain a qualified, credentialed person for the position; (2) state either that a credentialed person is not available, or that one or more credentialed persons are available but are not deemed qualified by the district or county superintendent of schools; and (3) that the applicant, if granted the emergency credential, will be employed in a specified position.[201]

These are the same requirements imposed by Education Code section 44300(a) and sections 80023.2 and 80026 of the Title 5 regulations and, thus, these activities are not new.

Moreover, prior law also required the applicant to pass a subject matter competency test. Beginning on July 1, 1987, emergency multiple or single subject credential candidates were required by former Education Code section 44254.5 to pass the appropriate subject matter competency examination before the emergency multiple or single subject permit may be initially issued. This statute also authorized CTC to issue the emergency credential to an applicant who had not taken the competency test, provided that the employing school district certifies that the applicant did not have an opportunity to take the test, that the applicant will take the test at the next regularly scheduled administration, and that the employing school district would discontinue employment of the person eight weeks after the date on which the test is administered if he or she does not give the employing school district evidence of having passed the competency test by that date. Education Code section 44254.5 has not been pled in this test

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[200] Education Code section 44254 was added in 1976, and was derived by former School Code section 5.127.1 (1943), and former Education Code sections 12060, 12008.1, 12042.1, 13117, and 13126 (added in 1970 and amended in 1971). Education Code section 44254.5 was added in 1986 (Stats. 1986, ch. 989.)

[201] Register 73, No. 26. See also, *Jones v. Oxnard School District* (1969) 270 Cal.App.2d 587, which describes the process for requesting an emergency credential in 1969. The court described former Administrative Code section 611, which required the submission of a statement of need signed by the school district to indicate that "no qualified, regularly certificated applicant of the type needed is available." *Id*. at p. 838.

claim, but does impose the same requirements as Education Code section 44301 and, thus, section 44301 does not mandate a new program or higher level of service.

The remaining provisions, including the training and guidance required when filling a position with a person holding an emergency permit, are new provisions in the law. In addition, the annual declaration of need for fully qualified educators, which must be filed before CTC is authorized to issue emergency multiple or single subject permits, has been expanded to require additional information from school districts.

These activities, however, are no longer required as of July 1, 2006. CTC, at its December 2003 hearing, voted to phase emergency multiple and single subject permits out, and replace the permit, beginning on July 1, 2006, with a short-term staff permit and provisional internship permit for multiple and single subjects, both of which have not been pled in this test claim.[202] CTC continued to issue initial emergency multiple and single subject permits for the 2004 and 2005 school years, but those permits expired on June 30, 2006. Thus, school districts did not perform any of the new activities associated with the emergency multiple or single subject permits pursuant to the test claim statutes and regulations after June 30, 2006.

The Commission finds that school districts are not legally compelled by state law to comply with these new activities. When analyzing the meaning of "state mandate" within article XIII B, section 6, the California Supreme Court has instructed the Commission to determine if the claimant's participation in the underlying program is voluntary or compelled 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.*[203]

Here, school districts are not legally compelled by state law to participate in the underlying program to request emergency permits for multiple or single subjects. Section 80023.1 of the Title 5 regulations plainly states that school districts and county offices of education "may" submit emergency permit applications for multiple or single subject permits. A local decision requiring a school district to incur costs does not constitute a state-mandated program.[204]

This conclusion is further supported by the court's decision in *California Teachers Association v. Commission on Teacher Credentialing*.[205] In that case, fully-credentialed teachers unsuccessfully applied for teaching jobs in Imperial County school districts. In place of the fully credentialed teachers, the districts hired individuals who had received emergency credentials

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[202] Minutes of the December 3-4, 2003 meeting of CTC; CTC staff proposed addition of sections 80021 and 80021.1 of the Title 5 regulations; California Code of Regulations, title 5, sections 80021 and 80021.1 (Register 2005, No. 18).

[203] *Kern High School Dist., supra*, 30 Cal.4th 727, 731.

[204] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 880.

[205] *California Teachers Association v. Commission on Teacher Credentialing* (1992) 7 Cal.App.4th 1469.

from CTC following the submittal of a statement of need from the school districts. The regularly credentialed teachers argued that by virtue of their regular credentials alone, they were "qualified" for the position, that the districts had a ministerial duty to hire credentialed candidates, and that the districts had no discretion to hire persons with emergency credentials when fully-credentialed teachers exist. The court held that the statute and regulation does not prevent CTC from issuing emergency credentials, or prevent a school district from exercising discretion to hire individuals who have received emergency credentials, when a fully-credentialed teacher applies for the position.[206] The court analyzed the governing statutes (former section 44254 and section 44300) as follows:

> Here the statutes, former section 44254 and section 44300, are themselves silent with respect to the discretion districts have in determining the qualifications of credentialed applicants. Unlike the petitioners, we do not believe the term "insufficient certified teachers" in former section 44254 and the phrase "unable to recruit . . . a sufficient number of certified teachers" in section 44300 require districts to hire unqualified credentialed teachers before submitting a Statement of Need. Indeed the reference in section 44300 to the ability of districts to "recruit" sufficient numbers suggests the Legislature understood that the hiring process is not simply a matter of filling vacant positions with credentialed applicants but requires consideration of qualifications beyond possession of the appropriate credentials.[207]

The court further determined that "nothing in title 5, California Code of Regulations, section 80026 [governing the statement of need] provides any limitation on a district's discretion. Rather the phrase "deemed qualified by the district' expressly provides districts discretion …."[208] At the time the court issued its decision in 1992, section 80026 of the regulations required a school district filing a statement of need to "state either that a credentialed person is not available, *or that one or more credentialed persons are available, but are not deemed qualified by the district* . . . to hold the position." (Emphasis added.) That language was amended in 1994 to require the school district filing a statement of need to certify that "there is an insufficient number of certificated persons who meet the *employing agency's specified employment criteria* to fill necessary positions."[209] The new phrase that there is "an insufficient number of certified persons who meet the employing agency's specified employment criteria," still provides school districts discretion in the hiring process.

The court also determined that the requirement in Education Code section 44300 that the governing board of a school district approve a declaration of insufficiency at a regularly scheduled meeting that allows the exclusive agent of certificated employees to object to the approval of the declaration, supports the conclusion that filing a statement of need and seeking the issuance of an emergency permit is discretionary. The court stated the following:

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[206] *Id*. at pages 1471, 1475-1476.

[207] *Id.* at page 1476.

[208] *Id*. at page 1475.

[209] Register 94, No. 16.

> On the other hand, if, in determining the applicant pool is insufficient, discretion must be exercised as to the qualifications of the credentialed applicants, it makes a great deal of sense to subject such a decision to review by the governing board with an opportunity for employee representatives to object. Such a process affords the board an opportunity to review both the qualifications being required by district administrators and the administrator's determination those qualifications cannot be met by current applicants.[210]

The Second District Court of Appeal, in *Jones v. Oxnard School District*, made a similar finding on the emergency credential process that existed in 1969 that also required a school district to file a statement of need that no qualified, regularly certificated applicant of the type needed was available before obtaining an emergency credential, stating the following:

> There is no contention that respondents failed to exercise a discretion which the law required of them. Rather, it is appellant's theory that being certificated she was per se "qualified" so that the district was duty bound not to determine to the contrary or to file the statement of need. If such were the case, mandate of prohibition conceivably might lie. [Footnote omitted.] But so to read section 611 [the former Administrative Code section on point] reduced the word "qualified" in that section to surplusage. The fair meaning of the section as written empowers the appropriate management personnel acting for the district to determine whether a certificated applicant is otherwise qualified for employment. That being the case, the district cannot be mandated to exercise the power in a particular fashion.[211]

Both of these cases were issued before Education Code section 44225.7 was enacted in 1999 to establish a priority for hiring, and to authorize school districts to request approval for an emergency permit "as a last resort." Section 44225.7(b) still recognizes the local decision-making in that situation, however, by stating a school district "*may* request approval for the assignment of a person who does not meet that criteria." Under the Education Code, the Legislature has clearly defined the word "may" as discretionary.[212]

Thus, the Commission finds that school districts are not legally compelled by state law to comply with the underlying program to obtain an emergency multiple or single subject permit, or to hire a person eligible for such a permit and, thus, there is no legal compulsion to comply with the new requirements that flow from this local discretionary decision.

Claimant argues, however, that school districts are practically compelled to comply with these statutes and regulations to fill positions with emergency credentials and, thus, are entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. To support its position, the claimant submits three CTC published reports:

- "The Annual Report on California Teacher preparation Programs for the Academic Year 2001-2002:"

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[210] *Id*. at pages 1476-1477.

[211] *Jones v. Oxnard School District* (1969) 270 Cal.App.2d 587, 591-592.

[212] Education Code section 75, defining "may" as permissive.

- "2001-2002 Annual Report, Emergency Permits and Credential Waivers;" and
- "Teacher Supply in California: A Report to the Legislature: Fifth Annual Report: 2001-02."

These reports point to enrollment growth fueling a shortage of fully qualified teachers in California classrooms, thereby requiring school districts or county offices of education to rely on emergency permits or waivers in the 2001-2002 school year. Claimant points to the following facts in these published materials:

- During the 2001-2002 school year, CDE reported that enrollment has grown by more than 25% during the last decade, contributing to a shortage of fully qualified teachers in California classrooms. (CTC Annual Report, p. 3.)
- Both the rapidity of the growth and size of the school age population, coupled with natural attrition in the profession, contributed to a teacher shortage in the state. Although California instituted several important initiatives and programs to recruit, prepare and retain qualified teachers, California's teacher shortage created a need for many schools and school districts to meet staffing needs through the employment of individuals who do not hold a teaching credential. (CTC Annual Report, p. 34)
- Before qualifying for an emergency permit, CTC must first approve a Declaration of Need. Employers who find the need to request an emergency permit in order to hire an individual to fill a short-term staffing need must secure local board approval prior to applying for the permit. (CTC Annual Report, p. 35. Emphasis in original.)
- Various statistics show (1) the number of emergency permits issued between 1997-2002; (2) the number of school districts (41) that had more than 20 percent of their staff on emergency permits and waivers in 2001-2002; (3) and the small number of school districts (5) that had no teachers with emergency permits. Claimant states if the employment of these individuals is not really necessary, it would no longer be necessary to employ 30,899 teachers in California [who were not fully certified as of 10/1/02] "in a market which already suffers from an extreme shortage of teachers."

Teacher shortages have occurred over time in the state of California, and those shortages have been documented.[213] Thus, it is possible that there may have been occasions in the relevant period of potential reimbursement (July 1, 2002 through June 30, 2006) when a school district felt compelled to comply with the emergency permit process. However, there is no concrete evidence in the record that a district was practically completed.

It has been made clear by the courts that instincts are insufficient to support a legal conclusion on the issue of practical compulsion.[214] Rather, the courts have found that practical compulsion requires a concrete showing, with evidence in the record, that a school district faces certain and severe penalties, such as double taxation or other draconian consequences for not complying the test claim statutes and regulations, or that a school district is left with no reasonable alternative

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[213] See also, a CTC press release issued in May 2007 reporting that since 2001-2002, emergency permits issued declined 76% since 2001-2002, and credential waivers issued had decreased 84% during that period. ("Teacher Supply Dips" Press Release, May 3, 2007.)

[214] *Department of Finance (POBRA), supra*, 170 Cal.App.4th at p. 1369, concurring opinion.

but to comply in order to carry out its core mandatory function to provide educational services to K-12 students.[215]

Here, there are no apparent penalties in the law for not complying with the emergency permit process for multiple or single subjects. While there is a monetary penalty imposed on a school district when it hires a person to render service as a teacher who does not have any valid certification document issued by CTC (which includes alternative and emergency permits), that penalty is not directly related to a school district choosing not to comply with the emergency permit process.[216] As evidenced in this claim, there are many options available to school districts to fill positions with persons with valid certification documents.

Nor is there concrete evidence in the record that an "emergency" existed which left no reasonable alternative and, in fact, practically compelled a school district to resort to the emergency permit process in order to carry out the core mandatory function to provide required educational services to K-12 students. The claimant's evidence of state reports and statistics alone, which show that districts statewide filed statements of need and CTC issued emergency permits during the 2001-2002 school year, is not sufficient to support a finding of practical compulsion. As stated above, there is discretion in those local hiring decisions, and no evidence has been filed showing the type of emergency, the classes that needed to be filled, or the alternatives that may have been available from July 1, 2002, through June 30, 2006. Moreover, school districts are required by state law to offer and provide certain courses of study for grades 1 to 12 (Ed. Code, §§ 51200, et seq.), but have full discretion to provide other courses of study prescribed by the local governing board. (Ed. Code, §§ 51210(h), 51220(k), 51225.3(a)(2).) Even if school districts could show practical compulsion, to the extent that they went through the emergency permit process to fill a staffing need for a discretionary course, they would not be eligible for reimbursement since offering the course is a discretionary decision.

Moreover, the statement of need required by section 80026 of the regulations is an annual filing by a district that "*estimates*" the number of unprepared teachers the district might need for the year, with a promise from the district that it will first try to recruit fully credentialed teachers and interns. An estimate of need is not "certain" for purposes of practical compulsion, and does not amount to concrete evidence that an emergency in fact existed forcing the district to go through the process and hire an individual eligible for an emergency permit.

Accordingly, the Commission finds that Education Code sections 44257.5, 44300, and 443301, and sections 80026, 80026.1, 80026.5, and 80026.6 of the Title 5 regulations with respect to emergency multiple or single subject permits do not impose a state-mandated program on school districts.

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[215] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 743, 749-754; San Diego Unified School Dist., supra, 33 Cal.4th 859, 884-887; *Department of Finance (POBRA), supra*, 170 Cal.App.4th 1355, 1362-1368.

[216] Education Code section 45037.

b) Emergency substitute permits

Separate processes are provided for emergency substitute permits.[217] Here, claimant has requested reimbursement to obtain an emergency 30-day substitute teaching permit, an emergency career substitute teaching permit, and an emergency designated subjects vocational educational permit for 30-day substitute teaching service.

i. Emergency 30-day substitute teaching permit (Cal. Code Regs., tit. 5, § 80025)

Section 80025 of the Title 5 regulations governs the emergency 30-day substitute teaching permit, which authorizes the holder to serve as a substitute in any K-12 classroom, preschool, or in classes organized primarily for adults. Under the process, the applicant can serve as an emergency substitute teacher provided that the employing school district has a completed statement of need on file at their office for the duration of the school year. The statement of need must (1) describe the situation or circumstances that necessitate the use of an emergency permit holder; (2) state that either a credentialed person is not available, or that one or more credentialed persons are available, but do not meet the specified employment criteria established by the employing agency; and (3) be prepared and signed by the superintendent of the employing school district or county. There is no requirement for the statement of need to be approved by CTC.

This regulation does not mandate a new program or higher level of service, and, in fact, imposes fewer requirements on school districts than what was provided in prior law. In 1973, former sections 5920.2 and 5920.3 of the Title 5 regulations were added to provide for emergency credentials for 30-day substitute teaching.[218] The regulations required the submission *and approval* of a statement of need in order for the credential to be granted to the applicant. The statement of need had to contain the same information as that required by section 80025, but further required the district to identify the specific position that the applicant would fill. "The grade level and the subjects to be taught or the service to be rendered shall be specified." School districts are no longer required to identify that information. These sections were amended in 1976, to clarify that an applicant who holds a teaching credential requiring a baccalaureate degree and teacher preparation could also serve as a 30-day substitute, thus providing more options under existing law for filling any staffing needs for substitute teachers.[219]

These sections were renumbered without substantive change in 1977 to section 80025 and 80026, respectively,[220] and then amended primarily to current form in 1981.[221]

Accordingly, the Commission finds that section 80025 does not mandate a new program or higher level of service on school districts.

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[217] Education Code section 44300(i) states that "this section shall not apply to the issuance of an emergency substitute teaching permit." In addition, section 80023.1 of the regulations governs the process for obtaining the emergency multiple or single subject permits identified in section 80023, but does not apply to emergency substitute permits.

[218] Register 73, No. 26.

[219] Register 76, No. 21.

[220] Register 77, No. 51.

[221] Register 81, No. 15.

ii. Emergency career substitute teaching permit (Cal. Code Regs., tit. 5, § 80025.1)

Section 80025.1 was added to the Title 5 regulations in 1998 and governs the process for an applicant to obtain an emergency career substitute teaching permit. This permit allows the applicant to serve as a substitute teacher in any K-12 classroom, preschool, or in classes organized primarily for adults for up to 60 days for any one teacher, rather than the 30 days authorized in section 80025. To obtain the permit, the applicant is required to submit an application packet through the employing agency. The application packet is required to include the following:

- Verification by the school district employer(s) of three consecutive years of at least ninety days per year of day-to-day substitute teaching in the California school district requesting the permit in the three years immediately preceding the date of application; or if the county office of education is responsible for the assignment of day-to-day substitutes for all their school districts, three consecutive years of at least ninety days per year of day-to-day substitute teaching accumulated from one or more California school districts in the county requesting the permit in the three years immediately preceding the date of application.
- A statement of endorsement signed by the superintendent of the employing school district that the applicant has served successfully in the district and that the district would allow the individual to substitute teach for up to 60 days for one teacher during the school year.
- Verification by the employing school district that it will make staff development activities offered to the regular teaching staff available to the permit holder.

To renew the permit, the applicant is required to submit the application for renewal through the school district employer prior to the expiration date, and submit a statement of continued endorsement from the superintendent of the employing school district or county office of education and verification that staff development activities offered to regular teaching staff were made available to the permit holder.

The Commission finds that section 80025.1 does not impose a state-mandated program on school districts. State law does not require school districts to use the process identified in section 80025.1 or to hire emergency career substitute teachers. These decisions are local hiring decisions that are not mandated by the state. In addition, these activities are not mandated by the state to the extent they are performed to fill a discretionary course.

Moreover, there is no law or evidence in the record showing that school districts face certain and severe penalties, such as double taxation or other draconian consequences, for not complying with section 80025.1. Nor is there evidence that a school district is left with no reasonable alternative but to comply with section 80025.1 in order to carry out its core mandatory function to provide educational services to K-12 students.

Accordingly, the Commission finds that section 80025.1 does not impose a state-mandated program on school districts.

iii. Emergency designated subjects vocational educational permit for 30-day substitute teaching service (Cal. Code Regs., tit. 5, § 80025.5)

Section 80025.5 was added to the Title 5 regulations in 1995 to govern the process for an applicant to obtain an emergency 30-day substitute teaching permit for designated technical,

trade or vocational education subjects. The regulation allows the holder to serve as a substitute in these classes for not more than 30 days for any one teacher during the school year, provided the employing school district has a completed statement of need. The statement of need must (1) describe the situation or circumstances that necessitate the use of an emergency permit holder; (2) state that either a credentialed person is not available, or that one or more credentialed persons are available, but do not meet the specified employment criteria established by the employing agency; and (3) be prepared and signed by the superintendent of the employing school district or county. There is no requirement for the statement of need to be approved by CTC.

This regulation does not impose a state-mandated program on school districts. State law does not require school districts to use the process identified in section 80025.5 or to hire emergency substitute teachers for vocational designated subject courses. These decisions are local hiring decisions that are not mandated by the state. Moreover, vocational courses are also organized primarily for adults. School districts have the authority to establish vocational classes for adults, but are not required by state law to do so.[222] Thus, to the extent these activities are performed for purposes of hiring an emergency substitute vocational teacher for an adult course, they are not mandated by the state. In addition, these activities are not mandated by the state to the extent they are performed to fill a discretionary course.

Moreover, there is no law or evidence in the record showing that school districts face certain and severe penalties, such as double taxation or other draconian consequences, for not complying with section 80025.5, or evidence that a school district is left with no reasonable alternative but to comply with section 80025.5 in order to carry out its core mandatory function to provide required educational services to K-12 students.

Accordingly, the Commission finds that section 80025.5 does not impose a state-mandated program on school districts.

5. Credential Waivers (Ed. Code, §§ 44225(m), 44225.7)[223]

Credential waivers are a last resort option that allows a school district, who is unable to fill a staffing need with a fully credentialed teacher, an intern, or an individual who is qualified for an emergency permit, to request a credential waiver for the best qualified applicant available. CTC describes credential waivers as follows.

> Credential waivers are utilized by county offices of education, school districts and non-public schools to fill certificated positions when individuals holding credentials are unavailable. When an employing agency reviews its staffing needs and recruits for various positions, it first must attempt to fill a position with an appropriately credentialed employee. If a credentialed individual is not available, the employer must explore the feasibility of employing an individual in an internship capacity. If a university or district internship program is not available, the employer may request an emergency permit. When the employer is unable to find an individual who qualified for the emergency permit, it then requests a variable term waiver [from CTC] for the best qualified applicant available.

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[222] Education Code sections 52501 and 52502.

[223] Statutes 1993, chapter 378; Statutes 1999, chapter 381.

> The Education Code [Section 44225(m)] authorizes the Commission to grant two types of waivers, short-term and variable term. Short-term waivers [which may be approved at the local level] give local agencies the ability to cover unanticipated, immediate, short-term needs with teachers who hold a basic credential, but are assigned to teach outside of their credential authorization for one semester or less with their consent. These waivers are reported to the county offices of education for assignment monitoring purposes. This report does not include information pertaining to short-term waivers.
>
> Variable term waivers [which are reviewed and acted on by CTC at a regularly scheduled meeting] provide additional time for individuals to complete credential requirements or provide employing agencies with time to find an individual who either holds an appropriate credential or qualifies under one of the available assignments options. Waivers are issued for one calendar year and the individual on the waiver must demonstrate progress by completing an examination or coursework toward the credential. Variable term waivers include: [see list below quoted from Education Code section 44225(m)(1)-(m)(5)].[224]

As amended in 1993, Education Code section 44225(m) provides that CTC is required to review requests from school districts for the waiver of one or more of the provisions governing the preparation or licensing of educators. The statute authorizes CTC to grant a waiver upon a finding that professional preparation equivalent to that prescribed under the provisions to be waived will be, or has been, completed by the credential candidate, or that a waiver is necessary to accomplish any of the following:

(1) Give a local educational agency one semester or less to address unanticipated, immediate, short-term shortages of fully qualified educators by assigning a teacher who holds a basic teaching credential to teach outside of his or her credential authorization, with the teacher's consent.

(2) Provide credential candidates additional time to complete a credential requirement.

(3) Allow local school districts or schools to implement an education reform or restructuring plan.

(4) Temporarily exempt from a specified credential requirement small, geographically isolated regions with severely limited ability to develop personnel.

(5) Provide other temporary exemptions when deemed appropriate by the commission.[225]

In addition, Education Code section 44225.7 states CTC may approve a school district request for a credential waiver as a last resort if the district has certified by an annual resolution of the governing board that it has first made reasonable efforts to recruit a fully credentialed teacher, an

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[224] CTC, "2001-02 Annual Report: Emergency Permits and Credential Waivers" May 2003, page 26. This is exhibit B of the claimant's December 2003 submitted comments.

[225] Education Code section 44225(m) (Stats. 1993, ch. 378).

intern, and a candidate scheduled to complete preliminary credential requirements within six months. CTC must also assure that the school district employer will provide orientation, guidance, and assistance to the candidate if the waiver is granted.

In 1994, CTC adopted sections 80120 et seq. of the Title 5 regulations to implement the credential waiver process. Although these regulations have not been pled in this claim, section 80121(c), which governs the general provisions for credential waiver requests, states the following:

> *Authorization* to Apply for Waivers. Each application for a variable term waiver shall be submitted to the Commission on behalf of the individual identified in the application. The following *may* submit applications for variable term waivers:
>
> (1) public school districts in California;
>
> (2) county offices of education or county superintendents of schools in California; . . . (Emphasis added.)

The Commission finds that Education Code sections 44225(m) and 44225.7 as they apply to credential waivers do not impose a state-mandated program on school districts. School districts are not legally compelled by state law to request a credential waiver. The plain language of the statutes and the regulations that implement the statutes provide that a school district "may" request authorization for a credential waiver. The decision to request a credential waiver is a local hiring decision that is not mandated by the state.

The claimant argues, however, that school districts are practically compelled to obtain credential waivers and bases its arguments, like it did for emergency permits, on state reports and statistics regarding the number of credential waivers issued in fiscal year 2001-2002 (2,803 waivers issued that year). However, a finding of practical compulsion must be based on a concrete showing, with evidence in the record, that a school district faces certain and severe penalties, such as double taxation or other draconian consequences for not complying the test claim statutes and regulations, or that a school district is left with no reasonable alternative but to comply in order to carry out its core mandatory function to provide educational services to K-12 students.[226]

Here, there are no apparent penalties in the law for not complying with the credential waiver process. While there is a monetary penalty imposed on a school district when it hires a person to render service as a teacher who does not have any valid certification document issued by CTC (which includes alternative and emergency permits), that penalty is not directly related to a school district choosing not to comply with the credential waiver process.[227] As evidenced in this claim, there are many options available to school districts to fill positions with persons with valid certification documents.

Nor is there concrete evidence in the record that an "emergency" existed during the relevant period of potential reimbursement, which left no reasonable alternative and, in fact, practically compelled a school district to resort to the credential waiver process in order to carry out the core

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[226] *Kern High School Dist., supra,* 30 Cal.4th 727, 731, 743, 749-754; *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 884-887; *Department of Finance (POBRA), supra,* 170 Cal.App.4th 1355, 1362-1368.

[227] Education Code section 45037.

mandatory function to provide required educational services to K-12 students. There is no information about the classes that needed to be filled, or the alternatives that may have been available from during the relevant period of reimbursement for this claim. School districts are required by state law to offer and provide certain courses of study for grades 1 to 12 (Ed. Code, §§ 51200, et seq.), but have full discretion to provide other courses of study prescribed by the local governing board. (Ed. Code, §§ 51210(h), 51220(k), 51225.3(a)(2).) School districts that go through the credential waiver process to fill a staffing need for a discretionary course would not be eligible for reimbursement.

Accordingly, the Commission finds that Education Code sections 44225(m) and 44225.7 do not impose a state-mandated program on school districts.

E. Penalties and Additional Options for Avoiding Penalties

1. Penalty Assessments for Teachers Lacking Certification Documents (Ed. Code, § 45037)[228]

Since 1961, school districts have been subject to penalties imposed by Education Code section 45036 when the district hires a person, without valid certification documents, to render services as a teacher. Under prior law, these penalties were imposed as follows:

- Penalties equivalent to the amount of over-claimed average daily attendance apportionment attributable to the pupils in the teacher's classroom during the time he or she did not hold a valid certification document. Pursuant to *Education Code* section 46300, school districts receive state funding for reported average daily attendance on the condition that pupils are taught by teachers who hold valid certification documents. Valid certification documents include any state-issued certificate or credential, vocational credential, internship credential or certificate, emergency teaching permits and credential waivers that have not expired or been revoked.
- Penalties equivalent to the marginal incentive and base-year funding for longer instructional day and longer year attributable to the teacher's instructional time during the time he or she did not hold a valid certification document pursuant to *Education Code* section 46200.
- Penalties equivalent to the amount of any over-claimed K-3 class-size reduction program funding; this funding is conditioned on program teachers holding valid credential documents issued by the Commission on Teacher Credentialing pursuant to *Education Code* section 52123.

In 2002, the Legislature enacted Education Code section 45037 to supersede the three prior penalties with a single penalty for employing school districts, beginning in fiscal year 2001-2002, when a teacher lacks valid certification documents. The single penalty is calculated pursuant to section 45037(b) by dividing the number of school days taught by all teachers, and then multiplying that quotient by the school district's revenue limit entitlement.

In addition, beginning in fiscal year 2002-2003, section 45037(c) provides for a new penalty imposed on county offices of education if a school district in its jurisdiction is assessed the single

[228] Statutes 2002, chapter 1069.

penalty for lack of a valid certification document and the county office of education paid the teacher's salary. The county penalty is calculated as the lesser of three amounts as follows:

- Fifty percent of all penalties assessed for that fiscal year for all school districts in the county office of education's jurisdiction based on the districts' penalties for non-credentialed personnel;
- One-half percent of the total expenditures for that fiscal year from unrestricted resources, as defined in the California School Accounting Manual, in the county office's county school fund, when two or fewer districts in the county office's jurisdiction are subject to penalties for non-credentialed personnel; or
- One percent of the total expenditures for that fiscal year from unrestricted funds, as defined in the California School Accounting Manual, in the county office's county school service fund, when three or more districts in the county office's jurisdiction are subject to penalties for non-credentialed personnel.

The claimant requests reimbursement for the amounts paid by school districts and county offices of education in penalties.

The Commission finds that Education Code section 45037 does not impose a state-mandated program on school districts. Although section 45037 may result in increased costs incurred by a school district, increased costs alone do not result in a reimbursement requirement under article XIII B, section 6 of the California Constitution. "Section 6 was not intended to entitle local entities to reimbursement for all increased costs resulting from legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State."[229] Section 45037 does not require school districts to perform any activities; it just assesses penalties for noncompliance. Moreover, as stated in the analysis above, school districts have many options for hiring persons who have valid certification documents. School districts also have several options for avoiding penalties when preliminary certification is set to expire, or when a person has completed all requirements and is simply awaiting CTC's approval. These additional options are more fully discussed below.

Accordingly, Education Code section 45037 does not impose a state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution.

2. Additional Options for Avoiding Penalties

a) Continuance or extension of service (Former Cal.Code Regs., tit. 5, § 80058.2)[230]

Generally, the five-year preliminary or level I teaching credential cannot be renewed or extended. To continue to teach in the public schools, the applicant must complete all of the requirements for the professional clear or Level II credential before the expiration date of the preliminary or level I credential. Emergency substitute teaching permits also expire.

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[229] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816; *Lucia Mar Unified School District v. State of California* (1988) 44 Cal.3d 830, 835; *Kern High School Dist., supra*, 30 Cal.4th 727, 735; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1189-1190.

[230] Register 78, No. 48.

Former section 80058.2(a) of the Title 5 regulations, enacted in 1978, allowed the employing school district to request a continuance until the end of the school year of preliminary credentials and substitute teaching permits that lapsed or expired just before the end of the year. The regulation stated the following:

(a) The employing school officials, upon request to county school officials, *may* receive continuance to the end of a school year of a candidate's preliminary credential which lapses (expires) April 1 or thereafter of a school year. Such continuance is authorization for payment of salaries for service rendered on the lapsed credential.

(b) The employing school official, upon request to the county school officials, *may* receive continuance of the 30-day emergency substitute teaching credential to the end of the school year if the 30-day authorization if fulfilled after May 15 of a school year.

Section 80058.2 was repealed in 2004 (Register 2004, No. 23, operative July 1, 2004) because it was determined to be obsolete.[231]

The claimant requests reimbursement to request continuance of the holder's preliminary or emergency substitute credential.

The Commission finds that section 80058.2 of the Title 5 regulations does not impose a state-mandated program on school districts. The plain language of the regulation refers to the school district's action as a request, which *may* be provided by the district. The decision to request a continuance is a local hiring decision that is not mandated by the state.

In addition, there is no evidence in the record that school districts were practically compelled during the potential period of reimbursement for this activity (July 1, 2002 until June 30, 2004) to request a continuance of a preliminary credential or emergency substitute teaching permit for those persons rendering services in classes that are required to be offered under state or federal law. A finding of practical compulsion must be based on a concrete showing, with evidence in the record, that a school district faces certain and severe penalties, such as double taxation or other draconian consequences for not complying the test claim statutes and regulations, or that a school district is left with no reasonable alternative but to comply in order to carry out its core mandatory function to provide educational services to K-12 students.[232] Although penalties imposed pursuant to Education Code section 45037 are a possibility, there is no evidence that penalties were in fact imposed or were certain to occur during this time period. Nor is there evidence of alternatives available and considered by the district to avoid any penalties.

Accordingly, section 80058.2 of the Title 5 regulations does not impose a state-mandated program on school districts.

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[231] CTC memorandum 04-0004, dated June 16, 2004.

[232] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 743, 749-754; *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 884-887; *Department of Finance (POBRA), supra*, 170 Cal.App.4th 1355, 1362-1368.

b) Temporary County Certificates (Ed. Code, § 44332; Cal. Code Regs., tit. 5, § 80441)[233]

A temporary certificate may be issued by the employing county office of education that authorizes employment and/or salary payment to employees whose credential applications are being processed by CTC. The certificates are valid for one calendar year.

Temporary county certificates were originally authorized in 1970 and are now governed by Education Code section 44332. [234] Education Code section 44332(a) provides in relevant part the following:

> … each county or city and county board of education *may* issue temporary certificates for the purpose of authorizing salary payments to certified employees whose credential applications are being processed . . . . However, the individual must have demonstrated proficiency in basic reading, writing, and mathematics skills pursuant to the requirements of Section 44252.5. The applicant for the temporary certificate shall make a statement under oath that he or she has duly filed an application for a credential or permit together with the required fee and that, to the best of his or her knowledge, no reason exists why a certificate or permit should not be issued. The certificate or permit shall be valid for not more than one calendar year from the date of issuance.

Since 1970, the statute has been amended to require the county or city and county board of education to cancel the temporary certificate or permit of an applicant upon receipt of certification in writing from CTC that the applicant does not possess adequate academic qualifications or has a disqualifying criminal record.[235] In addition, the statute prohibits a county or city and county board of education from issuing a temporary certificate to an applicant whose teaching credential has been revoked or suspended.[236]

In 1983, CTC added section 80441 to the Title 5 regulations to implement Education Code section 44332. The regulation provides that the purpose of Education Code section 44332 is for CTC to provide notification on the status of an application for a credential, certificate, or permit to the employers of certificate holders before the expiration date of the temporary county certificate. To accomplish this, section 80441(a) requires employing school districts or county offices of education to specify on the application form, the temporary county certificate and the expiration date of the temporary county certificate.

Section 80441(b) describes the responsibilities of CTC to provide information on the status of an application for a credential to the appropriate county office of education.

Section 80441(c) requires county superintendents of schools to provide CTC a listing of all applicants serving on a temporary county certificate for whom notification has not been received

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[233] Education Code section 44332(b). (Stats. 1981, ch. 1136, Stats. 1982, ch. 206, Stats. 1982, ch. 471, Stats. 1988, ch. 1355, Stats. 1991, ch. 590, Stats. 1999, ch. 281, Cal. Code Regs., tit. 5, § 80441, Register 83, No. 40, Oct. 27, 1983.

[234] Statutes 1970, chapter 557.

[235] Education Code section 44332(b).

[236] Education Code section 44332(d).

ten (10) school days before the expiration date of the temporary county certificate. This listing shall be forwarded to CTC immediately and shall include the following information for each applicant: (1) full name; (2) social security number; (3) birth date; (4) type of credential, certificate, or permit for which application was made, when available; (5) date of filing of the application, when available; (7) effective date of the temporary county certificate; and (8) expiration of the temporary county certificate.[237]

The Commission finds that the requirement imposed on the employing school district to complete portions of the application for a temporary county certificate pursuant to section 80441(a) to identify the certificate and the expiration date of the certificate are not mandated by the state. The decision to hire a candidate whose credential has not been fully processed by CTC is a local, discretionary hiring decision that triggers these downstream requirements. Thus, pursuant to the court's decision in *Kern*, these downstream activities are not mandated by the state.[238]

The Commission further finds that the activity performed by the county office of education to consider and issue a temporary county certificate is not a new activity. As stated above, the county has had the authority to issue these certificates since 1970. Moreover, the decision to issue a temporary certificate is a local decision that is not mandated by the state. Thus, the downstream requirements imposed on the county to cancel a certificate upon notice from CTC that the applicant is not qualified or has a disqualifying criminal record and to provide CTC with a listing of all temporary certificates issued are not mandated by the state.

Accordingly, the Commission finds that Education Code section 44332 and section 80441 of the Title 5 regulations does not impose a state-mandated program on school districts.

c) Validation of Service Requests (Cal. Code Regs., tit. 5, § 80601)[239]

As stated above, the Education Code generally requires school districts to employ for positions requiring certification qualifications, only persons who possess the qualifications required by law.[240] School districts that hire people to render teaching services who do not possess valid certification documents are assessed a penalty pursuant to Education Code section 45037.

Since 1961, employing school districts have been authorized to submit validation of service requests to CTC pursuant to Education Code section 45036 when certificated employees were eligible for the appropriate certification required for a position, but did not actually hold the needed credential or Temporary County Certificate during the period they performed the service. Thus, under the authority of Education Code section 45036, CTC can retroactively validate the service of the person under these circumstances in order to avoid any penalties that may be assessed pursuant to Education Code section 45037. Under former section 80600(b) of the Title 5 regulations, adopted in 1979, employing school districts could request validations of service that were required to include:

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[237] See also CTC memorandums 82-8308 and 83-8415.

[238] *Kern High School Dist., supra*, 30 Cal.4th 727, 731.

[239] Register 96, No. 26.

[240] Education Code section 44830.

> [A] statement by the chief administrative officer of the district in which the service was rendered or by the county superintendent of schools if the service was rendered for his office [giving] the reason for allowing the person to begin the services rendered and to continue during the period in question without having either the appropriate credential on file with the county superintendent of schools or a temporary certificate issued in accordance with Education Code section 44332.[241]

In 1996, section 80600 was amended and sections 80601 through 80604 were added to the regulations to implement the process to request a validation of service. Only section 80601 has been pled in this claim.

Section 80601 of Title 5 of the regulations states in part:

> When an employing agency finds that an individual has rendered service in a position requiring certification during a period in which the individual did not hold the appropriate certification or a temporary county certificate pursuant to Education Code §44332 to cover the service, the employing agency *may submit* a validation of service request to the Commission. [Emphasis added.]

Section 80601(a) states that CTC staff will now determine and insure that the individual was qualified for the needed credential during the period of service in question and that the individual has subsequently obtained a credential that authorized such service.

Section 80601(b)(c) describe the information that must be completed on the validation of service request form. School districts, when submitting such requests, must continue to explain the reason for the request (subdivision (b)(3) below) as they did under prior law and, thus, that provision is not new. But the remaining information is new and requires the following when submitting a validation of service request:

> (b)(1) The name, address, social security number, and birthdate of the applicant.
>
> (2) The name of the employer, the position the applicant held during the period requiring validation, the specific type of certification required for that position, and the specific dates of service requiring validation.
>
> (3) The employing agency must indicate the appropriate reason for the request for validation on the form and/or include a statement why the applicant was allowed to begin service and continue to serve without having the appropriate credential or temporary county certificate. The explanation either on the form or a separate statement must be signed by the chief administrative officer of the district for which the service was rendered or the chief administrative officer of the county if the service was rendered for the county office of education.
>
> (4) The applicant must verify that he or she has applied for or has been issued the credential required for the position for which the validation of service request has been made, the facts contained in the request are true, and the applicant approves of the employer's request for validation of service.

[241] Former California Code of Regulations, title 5, section 80060(b), (Register 79, No. 2.)

(5) The chief administrative officer or an appropriate representative of the chief administrative officer of the county office of education must verify whether or not a temporary county certificate was issued to cover the period of service in question.

(c) Supporting materials necessary to verify that the individual qualified for the appropriate certification must be submitted along with the request for validation of service form CL-224. Such materials may include but not be limited to official transcripts, verification of the date of program completion from the authorized person at a Commission-approved college or university, or original letters of experience.

CTC may not approve a validation of service request if the applicant was not eligible for the credential, the applicant was only eligible for an emergency permit or credential waiver, the applicant did not meet the academic requirements for renewal of the credential, the service was rendered prior to the date the applicant made application to CTC for his or her initial California credential, or the period of service requested to be validated exceeded six months.[242]

The claimant requests reimbursement for complying with all of the provisions of section 80601 when requesting a validation of service.

The Commission finds that section 80601 of the title 5 regulations does not impose a state-mandated program on school districts. The plain language of the regulation authorizes, but does not require, school districts to use this option to avoid a penalty when a fully qualified teacher renders service during the year without a valid credential. Thus, school districts are not legally compelled by state law to comply with this process.

Nor is there any evidence in the record that school districts are practically compelled to comply with section 80601. A finding of practical compulsion must be based on a concrete showing, with evidence in the record, that a school district faces certain and severe penalties, such as double taxation or other draconian consequences for not complying the test claim statutes and regulations, or that a school district is left with no reasonable alternative but to comply in order to carry out its core mandatory function to provide educational services to K-12 students.[243] Although penalties imposed pursuant to Education Code section 45037 are a possibility, there is no evidence that penalties were in fact imposed or were certain to occur during the relevant period of reimbursement. Nor is there evidence of the reasons a school district used this option, or the alternatives available and considered by the district to avoid any penalties.

Accordingly, section 80601 of the Title 5 regulations does not impose a state-mandated program on school districts.

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[242] California Code of Regulations, title 5, section 80603.

[243] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 743, 749-754; *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 884-887; *Department of Finance (POBRA), supra*, 170 Cal.App.4th 1355, 1362-1368.

F. Professional Growth Advisors (Cal.Code Regs. tit. 5, §§ 80556 & 80556.1)[244]

The claimant is also seeking reimbursement for two of the regulations that implement the professional growth program for credentialed employees.

The Legislature established the professional growth program as part of the Hughes-Hart Education Act of 1983 (Ed. Code, §§44277 – 44279), when the authority to issue life credentials was repealed and replaced with clear professional credentials that require renewal every five years. As relevant to the period of potential reimbursement for the professional growth program, which begins July 1, 2002, until December 31, 2006 (when the statute was amended to make it optional, effective January 1, 2007), Education Code section 44277 imposed the following minimum requirements for maintaining the validity of the clear multiple or single subject teaching credential and the employing school district:

- One-half school year of successful service as a classroom teacher or successful service authorized by a services credential.
- Completion of an individual program of professional growth "as prescribed by this section and by [CTC]. During this time period, the individual program of professional growth was required to consist of 150 clock hours of participation in activities that are aligned with the California Standards for the Teaching Profession that contribute to competence, performance, or effectiveness in the profession of education and the classroom assignment of teachers. This may be achieved through the completion of courses offered by regionally accredited colleges and universities, professional conferences and workshops, staff development programs, participation in school curriculum development projects, service in leadership roles, or participation in educational research. An individual program of professional growth may also include a basic course in cardiopulmonary resuscitation (CPR) or other Red Cross course.
- The individual program of professional growth shall be developed and planned by the holder of the clear teaching credential.
- Before the holder of the clear credential commences or amends an individual program of professional growth, a school principal, a mentor teacher provided for in Section 44496, or other district designee shall certify to the credential holder that the planned program or amendment complies with this section and the regulations.
- A clear teaching credential shall be deemed to remain valid so long as the holder of the credential, at five-year intervals, submits to CTC verification by a school principal, a mentor teacher, or other district designee that the holder has satisfied the minimum requirements. In the absence of adequate verification, CTC shall invalidate the credential. Verification by a school principal, a mentor teacher, or other district designee shall be independent of any evaluation of the performance of the holder. The arbitrary refusal of a school principal, a mentor teacher, or other district designee to verify completion of an individual program of professional growth meeting the requirements shall constitute grounds for an appeal pursuant to section 44278.

[244] Register 86, No. 40; Register 94, No. 19.

Thus, as originally enacted, section 44277 required school district employees to certify that the individual program of professional growth or any amendment to the plan complies with the Education Code and that the regulations before the credential holder begins or amends the program. School district employees were also required to verify that the holder satisfied the minimum requirements to maintain the validity of the credential: 150 clock hours of participation of activities identified in the professional growth plan, and one-half year of successful service, before the credential could be renewed.

Regulations governing the professional growth program were enacted in 1986, as sections 80550 through 80565.[245] These regulations require the credential holder to write, on a form provided by CTC, a professional growth plan that identifies the goals and activities he or she proposes to pursue. A professional growth advisor is required to sign the plan, and shall initial any amendment to the plan that complies with Education Code section 44227 and the regulations.[246] The credential holder must also write, under penalty of perjury, a professional growth record that accurately identifies the completed professional growth activities and indicates the number of hours spent completing each activity. The professional growth advisor is required to sign the record, and may ask for reasonable verification that the elements in the record are accurate.[247] Credential holders that are not employed, but who wish to keep their California credential current are also required to perform these activities, and may request that CTC or another authorized mentor act as the professional growth advisor.[248, 249]

The claimant has not pled the statute or regulations described above, but requests reimbursement for complying with sections 80556 and 80556.1 of the Title 5 regulations.

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[245] Register 86, No. 40.

[246] California Code of Regulations, title 5, section 80554.

[247] California Code of Regulations, title 5, section 80555.

[248] CTC's "Professional Growth Manual for Multiple Subject, Single Subject, Services and Specialist Credentials," pages 16, 25.

[249] California Code of Regulations, title 5, section 80556(g). CTC's "Professional Growth Manual for Multiple Subject, Single Subject, Services and Specialist Credentials," pages 6 and 7, state the following with respect to selecting a professional growth advisor:

Optional methods of obtaining a professional growth advisor include the following:

You may ask another employing agency to appoint an advisor from their approved list.

You may ask the Commission to approve the qualifications of a person you suggest to be your advisor. Send a signed and dated request naming the person you wish to have approved and a copy of his or qualifying credential. Promising groups of potential advisors include principals, mentor teachers, other teachers, appropriately credentialed persons who have retired from service as teachers or administrators, college or university personnel who hold credentials, and staff members in teacher centers and other regional service organizations in education.

If you are unsuccessful in obtaining a professional growth advisor after trying all methods mentioned above, you may request that the Commission serve as your advisor. As you will not receive the benefit and support that face-to-face contact provides, we ask that you use the Commission as the last alternative. . . .

1. **Professional Growth for Holders of Single or Multiple Subject Credentials (Cal. Code Regs., tit. 5, § 80556.1)**

Section 80556 clarifies the role of the professional growth advisor and provides the following:

- If a school district employs one or more holders of professional clear credentials, the chief administrative officer of the employing school district, or his or her designee, shall designate one or more certificated persons to be professional growth advisors.[250]
- The employing school district shall adopt policies and procedures for the selection of professional growth advisors which contribute the best possible match between the credential holder and the advisor.[251]
- The professional growth advisor is required to know the contents of Education Code section 44227, the regulations, and the professional growth manual published by CTC, and to provide for a discussion of these with credential holders. The professional growth advisor shall also discuss the staff development needs of the employing agency and the school with the credential holder and may recommend activities and domains of activities. [252] [already required]
- The professional growth advisor shall advise credential holders and approve professional growth plans and records that have been developed by credential holders, and that comply with Education Code section 44227 and article 4 of the regulations. [253] [already required]
- The employing school district shall give each credential holder the names and work locations of any professional growth advisors who have been designated by the district.[254]
- The chief administrative officer of the employing school district, or his or her designee, shall remove any professional growth advisor who has been determined by the district or CTC to have willfully and arbitrarily violated Education Code Section 44227 or Article 4 of the regulations.[255]

The substantive activities performed by the districts' professional growth advisors pursuant to section 80056(e) do not impose a new program or higher level of service when compared to the existing requirements of Education Code section 44227. As stated above, Education Code section 44227 requires the district's designee to certify to the credential holder that the planned program or amendment of the individual professional growth program complies with section 44227 and the regulations. Section 44227 also requires the district designee to verify that the holder has satisfied the minimum requirements to renew the credential. Regulatory requirements

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[250] California Code of Regulations, title 5, section 80556(a).

[251] California Code of Regulations, title 5, section 80556(c).

[252] California Code of Regulations, title 5, section 80556(e).

[253] California Code of Regulations, title 5, section 80556(e).

[254] California Code of Regulations, title 5, section 80556(f).

[255] California Code of Regulations, title 5, section 80556(j).

imposed for the professional growth advisor (the district's designee) by section 80556(e) of the regulations to know the contents of section 44227 and the regulations, to discuss the renewal requirements with the credential holder, and to discuss and recommend professional growth activities are activities necessary to comply the existing statutory requirements of section 44227 and, thus, these activities do not impose a higher level of service than what was required under prior law. In addition, the regulatory activities to advise the credential holder and approve professional growth plans and records are already required by section 44227 and, thus, are not new.

However, the Commission finds that the following procedural requirements imposed by section 80556 mandate a new program or higher level of service:

- If a school district employs one or more holders of professional clear credentials, the chief administrative officer of the employing school district, or his or her designee, shall designate one or more certificated persons to be professional growth advisors.[256]

  Although Education Code section 44227 imposed requirements on the school principal, teacher mentor, or "other district designee," it did not require school districts to designate professional growth advisors for the district. This activity is new.

- The employing school district shall adopt policies and procedures for the selection of professional growth advisors which contribute the best possible match between the credential holder and the advisor.[257]

- The employing school district shall give each credential holder the names and work locations of any professional growth advisors who have been designated by the district.[258]

- The chief administrative officer of the employing school district, or his or her designee, shall remove any professional growth advisor who has been determined by the district or CTC to have willfully and arbitrarily violated Education Code Section 44227 or Article 4 of the regulations.[259]

These activities became optional, however, on January 1, 2007. Statutes 2006, chapter 517 (SB 1209) amended Education Code section 44227 to delete the renewal requirement to develop a professional growth plan and verify professional growth requirements, and instead "*encourage* teachers to engage in an individual program of professional growth that extends their content knowledge and teaching skills and for school districts to establish professional growth programs that give individual teachers a wide range of options to pursue as well as significant roles in determining the course of their professional growth." The bill analysis from the Senate Rules Committee on SB 1209, dated August 22, 2006, states that the bill:

> Eliminates "seat time" requirement of 150 hours of course work every five years for credential renewal and instead encourages teachers to engage in an individual

[256] California Code of Regulations, title 5, section 80556(a).

[257] California Code of Regulations, title 5, section 80556(c).

[258] California Code of Regulations, title 5, section 80556(f).

[259] California Code of Regulations, title 5, section 80556(j).

> program of professional growth with no specific hour requirements and provides that a professional clear teaching or services credential is valid for the life of the holder if the holder submits an application and fee for renewal to the Commission on Teacher Credentialing (CTC) every five years and meets certain professional fitness requirements relating to good moral character.

According to CTC, this change affects all teaching and service credentials.[260]

Thus, the bulleted activities required by section 80556 of the Title 5 regulations constitute a mandated new program or higher level of service from July 1, 2002 until December 30, 2006.

2. Professional Development for Service and Specialist Credential Holders (Cal. Code Regs., tit. 5, § 80556.1)

In 1994, CTC added section 80556.1 to the regulations to govern the professional development program requirements for service and specialist credentials.[261] The specialist credentials at issue include the following: agriculture, bilingual cross-cultural instruction, early childhood education, health sciences, mathematics, reading, and special education. The services credentials at issue include the following: administrative, clinical rehabilitative, health, library media teacher, and pupil personnel.[262]

Under prior law, specialist and service credentials could be renewed without the completion of any professional growth activity or service. However, in 1988, the Legislature amended Education Code section 44225 to give CTC the broad authority to "establish standards for the issuance and renewal of credentials, certificates, and permits."[263] Pursuant to this statutory authority and the statute governing the professional growth program (Ed. Code, § 44227), CTC directed its staff to establish an advisory panel to develop and recommend professional renewal requirements for specialist and service credentials. Rather than develop a separate set of regulations governing the specialist and service credentials, CTC amended the regulations for single and multiple subject credential renewals to reflect similar but slightly different requirements and procedures. CTC added section 80556.1 and in its notice of proposed rulemaking, CTC highlighted the different renewal procedure with this regulation as follows:

> The responsibility for selecting appropriate and meaningful professional growth activities is to be placed primarily on the credential holder. A collegial model is to be implemented by these proposed regulations. Although the employing school district will be required to identify professional growth advisors, the credential holder will not be required to pick his or her advisor from the district list. The emphasis in these regulations is to allow the credential holder the freedom to

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[260] CTC's analysis of SB 1209 dated May 21, 2006. See also, CTC memorandum 06-0017, dated November 14, 2006 and http://www.ctc.ca.gov/credentials/FAQ/faq-prof-growth.html, which states that "By January 1, 2007, the Commission's online renewal process will be changed to remove the need to verify professional growth requirements for all types of credentials except the child development permits (Teacher, Master Teacher, Site Supervisor, and Program Director)."

[261] Register 94, No. 19.

[262] CTC memorandum 93-9309, dated March 31, 1993.

[263] *Ibid*; Education Code section 44225(d), as amended in 1988 by SB 148;

> select, as an advisor, a certificated professional most able to contribute to his or her growth. The proposed regulations would allow the credential holder to select more than one professional growth advisor, if he or she deems it appropriate.[264]

Similar to the requirements imposed on the holder of a single or multiple subject credential, the holder of a service or specialist credential is also required to write, on a form provided by CTC, a professional growth plan that identifies the goals and activities he or she proposes to pursue. A professional growth advisor is required to sign the plan, and shall initial any amendment to the plan that complies with the requirements of Education Code section 44227 and the regulations.[265] The credential holder must also write, under penalty of perjury, a professional growth record that accurately identifies the completed professional growth activities and indicates the number of hours spent completing each activity. To renew the credential, the holder is required to complete 150 hours of approved professional growth activities and one-half year of successful service. For credential holders renewing more than one credential simultaneously (i.e., a single or multiple subject credential and a specialist or service credential), a total of 150 hours of professional growth activities and on-half year of service under either credential satisfies the requirements.[266] The professional growth advisor is required to sign the record, and may ask for reasonable verification that the elements in the record are accurate.[267] Again, the claimant has not requested reimbursement for these activities, but has pled only section 80556.1.

Section 80556.1(a) provides that the chief administrative officer or designee of the school district "may" designate one or more persons to be professional growth advisors. However, the credential holder is responsible for selecting an appropriate advisor.

Section 80556.1(b) describes the eligibility requirements to be a professional growth advisor for service or specialist credentials. The advisor must satisfy one of the following requirements: hold a valid clear or professional clear specialist or services credential and a baccalaureate degree from an accredited institution of postsecondary education; instruct in the area of expertise in an approved credential program at the postsecondary level; or the holder may choose an advisor in the area of his or her teaching credential provided that the provision of section 80556 have been met.

Although section 80556.1(a) states that the district "may" designate one or more persons to be professional growth advisors, 80556(e) requires the school district to give each credential holder the names and work locations of any professional growth advisors who have been designated by the agency for these credential areas. CTC interprets its own regulation as requiring the school district to identify professional growth advisors. The credential holder, however, will not be required to pick his or her advisor from the district's list. CTC's memorandum 93-9309, which provided notice of the regulatory action to adopt section 80556.1, states the following:

> The responsibility for selecting appropriate and meaningful professional growth activities is to be placed primarily on the credential holder. A collegial model is to be implemented by these proposed regulations. *Although the employing school*

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[264] CTC memorandum 93-9309, page 3.

[265] California Code of Regulations, title 5, section 80554.

[266] California Code of Regulations, title 5, section 80552, as amended in 1994.

[267] California Code of Regulations, title 5, section 80555.

> *district will be required to identify professional growth advisors, the credential holder will not be required to pick his or her advisor from the district list.* The emphasis in these regulations is to allow the credential holder the freedom to select, as an advisor, a certificated professional most able to contribute to his or her growth. The proposed regulations would allow the credential holder to select more than one professional growth advisor, if he or she deems it appropriate. (Page 3, Emphasis added.)

An agency's interpretation of its own regulations is entitled to great weight.[268]

Thus, the Commission finds that the requirement in 80556(e) for the school district to identify professional growth advisors and give each credential holder the names and work locations of any professional growth advisors who have been designated by the agency for these credential areas mandates a new program or higher level of service. Before the enactment of section 80556.1, there were no specific requirements for service and specialist credential holders to have a professional growth plan. The specific requirements in Education Code section 44227, as indicated above, applied only to the renewal of single and multiple subject credentials.

Nevertheless, the amendment to section 44227 in 2006, which repealed the specific requirements relating to the renewal of single and multiple subject credentials and added language to encourage all teachers to engage in individual programs of professional growth, has been interpreted by CTC to end the professional growth program for service and specialist credential holders.[269] Accordingly, the activity to give each credential holder the names and work locations of any professional growth advisors who have been designated by the agency qualifies as a mandated new program or higher level of service from July 1, 2002 until December 31, 2006.

Section 80556.1(h) also gives the chief administrative officer, or his or her designee, the authority to remove any professional growth advisor who has been determined by the agency or CTC to have willfully or arbitrarily violated Education Code section 44277 or the regulations. The language of this regulation ("shall have the authority") is different than the requirement under section 80556 for the multiple or single subject credential renewals, which provides, without authority, that the school district "shall remove" the professional growth advisor who has been determined to have willfully or arbitrarily violated these provisions. Thus, the Commission finds that the activity to remove the professional growth advisor for specialist and service credentials is not mandated by the regulation. Removal of the advisor is a local decision and, therefore, does not impose a state-mandated program.[270]

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[268] *Yamaha Corp. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 9.

[269] CTC's analysis of SB 1209 dated May 21, 2006. See also, CTC memorandum 06-0017, dated November 14, 2006 and http://www.ctc.ca.gov/credentials/FAQ/faq-prof-growth.html.

[270] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 880.

G. Employment Issues not Related to Credentialing (Ed. Code, § 44842(a), 44901)

1. Procedures for Failure to Declare Intent to Remain Employed (Ed. Code, § 44842(a))[271]

Education Code section 44842(a) outlines a procedure for declining employment for probationary and permanent employees who fail to notify the school district of the employees' intent to remain in the district's employ if the district requests notice.

> (a) Except as set forth in subdivision (b), if, without good cause, a probationary or permanent employee of a school district fails prior to July 1 of any school year to notify the governing board of the district of his or her intention to remain or not to remain in the service of the district, as the case may be, during the ensuing school year *if a request to give such notice,* including a copy of this section, *shall have been personally served* upon the employee, or mailed to him or her by United States certified mail with return receipt requested to his or her last known place of address, *by the clerk or secretary of the governing board of the school district*, not later than the preceding May 30, the employee may be deemed to have declined employment and his or her services as an employee of the district may be terminated on June 30 of that year. [Emphasis added.]

Education Code section 44842(a) was initially enacted in 1973 as former section 13260 (Stats. 1973, ch. 291), and contained the same language as above, except that it applied only to permanent employees. Former section 13260 stated the following:

> If, without good cause, a permanent employee of a school district fails prior to July 1 of any school year to notify the governing board of the district of his intention to remain or not to remain in the service of the district, as the case may be, during the ensuing school year if a request to give such notice, including a copy of this section, shall have been personally served upon him, or mailed to him by United States certified mail with return receipt requested to his last known place of address, by the clerk or secretary of the governing board of the school district, not later than the preceding May 30, he may be deemed to have declined employment and his services as an employee of the district may be terminated on June 30 of that year.

This provision was renumbered section 44842 in the 1976 Education Code, and probationary employees were added by Statutes 1982, chapter 424. Thus, the provisions in section 44842(a) are only new with respect to probationary employees.

The remaining subdivisions were added to the statute in 1998. Subdivision (b) of section 44842 is similar to subdivision (a), but applies to employees of a year-round school. If the employee fails to provide notice of his or her intent to remain or not remain in the service of the school district, after the district has requested notice by the employee, the district may deem the employee to have declined employment and may terminate him or her. The request for notice to the employee must comply with section 44842(b)(2), which states:

> The request for notice sent to the employee by the school district shall be in writing and shall, along with a copy of this section, be either personally served

[271] Statutes 1982, chapter 434; Statutes 1998, chapter 533.

> upon the employee, or mailed to him or her by United States certified mail with return receipt requested to his or her last known address, by the clerk or secretary of the governing board of the school district.

According to section 44842(c), if an employee who was on a leave of absence for 20 or more consecutive working days after April 30 of the previous year, and the employee fails to report for duty at the beginning of the of the ensuing school year after having notified the district of his or her intent to remain employed by the district, the employee may be deemed to have declined employment and his or her services may be terminated on the day following the 20th consecutive day of absence. Section 44842(c) also provides:

> No school district may terminate any employee pursuant to this subdivision unless the district has specifically notified the employee, at least five days in advance, of the time and place at which the employee was to report to work, and the employee did not request or was not granted a leave of absence authorized by the governing board of the district.
>
> This subdivision is applicable only to employees who were on leave of absence for 20 or more consecutive working days after April 30 of the previous school year.

Claimant requests reimbursement for the notice provisions in section 44842(a)(b) and (c).

The Commission finds that Education Code section 44842 does not impose a state-mandated program on school districts. The express language of the statute makes all of its requirements conditional on the school district's "request to give such notice." Yet there is no requirement on the face of the statute for the school district to request a notice of an employee in subdivision (a) of section 44842, or request notice of an intention to remain or not remain in the service of a school district in subdivision (b), or to terminate the employee in (c), thereby obviating the need to notify employees of the time and place at which the employee was to report to work in (c). And section 44842(c) expressly authorizes, but does not require, the district to terminate the employee. The remainder of 44842(c) prohibits termination unless the district complies with specified notice procedures, and unless the employee was not granted a leave of absence authorized by the district governing board. These decisions are locally made and are not mandated by the state.[272]

Additionally, the California Supreme Court determined that a reimbursable state-mandate does not exist when a local entity incurs costs for activities required by the state as part of a program in which the local entity "voluntarily" participates, if the participation is without legal compulsion and there is no evidence that the entity is practically compelled to participate in the program. The claimant has not shown the "certain and severe" penalty or other draconian consequence that would occur if districts failed to comply with this statute, or that it has no reasonable alternative but to comply. [273]

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[272] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 880.

[273] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 743, 749-754; *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 884-887; *Department of Finance (POBRA), supra*, 170 Cal.App.4th 1355, 1362-1368.

Accordingly, the Commission finds that Education Code section 44842, as amended in 1982 and 1998, does not impose a state-mandated program on school districts.

2. Probationary Employees in Two or More Districts (Ed. Code, § 44901)[274]

Education Code section 44901 derives from former section 13320, which was enacted in 1959. The statute was renumbered in 1976. Before the statute was amended in 1983, it provided that a certificated employee who has served in a position or positions requiring certification qualifications in two or more districts, each having an average daily attendance of 250 or more and governed by boards of identical personnel, and who has so served for a total of three complete consecutive school years, must, on being elected for a fourth consecutive year to a position or positions requiring certification qualifications in any of the districts, be classified as a permanent employee of the last district in which he or she was employed before his or her election for a fourth consecutive year.

In 1983, the Legislature designated then-section 44901 as subdivision (a) and added the following language: "This subdivision shall apply only to probationary employees whose probationary period commenced prior to the 1983-84 fiscal year." The 1983 statute also added subdivision (b), which is similar to section 44901(a) except that it applies to employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter, and except that the employee must be classified as a permanent employee after two consecutive years of service upon commencement of the third consecutive year. The 1983 amendment added a requirement for the district to notify the employee, on or before March 15 of the employee's second complete consecutive school year of employment, of the district's decision to reelect or not reelect the employee for the next succeeding school year to the position requiring certification qualifications. Additionally, subdivision (b) states: "In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year."

Claimant requests reimbursement for notifying a certified employee serving in two or more districts, on or before March 15 of the employee's second complete consecutive school year, of employment of any decision to reelect or not reelect the employee for the next succeeding school year to such a position pursuant to section 44901(b).)

The Commission finds that Education Code section 44901(b) does not impose a state-mandated program on school districts. The school districts that do not notify these employees in their second year must accept them as permanent employees. Districts that do not want to reelect the employee must provide notice to effect this decision, but reelection is a discretionary decision of the district. There is no state requirement to reelect or terminate the employee.

Because the decision to reelect or terminate an employee is a local decision, rather than made by the state, the ensuing notification is not mandated by the state.[275] Additionally, the California Supreme Court determined that a reimbursable state mandate does not exist when a local entity incurs costs for activities required by the state as part of a program in which the local entity "voluntarily" participates, if the participation is without legal compulsion and there is no

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[274] Statutes 1983, chapter 498.

[275] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 880.

evidence that the entity is practically compelled to participate in the program.[276] Here, there is no evidence in the record that school districts are practically compelled to comply with section 44901, that they will suffer "certain and severe" penalties or other draconian consequences, or have no other reasonable choice but to comply.

Accordingly, Education Code section 44901, as amended in 1983, does not impose a state-mandated program on school districts.

Issue II: Do California Code of Regulations, title 5 sections 80556(a)(c)(f)(j) and 80556.1(e) impose costs mandated by the state within the meaning of Government Code section 17514 and 17556?

As indicated above, the following professional growth activities constitute a state-mandated new program or higher level of service from July 1, 2002 until December 31, 2006 to renew clear single or multiple subject credentials:

- If a school district employs one or more holders of professional clear credentials, the chief administrative officer of the employing school district, or his or her designee, shall designate one or more certificated persons to be professional growth advisors.[277]
- The employing school district shall adopt policies and procedures for the selection of professional growth advisors which contribute the best possible match between the credential holder and the advisor.[278]
- The employing school district shall give each credential holder the names and work locations of any professional growth advisors who have been designated by the district.[279]
- The chief administrative officer of the employing school district, or his or her designee, shall remove any professional growth advisor who has been determined by the district or CTC to have willfully and arbitrarily violated Education Code Section 44227 or Article 4 of the regulations.[280]

And, the following activity constitutes a state-mandated new program or higher level of service from July 1, 2002 until December 31, 2006, to renew clear service or specialist credentials:

- The school district shall identify professional growth advisors and give each credential holder the names and work locations of any professional growth advisors who have been designated by the agency for these credential areas.[281]

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[276] *Kern High School Dist., supra*, 30 Cal.4th 727, 731, 743, 749-754; *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 884-887; *Department of Finance (POBRA), supra*, 170 Cal.App.4th 1355, 1362-1368.

[277] California Code of Regulations, title 5, section 80556(a).

[278] California Code of Regulations, title 5, section 80556(c).

[279] California Code of Regulations, title 5, section 80556(f).

[280] California Code of Regulations, title 5, section 80556(j).

[281] California Code of Regulations, title 5, section 80556.1(e).

The remaining issue is whether these provisions impose costs mandated by the state pursuant to Government Code section 17514, and whether any exceptions to reimbursement in Government Code section 17556 apply. Government Code section 17514 defines "cost mandated by the state" as:

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

Government Code section 17564 requires reimbursement claims to exceed $1,000 to be eligible for reimbursement.

At the time this test claim was filed, claimants had to only estimate they would incur $1,000 in costs to comply with the activities pled in the claim. Declarations have been filed by both claimants, Grossmont Union High School District and San Diego County Office of Education, in this regard.

There is no evidence in the record that funding has been appropriated to school districts for these activities, nor any law or evidence suggesting that other exceptions to costs mandated by the state apply pursuant to Government Code section 17556.

Accordingly, the Commission finds that these activities impose costs mandated by the state pursuant to Government Code section 17514.

V. Conclusion

The Commission finds that California Code of Regulations, title 5, sections 80556(a)(c)(f)(j) and 80556.1(e), as added and amended in 1986 and 1994,[282] impose a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution on school districts from July 1, 2002 until December 31, 2006, for the following activities:

A. Professional growth activities related to renewing clear single or multiple subject credentials:

- If a school district employs one or more holders of professional clear credentials, the chief administrative officer of the employing school district, or his or her designee, shall designate one or more certificated persons to be professional growth advisors.[283]
- The employing school district shall adopt policies and procedures for the selection of professional growth advisors which contribute the best possible match between the credential holder and the advisor.[284]
- The employing school district shall give each credential holder the names and work locations of any professional growth advisors who have been designated by the district.[285]

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[282] Register 86, No. 40; Register 94, No. 19.

[283] California Code of Regulations, title 5, section 80556(a).

[284] California Code of Regulations, title 5, section 80556(c).

[285] California Code of Regulations, title 5, section 80556(f).

- The chief administrative officer of the employing school district, or his or her designee, shall remove any professional growth advisor who has been determined by the district or CTC to have willfully and arbitrarily violated Education Code Section 44227 or Article 4 of the regulations.[286]

B. Professional growth activities related to renewing clear service or specialist credentials:

- The school district shall identify professional growth advisors and give each credential holder the names and work locations of any professional growth advisors who have been designated by the agency for these credential areas.[287]

All other statutes, regulations, and activities pled in this test claim do not constitute reimbursable state-mandated programs subject to article XIII B, section 6 of the California Constitution and are, therefore, denied.

[286] California Code of Regulations, title 5, section 80556(j).

[287] California Code of Regulations, title 5, section 80556.1(e).