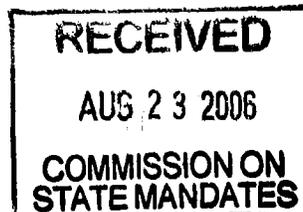




August 18, 2006

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



Dear Ms. Higashi:

As requested in your letter of October 3, 2005, the Department of Finance has reviewed the test claim submitted by the San Diego County Office of Education and the Sweetwater Union High School Districts (co-claimants) asking the Commission to determine whether specified costs incurred under various statutes and codes are reimbursable state mandated costs (Claim No. 05-TC-04, "Williams Case Implementation").

As a result of our review, we have concluded that the activities and requirements cited in this test claim do not constitute a state reimbursable mandate. We base this conclusion on the findings noted below, but first note that participation in voluntary and discretionary state programs, which may require certain conditions of participation, does not constitute a state mandate. In *Department of Finance v. Commission On State Mandates* (2003) 30 Cal.4<sup>th</sup> 727, the California Supreme Court confirmed the merits of the argument that where a local government entity voluntarily participates in a statutory program, the state may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for the increased level of activity. Consistent with this ruling, Williams Settlement activities imposed on the following voluntary programs should not constitute a reimbursable mandate:

- The School Facilities Emergency Repair Program (ERP), the School Facilities Program (SFP), the Lease Purchase Program, the Deferred Maintenance Program, and the State Relocatable Classroom Program.
- The Pupil Textbook and Instructional Materials Incentive Account.

In addition, Section 17556(e) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate if an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. Consistent with this code section, the following programs receive(d) funding for Williams Settlement activities, and therefore, these activities should not constitute a reimbursable mandate:

- Chapter 899, Statutes of 2004 (SB 6) provided \$25 million for the School Facilities Needs Assessment Grant Program (SFNAGP).
- Though the ERP is a voluntary program, funding is also provided to fully fund school facilities emergency repair projects. The annual budget provides \$100 million or 50 percent

of the unappropriated balance of the Proposition 98 Reversion Account, whichever amount is greater. The 2005 Budget Act provided \$196 million for the ERP and the 2006 Budget Act provides \$137 million for the ERP.

- Funding was provided in Section 23 of Chapter 900, Statutes of 2004 (SB 550) for superintendents to visit schools ranked in deciles 1 to 3, to report all instance of non-compliance with the instructional materials sufficiency requirements, to observe the sufficiency of textbooks, and to certify to the Superintendent of Public Instruction that school districts have corrected audit exceptions or that an acceptable plan of correction was submitted. Ongoing funding for these audits is included in Item 6110-266-0001 of the annual Budget Act.

There are also Williams Settlement activities that are not new activities or are activities that do not represent a higher level of service. All of these activities are reviewed in depth below.

### **Textbooks, Instructional Materials, Teachers, County Reporting**

Education Code Section (ECS) 1240: This section was amended to require that county superintendents:

- Conduct announced and unannounced visits to observe the sufficiency of textbooks, as defined by ECS 60119, and to ensure the information is correctly presented in the School Accountability Report Card.
- Review any school in his/her jurisdiction that ranked in any of deciles 1 to 3, inclusive, and not currently under review by the state or federal government.
- Report all instances of non-compliance with the instructional materials sufficiency requirements, provide an opportunity for the remedy of any identified deficiency, and if not remedied, request the State Department of Education to purchase the materials on the district's behalf pursuant to specified guidelines.

We note that, under prior law (ECS 1240), county superintendents already were required to visit and examine each school in his or her county at reasonable intervals to observe its operations and to learn of its problems. Many of the new requirements added in this section are contingent on the availability of funding. Funding was provided in Section 23 of Chapter 900, Statutes of 2004 (SB 550) for superintendents to visit schools for these purposes. Ongoing funding for these audits is included in Item 6110-266-0001 of the annual Budget Act. Therefore, this is not a reimbursable mandate because funding is provided for these purposes consistent with Government Code Section 17556(e). Further, the specific language of this section only applies to county superintendents and does not impose any new duties upon school districts.

This section also references section (c) of Section 60119 that defines "sufficient textbooks or instructional materials." Adding the references to ECSs 51050 and 60119 does not constitute a reimbursable mandate, it simply references existing law that requires school districts to enforce the courses of study and the uses of textbooks and instructional materials prescribed and adopted by the proper authority. This is not a new activity and therefore, not reimbursable.

ECS 14501: This section specifies that a compliance audit include: (1) the reporting requirements related to the sufficiency of textbooks and instructional materials as defined in Section 60119; (2) the inclusion of information related to teacher misassignments pursuant to Section 44258.9; and (3) the accuracy of the information in the School Accountability Report Card. We note that, prior to these amendments, school districts were already required to undergo financial and compliance audits. We also note that the K-12 Audit Guide never

increases the amount of activities detailed for audit. Any new addition to the Audit Guide is accompanied by a deletion of another activity. Thus the addition of these new requirements will not result in increased costs imposed on the district.

ECS 41020: This section specifies inclusion of information related to the use of instructional materials funds, teacher misassignments, and the information reported in the school accountability report card in county superintendent of schools' review of audit exceptions. County offices were already required to review audit exceptions, so while this section calls out the need to look at specific audit exceptions, it does not result in any additional workload since all exceptions would have required review previously. Further, the specific language of this section only applies to county superintendents and does not impose any new duties upon school districts.

ECS 41344.4: County superintendents are required to certify to the Superintendent of Public Instruction (SPI) that school districts have corrected audit exceptions pursuant to paragraphs 1-3 of ECS 14501 (b), or that an acceptable plan of correction was submitted pursuant to subdivision (k) of ECS 41020. Funding was provided in Section 23 of Chapter 900, Statutes of 2004 (SB 550) for superintendents to visit schools for these purposes. Ongoing funding for these audits is included in Item 6110-266-0001 of the annual Budget Act. Therefore, this is not a reimbursable mandate because funding is provided for these purposes consistent with Government Code Section 17556(e).

ECS 42127.6: Subdivision (a), as amended by test claim legislation, requires the county superintendents to review audits, reports, studies, etc. that contain evidence that a district is in fiscal distress. Superintendents must also review reports by external evaluators that find more than three of the Fiscal Crisis and Management Assistant Team's (FCMAT's) 15-most common indicators of a district in need of intervention are present. The superintendents are then required to investigate whether the district is in danger of receiving a qualified or negative certification, and, if so, report this finding along with recommended actions to the SPI. We note that in some cases the county would have found a district in need of a negative or qualified certification during the course of their the normal interim reporting period, and that activities under this scenario are not new requirements.

This section also requires school districts to provide the county superintendent with reports, audits, examinations, etc. commissioned by the district, county, the SPI, other state agencies that contain evidence of district fiscal distress. The cost of submitting a copy of this report would not appear to meet the \$1,000 annual threshold for making a claim.

ECS 44258.9: This section specifies the duties to be performed by county superintendents of schools with regard to the monitoring and review of school district certificated employee assignment practices and was amended by Chapter 118, Statutes of 2005, which simply clarified the existing language with regard to the monitoring and review of school teacher assignments. While this section provides priority and timeframes for schools based on specific characteristics (for example Academic Performance Index rank), the beginning of the code section clearly states that the duties are not mandated, but are to be performed "to the extent possible and with funds provided for that purpose..." Thus, this is not a reimbursable mandate. Further, the specific language of this section only applies to county superintendents and does not impose any new duties upon school districts.

ECS 60119: This section gives the eligibility requirements for the Pupil Textbook and Instructional Materials Incentive Program. Prior law required each governing school board, as a

condition of receipt of funds through the Pupil Textbook and Instructional Materials Incentive Program, to hold a public hearing or hearings to determine whether each pupil in each school in the district had sufficient textbooks and/or instructional materials in each subject consistent with the content and cycles of the curriculum framework adopted by the state board. Chapter 900, Statutes of 2004 (SB 550), specifies the curriculum subject matters to be discussed, specifies time frames for conducting the meetings, and defines "sufficient textbooks or instructional materials." Chapter 118, Statutes of 2005 (AB 831) specifies that the materials must be standards aligned and that if an insufficiency exists, the district must report on the percentage of pupils lacking the materials. However, while Chapter 900, Statutes of 2004 (SB 550) and Chapter 118, Statutes of 2005 (AB 831) provide more specificity regarding the times and issues to be discussed, the overarching requirement for a public meeting is not a mandated activity. Further, this section does not result in any mandated costs to districts for the reporting of insufficiencies, as instances of non-compliance would be voluntary and in violation of long-standing law (ECS 51050).

ECS 60252: Chapter 900, Statutes of 2004, amended this section to specify that one of the requirements for the Pupil Textbook and Instructional Materials Incentive Account is that districts are to ensure "to the extent practicable" that textbooks and instructional materials are purchased before the school year begins. Receiving money from the Pupil Textbook and Instructional Materials Incentive Account is voluntary on behalf of the district, therefore any requirements placed upon them as a condition of receipt of those funds is not reimbursable.

Section 11 of Chapter 902, Statutes of 2004: This section states the Legislature's encouragement that districts provide schools ranked in deciles 1 to 3 of the Academic Performance Index with first priority to review applications and resumes from credentialed teachers received by the district. The section only "encourages" this prioritization and the specific language does not place any new duties or requirements upon any school district or county superintendent of schools and therefore does not result in a reimbursable mandate.

### **School Accountability Report Card**

ECS 33126: The California voters approved Proposition 98, effective November 9, 1988, providing a state-funding guarantee for schools. The proposition amended article XVI, section 8 of the California Constitution, including adding subdivision (e), as follows:

Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school.

The proposition also added ECSs 33126 and 35256 concerning School Accountability Report Cards (SARCs). The Statement of Decision on the School Accountability Report Cards (97-TC-21) claim, rendered by the Commission on State Mandates on July 28, 2005, determined that the various additions and amendments that have been made to the SARC over time do not constitute a new program or higher level of service within an existing program within the meaning of the California Constitution, Article XIII B, section 6 and do not impose costs mandated by the state pursuant to Government Code sections 17514 and 17556.

The Commission's 2005 Statement of Decision was largely based on ECS 35256, which states that "the School Accountability Report Card shall include, but is not limited to, the conditions listed in ECS 33126." By specifying that the SARC "is not limited to" the provisions set out originally in ECS 33126, and by requiring districts to periodically compare their SARC with the

statewide model, the electorate recognized that the precise details of the model report card are subject to change, and that districts are required to make modifications as necessary.

Consistent with the Commission's 2005 Statement of Decision on SARC, the Department of Finance asserts that SARC responsibilities added by the test claim do not constitute new state reimbursable mandated activities for school districts. The assertions made by the San Diego County Office of Education and Sweetwater Union High School District in this test claim are very similar to the assertions by claimants during the SARC reconsideration in 2005. However, as established in the Commission's 2005 Statement of Decision, the SARC is not limited to the provisions originally set out in the Education Code because the electorate recognized that the details of the model report card are subject to change and districts are required to comply with those changes.

### **Uniform Complaint Procedure**

ECS 35186: This section requires school districts to report on a quarterly basis summarized data on the nature and resolution of all complaints against the school district to the county superintendent of schools and the governing board of the school district. Further, the section requires that the summary: (1) be presented at a regularly scheduled meeting of the governing board; (2) be organized by subject area of complaint; and (3) a distinction between resolved and unresolved complaints be made. Federal law mandates that complaint resolution processes be established. As a result, prior law and regulations already require local educational agencies to conduct and complete an investigation of most complaints within sixty days, and some complaints within thirty days. We note that this section simply requires school districts to provide final complaint reports that are already required by long-standing uniform complaint procedure law and regulations, to county offices of education and governing boards. Therefore, this section does not create a state reimbursable mandate for school districts. The specific language of this section only applies to school districts and does not impose any new duties upon county offices of education. Therefore, this section does not create a state reimbursable mandate for county offices of education either.

### **School Facilities Needs Assessment Grant Program**

As noted above, Section 17556(e) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate if an appropriation in a Budget Act or other bill includes additional funding that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. Chapter 899, Statutes of 2004 (SB 6), provided \$25 million to school districts specifically to fund all the requirements of the School Facilities Needs Assessment Grant Program (SFNAGP). As a result, activities related to the SFNAGP identified in the ECSs and the California Code of Regulation Sections (CCRSs) below are not reimbursable as state funding was provided to fully fund the program.

ECS 17592.70: This section established the School Facilities Needs Assessment Grant Program (SFNAGP) requiring school districts to: (1) develop a comprehensive needs assessment; (2) use the comprehensive needs assessment as baseline data for the facilities inspection system required pursuant to ECS 17070.75(e); (3) provide the results of the assessment to the Office of Public School Construction (OPSC); (4) use any remaining funds not needed for the assessment for making facilities repairs identified in its assessment and report to the OPSC on the repairs completed and the cost of the repairs; and (5) submit to the OPSC an interim report regarding the progress made by the district in completing the assessments of all eligible schools.

California Code of Regulations Section (CCRS) 1859.310: This section requires a school site that qualifies for the SFNAGP to be allocated funds by the SAB in order to conduct a one-time comprehensive school facilities needs assessment and must complete and submit a Web-Based Needs Assessment to the OPSC for each school site that meets the provisions of Section 1859.311 (1859.311 specifies the school must have been identified on the list published by the Department of Education pursuant to ECS 17592.70(b) and be newly constructed prior to January 1, 2000).

CCRS 1859.312: This section specifies the amount of funding provided for each school for the SFNAGP. There are no activities required of test claimants from this section; therefore this section is not a reimbursable mandate.

CCRS 1859.313: This section specifies the use of the SFNAGP grant funds for unbudgeted administrative or third party costs incurred as a result of performing the needs assessment and for repairs identified at any eligible school site within the local education agency where a needs assessment has been completed.

CCRS 1859.314: This section specifies the qualifications of the inspector completing the needs assessment. There are no activities required of test claimants from this section; therefore this section is not a reimbursable mandate.

CCRS 1859.315: This section specifies the reporting requirements of an local education agency that receives SFNAGP funds pursuant to 1859.312 and ECS 17592.70(c), including: (1) completing a Certification of Eligibility and submitting it to OPSC; (2) completing a Web-Based Progress Report Survey and submitting it to OPSC; (3) completing a Web-Based Needs Assessment for each applicable site and submitting it to OPSC by January 1, 2006; and (4) completing Form SAB 61-02 to report all expenditures made with SFNAGP grant funds on an agency-wide basis and submitting it to OPSC by January 1, 2007.

CCRS 1859.316: This section specifies that a school district's SFNAGP expenditures shall be subject to audit. There are no activities required of test claimants from this section; therefore this section is not a reimbursable mandate.

### **Other School Facilities Programs**

As noted above, in *Department of Finance v. Commission On State Mandates* (2003) 30 Cal.4<sup>th</sup> 727, the California Supreme Court ruled that where a local government entity voluntarily participates in a statutory program, the state may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for increased level of activity. The School Facilities Emergency Repair Program (ERP), the School Facilities Program (SFP), the Lease Purchase Program, the Deferred Maintenance Program, and the State Relocatable Classroom Program are voluntary programs. As such, the new requirements added to these programs in the ECSs and CCRSs below do not constitute a reimbursable mandate.

ECS 17592.72: This section established the ERP for schools ranked in deciles 1-3. The ERP was designed to address emergency facility repairs or replacement of structures or systems that are in a condition that poses a threat to the health and safety of pupils or staff while at school. Funding is provided in the amount of \$100 million or 50 percent of the unappropriated balance of the Proposition 98 Reversion Account, whichever amount is greater. The 2005 Budget Act

provided \$196 million for the ERP and the 2006 Budget Act provided \$137 million for the ERP to reimburse 100 percent of the facility emergency repair costs. Thus, this also meets the conditions of Government Code Section 17556(e) as stated above.

ECS 17592.73: This section lists the requirements for the State Allocation Board (SAB) in implementing and operating the SFNAGP and the ERP, including the following requirements: (1) adopt regulations and review and amend regulations as necessary; (2) establish and publish any procedures and policies; (3) apportion funds to eligible school districts; (4) provide technical assistance to school districts; (5) submit an interim status report on the SFNAGP to the Legislature by June 30, 2005; and (6) report to the Legislature and the Governor on expenditures and projections of the future expenditures related to the ERP, by June 30, 2008. Finance asserts that the activities in this section are not reimbursable, given that these activities are performed by a state agency, the SAB.

ECS 17070.75(e): This section requires a local education agency, as a condition of participation in the SFP or the receipt of Deferred Maintenance funds, to establish a facilities inspection system to ensure that each of its schools is maintained in good repair.

ECS 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, 17089: These sections define good repair as meaning a 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 OPSC by January 25, 2005. To evaluate the conditions of a school facility, the district may use the interim evaluation instrument or it may use an alternative evaluation instrument provided that it contains the minimum components addressed in the interim evaluation instrument. The interim evaluation instrument is designed so as not to require capital enhancements beyond the standards to which the facility was designed and constructed. A state standard of good repair is required to be determined by September 1, 2006. Ensuring that school facilities are in good repair has always been a requirement of the SFP, Lease Purchase Program, Deferred Maintenance Program, and the State Relocatable Classroom Program.

CCRS 1859.320: This section specifies that a school district seeking an ERP grant must complete and file a Form SAB 61-03 with OPSC.

CCRS 1859.325: This section specifies that school district facility maintenance accounts are subject to a review by OPSC to ensure that the local education agency is exercising due diligence in the administration of deferred maintenance and regular maintenance in order to avoid the occurrence of emergency repairs. There are no activities required of test claimants from this section; therefore this section is not a reimbursable mandate.

CCRS 1859.326: This section specifies that school district ERP expenditures are subject to audit by the OPSC. There are no activities required of test claimants from this section; therefore this section is not a reimbursable mandate.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing lists which accompanied your October 3, 2005 letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact me at (916) 445-0328.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Schweizer', written over the printed name.

Nicolas Schweizer  
Assistant Program Budget Manager

Attachments

Attachment A

DECLARATION OF NICOLAS SCHWEIZER  
DEPARTMENT OF FINANCE  
CLAIM NO. 05-TC-04

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

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

8/21/06

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at Sacramento, CA



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Nicolas Schweizer

## PROOF OF SERVICE

Test Claim Name: Williams Case Implementation

Test Claim Number: 05-TC-04

I, the undersigned, declare as follows:

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

On August 18, 2006, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Facsimile No. 445-0278

B-8

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

B-29

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

Ms. Lora Duzyk

San Diego County Office of Education  
6401 Linda Vista Road  
San Diego, CA 92111-7309

Ms. Dianne L. Russo  
Sweetwater Union High School District  
1130 Fifth Ave.  
Chula Vista, CA 91911-2896

Mr. Keith B. Petersen  
SixTen and Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Mr. Arthur Palkowitz  
San Diego Unified School District  
4100 Normal Street, Room 3159  
San Diego, CA 92103-8363

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting and Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Ms. Sandy Reynolds  
Reynolds Consulting Group, Inc.  
P.O. Box 894059  
Temecula, CA 92589

Ms. Harmeet Barkschat  
Mandate Resource Services  
5325 Elkhorn Blvd. #307  
Sacramento, CA 95842

Ms. Luisa Park  
State Allocation Board  
Office of Public School Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814

Mr. David E. Scribner  
Scribner Consulting Group, Inc.  
3840 Rosin Court, Suite 190  
Sacramento, CA 95834

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

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

Steve Smith Enterprises, Inc.  
Attention: Steve Smith  
4633 Whitney Avenue, Suite A  
Sacramento, CA 95821

E-8  
Department of Education  
Fiscal and Administrative Services Division  
Attention: Gerald Shelton  
1430 N Street, Suite 2213  
Sacramento, CA 95814

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

Education Mandated Cost Network  
Attn: Mr. Robert Miyashiro  
Director of Management Consulting  
School Services of California, Inc.  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Education Mandated Cost Network  
Attn: Michael Johnston, Chair  
Assistant Superintendent, Business  
Clovis USD  
School Services of California, Inc.  
1121 L Street, Suite 1060  
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 18, 2006 at Sacramento, California.



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Chad Rohrs