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Received  
November 8, 2012  
Commission on  
State Mandates  
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November 8, 2012

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 9th Street, Suite 300  
Sacramento, CA 95814

**Re: Williams I, II, III  
05-TC-04; 07-TC-06; 08-TC-01**

Dear Ms. Halsey:

Please be advised claimant submits the following comments in response to the Draft Staff Analysis ("DSA").

School Facilities Emergency Repair Program, Education Code sections 17592.72- 17592.73; California Code of Regulations, Title 2, sections 1859.302; 1859.320-1859.330; Application for Reimbursement and Expenditure Report.

The *Eliezer Williams, et al., v. State of California, et al. (Williams)* case was filed as a class action in 2000 in San Francisco County Superior Court. The plaintiffs included nearly 100 San Francisco County students, who filed suit against the State of California and state education agencies, including the California Department of Education (CDE). The basis of the lawsuit was that the agencies failed to provide public school students with equal access to instructional materials, safe and decent school facilities, and qualified teachers. (<http://www.cde.ca.gov/eo/ce/wc/wmslawsuit.asp>) In 2004, in response to the settlement, the Legislature created the Emergency Repair Program (ERP), which provides funding for critical health and safety repairs in certain low-performing schools.

Staff comments in the DSA state, "It might be argued that compliance with the terms of the Emergency Repair Program, and other Williams legislation, is required in order to carry out that preexisting constitutional and statutory duty to provide safe educational facilities, and thus to avoid liability."

Claimants contend school districts are both legally and practically compelled to perform emergency repairs based on the constitutional and statutory duty to provide facilities that are safe for

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students, staff and the general public occupying the facilities.<sup>1</sup> Other than the School Facilities Emergency Repair Program, local governmental entities are provided with “no reasonable alternative” and “no true choice but to participate” in the program, and incur the additional costs associated with an increased or higher level of service. Denying the test claim based on a lack of sufficient evidence, that seeking emergency repair program funds “is not the only reasonable means to carry out [school districts’] core mandatory functions” fails to comply with reasonable interpretation of statutory and case law.

“Practical compulsion” this does not mean void of any choice, rather a more reasonable standard, feasible and more suitable for the particular purpose. (<http://oxforddictionaries.com/definition/practical>) “Practical” compulsion must mean something less than legal compulsion, some element of discretion, for example a financially-strapped school district to use state funds instead of local funds.

Good Repair and the Facilities Inspection System, Education Code sections 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, 17089.

“Former section 17002 contained definitions of a number of terms used in the State School Building Lease-Purchase Law of 1976, but did not expressly define “good repair,” as used in the chapter. A number of other sections, as discussed below, referred generally to a requirement of maintaining facilities in good repair, but did not define good repair in any express terms or by any identifiable standard. SB 550 added to section 17002 a definition of “good repair,”<sup>2</sup> as it applies to facilities, instructional spaces, and portable classrooms, and incorporated that definition by

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<sup>1</sup> Stated another way a reimbursable state mandate is created when the test claim statutes or regulation established conditions under which the state, rather than a local entity has made a decision requiring the district to incur the cost of a new program. *San Diego Unified v. Commission on State Mandates*, 33 Cal.4th 859, 880 (2004).

<sup>2</sup> (d)(1) “Good repair” means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an interim evaluation instrument developed by the Office of Public School Construction. The instrument shall not require capital enhancements beyond the standards to which the facility was designed and constructed.

(2) By January 25, 2005, the Office of Public School Construction shall develop the interim evaluation instrument based on existing prototypes and shall consult with county superintendents of schools and school districts during the development of the instrument. The Office of Public School Construction shall report and make recommendations to the Legislature and Governor not later than December 31, 2005, regarding options for state standards as an alternative to the interim evaluation instrument developed pursuant to paragraph (1). By September 1, 2006, the Legislature and Governor shall, by statute, determine the state standard that shall apply for subsequent fiscal years.

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reference in a number of other facilities funding programs.” (DSA p.17) Staff’s conclusion the aforementioned voluntarily assumed activities are based on a local decision fails to consider a lawsuit settlement resulting in a new statute legislation requiring the maintenance of facilities in good repair.

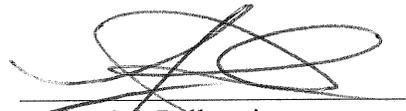
“The definition of good repair under amended section 17002 provides more tangible and objective criteria by which the requirement is met, in part by requiring the OPSC to develop a measuring instrument for the local agencies to use to ensure good repair. The amended section gives LEAs the flexibility to develop their own evaluation instrument, so long as its contents meet the minimum requirements of the instrument developed by the OPSC. But none of these requirements leads inexorably to the conclusion that “good repair” is a new standard, or a new responsibility of schools and school districts.” (DSA 67-68) This conclusion is based on conjecture that the changes to the statute are without purpose.

**CONCLUSION**

Based on the above, claimant contends the new activities stated above and imposed by the test claim statutes are reimbursable mandated activities.

**CERTIFICATION**

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

  
Arthur M. Palkowitz  
Attorney for the Claimant