



EDMUND G. BROWN JR. ■ GOVERNOR

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November 15, 2012

Ms. Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

Dear Ms. Halsey:

The Department of Finance has reviewed the Commission on State Mandates draft staff analysis of the consolidated test claims 05-TC-04, 07-TC-06, and 08-TC-01, *Williams Case Implementation I, II, and III*, submitted by the San Diego County Office of Education and the Sweetwater Union High School District, which will be considered at the Commission's December 7, 2012 hearing.

We do not believe that any of the statutes or executive orders alleged in the test claims constitute reimbursable state mandates. Therefore, we disagree with the staff's recommendation that the following activities constitute reimbursable state mandates:

- County Superintendents' Oversight and Monitoring Responsibilities: Fiscal Crisis and Management Team Referrals, Education Code section 42127.6;
- School Accountability Report Cards, Education Code sections 33126 and 33126.1;
- Williams Complaint Process, Education Code section 33186; and
- Review of Audits and Audit Exceptions, Education Code section 14501, 41020, and 41344.4.

We do not believe these activities constitute reimbursable state mandates for the following reasons:

**1. County Superintendents' Oversight and Monitoring Responsibilities: Fiscal Crisis and Management Team Referrals, Education Code section 42127.6**

- A. County superintendents have, pursuant to statutes effective prior to January 1, 1975, a responsibility to "superintend," or conduct oversight of, the schools in their respective counties.***

The test claim statute states, "A school district shall provide the county superintendent of schools with a copy of a study, report, evaluation, or audit that was commissioned by the district, the county superintendent, the Superintendent of Public Instruction, and state control agencies and that contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team created pursuant to subdivision (i) of Section 42127.8."

County offices of education have a longstanding responsibility, articulated in statutes that have been effective at least since January 1, 1975, to monitor and oversee the school districts within their counties. Education Code section 1240 states, "The county superintendent of schools shall do all of the following: (a) Superintend the schools of his or her county..." This section must be interpreted to broadly describe the function of a county office of education in relation to the school districts in the county, and it must be interpreted to include a broad range of activities related to monitoring and oversight. A narrower interpretation would render the statutory enactment meaningless. This section further states that the county superintendent **shall** visit and examine a school to observe their operations and learn of their problems. For this statute to have meaning, there must be a complementary requirement on the part of school districts to provide the county superintendent with any documents, including the studies, reports, evaluations, and audits included in the test claim legislation, necessary for him to "superintend" the schools in the county.

The test claim statute complements and reinforces this interpretation and simply names specific duties that are part of, not in addition to, to the longstanding requirements enumerated in the Education Code. School districts have always had an obligation to provide county superintendents with necessary documents in order for the county superintendent to conduct its oversight responsibilities.

***B. If a school district commissions a study, it does so at its own discretion, and the requirement to provide that study to the county superintendent is a downstream activity stemming from the discretionary activity. Furthermore, when a county superintendent commissions a study of the school district, it should be understood that the county superintendent would receive a copy of that report.***

A school district makes a decision to commission a study, report, evaluation, or audit at its own discretion. Therefore, any costs to provide a copy of these documents would stem from the district's discretionary activity. Additionally, a school district would already provide a county superintendent with a copy of a study, report, evaluation or audit that was commissioned by that same county superintendent, by the very nature of a report that is "commissioned." Therefore, because they would not result in additional costs, the statutory requirements cannot constitute a reimbursable state mandate.

## **2. School Accountability Report Cards, Education Code sections 33126 and 33126.1**

***Because the test claim statutes impose duties that are necessary to implement and are expressly included in a ballot measure approved by voters in a statewide election, it does not constitute a reimbursable state mandate, consistent with Government Code section 17556.***

The test claim statutes identify specific elements that must be included in a School Accountability Report Card and implement the provisions of Proposition 98, which was approved by voters in the November 1998 statewide election and created the requirements for all schools to prepare and distribute School Accountability Report Cards.

Proposition 98 added Education Code section 33126. Section (a) of the statute states:

*"(a) The model School Accountability Report Card shall include, but is not limited to, assessment of the following school conditions:*

- (1) Student achievement in and progress toward meeting reading, writing, arithmetic and other academic goals.
- (2) Progress toward reducing drop-out rates.
- (3) Estimated expenditures per student, and types of services funded.
- (4) Progress toward reducing class sizes and teaching loads.
- (5) Any assignment of teachers outside their subject areas of competence.**
- (6) Quality and currency of textbooks and other instructional materials.**
- (7) The availability of qualified personnel to provide counseling and other student support services.
- (8) Availability of qualified substitute teachers.
- (9) Safety, cleanliness, and adequacy of school facilities.**
- (10) Adequacy of teacher evaluations and opportunities for professional improvement.
- (11) Classroom discipline and climate for learning.
- (12) Teacher and staff training, and curriculum improvement programs.
- (13) Quality of school instruction and leadership.

*“In developing the statewide model School Accountability Report, the Superintendent of Public Instruction shall consult with a Task Force on Instructional Improvement, to be appointed by the Superintendent, composed of practicing classroom teachers, school administrators, parents, school board members, classified employees, and educational research specialists, provided that the majority of the task force shall consist of practicing classroom teachers.” [Emphasis added.]*

As the Commission’s draft staff analysis indicates, the initiative also specifies that its statutory provisions may only be amended by a two-thirds vote of the Legislature to further the purposes of the initiative.

The test claim statute implements the provisions of the voter-approved initiative related to the School Accountability Report Card. There are several indications that the proponents of Proposition 98 intended for the Legislature to take further action to make operational the categories listed in the initiative language:

- The initiative specifies that the model report card shall include specific elements but expressly states that the list is not comprehensive.
- The initiative requires that the Superintendent consult with the task force to develop the model report card, which serves as the basis for the report cards produced by individual schools. If the initiative were self-implementing, this type of consultation would be unnecessary.
- Most directly, the initiative specifically allows the Legislature to amend the statute to further the initiative’s purposes.

The Legislative Counsel included the following in its digest of the test claim statute:

*“This bill would require the school accountability report card to include information regarding the availability of sufficient textbooks and other instructional materials for each pupil, any needed maintenance of school facilities to ensure good repair, the misassignments of teachers, including misassignments of English learner teachers, and*

*the number of vacant teacher positions for the most recent 3-year period. The bill would define "misassignment" and "vacant position" for this purpose."*

The School Accountability Report Card elements that were added by the test claim statutes directly relate to the subjects contained in the original Proposition 98 language. They describe specific indicators related to instructional materials, teacher assignments, and school facilities, which were all addressed in Proposition 98. Therefore, the amendments should be interpreted to make operational the broad categories enumerated in the initiative language, not to add new requirements.

If these elements were not selected by the Legislature to make operational the categories identified in the initiative, the Superintendents of Public Instruction and individual school districts would make decisions about specific indicators to use. They would not be free of the responsibility to report information that fits into these categories. The state is not shifting additional responsibility to local governments; instead, it is selecting one alternative in implementing the initiative that school districts are expected to use.

Finally, because the initiative expressly states that the Legislature may only amend the statutes in furtherance of the initiative's purposes, the Commission must presume that the Legislature did so and that the statutes are necessary to implement the initiative and expressly permitted by the initiative.

### **3. Williams Complaint Process, Education Code section 33186**

#### ***A. The Uniform Complaint Process alleged in the test claim is not "new and different."***

Section (a) of Education Code section 35186, alleged in the test claim states, "A school shall **use the uniform complaint process it has adopted** as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, teacher vacancy or misassignment, and intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12."

As the emphasized selection indicates, the test claim statute states that the complaint process used to address *Williams* complaints is the process the school district has already adopted. This statute does not add a new process but provides additional purposes for an existing process.

#### ***B. In the absence of the complaint process created by the test claim statute, a school district would still be required to respond to violations of applicable laws. There is no evidence that this process would result in greater costs than an alternative. This is especially true in cases in which the school district is violating applicable statutes and the complaint process corrects these errors.***

The Uniform Complaint Process established by the test claim statute creates a structure for individuals to seek remedies if a school district violates applicable laws or regulations. In the absence of the process established in the statute, there would be an expectation that school

districts develop and implement an alternative process for individuals to file complaints and for districts to respond to such complaints.

The costs to school districts related to the implementation of the complaint process created by the test claim statute must be compared with the costs of implementing an alternative process for the district to respond to complaints. There is no evidence that the Uniform Complaint Process costs more than the alternatives. Therefore, the test claim statute does not constitute a reimbursable state mandate.

This is especially relevant in cases in which a school district identifies and resolves deficiencies in response to a complaint made pursuant to the Uniform Complaint Process. In these cases, a school district's costs as a result of engaging in the Uniform Complaint Process are activities that result from the district's deficiency related to instructional materials, facilities conditions, or teacher vacancies or misassignments, and the district should be liable for these costs.

***C. There is no reason to believe the requirement to post notices would result in any actual costs.***

It is not reasonable to assume that there would be costs associated with posting a notice regarding the complaint procedures, pursuant to Education Code section 35186. The Legislature included in the test claim statute the exact text of an acceptable notice. A school district that chooses to modify the text should bear the costs of any modifications. There is no reason to believe that the costs of physically posting the notices would create any actual costs for the school district, even on a one-time basis.

**4. Review of Audits and Audit Exceptions, Education Code section 14501, 41020, 41344.4**

***A. In approving Proposition 98 in 1988, voters required that schools that receive state funding shall implement an annual audit. Therefore, the test claim statute, including the requirements that the audit address Williams issues, implement a voter-approved initiative, consistent with Government Code section 17556.***

Subsection (e) of Section 8.5 of Article XVI of the California Constitution, as amended by Proposition 98, states, "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 *Williams* elements are basic requirements that all school districts must meet in expending state funding. Therefore, it is reasonable for the financial and compliance audits, performed pursuant to Education Code section 14501, to include verification of these requirements.

***B. Given that the financial and compliance audits may address all of a school district's funds, the test claim statute should be interpreted to provide focus in how audit resources should be directed, rather than creating a higher level of service.***

The existing financial and compliance audits program has always been able to address the categories of expenditures identified in the test claim statute. The statute should not be interpreted to create a higher level of service, but to identify the Legislature's use of audit resources.

**C. Review of audit exceptions are, and have been, a part of a county superintendent's responsibility to "superintend" the schools.**

These are not new responsibilities for county offices of education. Prior to the enactment of the test claim statute, county superintendents would have had to address audit exceptions that related to the *Williams* elements, even though they were not expressly contained in statute. Furthermore, as discussed previously, any costs to the county offices are a part of the broad range of duties required to superintend the schools in the county. In order to carry out the responsibilities of superintending the school districts in a county, the county superintendent must ensure that the school district is operating schools that meet basic constitutional requirements, including those specifically included in the *Williams* statutes. To do so, the county superintendent must review these audit exceptions specifically related to these statutes.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Elisa Wynne, Principal Program Budget Analyst, at (916) 445-0328.

Sincerely,



NICK SCHWEIZER  
Program Budget Manager