BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code sections 88, 1240, 1242, 1242.5, 14501, 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, 17089, 17592.70, 17592.71, 17592.72, 17592.73, 32228.6, 33126, 33126.1, 35186, 41020, 41207.5, 41344.4, 41500, 41501, 41572, 42127.6, 44225.6, 44258.9, 44274, 44275.3, 44325, 44453, 44511, 48642, 49436, 52055.625, 52055.640, 52055.662, 52059, 52295.35, 56836.165, 60119, 60240, 60252, and 62000.4 as Added or Amended by Statutes 2004, Chapter 899 (SB 6); Statutes 2004, Chapter 900 (SB 550); Statutes 2004, Chapter 902 (AB 3001); Statutes 2004, Chapter 903 (AB 2727); Statutes 2005, Chapter 118 (AB 831); Statutes 2006, Chapter 704 (AB 607); Statutes 2007, Chapter 526 (AB 347).

California Code of Regulations Title 5, Sections 4600-4671; Title 2, Sections 1859.300-1859.330 as Added or Amended by Register 2005, No. 52; Register 2005, No. 22; Register 2005, No. 45; Register 2007, No. 27; Register 2007, No. 51.

Alleged Executive Orders, State Allocation Board Forms: Certification of Eligibility, Interim Evaluation Instrument, Needs Assessment Report, Needs Assessment Report Worksheet, Expenditure Report, Application for Reimbursement and Expenditure Report, Web-Base Progress Report Survey, Web-Based Needs Assessment.

Williams I Filed on September 21, 2005,
Williams II Filed on December 14, 2007,
Williams III Filed on July 7, 2008

By San Diego County Office of Education, and Sweetwater Union High School District, Claimants.

Case No.: 05-TC-04; 07-TC-06; 08-TC-01

Williams Case Implementation I, II, III

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

(*Adopted: December 7, 2012*)

(*Served: December 18, 2012*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on December 7, 2012. Mr. Arthur Palkowitz appeared for the claimants. Ms. Elisa Wynne and Mr. Christian Osmena appeared for the Department of Finance.

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 the staff analysis to partially approve the test claim at the hearing by a vote of seven to zero.

Summary of the Findings

This consolidated test claim alleges reimbursable state-mandated costs incurred by school districts and county offices of education pursuant to implementation of the legislative enactments resulting from the state's settlement in *Eliezer Williams, et al. v. State of California* (*Williams*). In *Williams*, the plaintiffs sought to vindicate the rights of public schoolchildren to receive access to sufficient instructional materials; decent, clean, and safe school facilities; and capable teachers.

The case was settled under the Schwarzenegger administration, and the settlement agreement called for legislative action to ensure that students would be provided with sufficient instructional materials, qualified teachers, and clean and safe facilities and instructional spaces. Specifically, the statutes, regulations, and alleged executive orders that were enacted to implement the settlement affect the following eight programs:

- The School Facilities Needs Assessment Grant Program. This program is a grant program that funds a one-time Comprehensive Needs Assessment to assess the needs of schools ranked in deciles 1 to 3 of the Academic Performance Index (API).
- The School Facilities Emergency Repair Program. An account was established to fund urgent repairs or replacements of building systems of facilities at deciles 1 to 3 schools.
- County Office of Education Oversight. The statutes expanded fiscal and operational oversight of schools and school districts by county superintendents with respect to the condition of facilities, teacher vacancies and misassignments, accuracy of the School Accountability Report Cards (SARCs), and availability of intensive instruction to aid students in passing the high school exit examination
- School Facilities Funding (Good Repair). The statutes clarified the definition of "good repair," and added a Facilities Inspection System to ensure the good repair of school facilities.
- School Accountability Report Cards. The statutes expanded the scope of the SARCs.
- *Williams* Complaint Process. A new *Williams* specific Uniform Complaint Process was added (*Williams* complaint process).
- Fiscal and Compliance Audits. The scope of fiscal and compliance audits was expanded.
- Pupil Textbook and Instructional Materials Incentive Program. New benchmarks for provision of sufficient textbooks and instructional materials were provided.

For the reasons stated in the decision, the Commission denies many of the requested activities added or amended by the test claim statutes, regulations, and executive orders on the ground that they are triggered by a school district's voluntary compliance with a grant program; some activities are not new, but simply clarify existing law; and many activities are fully funded by specific appropriations made to local educational agencies (LEAs) in amounts that are sufficient to fund the cost of any new required activity.

The Commission finds, however, that Education Code sections 14501, 41020, 33126(b), 35186, and 42127.6 impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the new mandated activities listed in the conclusion of this decision that relate to School Accountability Report Cards, *Williams* complaint process, and Fiscal and Compliance Audits.

COMMISSION FINDINGS

I. Chronology

9/21/2005	Claimants, San Diego County Office of Education and Sweetwater High School District, filed *Williams I* (05-TC-04) with the Commission on State Mandates (Commission).[1]
10/28/2005	Department of Finance (DOF) requested an extension of time to submit written comments on *Williams I*.
10/31/2005	The Commission granted DOF's request for an extension of time to submit comments to February 2, 2006.
11/01/2005	Office of Public School Construction (OPSC) submitted written comments on *Williams I* (05-TC-04).
2/02/2006	DOF requested a second extension of time to submit written comments on *Williams I*.
2/07/2006	The Commission granted DOF's request for an extension of time to submit comments to April 3, 2006.
3/27/2006	DOF requested a third extension of time to submit written comments on *Williams I*.
4/07/2006	The Commission granted DOF's request for an extension of time to submit comments to June 19, 2006.
6/19/2006	DOF requested a fourth extension of time to submit written comments on *Williams I*.
6/21/2006	The Commission granted DOF's request for an extension of time to submit comments to August 18, 2006.
8/18/2006	DOF submitted written comments on *Williams I* (05-TC-04).

[1] Based on the September 21, 2005 filing date, the potential period of reimbursement for the *Williams I* test claim would begin July 1, 2004. However, the test claim statutes alleged in *Williams I* were enacted as urgency legislation on September 29, 2004, and therefore the date of enactment marks the potential period of reimbursement.

12/14/2007	Claimants filed *Williams II* (07-TC-06) with the Commission.[2]
1/25/2008	DOF requested an extension of time to submit written comments on *Williams II*.
1/25/2008	The Commission granted DOF's request for an extension of time to February 25, 2008.
2/22/2008	OPSC requested an extension of time to submit written comments on *Williams II*.
2/25/2008	Department of Finance submitted written comments on *Williams II* (07-TC-06).
3/12/2008	The Commission granted OPSC's request for an extension of time to April 12, 2008.
4/14/2008	Office of Public School Construction submitted written comments on *Williams II* (07-TC-06).
7/02/2008	Claimants filed *Williams III* (08-TC-01) with the Commission.[3]
8/19/2011	Commission notified parties of consolidation of the three *Williams* claims.
10/18/2012	Draft staff analysis and proposed statement of decision issued for a public comment period ending on November 8, 2012.
11/08/2012	Claimants submitted written comments on the draft staff analysis and proposed statement of decision.
11/16/2012	DOF submitted late comments on the draft staff analysis and proposed statement of decision.[4]

[2] Based on the December 14, 2007 filing date, the potential period of reimbursement for the *Williams II* test claim would begin July 1, 2006. However the test claim statutes alleged in *Williams II* were enacted September 29, 2006, effective January 1, 2007, and therefore the period of reimbursement begins on the later effective date of January 1, 2007. Amendments to the regulations alleged in *Williams II* were filed as emergency regulations July 2, 2007, and the reimbursement period for any mandated activities found under the regulations would be July 2, 2007.

[3] Based on the July 2, 2008 filing date, the potential period of reimbursement for the *Williams III* test claim would begin July 1, 2007. However the test claim statute at issue in *Williams III* was enacted as urgency legislation October 12, 2007, and therefore the date of enactment marks the potential reimbursement period.

[4] The late filing of comments has resulted in Commission staff rewriting the final staff analysis and putting them through the Commission's review process two times, since the comments came in on the day final analyses were due to have been completed by staff. This has caused significant disruptions in work flow and has taken staff away from working on matters for the January hearing. Several parties have taken to routinely filing late comments without requesting an extension of time to file comments for good cause, as is provided for under the Commission's

II. Introduction & Background

This consolidated test claim alleges reimbursable state-mandated costs incurred by school districts and county offices of education pursuant to implementation of the legislative enactments resulting from the settlement in the case of *Eliezer Williams, et al. v. State of California* (*Williams*). The activities alleged include conducting needs assessments of low-performing schools; conducting emergency repairs; more intensively monitoring schools and school districts for compliance with defined standards for sufficiency of textbooks, providing qualified teachers, and safe and habitable school facilities; more intensive enforcement of state textbook standards; more intensive monitoring of hiring and assignment of credentialed teachers; compliance with various regulations for the receipt of grant funding to repair schools; increased scope of the SARC; a new *Williams* complaint process; new and expanded auditing requirements, and new benchmarks with respect to the sufficiency of textbooks.

A. The *Williams* Settlement

The plaintiffs in *Williams* sought to vindicate the rights of public schoolchildren to receive access to sufficient instructional materials; decent, clean, and safe school facilities; and capable teachers. The *Williams* case was filed on May 17, 2000, alleging that defendants, including the State of California, the California Board of Education, the California Department of Education (CDE), and the California Superintendent of Schools, had failed to meet their duty under the California Constitution to provide equal access to the fundamental necessities of education for all of California public schoolchildren. The case was certified as a class action on October 1, 2001; the class was defined to include all current and future students of California public schools "who suffer from one or more deprivations of basic educational necessities." During the pendency of the litigation, and in the midst of protracted settlement negotiations, a recall election was held, and the new Schwarzenegger Administration "manifested a determination to deal with problems in public education and to settle this litigation."[5]

The settlement called for a series of legislative proposals intended to ensure that students would be provided with sufficient instructional materials; that they would be met with qualified teachers; and that the facilities and instructional spaces would be clean and safe. The settlement legislation authorized substantial new spending to repair facilities; replace instructional materials; and improve oversight at the county and the state level, all targeted to impact primarily the lowest performing schools as defined by the API.[6]

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regulations. The net result of this practice is to increase delays in the processing of matters pending before the Commission. Under the Commission's regulations, a three week comment period is provided and "all comments timely filed shall be reviewed by Commission staff and may be incorporated into the final written analysis." (2 CCR 1183.07(c).) However, written testimony received at least 15 days in advance of the hearing [i.e. late filings], shall be included in the Commission's meeting binders. (2 CCR 1187.6.) Thus, there is no requirement for staff to review late comments or include an analysis of them in the final staff analysis and proposed decision.

[5] Exhibit I, Notice of Proposed Settlement, *Williams* v. California, No. 312236, Superior Court of California, County of San Francisco, pp. 1-5 [citing Declaration of Jack W. Londen].

[6] *Id.*, at p. 7.

B. Statutes Alleged

The legislation implementing the terms of the settlement hereinafter will be referred to by bill number or by code section, as appropriate. Where a code section was amended more than once by the test claim statutes alleged, the bill number or chapter number may be necessary to clarify the amendments made and the applicable periods of reimbursement for certain activities. The following is a brief summary of the test claim statutes, by statute, chapters, bill number, and code sections affected.

Statutes of 2004, chapter 899 (SB 6)

SB 6, the first *Williams* statute at issue in this test claim, sought to re-direct funding from various sources to schools in need of repair, with first priority being those schools that were ranked in deciles 1-3, inclusive, of the API. To that end, SB 6 made the following changes to the law in effect immediately prior to its enactment:

- Added section 17592.70 directing the State Allocation Board (SAB) to administer a new account,[7] and directing the school districts receiving funds from that account to complete a one-time comprehensive assessment of school facilities needs for schools ranked in deciles 1-3 of the 2003 base API;[8]
- Created another SAB administered account to reimburse school districts, upon application, for emergency or urgent repairs;[9]
- Allocated $30 million to fund the one-time comprehensive needs assessments and to begin funding the emergency repair account in Section 4 of the bill; and,[10]
- Established the Proposition 98 Reversion Account, to hold funds that have not been disbursed or otherwise encumbered.[11]

Statutes of 2004, chapter 900 (SB 550)

The second statute alleged in this test claim is SB 550. SB 550 made the following changes to existing law:

- Broadened the oversight duties of county superintendents with respect to facilities needs, textbook sufficiency, and the accuracy of information reported in the SARCs;[12]
- Broadened a county superintendent's duties to enforce the use of state textbooks, and provided for remedial action to be taken in the case of noncompliance;[13]

[7] Education Code section 17592.70(a) (Stats. 2004, ch. 899 § 1 (SB 6)).

[8] Education Code section 17592.70(d)(1) (Stats. 2004, ch. 899 § 1 (SB 6)).

[9] Education Code sections 17592.71-17592.73 (Stats. 2004, ch. 899 § 1 (SB 6)).

[10] Statutes 2004, chapter 899, section 4 (SB 6).

[11] Statutes 2004, chapter 899, section 2 (SB 6).

[12] Education Code section 1240(c)(2)(E) (Stats. 2004, ch. 900 § 1 (SB 550)).

[13] Education Code section 1240(i) (Stats. 2004, ch. 900 § 1 (SB 550)).

- Clarified the meaning of "good repair" as it is used in the State School Building Lease-Purchase Law of 1976 and the School Facilities Act of 1998, among other statutes;[14]
- Provided that as a condition of the school facilities program, a district must establish a "facilities inspection system" to ensure schools are maintained in "good repair;"[15]
- Added additional information that must be reported in the SARC, including the availability of sufficient textbooks and instructional materials, needed maintenance of school facilities, and teacher misassignments and vacancies;[16]
- Directed the California Department of Education (CDE) to add the above objectives to its standardized template for SARC;[17]
- Created a new *Williams* complaint process to address primary objectives of availability of textbooks, facilities conditions, and teacher misassignments and vacancies;[18]
- Required local officials to investigate and take remedial action promptly to resolve issues identified by the *Williams* complaint process;[19]
- Included within the scope of a "financial and compliance audit" the objectives of sufficient textbooks, teacher misassignments and vacancies, and accuracy of the school accountability report cards;[20] and required that the superintendent include those objectives in the review of audit exceptions;[21]
- Provided that, notwithstanding any other law, a school district is not required to repay an apportionment based on a significant audit exception if the county superintendent certifies to the Superintendent of Public Instruction and the Controller that an audit exception has been corrected or an acceptable plan of correction put in place;[22]
- Amended sections 52055.625 and 52055.640 to add requirements, conditional upon the receipt of funds, to the High Priority Schools Grant Program;
- Added section 52055.662, providing for new grants during the phase-out of schools from the High Priority Schools Grant Program;[23]

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[14] See Education Code section 17000, et seq.; Education Code section 17070.10 et seq. (Stats. 2004, ch. 900 §§ 3-9 (SB 550)).

[15] Education Code section 17070.75(e) (subd. (e) added by Stats. 2004, ch. 900 § 7 (SB 550)).

[16] Education Code section 33126(b)(5-6; 9) (Stats. 2004, ch. 900 § 10 (SB 550)).

[17] Statutes 2004, chapter 900, section 11 (SB 550).

[18] Education Code section 35186 (Stats. 2004, ch. 900 § 12 (SB 550)).

[19] Education Code section 35186 (Stats. 2004, ch. 900 § 12 (SB 550)).

[20] Education Code section 14501 (Stats. 2004, ch. 900 § 2 (SB 550)).

[21] Education Code section 41020 (Stats. 2004, ch. 900 §13 (SB 550)).

[22] Statutes 2004, chapter 900, section 14 (SB 550).

[23] Statutes 2004, chapter 900, section 15-17 (SB 550).

- Clarified the definition of "sufficient textbooks or instructional materials" in the context of the Pupil Textbook and Instructional Materials Incentive Program, and required that as a condition of participation in the program, school districts must make a determination and resolution before the end of the eighth week of school as to whether their students in fact have sufficient textbooks or instructional materials;[24]
- Amended section 60240 to provide for up to $5 million to be expended from the State Instructional Materials Fund to acquire instructional materials for school districts at the request of county superintendents pursuant to section 1240(i);[25]
- Required that, as a condition of receiving Instructional Materials funds, a school district must ensure, *to the extent practicable*, that it orders necessary books and materials before the beginning of the school year;[26]
- Repealed section 62000.4; and,[27]
- Made a number of appropriations in sections 22 and 23 of the bill, as discussed below where appropriate.[28]

Statutes of 2004, chapter 902 (AB 3001)

AB 3001 amended the Education Code as follows:

- Amended section 42127.6 to provide that school districts must provide their county superintendent with copies of any reports or studies containing evidence of the district being in fiscal distress. The county superintendent is then required to review those reports or studies, and investigate whether the school district may be unable to meet its financial obligations. If so, the superintendent must report to the Superintendent of Public Instruction, and take remedial action as provided. One of the available remedial actions possible is to assign the Fiscal Crisis and Management Assistance Team to review teacher hiring, retention, and misassignment. If the Fiscal Crisis and Management Assistance Team is assigned, the school district is required to take and adopt their recommendations unless it can show good cause for not doing so;[29]
- Amended section 44225.6, addressing the annual report to the Legislature and to the Governor by the Commission on Teacher Credentialing;[30]
- Provided that in exercising his or her existing duties to monitor and review certificated employee assignment practices under section 44258.9, a county superintendent shall "give priority" to schools ranked in deciles 1 to 3 of the 2003 base API;[31]

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[24] Education Code section 60119 (Stats. 2004, ch. 900 § 18 (SB 550)).

[25] Statutes 2004, chapter 900, section 19 (SB 550).

[26] Education Code section 60252 (Stats. 2004, ch. 900 § 20 (SB 550)).

[27] Statutes 2004, chapter 900, section 21 (SB 550).

[28] Statutes 2004, chapter 900, sections 22-23 (SB 550).

[29] Education Code section 42127.6 (Stats. 2004, ch. 902 § 1 (AB 3001)).

[30] Statutes 2004, chapter 902, section 2 (AB 3001).

- Amended section 44258.9 to require that a county superintendent must investigate school and district efforts to ensure that credentialed teachers serving in an assignment requiring special certification or training have completed such certification or training;
- Required that the annual report submitted to the Commission on Teacher Credentialing must also be submitted to CDE, and must include information on employee assignment practices in schools ranked in deciles 1 to 3 of the 2003 base API, to ensure that in schools of 20% or more English learner pupils, the assigned teachers have completed the necessary training;[32]
- Amended sections 44274 and 44275.3 to provide that where the commission [on Teacher Credentialing] determines that another state's licensing requirements are at least comparable to California's applicants from that state will not be required to meet California requirements for the basic skills proficiency test;[33]
- Amended sections 44325 and 44453 to bring districts' and universities' internship programs in line with the requirements of the federal No Child Left Behind Act of 2001;[34]
- Made technical, non-substantive changes to section 44511;[35]
- Amended section 52055.640, of the High Priority Schools Grant Program to require annual reporting of school statistics regarding the percentages of credentialed teachers and English learners;[36]
- Amended section 52059 to require that the Statewide System of School Support, consisting of regional consortia, including county offices of education and school districts, shall provide assistance to schools and school districts in need of improvement by reviewing and analyzing all facets of the school's operation, including recruitment, hiring, and retention of principals, teachers, and other staff; and the roles and responsibilities of district and school management personnel; and,[37]
- "[E]ncourages school districts to provide all the schools it maintains that are ranked in deciles 1 to 3…priority to review resumes and job applications received by the district from credentialed teachers."[38]

Statutes of 2004, chapter 903 (AB 2727)

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[31] Education Code section 44258.9 (Stats. 2004, ch. 902 § 3 (AB 3001)).

[32] Education Code section 44258.9 (Stats. 2004, ch. 902 § 3 (AB 3001)).

[33] Statutes 2004, chapter 902, sections 4-5 (AB 3001).

[34] Statutes 2004, chapter 902, sections 6-7 (AB 3001).

[35] Statutes 2004, chapter 902, section 8 (AB 3001).

[36] Statutes 2004, chapter 902, section 9 (AB 3001).

[37] Statutes 2004, chapter 902, section 10 (AB 3001).

[38] Statutes 2004, chapter 902, section 11 (AB 3001).

AB 2727 amended section 35186, as enacted under chapter 900 of Statutes of 2004, to require that LEAs use the *Williams* complaint process to address "emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff." SB 550, which was signed before AB 2727, would have amended the same code section and contained broader language, permitting complaints with respect to "the condition of a facility that is not maintained in a clean or safe manner or in good repair."[39] Assembly Bill 2727 thereby limited facilities complaints under the *Williams* complaint process to those complaints regarding *dangerous* conditions, rather than the broader scope of complaints provided for in the earlier language, and since AB 2727 was signed after SB 550, the language on this point prevailed and became law.

Statutes of 2005, chapter 118 (AB 831)

AB 831 amended selected language in several sections of the earlier test claim statutes, in order to clarify the requirements, and in some cases provide some leniency as follows:

- Added section 88, which provides that the "state board," when used in the Education Code, means the State Board of Education, generally;[40]
- Amended section 1240(c), which provided formerly that a county superintendent's visits to schoolsites must not disrupt the operation of the school; to provide that the superintendent's visits should "minimize disruption;"[41]
- Amended section 1240(i) addressing the county superintendent's review and enforcement of state textbooks, adding a cross-reference to the section providing for proper adoption of textbooks and instructional materials;
- Made explicit that the review of schools ranked in deciles 1 to 3 must be completed *by the fourth week* of school; the former language had required the review "shall be conducted within the first four weeks;"[42]
- Provided that for counties in which more than 200 schools are ranked in deciles 1 to 3, the superintendent may utilize a combination of site visits and written surveys to accomplish the textbook sufficiency review within the timeframe;[43]
- Made technical non-substantive changes to section 17592.70;[44]
- Repealed section 32228.6;[45]

[39] Compare Education Code section 35186(a) (Stats. 2004, ch. 900 § 12 (SB 550)) with Education Code section 35186(a) (Stats. 2004, ch. 903 § 1 (AB 2727)).

[40] Education Code section 88 (Stats. 2005, ch. 118 § 1 (AB 831)).

[41] Education Code section 1240(c)(2)(D)(i) (Stats. 2005, ch. 118 § 1 (AB 831)).

[42] Education Code section 1240(i) (Stats. 2005, ch. 118 § 1 (AB 831)).

[43] Education Code section 1240(i)(3)(B) (Stats. 2005, ch. 118 § 1 (AB 831)).

[44] Statutes 2005, chapter 118, section 3 (AB 831).

[45] Statutes 2005, chapter 118, section 4 (AB 831).

- Required that the notice to be placed in each classroom regarding the use of the *Williams* complaint process must include teacher vacancies or misassignments as a potential subject of complaint, and restated the definition of a "teacher vacancy;"[46]
- Provided that county superintendents must *annually review* the employee assignment practices of schools known or anticipated to have problems with teacher misassignments and vacancies based on past experience, and *annually review* schools ranked in deciles 1 to 3 of the 2003 base API. The former section required that county superintendents *give priority* to those schools within the ongoing annual review and monitoring processes;[47]
- Amended section 48642 to provide for the sunsetting and repeal of a number of other sections not relevant to this test claim;[48]
- Made technical changes to sections 41500, 41501, 41572, 49436, 52055.640, 52295.35, and 56836.165, not relevant to this test claim.[49]
- Clarified the definition of sufficient textbooks and instructional materials, by inserting language requiring sufficient materials to be "standards-aligned;"
- Required that where a deficiency is found, the governing board of the school district must notify teachers and the public regarding the percentage of students lacking sufficient materials;[50]
- Made changes to appropriations provided in Statutes 2004, chapter 900, sections 22 and 23, not relevant to this test claim;[51] and,
- Declared that it should be implemented immediately as an urgency statute.[52]

Statutes 2006, chapter 704 (AB 607)

Assembly Bill 607 amended the Education Code as follows:

- Clarified the technical and substantive requirements of a county superintendent's site visits and reporting duties under section 1240;
- Added reporting of teacher misassignments and vacancies to the county superintendent's responsibilities, and described the manner in which the deciles 1 to 3 schools will be identified in the future, for purposes of those site visits;[53]

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[46] Education Code section 35186(f)(3); (h)(3) (Stats. 2005, ch. 118 § 5 (AB 831)).

[47] Compare Education Code section 44258.9 (Stats. 2004, ch. 900 (SB 550)) with Education Code section 44258.9 (Stats. 2005, ch. 118 (AB 831)).

[48] Statutes 2005, chapter 118, section 10 (AB 831).

[49] Statutes 2005, chapter 118, sections sections 6-8 and 11-14 (AB 831).

[50] Education Code section 60119 (Stats. 2005, ch. 118 § 15 (AB 831)).

[51] Statutes 2005, chapter 118, sections 17-18 (AB 831).

[52] Statutes 2005, chapter 118, section 21 (AB 831), effective July 25, 2005.

[53] Education Code section 1240 (Stats. 2006, ch. 704 § 1 (AB 607)).

- Provided for the allocation of funding for the county superintendents' site visits;[54]
- Incorporated in the definition of "good repair" the school facility inspection and evaluation instrument to be developed by OPSC, to replace the interim evaluation instrument provided for under the prior section;[55]
- Provided for repayment of unexpended facilities funds under a payment plan, if a 60 day repayment would cause severe hardship. This section is not relevant to this test claim;[56]
- Changed the School Facilities Emergency Repair Account to a grant scheme instead of a reimbursement-grant scheme;[57]
- Required that within the *Williams* complaint process, a school must respond, if response is requested, in English and in the primary language of the complaint, if 15 percent or more of the pupils enrolled in a school speak that primary language;[58] and,
- Clarified the technical requirements of the school district governing board's reporting to the public regarding a textbook shortage.[59]

Statutes 2007, chapter 526 (AB 347)

AB 347 made the following changes to the Education Code:

- Added again to a county superintendent's oversight and reporting duties, requiring determination of the extent to which students who have not passed the high school exit examination are informed of the availability of intensive instruction services, and the extent to which those who seek intensive instruction to pass the exam are being served;[60]
- Broadened again the scope of the *Williams* complaint process, permitting complaints regarding deficiencies in the intensive instruction and services provided to those who have not passed the high school exit examination by the end of grade 12;[61]
- Provided that the notice posted in classrooms must inform parents or guardians of the availability of intensive instruction and services to assist in passing the high school exit examination;[62]

[54] Education Code sections 1242; 1242.5 (Stats. 2006, ch. 704 § 2 (AB 607)).

[55] Education Code section 17002 (Stats. of 2006, ch. 704 § 4 (AB 607)).

[56] Education Code section 17076.10 (Stats 2006, ch. 704 § 5 (AB 607)).

[57] Education Code section 17592.72 (Stats. of 2006, ch. 704 § 6 (AB 607)).

[58] Education Code section 35186 (Stats. of 2006, ch. 704 § 7 (AB 607)).

[59] Education Code section 60119(a)(2) (Stats. 2006, ch. 704 § 8 (AB 607)).

[60] Education Code section 1240(c) (Stats. 2007, ch. 526 (AB 347)).

[61] Education Code section 35186(a)(4) (Stats. 2007, ch. 526 (AB 347)).

[62] Education Code section 35186(f) (Stats. 2007, ch. 526 (AB 347)).

- Amended the eligibility requirements for intensive instruction and services to aid students in passing the high school exit examination under section 37254. This section and changes are not relevant to this test claim; and,[63]
- Amended section 52378, adding to the Middle and High School Supplemental Counseling Program a cross reference to intensive instruction and services to aid students in passing the high school exit examination.[64]

III. Positions of Parties and Interested Parties

A. Claimants Position

Claimants allege generally that the *Williams* implementing legislation results in new programs and activities which cause school districts and county offices of education to incur reimbursable state-mandated costs.

Claimant San Diego County Office of Education filed in *Williams I* a declaration of Elaine Hodges, Senior Director of Leadership and Accountability, self-identified as "the administrative official responsible for the implementation of the *Williams* Case mandate legislation." The Hodges declaration describes costs greater than $1,000 incurred pursuant to a number of programs within the test claim statutes.[65] In *Williams II* and *III*, San Diego proffered the declaration of Charmaine Lawson, "Coordinator, District and School Improvement, *Williams* Settlement Coordination, San Diego County Office of Education." The Lawson declarations each allege costs in excess of $1,000 pursuant to amendments made to the *Williams* implementing legislation.[66]

Claimant Sweetwater Union High School District filed in *Williams I* a declaration by Ernest Anastos, Area Superintendent. The Anastos declaration describes costs greater than $1,000 incurred pursuant to programs of the test claim statutes.[67] In *Williams II* and *III*, Sweetwater advanced the declaration of Karen Janney, Assistant Superintendent for Academic Growth and Development with Sweetwater Union High School District. The Janney declarations allege costs exceeding $1,000 pursuant to amendments to the test claim statutes made in *Williams II* and *III*.[68]

Claimants filed comments on the draft staff analysis and proposed statement of decision, in which claimants argue that participation in the Emergency Repair Program is practically compelled, and that the requirement to maintain facilities in good repair is a reimbursable state mandate.

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[63] Statutes 2007, chapter 526, section 3 (AB 347).

[64] Statutes 2007, chapter 526, sections 4;4.5 (AB 347).

[65] Exhibit A, Test Claim I, Declaration of Elaine Hodges, pp. 1; 11-13.

[66] Exhibit B, Test Claim II, Declaration of Charmaine Lawson, pp. 2; 9-11. Exhibit C, Test Claim III, Declaration of Charmaine Lawson, pp. 4-6.

[67] Exhibit A, Test Claim I, Declaration of Ernest Anastos, pp. 21-27.

[68] Exhibit B, Test Claim II, Declaration of Karen Janney, p. 13. Exhibit C, Test Claim III, Declaration of Karen Janney, pp. 3-5.

B. Department of Finance Position

DOF argues that none of the statutes alleged impose reimbursable state-mandated costs. DOF holds generally that the activities required by the test claim statutes are either not mandatory, not new, or do not result in increased costs mandated by the state within the meaning of Government Code section 17514. DOF relies, alternatively, on *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, for the issue of voluntarily assumed costs; on section 17556(e) for the issue of no costs mandated by the state; and on section 17556(f) for costs imposed by a voter-enacted ballot initiative.

DOF's comments on the draft staff analysis and proposed statement of decision focus on the county superintendents' oversight and monitoring responsibilities; the School Accountability Report Cards; the *Williams* complaint process, and the review of audits and audit exceptions. DOF asserts the statutory changes to these programs do not mandate a new program or higher level of service because the SARC requirements are necessary to implement a voter initiative; the *Williams* complaint process is not new; and, the audit requirements are either not new or are triggered by the discretionary decision of the local agency.

C. Office of Public School Construction Position

The Office of Public School Construction (OPSC), in comments dealing primarily with facilities funding issues (mainly the School Facilities Needs Assessment Grant Program under sections 17592.70 and 17592.73, the School Facilities Emergency Repair Program under sections 17592.72 and 17592.73, and the definition of "good repair" under sections 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, and 17089), asserts that the test claim does not allege reimbursable state-mandated costs, both because the activities required are conditional upon participation in voluntary facilities funding programs, and because the activities involved in the School Facilities Needs Assessment Grant Program and the School Facilities Emergency Repair Program are funded by specific appropriations.

OPSC further asserts that school districts cannot allege costs mandated by the state under Government Code section 17556(d) because the districts have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.[69]

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.[70]

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

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[69] Exhibit E, Comments filed by Office of Public School Construction, *Williams* I, p. 2.

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

articles XIII A and XIII B impose."[71] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[72]

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.[73]
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.[74]
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.[75]
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.[76]

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.[77] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[78] 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."[79]

The above framework will be applied, as appropriate, in sections (A.) through (H.), below, in order to analyze the eight programs pled in this test claim.

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

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

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

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

[75] *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.

[76] *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.

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

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

[79] *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.

A. The School Facilities Needs Assessment Grant Program Does Not Impose a State-Mandated Program.[80]

The School Facilities Needs Assessment Grant Program is added by Statutes 2004, chapter 899 (SB 6), "for the purpose of awarding grants to school districts on behalf of schoolsites ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, as specified, to conduct a one-time comprehensive assessment of school facilities needs, as provided."[81]

Section 17592.70 provides:

- "There is hereby established the School Facilities Needs Assessment Grant Program with the purpose to provide for a one-time comprehensive needs assessment of school facilities needs."
- "The grants shall be awarded to school districts on behalf of schoolsites ranked in deciles 1 to 3, inclusive, on the Academic Performance Index…based on the 2003 base Academic Performance Index score."
- The SAB "shall allocate funds… to school districts with jurisdiction over eligible schoolsites" at a rate of $10 per pupil in a qualifying school, with a minimum allocation of $7,500 for a single schoolsite.
- School districts are required, *as a condition of receiving funds*, to use the funds to develop a comprehensive needs assessment of all eligible schools, which must contain:
    - information regarding the age and condition of school facilities;
    - capacity and number of pupils actually enrolled;
    - number of classrooms and portable classrooms;
    - type of calendar or scheduling of the school;
    - whether the school has a cafeteria or auditorium not used for instruction;
    - useful life remaining in all major building systems;
    - estimated cost to maintain functionality of instructional spaces for five years; and,
    - a list of necessary repairs.
- School districts are also required, as a condition of receiving funds, to:
    - use the assessment as a baseline for the facilities inspection system;
    - provide the results of the assessment to the OPSC;
    - use remaining grant funds for repairs identified in the needs assessment; and,

[80] Education Code sections 17592.70; 17592.73 (Stats. 2004, ch. 899, § 1 (SB 6)); Title 2, California Code of Regulations, sections 1859.300-1859.319 (Register 2005, No. 22; Register 2005, No. 45; Register 2007, No. 27; Register 2007, No. 51); Certification of Eligibility; Needs Assessment Report; Needs Assessment Report Worksheet; Expenditure Report; Web-Based Progress Report; Web-Based Needs Assessment.

[81] Legislative Counsel's Digest, Statutes 2004, chapter 899 (SB 6).

- submit to the OPSC an interim report detailing progress made by the district in completing the assessments.[82]

The statute provides that the SAB "shall… adopt regulations…for the administration of this article."[83] Those regulations were adopted at Title 2, California Code of Regulations, sections 1859.300-1859.319; which sections lay out the technical requirements of the program, including eligibility requirements, use of the grant funds, and reporting requirements.

- Section 1859.310 of the Title 2 regulations requires that a school site that qualifies for the School Facilities Needs Assessment Grant Program (an API deciles 1-3 school constructed prior to January 1, 2000) *shall be allocated* funds by the SAB in order to conduct a one-time comprehensive school facilities needs assessment and *shall be required* to complete and submit a Web-Based Needs Assessment to the OPSC for each school site meeting the provisions of section 1859.311.
- Section 1859.311 provides that a school is eligible for the School Facilities Needs Assessment Grant Program if it is identified on the list of deciles 1 to 3 schools published by the CDE pursuant to section 17592.70, and was newly constructed prior to January 1, 2000.
- Section 1859.312 provides that the SAB "shall allocate ten dollars per Pupil enrolled…for each school site identified by the California Department of Education [as being ranked in deciles 1 to 3]. Once an Apportionment has been made by the SAB and the OPSC has received the Certification of Eligibility, funds for eligible school sites will be released by OPSC to the LEA with jurisdiction over the schools site(s)…Apportionments shall be reduced by the grant amount allocated of ineligible school sites upon receipt of the Certification of Eligibility."
- Section 1859.302 defines the "Certification of Eligibility" as "the on-line worksheet provided by the OPSC…for the purpose of a one-time determination of whether a school site meets the provisions of section 1859.311(b) [newly constructed prior to January 1, 2000]."
- Section 1859.313 specifies the use of the Needs Assessment Grant Funds, including unbudgeted administrative or third party costs incurred by completing the assessments.
- Sections 1859.314 and 1859.315 provide the requirements for conducting the assessments.[84]

LEAs complete a Certification of Eligibility to report which schools in their district were constructed after January, 2000, and thereby receive funds for those schools eligible under the criteria of both sections 1859.311(a) and (b). The Needs Assessment Report, and the Needs Assessment Report Worksheet are required, "as a condition of receiving funds," to complete the one-time comprehensive assessments of school facilities needs. The Expenditure Report is a

[82] Education Code section 17592.70(a-d) (Stats. of 2004, ch. 899 § 1 (SB 6)).

[83] Education Code section 17592.73(a)(1) (Stats. 2004, ch. 899 § 1 (SB 6)).

[84] Title 2, California Code of Regulations, sections 1859.300-1859.319 (Register 2005, No. 22; Register 2005, No. 45).

conditional requirement of receiving funds under the School Facilities Needs Assessment Grant Program, requiring reporting of the use of grant funds. The Web-based Progress Report and Web-based Needs Assessment are also required, "as a condition of receiving funds" under the School Facilities Needs Assessment Grant Program, as a means to complete the one-time comprehensive assessments of school facilities needs.

The claimants contend that newly added Education Code section 17592.70, the regulations issued pursuant to the section, and the forms issued by SAB impose a state-mandated new program or higher level of service, and that the claimants should be entitled to reimbursement for the activities required.[85]

For the following reasons, the Commission finds that Education Code section 17592.70, the regulations that implement that section, and the alleged executive orders issued by SAB do not impose a reimbursable state-mandated program.

In *City of Merced v. State of California*, the city argued that it was subject to a reimbursable mandate when required by statute to compensate a business owner for the loss of business goodwill, pursuant to exercising the power of eminent domain to take the underlying property. The Board of Control (predecessor to the Commission) determined that the requirements of the eminent domain statute imposed a reimbursable mandate, but the court of appeal concluded that the exercise of the eminent domain power was a discretionary act, and that therefore no activities were mandated.[86] In accord is *Department of Finance v. Commission on State Mandates* (*Kern*), in which a state statute required districts maintaining school site councils to comply with the state's open meetings laws, including preparing and posting an agenda in advance, and keeping council meetings open to the public. The court recognized that the notice and hearing requirements could be found to generate activities not previously required, but there was no mandate under the law to establish a school site council in the first instance, and therefore the activities and costs claimed were not mandated. The California Supreme Court reaffirmed *City of Merced*, and held that where activities alleged are conditional upon participation in another or an underlying voluntary or discretionary program, or upon the taking of discretionary action, there can be no finding of a mandate. The court in *Kern* stated the rule that where a local government entity voluntarily undertakes to participate in a program, the legislature may attach reasonable conditions to participation in that program without giving rise to reimbursable state-mandated activities.[87]

Here, the one-time comprehensive Needs Assessments provided for under the statute, as well as all of the SAB forms that must be completed, are downstream requirements, conditional upon receiving funding under the School Facilities Needs Assessment Grant Program. The regulations and statutes provide that the SAB is required to allocate funds to the districts for the number of pupils enrolled in schools ranked in deciles 1 to 3 of the 2003 base API, based on the list published by the CDE. Because the CDE did not have at its disposal the construction dates of all schools, "the SAB apportioned funds to all schools meeting the API criteria." Then, "[p]rior to release of funds, LEAs had to submit a worksheet to the OPSC to determine whether or not each

[85] See Exhibit A, Test Claim I, pp. 4-6.

[86] *City of Merced v. State of California* (Cal. Ct. App. 5th Dist. 1984) 153 Cal.App.3d 777.

[87] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 743.

of the decile 1 through 3 schools under their jurisdiction was newly constructed prior to January 1, 2000." Schools constructed after that date are ineligible under the statute, even if they are ranked in deciles 1 to 3, and "any funds apportioned for an ineligible school will not be released."[88] The funding is released to the school districts only upon completion of a Certification of Eligibility, showing that the schools in question are older than January 2000; the form thus determines whether and for which of the deciles 1 to 3 schools the funds will be released.[89] Then, once the funds are released, the other requirements of conducting the assessment, as provided above, become effective. Therefore, as in *Kern*, the activities required under the test claim statute are conditional upon participation in the underlying funded program: the Certification of Eligibility is a prerequisite to receiving funds, and the one-time comprehensive needs assessments, along with all other later requirements, are conditional upon that receipt of funds.

Moreover, the School Facilities Needs Assessment Grant Program is funded, in section 4 of SB 6, by a targeted appropriation of $25 million.[90] Section 1859.313 of Title 2 of the Code of Regulations provides for the use of funds for "unbudgeted administrative or third party costs *incurred as a result* of performing the Needs Assessment," meaning that even ancillary costs of conducting the one-time assessments are funded by the appropriation in SB 6. Section 1859.312 provides for an allocation of not less than $7,500 per eligible schoolsite. There is no evidence in the record that costs pursuant to the test claim statutes exceed the funding provided.

The Commission finds that Education Code sections 17592.70 and 17592.73, as added by Statutes 2004, chapter 899, regulations established there under at Title 2, sections 1859.300 through 1859.319, and the forms listed above do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

B. The School Facilities Emergency Repair Account Does Not Impose a State-Mandated Program.[91]

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[88] See Education Code section 17592.70(b); California Code of Regulations, Title 2, sections 1859.311(a); 1859.312 (Register 2005, No. 22; Register 2005, No. 45). See also, Report on the Progress of the School Facility Needs Assessments Required by the *Williams* Settlement: Report to the Governor and Legislature, June 2005, prepared by the State Allocation Board and the Office of Public School Construction, at p. 3. Available at: http://www.documents.dgs.ca.gov/opsc/SAB_Agenda_Items/Archives/2005/Jun22.pdf

[89] See Certification of Eligibility, SAB forms, at: http://www.documents.dgs.ca.gov/opsc/Regulations/SFNAGP-ERP_Proposed/Jan_SAB/Cert_of_Eligibility.pdf [directs the LEA to list ineligible schools, for which funding will be withheld and no comprehensive needs assessment will be required].

[90] Statutes of 2004, chapter 899, section 4

[91] Education Code sections 17592.71-17592.73 (added, Stats. 2004, ch. 899 § 1 (SB 6)); Education Code section 17592.72 (as amended Stats. 2006, ch. 704 § 6 (AB 607)); Title 2, California Code of Regulations, sections 1859.320-1859.329 (filed 5/31/2005; amended 7/2/2007); State Allocation Board forms SAB 61-03 (Application for Reimbursement and Expenditure Report); SAB 61-01 (School Facilities Needs Assessment).

The School Facilities Emergency Repair Account was established by section 17592.72 of the Education Code, as added by chapter 899 of Statutes 2004 (SB 6), "to be administered by the [SAB], for the purpose of reimbursing school districts…for emergency facilities repairs, as provided."[92] The account was to be funded each year from unexpended Proposition 98 funds until $800 million dollars had been disbursed for repairs. The funds in the account were made available "for reimbursement to schools ranked in deciles 1 to 3, inclusive," of the 2003 base API, in order to satisfy repair costs of projects described as "emergency" needs. The SAB was given authority to adopt implementing regulations, and did so at Title 2, sections 1859.320 through 1859.329.[93] The School Facilities Emergency Repair Program provides:

- All moneys in the School Facilities Emergency Repair Account are available for reimbursement to schools ranked in deciles 1 to 3…based on the 2003 base API.
- "It is the intent of the Legislature that" school districts exercise due diligence in the administration of deferred maintenance and regular maintenance in order to avoid emergency repairs.
- Funds made available pursuant to this article shall supplement, not supplant, existing funding made available for maintenance of school facilities.
- The SAB is authorized to deny funding to a school district if it detects a pattern of failing to "exercise due diligence" in making necessary repairs before facilities required emergency repairs.
- School districts are prohibited from using the Emergency Repair Account funds for cosmetic or nonessential repairs: "emergency facilities needs" includes "structures or systems that are in a condition that poses a threat to the health and safety of pupils or staff while at school."
- School districts are permitted to replace components or structures only if more cost effective than repair.[94]

In order to receive funding from the School Facilities Emergency Repair Account, LEAs must comply with the regulatory requirements promulgated by the SAB at Title 2, California Code of Regulations, section 1859.320 *et seq*. Those regulations provide:

- "An LEA seeking Emergency Repair Program Grant for reimbursement of costs…shall complete and file a form SAB 61-01 with the OPSC."
- "An LEA that has a school site meeting all of the following is eligible to submit a Form SAB 61-03:

  (a) The school was identified on the list published by the CDE pursuant to [Education Code section] 17592.70(b).

[92] Legislative Counsel's Digest, Statutes 2004, chapter 899 (SB 6).

[93] Education Code section 17592.73(a) (Stats. 2004, ch. 899 § 1 (SB 6)); California Code of Regulations, Title 2, sections 1859.320-1859.329 (Register 2005, No. 22; Register 2005, No. 45; Register 2007, No. 27; Register 2007, No. 51).

[94] Education Code section 17592.70(b-d) (Stats. 2004, ch. 899 § 1 (SB 6)).

(b) The school was newly constructed prior to January 1, 2000."[95]

AB 607, enacted in Statutes of 2006, chapter 704, changed the "reimbursement" language of section 17592.72 above to reflect a forward-looking "grant" program. The new section provides:

- "Commencing with the 2006-2007 fiscal year, all moneys in the School Facilities Emergency Repair Account are available for *the purpose of providing emergency repair grants* to schools ranked in deciles 1 to 3."
- The SAB shall establish a grant application process, grant parameters, substantial progress requirements, and a process for certifying the completion of projects.
- The SAB shall post the grant application on its Internet Web site.

The SAB in turn amended the applicable regulations, sections 1859.320-1859.329, to reflect grant "funding," rather than grant "reimbursement."[96] The new regulation section provides that "[a]n LEA seeking an ERP Grant for funding of costs for repairs or replacement of existing structural components or building systems…shall submit to the OPSC a completed Form SAB 61-03."[97] This language change, however, *did not change*, substantively, the process of applying for funding, or the eligibility requirements.

For the following reasons, the Commission finds that Education Code sections 17592.71-17592.73, the regulations that implement those sections, and the alleged executive orders issued by SAB do not impose a reimbursable state-mandated program.

1. School Districts are not *legally compelled* to participate in the Emergency Repair Program or to seek funding from the Emergency Repair Account.

The court in *Kern, supra,* stated the rule that where a local government entity voluntarily undertakes to participate in a program, the legislature may attach reasonable conditions to participation in that program without giving rise to reimbursable state-mandated activities.[98]

Here, the regulatory requirements described above, as well as the actual repairs or replacements undertaken by the school districts, operate conditionally upon the receipt of funding, or as a prerequisite to the receipt of funding, but are not, of themselves, mandated activities. All requirements alleged with respect to the School Facilities Emergency Repair Account are incidental to or conditional upon participation in this voluntary program. For example, school districts, in order to receive program funds, must file a form with the SAB documenting repairs made or to be made, and must comply with the regulations promulgated by the SAB. Filing

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[95] California Code of Regulations, Title 2, section 1859.320 et seq. (Register 2005, No. 22; Register 2005, No. 45).

[96] See, e.g., California Code of Regulations, Title 2, section 1859.320 (Register 2005, No. 22; Register 2005, No. 45) ["An LEA seeking an Emergency Repair Program Grant for *reimbursement* of cost for repairs or replacement…"]; California Code of Regulations, Title 2, section 1859.320 (Register 2007, No. 27; Register 2007, No. 51) ["An LEA seeking an ERP Grant for *funding* of costs for repairs or replacement…"].

[97] California Code of Regulations, Title 2, section 1859.320 (Register 2007, No. 27; Register 2007, No. 51).

[98] *Kern, supra,* (2003) 30 Cal.4th 727, 743.

form SAB 61-03 is an activity prerequisite to obtaining funds under a voluntary program. Similarly, using the Emergency Repair Account funds to conduct emergency repairs is a requirement of receiving the funds; but in both cases the underlying program by which the funds are received is voluntary.

Nothing in the plain language of the statute requires LEAs to seek funding from the Emergency Repair Account. The language of the test claim statutes makes clear that emergency repair funds are "made available" to school districts for reimbursement of repair costs; and the implementing regulations refer to an "LEA *seeking* an Emergency Repair Program Grant," and districts being "*eligible* to submit" an "*application*" for funding.[99] School districts are and have at all times been free to raise or apply their own funds, rather than seeking construction, repair, or replacement costs from the state.[100] School districts are not legally compelled to participate in the Emergency Repair Program, or seek funds from the Emergency Repair Account.

2. There is no evidence in the record that school districts are *practically compelled* to participate in the Emergency Repair Program or to seek funding from the Emergency Repair Account.

The school district plaintiffs in *Kern, supra,* urged the court to define "state mandate" broadly to include situations where participation in the program is *practically* compelled; where the absence of a reasonable alternative to participation creates a "de facto" mandate.[101] Although the court in *Kern* declined to apply the reasoning of *City of Sacramento,* the court stated:

> [W]e do not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6 properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds.

The court in *Kern* found that the facts before it failed to amount to a "de facto" mandate, since a school district that elected to discontinue participation in one of the educational funding programs at issue did not face "certain and severe" penalties such as "double … taxation" or other "draconian" consequences, but simply must adjust to the loss of program funding.[102]

In this case, the claimants argue that the Emergency Repair Account creates a state-mandated program for the following reasons:

> 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 students, staff and the general public occupying the facilities. Other than the School Facilities Emergency Repair Program, local government entities are provided with "no reasonable alternative" and "no true

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[99] California Code of Regulations, Title 2, sections 1859.320-1859.322 (Register 2005, No. 22; Register 2005, No. 45) [emphasis added].

[100] See Statement of Decision, *School Facilities Funding Requirements* (02-TC-30; 02-TC-43; 09-TC-01) pp. 43-53 [providing analysis of School Facilities Funding programs, and concluding that school districts are not compelled to seek state funding to construct or repair facilities].

[101] *Kern, supra,* 30 Cal.4th 727, 748.

[102] *Kern, supra,* 30 Cal.4th 727, 752.

> 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 [*sic*]. "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 [*sic*].[103]

The claimants' argument, though asserting both legal and practical compulsion, rests primarily on the issue of practical compulsion. As discussed above, there is no legal requirement that school districts seek funding from the state to conduct emergency repairs. While it might be argued that a preexisting constitutional and statutory duty to keep students and staff safe while at school could give rise to a *duty to make emergency repairs*, such duty, even if granted, does not constitute practical compulsion *to seek funds from the Emergency Repair Program*. Moreover, as explained below, that line of reasoning is entirely hypothetical; potential civil liability cannot reasonably be said to constitute "practical compulsion" within the meaning of article XIII B, section 6 of the California Constitution.

The theory of "practical compulsion" traces its origin to *City of Sacramento v. State*, (1990) 50 Cal.3d 51. In *City of Sacramento*, the California Supreme Court held that where a failure to participate in a federal program would result in "certain and severe" penalties, that federal program is mandated. In that case the federal law at issue required certain changes to California's unemployment taxation system, and the court found that "[i]f California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty – full, double unemployment taxation by both state and federal governments." The court held that those penalties resulted in a federal mandate because "[t]he alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards."[104] This analysis essentially concluded that the "certain and severe" penalties, including, "full, double unemployment taxation," resulted in a "de facto" federal mandate, which in turn superseded the state mandates claim.

In *Kern, supra*, the California Supreme Court adapted the analysis of a federal mandate in *City of Sacramento* in order to analyze the question whether claimants were subject to a "de facto" state mandate. The court recognized the possibility that some set of facts would constitute practical compulsion, while rejecting the claimants' assertions of a de facto mandate in the particular case. The court held that open meeting requirements applied to school site councils established under existing funded programs did not constitute practical compulsion, where there was no compulsion to maintain the school site councils in the first instance. Furthermore, the claimants in *Kern* asserted that they "had 'no true option or choice' but to participate in the various

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[103] Exhibit H, Claimant Comments on Draft Staff Analysis/Proposed Statement of Decision, November 8, 2012.

[104] *City of Sacramento v. State* (1990) 50 Cal.3d 51, at p. 74.

programs here at issue, and hence to incur the various costs of compliance, and that the absence of a reasonable alternative to participating is a de facto [reimbursable state] mandate."[105] The court found, on the contrary, that "school districts are, and have been, free to determine whether to (i) continue to participate and receive program funding… or (ii) decline to participate in the funded program."[106] Finally, in *Kern*, the court observed that "the costs associated with the …requirements at issued in this case appear rather modest." And, the court held, "the parties have not cited, nor have we found, anything in the governing statutes or regulations, or in the record, to suggest that a school district is precluded from using a portion of the program funds obtained from the state to pay associated notice and agenda costs."[107]

In *San Diego Unified School District v. Commission on State Mandates* (2004) 22 Cal.4th 859, the court addressed due process requirements imposed on school districts, triggered by expulsion proceedings, both mandatory and discretionary. While deciding the case on federal mandate grounds, the court discussed whether to extend the analysis of *Kern*, and others, to hold that because school districts exercised discretion in initiating expulsion proceedings, the mandatory due process requirements should not be considered a reimbursable state-mandated activity. The court declined to extend the rule, agreeing with the school district claimant that "although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program."[108] Ultimately, however, the due process requirements were held to be implementing federal law, and therefore not reimbursable, and San Diego Unified, hence, does not rely on the court's examination of the practical compulsion issues.

The court of appeal addressed the issue of practical compulsion again in *Department of Finance v. Commission on State Mandates* (*POBRA*), (Cal. Ct. App. 3d Dist. 2009) 170 Cal.App.4th 1355, in which the Commission had approved reimbursement for costs associated with the Public Safety Officers Procedural Bill of Rights Act, as applied to school districts and special districts that employed peace officers. The court considered the leading cases on the issue of practical compulsion, and determined that school districts were "authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function." Therefore, the procedural protections mandated under the Public Safety Officers' Procedural Bill of Rights Act were "prima facie reimbursable" as to cities, counties, and other local government entities, for whom provision of police protection is an essential service. But the statute was held not reimbursable as to the school district claimants. The court rejected the Commission's view, finding "nothing in this record to show that the school and special districts in issue are practically compelled to hire peace officers." The court held that practical compulsion to hire peace officers, and thus to incur the costs associated with the Procedural Bill of Rights Act, could not be found "unless there is a showing that, as a practical

[105] *Kern*, *supra*, at p. 752.

[106] *Id.*, at p. 753.

[107] *Id.*, at p. 752.

[108] *San Diego Unified*, *supra*, 22 Cal.4th at p. 887.

matter, exercising the authority to hire peace officers is the *only reasonable means to carry out their core mandatory functions*."[109]

Here, claimants have not provided any evidence of practical compulsion, either to make emergency repairs or to participate in the Emergency Repair Program.

There are no "certain and severe" penalties found in the applicable statutes, to be applied if a school district chooses not to participate in the Emergency Repair Program. There is no provision for "double…taxation," or other "draconian" consequences.[110] Neither, in fact, is there any evidence that a renewed lawsuit would be successful. The *Williams* class action was settled before ever being fully tested, and it is uncertain what the outcome would be of a renewed suit against school districts for failing to maintain facilities.

The claimants have borrowed from the language of *Kern*, asserting that "[o]ther than the School Facilities Emergency Repair Program, local government entities are provided with 'no reasonable alternative' and 'no true choice but to participate'"[111] But the claimants have put forward no evidence, other than naked assertion, that there is no reasonable alternative. In *POBRA*, the court insisted on *evidence in the record* to support a Commission finding of practical compulsion, that "exercising the authority [given under the statute at issue] is the only reasonable means to carry out their core mandatory functions."[112] While it might be persuasively argued that providing safe school facilities is one of the "core mandatory functions" of a school district, there is no evidence that the Emergency Repair Program is the only reasonable means by which to do so. Moreover, the statute itself contemplates, and in fact requires, for program participants, that school districts exercise due diligence in ordinary, ongoing repairs, and in the conduct of deferred maintenance, to avoid the occurrence of emergency repairs; the statute also expressly forbids the use of emergency repair funds to supplant existing sources of maintenance funds. [113]

Furthermore, "school districts are, and have been, free to determine whether to (i) continue to participate and receive program funding… or (ii) decline to participate in the funded program," just as in *Kern*, *supra*.[114] There is no language in the enactment or amendments of the Emergency Repair Program that makes participation mandatory. Neither is there any language in the statute that prevents school districts from applying other funds to the needs of their facilities. And, whatever the school districts' duties to maintain their facilities before the institution of the Emergency Repair Program, there is no evidence that, after the program became available to fund emergency repairs, it was, or is, the only reasonable means by which to do so.

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[109] *Department of Finance v. Commission on State Mandates* (*POBRA*) (Cal. Ct. App. 3d Dist. 2009) 170 Cal.App.4th 1355, 1366-1368 [emphasis added].

[110] See *City of Sacramento*, *supra*, at p. 74.

[111] Exhibit H, Claimant Comments on Draft Staff Analysis/Proposed Statement of Decision, November 8, 2012; *Kern*, *supra*, at p. 752.

[112] *POBRA*, *supra*, 170 Cal.App.4th 1355, at p. 1368.

[113] Education Code section 17592.70(b-d) (Stats. 2004, ch. 899 § 1 (SB 6)).

[114] *Id.*, at p. 753.

In conclusion, even if claimants could show some evidence of practical compulsion to participate in the program, the Emergency Repair Program is a funded grant program, and therefore not reimbursable. Consequently the only increased costs that might reasonably be asserted under a practical compulsion theory are the incidental costs of applying for grant funds. Those application costs are clearly provided for in the regulations, as amended in 2007,[115] and are not expressly made ineligible expenditures in the earlier regulations, adopted in 2005.[116] Moreover, there is no evidence that the application and submittal costs are, in the usual case, anything more than "rather modest:" the regulations on point suggest that up to two percent of project costs may be expended on the costs of applying for grant funds, and there is no evidence that such limitation renders the funding insufficient.

For the foregoing reasons, the Commission finds no evidence of practical compulsion, and no evidence of increased costs mandated by the state.

3. The test claim alleges activities not required by the plain language of the statute.

Several elements of the Emergency Repair Account program, aside from being voluntarily entered into, are also not strictly susceptible of an interpretation that creates an activity. For example, paragraph (2) of subdivision (b) states that "[f]unds made available pursuant to this article shall supplement, not supplant, existing funds available for maintenance of school facilities." This statement might be considered a limitation or caveat on the funds available, but it does not specifically impose any mandated activities. Likewise, the statute expresses "the intent of the Legislature" that school districts will exercise due diligence in the administration of deferred and regular maintenance in order to prevent the need for emergency repairs.[117] There is no specific activity mandated by the Legislature's expressed intent.

4. Conclusion

For the foregoing reasons the Commission finds that the activities alleged under the Emergency Repair Program, sections 17592.71, 17592.72 and 17592.73 of the Education Code, regulations there under found at sections 1859.320-1859.329 of California Code of Regulations, Title 2, and

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[115] California Code of Regulations, Title 2, section 1859.323 (Register 2007, No. 27) ["Funding of eligible projects costs shall be limited to the minimum work required on existing structural components or building systems to mitigate the health and safety hazard, plus application documentation preparation and submittal costs, if any, as permissible under Regulation Section 1859.323.2(j)."]; Code of Regulations, Title 2, section 1859.323.2 (Register 2007, No. 27) [ERP grant may not be used for… "(j) Application documentation preparation and submittal costs that exceed two percent of the total project cost or $5,000, whichever is less. The total project cost shall be calculated by adding all other eligible costs and re-calculated upon the grant adjustment determination pursuant to Section 1859.324.1."]

[116] California Code of Regulations, Title 2, section 1859.323 (Register 2005, No. 22) ["Reimbursement of eligible projects costs shall be limited to the minimum work required on existing structural components or building systems to mitigate the health and safety hazard."] section 1859.323.2 [no listing of application preparation and submittal costs as "Ineligible Expenditures."]

[117] Education Code section 17592.72(b) (added by Stats. 2004, ch. 899 (SB 6)).

the Application for Reimbursement and Expenditure Report, form SAB 61-03, do not impose a state-mandated program .

C. County Superintendents' Oversight and Monitoring Duties Do Not Impose Costs Mandated By the State Upon County Offices of Education, Within the Meaning of Section 17514 of the Government Code. However, Section 42127.6 Does Impose a Reimbursable State-Mandated Program Upon School Districts, Within the Meaning of Article XIII B, Section 6.[118]

This section analyzes the duties of the county superintendent under Education Code sections 1240(c) and (i); and sections 42127.6; 44258.9; 1242; and 1242.5.

1. Section 1240(c) mandates a new program or higher level of service to the extent that funding is provided for county superintendent site visits.

Education Code section 1240(c), as amended in Statutes 2004, chapter 900 (SB 550), expanded and made more explicit the duties of county superintendents with respect to oversight of schools within their jurisdiction. Prior law required the county superintendent to "[v]isit and examine each school in his or her county at reasonable intervals to observe its operation and learn of its problems." Prior law also provided that the superintendent "*may* annually present a report of the state of the schools" to the board of education and the board of supervisors.[119] Those provisions survived the amendments involved in this test claim in paragraph (1) of section 1240(c).

As amended by Statutes 2004, chapter 900 (SB 550), section 1240(c)(2) now provides that the superintendent, "*[t]o the extent that funds are appropriated for purposes of this paragraph*":

- "[*S*]*hall* annually present a report" to the governing board of each school district, the county board of education, and the county board of supervisors;
- That report must include the superintendent's observations while visiting the schools in his or her district ranked in deciles 1 to 3 of the 2003 base API, and must generally describe the state of the deciles 1-3 schools;[120]
- The priority objectives of the schoolsite visits, and the reports, are to determine: (i) the sufficiency of textbooks as defined in section 60119; (ii) the condition of a facility which may pose an emergency or urgent threat to students or staff; and (iii) the accuracy of the information reported on the school accountability report card, including the availability of sufficient textbooks and instructional materials, and the safety, cleanliness, and adequacy of school facilities, including good repair as defined in the code;[121]

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[118] Education Code section 1240 (amended by Stats. 2004, ch. 900 § 1 (SB 550); Stats. 2005, ch. 118 § 1 (AB 831); Stats. 2006, ch. 704 § 1 (AB 607); Stats. 2007, ch. 526 § 1 (AB 347)); section 1242 (added by Stats. 2006, ch. 704 § 2 (AB 607)); section 1242.5 (added by Stats. 2006, ch. 704 § 3 (AB 607)); section 42127.6 (amended by Stats. 2004, ch. 902 § 1 (AB 3001)); section 44258.9 (amended by Stats. 2004, ch. 902 § 3 (AB 3001); Stats. 2005, ch. 118 § 9 (AB 831)).

[119] Education Code section 1240(c) (Stats. 2001, ch. 620, § 1 (AB 139)).

[120] Education Code section 1240(c)(2)(A) (Stats. 2004, ch. 900, § 1 (SB 550)).

[121] Education Code section 1240(c)(2)(E) (Stats. 2004, ch. 900 § 1 (SB 550)) [substantially unchanged by Stats. 2005, ch. 118 and Stats. 2006, ch. 704, but renumbered at subparagraph (I)

- Pursuant to the 2007 amendments, the site visits and reports are also meant to determine: "(iv) The extent to which pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first…[and] (v) The extent to which pupils who have elected to receive intensive instruction and services…are being served;"[122]
- Pursuant to the 2006 amendments, if a county superintendent or his or her designee finds that the condition of a facility "poses an emergency or urgent threat to the health or safety of pupils or staff…or is not in good repair" the county superintendent is authorized, but not required, to take certain actions. The county superintendent "may, among other things, do any of the following:"
    - Return to the school to verify repairs; and,
    - Prepare a report that specifically identifies and documents the areas or instances of noncompliance if the district has not provided evidence of successful repairs within 30 days of the county superintendent's visit or, for major projects, has not provided evidence that the repairs will be conducted in a timely manner. The report may be provided to the governing board of the school district. If the report is provided to the school district, it shall be presented at a regularly scheduled meeting held in accordance with public notification requirements. The county superintendent shall post the report on its Internet Web site. The report shall be removed from the Internet Web site when the county superintendent verifies the repairs have been completed.[123]

All of the activities under paragraph (2) above fall within the conditional statement, "*to the extent that funds are appropriated for purposes of this paragraph*." Article XIII B, section 6 requires reimbursement when the Legislature or a state agency "mandates" a new program or higher level of service upon local government. The limiting language here, "to the extent that funds are appropriated," calls into question whether the activities of paragraph (2) are in fact mandated. Because section 1240 was amended as urgency legislation, there is virtually no legislative history to aid in examining the purpose of this phrase, but as in all cases of statutory construction, the inquiry must begin with the language of the statute, giving words their plain or literal meaning.[124] "*To the extent that funds are appropriated for purposes of this paragraph*"

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in the 2006 amendments, and again renumbered at subparagraph (J) in the 2007 amendments (Stats. 2006, ch. 704 § 1 (AB 607); Stats. 2007, ch. 526 § 1 (AB 347)).]

[122] Education Code section 1240(c)(2)(J) (Stats. 2007, ch. 526 § 1 (AB 347)). See also section 1240(c)(2)(E) (Stats. 2007, ch. 526 § 1 (AB 347)) [providing freestanding requirement that county superintendent verify students are made aware of availability of intensive instruction services].

[123] Education Code section 1240(c)(2)(K) (Stats. 2006, ch. 704 § 1 (AB 607)).

[124] See Legislative Counsel's Digest, Statutes 2004, chapter 900 (SB 550) ["This bill would declare that it is to take effect immediately as an urgency statute."]. See also, Exhibit I, California Jurisprudence, Vol. 58, Statutes, § 92 [citations omitted].

means that the activities alleged are mandated only when funds are provided, and only to the extent that the activities are capable of completion with the funds provided. Stated in the negative, where funds fall short, there is no mandate. In either case, the Commission finds that the mandate lies if and only to the extent funds are appropriated, and if funds are not appropriate, or are reduced, the mandate is limited by the limiting language. The requirements of section 1240(c), pursuant to the amendments alleged in this test claim, are substantially expanded from the requirements provided for under prior law. Given that these activities relate to the monitoring and oversight of schools and school districts (a service to the public), the test claim statute imposes a mandated new program or higher level of service upon the LEAs, under *County of Los Angeles*, *supra*, but only to the extent that funds are appropriated.

The Commission finds that the required activities described above under paragraph (2) of subdivision (c) constitute a mandated new program or higher level of service, but only to the extent funding is appropriated. However, as discussed below, section 23 of Statutes of 2004, chapter 900, followed by an ongoing budget appropriation at line 6110-266-0001, provides for annual funding of the section 1240 requirements, and claimant has made no showing that those appropriations are insufficient to fund the costs of the mandated activities.

2. Section 1240(i) imposes a state-mandated new program or higher level of service for county superintendents' enforcement of the use of state textbooks.

The requirement that the county superintendent shall enforce the use of state textbooks is mandatory, irrespective of funding, based on the language of subdivision (i). Prior section 1240(i) required the county superintendent to "enforce the use of state textbooks."[125] Amended section 1240(i) provides that:

- A county superintendent shall review for textbook sufficiency, at least annually, schools ranked in deciles 1 to 3, by the end of the fourth week of the school year.
- For counties with more than 200 schools ranked in deciles 1 to 3, a superintendent may utilize a combination of onsite visits and written surveys with follow-up site visits in order to meet the fourth week deadline.
- If a county superintendent determines that a school does not have sufficient textbooks or instructional materials, he or she "shall do all of the following:"
    - prepare a report documenting the instances of noncompliance;
    - provide that report to the district and the Superintendent of Public Instruction;
    - provide the school district with an opportunity to remedy the deficiency, and ensure that it is done within the first two months of the school year; and
    - If the deficiency is not remedied, request the Department of Education to purchase the materials as a loan to the district, to be repaid by agreement with the Superintendent of Public Instruction, or deducted from the next principal apportionment by the Controller.[126]

[125] Education Code section 1240(i) (Stats. 2001, ch. 620 (AB 139)).

[126] Education Code section 1240(i) (Stats. 2004, ch. 900 § 1 (SB 550); Stats. 2005, ch. 118 (AB 831); Stats. 2006, ch. 704 § 1 (AB 607)).

As noted above, unlike the requirements of paragraph (2) of section 1240(c), which are conditional upon funding, the requirements of subdivision (i) are mandatory, irrespective of funding, by the plain language of the section. These requirements are new, and different from the requirements in effect prior to the test claim statutes; and given that the purpose and effect of these requirements is to ensure that students in public schools have sufficient instructional materials early in the school year, the activities provide a service to the public. Furthermore, the requirements of enforcing the use of state textbooks fall uniquely upon county offices of education, a unit of local government. [127]

The Commission finds that the new requirements constitute a state-mandated new program or higher level of service. However, as discussed below, section 23 of Statutes of 2004, chapter 900, followed by an ongoing budget appropriation at line 6110-266-0001, provides for annual funding of the section 1240 requirements, and claimants have made no showing that those appropriations are insufficient to fund the costs of the mandated activities.

3. Section 1240 imposes a state-mandated new program or higher level of service only upon county offices of education, and not school districts.

To the extent that section 1240 creates or expands activities required of LEAs, the section only places such requirements or activities at the feet of the *county superintendent* and certain *state* officials, and does not require any activities of *school districts*.

Claimant Sweetwater Union High School District asserts that section 1240 requires school districts to prepare for and participate in the county superintendents' site visits. Sweetwater claims that it has expended substantial staff time "to prepare the reports and information required by the county office of education for its evaluation of the district's and deciles 1-3 school compliance with *Williams*." Sweetwater also claims that it has spent substantial staff time "to prepare and implement corrective actions, facility repairs, apply for special funding, board action, updating policy and procedures, and other actions in response to the site inspection findings."[128]

None of the activities alleged by Sweetwater are required by the plain language of the statute. The alleged preparation of documentation and reports "required by the county office of education" is exactly that: a requirement of the county office of education. The implementation of corrective action in response to the site inspection findings is also a requirement imposed by the county office of education. In *City of San Jose*, the court held that where a statute authorized, but did not require, a county to charge cities and school districts for the cost of booking persons arrested within those jurisdictions into the county jail, any costs incurred were not imposed by the state, but by another local government entity, and thus were not reimbursable.[129] Here, the state is not imposing any mandated duties on the school district: the state has given the county office of education certain oversight authority with respect to the school districts, which the school districts allege cause them to incur costs. But where the county may request information or demand remedial action, those activities are mandated by the

[127] Education Code section 1240(i) (Stats. 2004, ch. 900 § 1 (SB 550)).

[128] Exhibit A, Test Claim I, Declaration of Ernest Anastos, p. 26.

[129] *City of San Jose, supra* (Cal Ct. App. 6th Dist. 1996) 45 Cal.App.4th 1802, pp. 1816-1817.

county's oversight authority, not by the test claim statute itself. Therefore any costs incurred pursuant to that oversight are imposed by the county, and not by the Legislature.

Alternatively, mandated activities imposed upon the school districts pursuant to the county superintendents' reviews and monitoring may be ascribed to a failure to abide by the conditions and requirements of other pre-existing provisions of the Education Code, and would not be reimbursable, since those requirements are not new. If a school district is required, for example, to take corrective action to remedy an insufficiency of textbooks, or an inaccuracy reported in the school accountability report card, that corrective action is not required by section 1240; it is an existing requirement of the Pupil Textbook and Instructional Materials Incentive Program, or of the School Accountability Report Card, respectively, as those programs are discussed below. The court of appeal in *City of Merced*, discussed above, withheld reimbursement to a local government choosing to incur costs pursuant to its exercise of eminent domain power. And *Kern* upheld and reinforced that ruling, holding that mandated open meeting and agenda costs were not reimbursable where a local educational agency voluntarily entered into programs triggering those required costs. Similarly here, where mandated activities and costs arise due to a failure to abide by the requirements of another code section or program, those requirements, and their resulting costs, are assumed voluntarily under analogy to *Kern* and *City of Merced*, *supra*.[130]

The Commission finds that to the extent that the county superintendent's reviews and monitoring of schools under section 1240 may lead to a district incurring costs, whether from participating in the superintendents' reviews, or from being directed to remedy deficiencies, those costs are imposed by the county office of education, or by the district's failure to comply with other applicable requirements, not by the state. Section 1240 does not impose any *state-mandated* activities or costs upon school districts.

4. Section 42127.6 mandates a new program or higher level of service upon school districts and county offices of education.

Amended section 42127.6 provides as follows:

> (a)(1) 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. The county superintendent shall review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present. If these findings are made, the county superintendent shall investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for

[130] *City of Merced, supra* 153 Cal.App.3d 777, 783; *Kern, supra* 30 Cal.4th 727, 743.

> the current or two subsequent fiscal years, or should receive a qualified or negative interim financial certification pursuant to Section 42131. If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years or if a school district has a qualified or negative certification pursuant to Section 42131, he or she shall notify the governing board of the school district and the Superintendent of Public Instruction in writing of that determination and the basis for the determination. The notification shall include the assumptions used in making the determination and shall be available to the public. The county superintendent of schools shall report to the Superintendent of Public Instruction on the financial condition of the school district and his or her proposed remedial actions and shall do at least one of the following and all actions that are necessary to ensure that the district meets its financial obligations:[131]

Section 42127.6(a)(1)(G) added a new option for remedial actions that can be taken by the county superintendent of schools when a school is in fiscal distress. The county superintendent can now assign the Fiscal Crisis and Management Assistance Team (FCMAT) "to review teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and the extent of teacher misassignment in the school district and provide the district with recommendations." If the FCMAT is assigned, "the district shall follow the recommendations of the team, unless the district shows good cause for failure to do so."

The requirements imposed on school districts and county offices of education are analyzed below.

School Districts

Claimant, Sweetwater Union High School District, alleges that section 42127.6 requires school districts to provide a copy of any report, study, evaluation or audit which indicates possible fiscal distress, and that if the FCMAT is assigned, a district is required to implement the team's recommendations or show good cause for failure to do so. Sweetwater also alleges costs incurred or estimated at the district level, related to implementing the FCMAT recommendations "or showing good cause for failure to do so," in amounts of $8,828 for fiscal year 2004-2005 and $9,000 for fiscal year 2005-2006.

DOF submitted written comments on the draft staff analysis, arguing that section 42127.6 does not mandate a new program or higher level of service upon school districts or county offices of education:

> 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

[131] Education Code section 42127.6(a)(1) (Stats. 2004, ch. 902 (AB 3001)).

> 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, 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.[132]

The Commission finds that section 42127.6(a) mandates a new program or higher level of service on school districts as described below.

Section 42127.6(a) requires school districts to provide copies to the county office of education of any reports, evaluations, or audits commissioned by the district, the county office of education, the Superintendent of Public Instruction, or other state agencies, and that show evidence of fiscal distress, or a report by the County Office Fiscal Crisis and Management Assistance Team, or any regional team created pursuant to section 42127.8. Then, pursuant to the review of the county office of education, if the FCMAT is assigned to review teacher hiring and retention policies, the district is required to implement the recommendations of the team unless it shows good cause for not doing so.

The requirement under section 42127.6 that the district follow the recommendations of the FCMAT unless it can show good cause *does not impose a* mandated new program or higher level of service upon school districts. Under section 42127.6(a)(1)(G) the county superintendent is authorized, but not required, to assign the FCMAT to review a district's hiring and retention policies and make recommendations; just as in *City of San Jose*, where the county was authorized, but not required, to charge cities and school districts for the costs of booking arrestees into the county jail. *City of San Jose* dictates a strict interpretation of article XIII B, section 6, holding that "there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions."[133] The FCMAT is assigned, if at all, by the county superintendent, not the state, and any increased costs are imposed therefore by the county, not the state. Finally, section 42127.6(a)(1)(G) specifically creates an exception for "good cause," and thus makes clear that it is not strictly *mandatory* to comply with the recommendations of the FCMAT, whatever the source of its authority.[134] Therefore the Commission finds that section 42127.6(a)(1)(G) does not impose any state-mandated activities or costs upon school districts, as alleged.

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[132] Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November16, 2012.

[133] *City of San Jose, supra*, (Cal. Ct. App. 6th Dist. 1996) 45 Cal.App.4th 1802, pp. 1816-1817.

[134] Education Code section 42127.6(a)(1)(G) (Stats. 2004, ch. 902, (AB 3001)).

Regarding the remaining requirements of section 42127.6(a), DOF's observation of the existing oversight relationship between the county offices of education and school districts is correct, but the responsibility to "superintend the schools" of the county does not, no matter how broadly interpreted, impose an *affirmative* statutory duty upon school districts to provide copies of reports and studies, as required by the test claim statute. Neither does the obligation on the county superintendent to "visit and examine each school in his or her county at reasonable intervals" equate to a responsibility upon the school districts to disclose, unbidden, any studies or evaluations that betray fiscal difficulties. DOF argues that "[a] narrower interpretation would render the statutory enactment meaningless," but the interpretation that DOF urges implies affirmative duties not found in the plain language of existing law; grounded in nothing more than a general power relationship that exists between counties and school districts. The interpretation that is applied by the Commission, one grounded in the plain language of the test claim statute, does not challenge that relationship; it merely recognizes the affirmative duties on the school districts, newly created by section 42127.6. DOF also argues that "[f]or this statute [section 1240] to have meaning, there must be a complementary requirement on the part of school districts to provide the county superintendent with any documents…necessary for him to 'superintend' the schools," but section 1240 is clearly addressed to the responsibilities and power of the county superintendent, and does not touch on the obligations of school districts.

The prior versions of the code sections to which DOF refers clearly placed the burden on the county superintendent to exercise fiscal oversight. Section 42127.6, prior to SB 550, stated, "[i]f at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years…"[135] That language places the burden on the county office of education to uncover the fiscal difficulties of the school districts under its supervision. Section 1240, prior to SB 550, only required visits "at reasonable intervals," and again imposed no affirmative responsibility on the school districts to disclose information upon those visits.[136] DOF imagines a preexisting duty, based on the oversight relationship between school districts and county offices of education, to disclose the type of information now expressly required by the test claim statute. But prior to the enactment of test claim statutes there was no affirmative duty mandated by the state on school districts to provide such information. Moreover, to the extent that school districts might have been obligated to provide documents to the county superintendent when asked, those activities would be mandated by one local government entity as against another, and not mandated by the state.[137]

The requirement that districts "provide the county superintendent of schools with a copy" of reports or studies containing evidence of fiscal distress is a new and more specific requirement than under prior law. And, because the purpose of this requirement is to maintain closer control and oversight of school districts' financial solvency, it provides a higher level of service to the public.

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[135] Statutes 2001, chapter 620, section 3 (AB 139).

[136] Statutes 2001, chapter 620, section 1 (AB 139).

[137] See *City of San Jose v. State* (Cal. Ct. App. 6th Dist. 1996) 45 Cal.App.4th 1802, at p. 1816 [statute permitted, but did not require, county to shift costs of booking arrestees into county jail to cities and other local government entities conducting arrests].

However, there is another portion of DOF's comments regarding section 42127.6 that is persuasive:

> 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.

Two separate, but related issues are raised by this comment. First, under *City of Merced* and *Kern*, supra, local government is not entitled to reimbursement for required activities that are triggered by discretionary decisions. And second, where an activity that results in increased costs is compelled by another local government entity, that activity is not mandated *by the state*, and therefore is not reimbursable.

In *City of Merced*, *supra*, the city argued that it was subject to a reimbursable mandate when required by statute to compensate a business owner for the loss of business goodwill, pursuant to exercising the power of eminent domain to take the underlying property. The court of appeal concluded that the exercise of the eminent domain power was a discretionary act, and that therefore no activities were mandated.[138] In accord is *Department of Finance v. Commission on State Mandates* (*Kern*), in which a state statute required districts maintaining school site councils to comply with the state's open meetings laws, including preparing and posting an agenda in advance, and keeping council meetings open to the public, but there was no mandate under the law to establish a school site council in the first instance, and therefore the activities and costs claimed were not mandated. The court in *Kern* stated the rule that where a local government entity voluntarily undertakes to participate in a program, the Legislature may attach reasonable conditions to that program without giving rise to reimbursable state-mandated activities.[139]

To the extent that studies, reports, evaluations, or audits are "commissioned by the district," solely at its discretion, then to "provide the county superintendent of schools with a copy" of such document would be a conditional requirement of a voluntarily-undertaken activity, and would not be reimbursable under *Kern*, *supra*. But if a study or report, or an audit, is required by other state or federal law, a district is required to "commission" those activities and is without discretion whether to do so. Therefore, the findings below are qualified, with respect to studies, reports, evaluations or audits that are commissioned at the discretion of the district.

Similarly, reports commissioned by the county superintendent or county office of education, *at their discretion*, would not be reimbursable. Under *City of San Jose*, *supra*, where the county has the authority, but not the imperative, to commission a study or report, or to direct the school district to commission a study or report, provision of those documents to the county would not be reimbursable, because the county, not the state, is the entity imposing the increased costs.[140]

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[138] *City of Merced v. State of California* (Cal. Ct. App. 5th Dist. 1984) 153 Cal.App.3d 777.

[139] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 743.

[140] See *City of San Jose*, *supra*, at Fn 160.

Finally, the amended section also requires school districts to provide copies of "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." Section 42127.8, in turn provides that the County Office Fiscal Crisis and Management Assistance Team, and possible creation of regional teams, are created at the initiative of a 25-member statewide governing board. Any reports by these bodies would therefore be prepared as a result of state action, rather than county action, and would not fall under the *City of San Jose* argument. Thus, the requirement for school districts to provide reports on the school district by the County Office Fiscal Crisis and Management Assistance Team or any regional team to the county superintendent of schools is mandated by the state.

Therefore the Commission finds that section 42127.6(a)(1) mandates a new program or higher level of service upon school districts to provide the county superintendent with a copy of a study, report, evaluation, or audit that contains evidence that the school district is showing fiscal distress, 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, unless commissioned at the discretion of the district or of the county office of education.

County Offices of Education

Claimant, San Diego COE, alleges that section 42127.6(a)(1) requires the county superintendent to *review and consider studies, reports, evaluations, or audits that contain evidence of school districts being in fiscal distress*, and that this activity results in increased costs. San Diego alleges that county superintendents are required to investigate any such evidence and determine if the school may be unable to meet its financial obligations. San Diego alleges that if that determination is made, a county superintendent is then required to report to the Superintendent of Public Instruction, and take remedial action. San Diego alleges costs incurred under section 42127.6(a)(1) in the form of "[s]taff time to refer the district to the Fiscal Crisis and Management Assistance Team for review and recommendations."[141]

As discussed above, section 42127.6 requires the county superintendent to "review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention…are present." If those findings are made "the county superintendent shall investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for the current or two subsequent fiscal years." And, "[i]f at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years…he or she shall notify the governing board of the school district and the Superintendent of Public Instruction in writing of that determination and the basis for the determination." The county superintendent of schools "shall report to the Superintendent of Public Instruction on the financial condition of the school district and his or her proposed remedial actions." And the county superintendent "shall do at least one

[141] Exhibit A, Test Claim I, Declaration of Elaine Hodges, pp. 8-9; 11-12.

of the following and all actions that are necessary to ensure that the district meets its financial obligations."[142]

Of those requirements, only "review[ing] and consider[ing] studies, reports, evaluations or audits," and "investigat[ing] the financial condition of the school district" are newly added by the test claim statute. All other requirements are found in prior law, except that the remedial actions now include the option of assigning the Fiscal Crisis and Management Assistance Team to review teacher hiring and retention practices.[143]

The requirements of section 42127.6(a)(1), with respect to county offices of education, are mandatory by the plain language of the statute: the county superintendent, under amended section 42127.6, "shall review and consider studies, reports, evaluations, or audits of the school district," and "shall investigate the financial condition of a school district."

As discussed above with respect to section 1240, and below with respect to section 44258.9, where the county superintendent's oversight responsibilities are expanded and made more specific by the *Williams* legislation, those oversight responsibilities constitute new activities that fall uniquely on local government, and that provide a higher level of service to the public.

Under prior law, the county office of education had broad oversight authority with respect to the school districts within the county.[144] And under prior section 42127.6, the county office of education was expected to take remedial action if the superintendent determined that a school might be unable to meet its fiscal obligations. The amendments to section 42127.6 in this test claim make the duties of the county office of education much more specific than before. The requirement to review and consider studies and reports turned over by the school districts might have generally been a part of a county superintendent's due diligence, but now such reports are required by the state to be forwarded by the school districts, and the county superintendent "shall review and consider" them. Additionally, while a duty to "investigate the financial condition of the school district" might have been implied by the general oversight responsibility, it is made more specific by the test claim statute, and made mandatory upon the occurrence of certain conditions. Therefore the test claim statute mandates a new program or higher level of service upon county offices of education with respect to reviewing and considering reports and investigating the financial condition of the districts.

As stated above, claimants have alleged that the taking of remedial action has resulted in state-mandated increased costs. The prior section 42127.6 provided for remedial action "if at any time during the school year the county superintendent of schools determined that a school district may be unable to meet its financial obligations," but did not provide specifically that the county superintendent shall investigate reports and studies transmitted by the school districts, in order to make such determinations. The prior section also provided that the county superintendent "shall do any or all of the following, as necessary, to ensure that the district meets its financial obligations."[145] Amendments to the section alleged in this test claim require the county

[142] Education Code section 42127.6(a)(1) (Stats. 2004, ch. 902 (AB 3001)).

[143] See Education Code section 42127.6 (Stats. 2001, ch. 620 (AB 139)).

[144] See Education Code sections 1240; 42127.6; 41020; 41344.4 [demonstrating oversight relationship between county office of education and school districts].

[145] See Education Code section 42127.6 (Stats. 2001, ch. 620 § 3 (AB 139)).

superintendent to do "*at least one of the following*…and all actions that are necessary," and provide that one of the possible remedial actions that may be taken is to assign the Fiscal Crisis and Management Assistance Team (FCMAT) to review the district's teacher hiring and retention policies.[146] The county superintendent is given options under the section as to how to proceed, and therefore the costs alleged "to refer the district to the FCMAT" is not a mandated increased cost, because it is only one of several options. The county superintendent still has the authority to exercise discretion.

In conclusion, the Commission finds that section 42127.6(a)(1) mandates a new program or higher level of service upon LEAs for the following activities:

- For school districts to provide the county superintendent with a copy of a study, report, evaluation, or audit that contains evidence that the school district is showing fiscal distress, 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, unless commissioned at the discretion of the district or of the county office of education.
- For county superintendents:
    - Review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that more than three of the 15 most common predictors of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team, are present.
    - If these findings are made, investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for the current or two subsequent fiscal years, or should receive a qualified or negative interim financial certification pursuant to Section 42131.

However, as discussed below, section 23 of Statutes of 2004, chapter 900, followed by an ongoing budget appropriation at line 6110-107-0001, provides for annual funding of *county offices of education*, with respect to the section 42127.6 requirements, and claimants have made no showing that those appropriations are insufficient to fund the costs of the mandated activities. The funding identified does not fund the activities of *school districts* under section 42127.6. Therefore, the activities found to be mandated above are reimbursable *only for school districts*, and not for county offices of education.

5. Education Code section 44258.9, as amended, imposes a state-mandated new program or higher level of service, but only to the extent of funding provided for expanded oversight and monitoring of school districts' certificated employee assignment practices by county offices of education.

The 2004 amendments to section 44258.9 increased the responsibilities of county superintendents to monitor and review district hiring and assignment practices to minimize the

[146] Education Code section 42127.6(a)(1)(G) (Stats. 2004, ch. 902 § 1 (AB 3001)).

incidence of teacher misassignments and teacher vacancies.[147] Prior section 44258.9 provided that "*to the extent possible and with funds provided for that purpose*:"

> Each county superintendent of schools shall annually monitor and review school district certificated employee assignment practices according to the following priority:
>
> (A) Schools and school districts that are likely to have problems with teacher misassignment based on past experience or other available information.
>
> (B) All other schools on a four-year cycle.[148]

The 2004 amendments to section 44258.9 provided that, "*to the extent possible and with funds provided for that purpose*," county superintendents, in the conduct of their ongoing annual monitoring of school districts' certificated employee assignment practices "shall give priority to schools ranked in deciles 1 to 3."[149]

And as of the 2005 amendments, section 44258.9 provides that, "*to the extent possible and with funds provided for that purpose*," county superintendents shall:

- "*[A]nnually monitor and review* schools and school districts that are likely to have problems with teacher misassignments and teacher vacancies…based on past experience or other available information."
- "*[A]nnually monitor and review* schools ranked in deciles 1 to 3" for teacher vacancies and misassignments. [150]
- If, pursuant to an annual review, "a school has no teacher misassignments or teacher vacancies," that school may return to a four-year cycle of review pursuant to subparagraph (C).[151]
- A county superintendent "shall investigate school and district efforts to ensure that any credentialed teacher serving in an assignment requiring a certificate…or training…completes the necessary requirements for these certificates or completes the required training."
- A county superintendent's annual report must include information on certificated employee assignment practices in schools ranked in deciles 1 to 3, "to ensure that, at a minimum, in any class in these schools in which 20 percent or more pupils are English

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[147] Education Code section 44258.9 (Stats. 2004, ch. 902 (AB 3001)).

[148] Education Code section 44258.9 (Stats. 1996, ch. 204 § 12 (AB 3488)).

[149] Education Code section 44258.9(b) (Stats. 2004, ch. 902 § 3 (AB 3001)).

[150] Education Code section 44258.9(b) (Stats. 2005, ch. 118 § 9 (AB 831)).

[151] Education Code section 44258.9(b)(1)(B-C) (Stats. 2005, ch. 118 § 9 (AB 831)). See Education Code section 44258.9(b)(1)(B) (Stats. 2007, ch. 730 (SB 132)) [a school may return to the four year cycle after finding no vacancies or misassignments for two consecutive years].

learners the assigned teacher possesses a certificate…or has completed training…or is otherwise authorized by statute."[152]

Article XIII B, section 6 requires a subvention of funds when the Legislature or a state agency "mandates" a new program or higher level of service upon local government. As discussed above with respect to section 1240(c), the limiting language, "to the extent possible and with funds provided for that purpose," calls into question whether the activities of section 44258.9 are in fact mandated. Because both AB 3001 and the prior version of section 44258.9 found in AB 3488 were passed as urgency legislation, there is a dearth of legislative history to illuminate the purpose of this phrase; but the plain language may nonetheless be instructive, as above.[153] The fundamental rule of statutory construction being to give effect to the intent of the Legislature, as in all cases of statutory construction the inquiry must begin with the language of the statute, giving words their plain or literal meaning.[154] "To the extent possible and with funds provided for that purpose" means that the activities provided for are mandated insofar as funds are provided, and only mandated to the extent that the activities are capable of completion with the funds provided. From another perspective, the phrase means that where funds fall short, there is no mandate. In either case, there are mandated activities only if and to the extent that funds are appropriated.

The Commission finds that section 44258.9 mandates a new program or higher level of service upon county offices of education for the activities bulleted above, but only to the extent that funding is provided. If the funding is reduced or discontinued, the activities would no longer be mandated. Here, as discussed below, section 23 of Statutes of 2004, chapter 900, provides for funding of the section 44258.9 requirements and, thus, there are no costs mandated by the state in any event.

6. Sections 1242 and 1242.5 do not impose any state-mandated activities upon local educational agencies.

Section 1242, added in 2006, outlines the manner in which county offices of education should allocate funding appropriated in the 2006 budget for schoolsite visits required under section 1240. Subdivision (a) requires that the county offices allocate for site visits $2,500 for each elementary school, $3,500 for each middle or junior high school, and $5,000 for each high school. Subdivision (b) provides that county offices of education shall receive additional funding for sites in which enrollment is 20 percent greater than the average of all sites for the prior year. The additional funding will be allocated as follows: two dollars and fifty cents for each pupil exceeding a total elementary school enrollment of 856 pupils; three dollars and fifty cents for each pupil exceeding a total middle or junior high school enrollment of 1,427 pupils; and five dollars for each pupil exceeding a total high school enrollment of 2,296 pupils. Subdivision (c) provides that county offices of education responsible for visiting more than 150

[152] Education Code section 44258.9(b-c) (Stats. 2004, ch. 902 § 3 (AB 3001)).

[153] See Legislative Counsel's Digest paragraph (44), Statutes 1996, chapter 204 (AB 3488) ["The bill would declare that it is to take effect immediately as an urgency statute."]. See also, Legislative Counsel's Digest, Statutes 2004, chapter 902 (AB 3001) ["This bill would declare that it is to take effect immediately as an urgency statute."]

[154] Exhibit I, California Jurisprudence, Vol. 58, Statutes, §§ 91-92 [citations omitted].

schoolsites shall receive an additional one dollar per pupil for the total enrollment of all sites visited. And subdivision (d) provides that the minimum amount for allocation to a county office of education shall be $10,000.[155] There are no new activities required by the plain language of this section, and accordingly no specific activities or costs are alleged.[156]

New section 1242.5, also added by Statutes of 2006, chapter 704, (AB 607), requires that any funds allocated for schoolsite visits under section 1240, but not expended by county offices of education, "shall revert to the extraordinary cost pool created by chapter 710 of the Statutes of 2005 and shall be available to cover the extraordinary costs incurred by county offices of education" in conducting their schoolsite visits and reviews under section 1240.[157] There are no new activities required of local governments by this provision, and no specific activities or costs are alleged.[158]

The Commission finds no mandated activities under sections 1242 and 1242.5.

7. **Section 42127.6 imposes costs mandated by the state for school districts to forward and provide copies of reports suggesting fiscal distress to county superintendents. However, the activities required by sections 1240(c), 1240(i), 42127.6, and 44258.9 do not impose "costs mandated by the state" on county offices of education, within the meaning of section 17514 of the Government Code.**

Section 1240(c) requires county superintendents to conduct site visits of deciles 1 to 3 schools early in each school year, to determine the sufficiency of textbooks and instructional materials, the condition of facilities, any teacher misassignments or vacancies, and the availability of intensive instruction services to aid students in passing the high school exit examination. Section 1240(i) requires county superintendents to enforce the use of state textbooks and instructional materials, and to determine whether each student has sufficient textbooks or instructional materials by the end of the fourth week of school, and if not, to take remedial action. Section 42127.6 requires school districts to forward copies of studies or reports suggesting fiscal distress to the county office of education, and requires the county superintendent to investigate any such reports, and determine whether a school district may be unable to meet its financial obligations in that year or the next, and if so, to take remedial action. Section 44258.9 requires county superintendents to annually review and monitor district certificated employee assignment practices at schools and in districts likely to have problems with teacher vacancies or misassignments based on past experience, and schools ranked in deciles 1 to 3 of the applicable base API.

Where an appropriation in the statute, or other bill, or in the annual budget act, provides funds specifically intended to offset the mandated activities, in an amount sufficient to fund the mandated activities, the Commission is proscribed from finding "costs mandated by the state," within the meaning of section 17514.[159]

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[155] Education Code section 1242(a-d) (added, Stats. 2006, ch. 704 § 2 (AB 607)).

[156] Exhibit B, Test Claim II, Declaration of Charmaine Lawson, pp. 9-11.

[157] Education Code section 1242.5 (added, Stats. 2006, ch. 704 § 3 (AB 607)).

[158] Exhibit B, Test Claim II, Declaration of Charmaine Lawson, pp. 9-11.

[159] Government Code section 17556(e).

The activities required under amendments to sections 1240(c) and (i), 42127.6, and 44258.9 are provided for in Section 23 of chapter 900 of Statutes of 2004, which provides:

> The sum of fifteen million dollars ($15,000,000) to the State Department of Education for allocation to county offices of education to review, monitor, and report on teacher training, certification, misassignment, hiring and retention practices of school districts pursuant to subparagraph (G) of paragraph (1) of subdivision (a) of Section 42127.6 of the Education Code, subparagraphs (A) and (B) of paragraph (1) of subdivision (b) of Section 44258.9 of the Education Code, and paragraph (4) of subdivision (e) of Section 44258.9 of the Education Code, and to conduct and report on site visits pursuant to paragraph (2) of subdivision (c) of Section 1240 of the Education Code, and oversee schools' compliance with instructional materials sufficiency requirements as provided in paragraphs (2) to (4), inclusive, of subdivision (i) of Section 1240 of the Education Code.[160]

Ongoing budget appropriations, beginning in 2006, provide for the county office of education site visits under section 1240, and for the fiscal oversight activities of the county offices of education under section 42127.6. Line item 6110-266-0001, beginning in the 2006 Budget Act and continuing through 2012, provides $10 million for allocation to county offices of education "for the purposes of site visits pursuant to Sections 1240 and 52056." Line item 6110-107-0001 provides, in the 2005 budget act:

> Funds contained in Schedule (1) may be used for activities, including, but not limited to, conducting reviews, examinations, and audits of districts and providing written notifications of the results at least annually by county offices of education on the fiscal solvency of the districts with disapproved budgets, qualified or negative certifications, or, pursuant to Section 42127.6 of the Education Code, districts facing fiscal uncertainty. Written notifications of the results of these reviews, audits, and examinations shall be provided at least annually to the district governing board, the Superintendent of Public Instruction, the Director of Finance, and the Office of the Secretary for Education.[161]

Line item 6110-107-0001 provides between $10 million and $11.4 million each year, beginning in 2005.[162]

It is unclear whether item 6110-107-0001 is intended to cover the costs of activities under section 44258.9, or whether item 6110-266-0001, discussed above, might include the county

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[160] Statutes 2004, chapter 900, section 23 (SB 550).

[161] Statutes 2005, chapter 38 (SB 77): Item 6110-107-0001

[162] Statutes 2005, chapter 38 (SB 77): Item 6110-107-0001; Statutes 2006, chapter 47 (AB 1801): Items 6110-107-0001, 6110-266-0001; Statutes 2007, chapter 171 (SB 77): Items 6110-107-0001, 6110-266-0001; Statutes 2008, chapter 268 (AB 1781): Items 6110-107-0001, 6110-266-0001; Statutes 2009, Third Extraordinary Session, chapter 1 (SBX3 1): Items 6110-107-0001, 6110-266-0001; Statutes 2010, chapter 712 (SB 870): Items 6110-107-0001, 6110-266-0001; Statutes 2011, chapter 33 (SB 87): Items 6110-107-0001, 6110-266-0001; Statutes 2012, chapter 21 (AB 1464) Items 6110-107-0001, 6110-266-0001 [both items reduced, Statutes 2012, chapter 29 (AB 1497)].

superintendents' monitoring of teacher assignment practices under section 44258.9 in conjunction with the site visits and reviews required under section 1240s (c) and (i). Section 23 of Statutes 2004, chapter 900 clearly invokes section 44258.9 along with these other requirements, but neither of the above-described ongoing budget items clearly expresses the Legislature's intent to continue funding the activities required by section 44258.9. However, as analyzed above, if neither of these ongoing budget items is available to fund the activities described under section 44258.9, those activities are no longer mandated, pursuant to the limiting language, as discussed.

Taking claimant's estimates at face value,[163] the statewide costs of county office of education activities, (including amendments and additional costs, and the *Williams* complaint process, which is not separately accounted for in Test Claims II and III, and a number of training and preparation costs not expressly required by the statute), would be less than amounts appropriated in the budget acts and amount to *no more than*: $4,202,737 in fiscal year 2004-2005; $4,260,000 in fiscal year 2005-2006; plus an additional $393,500 in fiscal year 2007-2008; and another $195,700 in fiscal year 2007-2008.[164] And even if *all* activities and costs alleged were approved, both for county offices of education and for school districts,[165] the claimant's estimate of statewide costs would amount to only $12,805,842 in fiscal year 2004-2005 and $10.3 million in fiscal year 2005-2006. Without more, claimant has not alleged any increased costs mandated by the state over and above the $15 million initially appropriated in section 23 of Statutes 2004,

[163] Statewide Cost Estimates throughout all three consolidated test claims are based upon proportional calculation of claimants' costs as compared to surveyed costs of other districts and counties. For example, the total reported costs of school districts responding to claimants' survey in the 2004-2005 fiscal year amounted to $907,678. The estimated costs reported by claimant Sweetwater in 2004-2005 were $60,340. Sweetwater calculated that its costs represented approximately 7% of the survey costs, and that school districts responding to the survey represented about 10% of the county offices of education. For all three test claims, Sweetwater used its own estimated costs (e.g., $10,750 for FY 2007-2008 alleged in Test Claim II), divided by its share of the survey costs from fiscal year 2004-2005 ($10,750 divided by 7% = $153,571, rounded to $153,500), and then divided again by the survey respondents' representation of all county offices of education ($153,500 divided by 10% = $1,535,000). Sweetwater alleges, in all three test claims, that it has received no funds for the activities alleged under sections 1240, 42127.6, and 44258.9. San Diego alleges in Test Claim I $312,000 received or receivable for 2004-2005 and 2005-2006, and no additional funds made available in Test Claims II and III.

[164]County Office of Education statewide totals, Test Claim I, p. 54; $697,000 Statewide Estimate of additional costs for 2007-2008 (Test Claim II); and $195,700 Statewide Estimate of additional costs for 2007-2008 (Test Claim III, which does not distinguish between section 1240 costs and Uniform Complaint Process costs).

[165] Note that claimant Sweetwater has alleged activities, discussed above, that are not required by the plain language of the statute; and still others that are mandated by the county office of education, not by the state.

chapter 900, and the more than $20 million in ongoing appropriations found in the annual budget act during the eligible period of reimbursement.[166]

The Commission finds that sections 1240, 42127.6, and 44258.9 do not impose "costs mandated by the state," within the meaning of Government Code section 17514, upon county offices of education, because the activities involved are either not mandatory where funding falls short, or specifically funded by the above-described budget appropriations in an amount sufficient to fund the mandated activities within the meaning of Government Code section 17556(e).

However, the Commission finds that there are costs mandated by the state for school districts, under section 42127.6, with respect to the requirement of providing copies of reports and studies to the county offices of education. No funding specifically intended for school districts is identified in the Budget Acts or other bills that bars this finding under section 17556(e).

8. Conclusion

The Commission finds that Education Code section 42127.6 imposes a reimbursable state-mandated program upon school districts, within the meaning of article XIII B, section 6, to provide the county superintendent with a copy of a study, report, evaluation or audit that contains evidence of fiscal distress, 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, unless commissioned at the discretion of the district, or of the county office of education, as described above. The Commission finds that sections 1240 and 44258.9 do not impose a reimbursable state mandated program upon school districts, within the meaning of article XIII B, section 6 of the California Constitution. The Commission further finds that Education Code sections 1240, 42127.6, and 44258.9 do not impose a reimbursable state-mandated program on county offices of education within the meaning of article XIII B, section 6 of the California Constitution.

D. The Changes to School Facilities Funding Programs to Define "Good Repair" Do Not Mandate a New Program or Higher Level of Service Upon Local Educational Agencies.[167]

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.[168] 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

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[166] See Test Claim I, p. 54; Test Claim II p. 25; Test Claim III p. 17. It should be noted that budget Line items 6110-107-0001 and 6110-266-0001 were both reduced, by approximately 20%, in Statutes 2012, chapter 29 § 72 (AB 1497), but that claimants have shown no basis for a finding of increased costs.

[167] Education Code sections 17002(d) (Stats. 2004, ch. 900 § 3 (SB 550); Stats. 2006, ch. 704 § 4 (AB 607)); 17014 (Stats. 2004, ch. 900 § 4 (SB 550)); 17032.5 (Stats. 2004, ch. 900 § 5 (SB 550)); 17070.15 (Stats. 2004, ch. 900 § 6 (SB 550)); 17070.75 (Stats. 2004, ch. 900 § 7 (SB 550)); 17087 (Stats. 2004, ch. 900 § 8 (SB 550)); 17089 (Stats. 2004, ch. 900 § 9 (SB 550)); Interim Evaluation Instrument, State Allocation Board.

[168] Education Code section 17002 (Statues 1996, ch. 277 § 2 (SB 1562)).

any identifiable standard. SB 550 added to section 17002 a definition of "good repair," as it applies to facilities, instructional spaces, and portable classrooms, which reads as follows:

> (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.

Statutes of 2006, chapter 704, substituted the language regarding the "interim evaluation instrument," with new language providing for a "school facility inspection and evaluation instrument." The amended section provides that until a school facility inspection and evaluation instrument is approved by the SAB, "good repair" will continue to mean that a facility is clean, safe, and functional as determined by the interim evaluation instrument, "or a local evaluation instrument that meets the same criteria as the interim evaluation instrument." The amended subdivision provides a lengthy list of minimum criteria to be included in the school facility inspection and evaluation instrument, or local evaluation instruments. Finally, paragraph (2) of subdivision (d) requires the Office of Public School Construction to develop the school facility inspection and evaluation instrument by January 1, 2007, and provides that the overall evaluation of facilities under the instrument will be on a scale of "poor" to "exemplary."[169]

1. Sections 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, and 17089 do not mandate any new activities upon local educational agencies.

The activities alleged under the newly added definition of good repair are not state-mandated reimbursable activities, for two reasons: first, any new programs or higher levels of service that might be alleged under the definition of good repair referred to in sections 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, or 17089 are conditional requirements imposed upon voluntary funding programs, and therefore constitute voluntarily assumed activities. And second, the Facilities Inspection System required under section 17070.75 is explicitly made conditional upon the receipt of funding under the Leroy F. Greene School Facilities Act, which is both voluntarily received, and, when funded, not a mandated cost.

The State School Lease-Purchase Law of 1976, beginning at section 17000, states that "it is in the interest of the state and the people thereof for the state to reconstruct, remodel, or replace existing school buildings that are educationally inadequate, or that do not meet present-day

[169] Education Code section 17002(d) (Stats. 2006, ch. 704 § 4 (AB 607)).

structural safety requirements."[170] Nowhere does it appear that LEAs are *required* to seek funding for reconstruction or remodeling; the statute only refers to the state's role and "interest" in seeing that inadequate facilities are reconstructed or replaced. The requirement of maintaining "projects" in good repair under the chapter is only applicable to the extent that schools and school districts are participating in the program. Sections 17014 and 17032.5 both invoke the definition of good repair in section 17002; both fall within the State School Lease-Purchase Law, and are therefore conditional upon voluntary participation in the Program.

The School Facilities Act, beginning at section 17070.10, provides for new construction funds, to be distributed by the SAB, upon conditions as set out by the code and regulations adopted by the board. The School Facilities Act requires that "*applicant school district[s]*" undertake to ensure that a project is kept in good repair. Section 17070.75(b) provides: "[i]n order to ensure compliance with subdivision (a) and to *encourage* school districts to maintain all buildings under their control, the [SAB] shall require an *applicant school district* to do all of the following…" Thus subdivision (b) recognizes the limited applicability of the requirements of the chapter: school districts are not required to meet the statutory standard of "good repair," or to establish restricted accounts for facilities funding, or to do any other thing, except in the case of being an "applicant" participating in the School Facilities Fund.[171] The entire chapter is premised upon the availability of funding that the SAB "may apportion" to school districts.[172]

The State Relocatable Classroom Law of 1979, beginning at section 17085, provides for the transfer or reallocation of funds from the School Facilities Fund or the Deferred Maintenance Fund, for allocation by the [SAB] for the purchase or maintenance of portable buildings.[173] Section 17089 provides that the "[SAB] shall require each lessee [of a portable classroom] to undertake all necessary maintenance, repairs, renewal, and replacement to ensure that a project is at all times kept in good repair, working order, and condition."[174] But despite the mandatory language of that provision, the underlying program is not mandatory; the code describes the conditions under which a district "shall qualify for the lease under this chapter."[175]

Claimants challenge the "conclusion" with respect to the voluntary nature of these facilities funding programs. Claimants quote the following from page 17 of the draft staff analysis to argue that the analysis fails to consider the new statute resulting from the *Williams* settlement as requiring maintenance of facilities in good repair:

> "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

[170] Education Code section 17001 (Stats. 1996, ch. 277 (SB 1562)).

[171] Education Code section 17070.75(b) (Stats. 2004, ch. 900 § 7 (SB 550)).

[172] Education Code section 17070.40.

[173] Education Code section 17088.2 (Stats. 2002, ch. 33 (AB 16)).

[174] Education Code section 17089(b) (Stats. 2004, ch. 900 (SB 550)).

[175] Education Code section 17088.3(a) (Stats. 1996, ch. 277 § 2 (SB 1562)).

> standard. SB 550 added to section 17002 a definition of 'good repair,' as it applies to facilities, instructional spaces, and portable classrooms, and incorporated that definition by reference in a number of other facilities funding programs." 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 [*sic*].

However, a new statute, placed within voluntary facilities funding programs, cannot impose a reimbursable state mandated program. A statute must not be interpreted in isolation, but in light of the whole law of which it is a part.[176]

All of these funding programs are voluntary: language found in several programs refers, alternatively, to "applicant[s]," or the "eligibility of school districts" to receive funding, or to enter into leases.[177] Therefore the Commission finds that any and all requirements of the above sections pled in this test claim that result from the new definition of good repair are not reimbursable state-mandated activities because they are downstream requirements of an underlying voluntary funded program.

2. Sections 17002, 17014, 17032.5, 17070.15, 17070.75, 17087, and 17089 do not impose new programs or higher levels of service.

The California Supreme Court in *County of Los Angeles v. State of California* expressly stated that the term "higher level of service" must be read in conjunction with the phrase "new program." Both are directed at *state-mandated increases in the services provided* by local agencies and school districts.[178] The enactment of new statutory language, however, does not always mean that the Legislature intended to change the law, or to increase the level of service provided by school districts; new language can be intended to clarify law, rather than change it.

> We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. Our consideration of the surrounding circumstances can indicate that the Legislature made ... changes in statutory language in an effort only to clarify a statute's true meaning.[179]

The issue here is whether the requirements of the test claim statute increase the responsibilities of local government, or the test claim statute is intended only to clarify a prior requirement.

The requirement to keep and maintain school facilities in good repair is not new. Amendments to the above sections in SB 550 (Stats. 2004, ch. 900) provide a definition of good repair, but the requirement that school districts generally maintain facilities in a safe and habitable condition

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[176] Exhibit I, California Jurisprudence 3d, Volume 58, Statutes, section 113 [citing *People v. Allen*, 42 Cal.4th 91].

[177] Education Code section 17070.75(b) (Stats. 2004, ch. 900 § 7 (SB 550)); Education Code 17005 (Stats. 2004, ch. 900 § 3 (SB 550)).

[178] *County of Los Angeles, supra*, 43 Cal.3d at page 56.

[179] Exhibit I, *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243 [citations omitted].

was well established in both statutory and common law.[180] The requirement of keeping good repair was found in several sections of the Education Code prior to its express definition in SB 550, and under common law, the courts have long recognized a special relationship between schools and their pupils based on the compulsory nature of K-12 education:

> A special relationship is formed between a school district and its students resulting in the imposition of an *affirmative duty on the school district to take all reasonable steps to protect its students*. This affirmative duty arises, in part, based on the compulsory nature of education. (*Rodriguez v. Inglewood Unified School Dist.* (1986) 186 Cal.App.3d 707, 714-715; … see also Cal.Const., art. 1, § 28, subd. (c) [students have inalienable right to attend safe, secure, and peaceful campuses]; Ed. Code, § 48200 [children between 6 and 18 years subject to compulsory full-time education].) "The right of all students to a school environment fit for learning cannot be questioned. Attendance is mandatory and the aim of all schools is to teach. Teaching and learning cannot take place without the physical and mental well-being of the students. *The school premises, in short, must be safe and welcoming.*" (*In re William G.* (1985) 40 Cal.3d 550, 563)[181]

It is telling that the Legislature seems to have felt no need to clarify what was meant by "good repair" prior to the *Williams* implementing legislation. The phrase appeared in five or more code sections dictating the proper condition and maintenance of school facilities, but was not expressly defined until the addition of section 17002(d) in SB 550, and the attendant cross-references.[182] The claimants assert that the definition of "good repair" added to the Education Code in 2004 imposes requirements which constitute a new program or higher level of service. However, given that the requirement to maintain facilities in good repair existed previously without an express definition, it appears that "good repair" was already an established requirement, and the Legislature acted in 2004 only to clarify it, not to expand it.[183]

Under the rules of statutory construction, courts generally "give effect to statutes according to the usual, ordinary import of the language employed in framing them." Courts generally "may not, under the guise of statutory construction, rewrite the law or give the words an effect

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[180] See prior sections 17014 (Stats. 1997, ch. 513 § 1 (AB 553)), 17032.5 (Stats. 1997, ch. 893 § 85 (SB 161)), 17070.75 (Stats. 2004, ch. 195 § 1 (SB 409)), 17089 (Stats. 1996, ch. 277 § 2 (SB 1562)) [each stating requirement of keeping projects in good repair].

[181] Exhibit I, *M.W. v. Panama Buena Vista Union School Dist.* (Cal. Ct. App. 5th Dist. 2003) 110 Cal.App.4th 508, 517 [emphasis added].

[182] See prior sections 17014 (Stats. 1997, ch. 513 § 1 (AB 553)), 17032.5 (Stats. 1997, ch. 893 § 85 (SB 161)), 17070.75 (Stats. 2004, ch. 195 § 1 (SB 409)), 17089 (Stats. 1996, ch. 277 § 2 (SB 1562)).

[183] Exhibit I, Legislative Proposals published as a part of the *Williams* Settlement Agreement, at pp. 9-10, provide that good repair shall be judged by reference to health and safety standards applicable to restaurants, rental housing, and other similar facilities. Ultimately the definition adopted was more specific to schools, and did not reference the Health and Safety Code. (Exhibit I, Notice of Proposed Settlement: Legislative Proposals).

different from the plain and direct import of the terms used."[184] Courts may, however, use the dictionary as a proper source to determine the usual and ordinary meaning of a word or phrase in a statute.[185] In Webster's Third New International Dictionary, "repair" is defined to mean "1.a. the act or process of repairing; restoration to a state of soundness, efficiency, or health; b. the state of being in good or sound condition."[186] This definition is consistent with the court's interpretation in *People v. Tufts* of a county ordinance requiring that toilets be maintained in good repair. The defendant in *Tufts* argued that the county ordinance was unconstitutionally vague, claiming that the words "state of good repair" were uncertain, but the court disagreed, holding that a toilet that does not work is not in a state of good repair.

> Common sense is sufficient to tell anyone that a toilet which does not work is not in a state of good repair. Persons of ordinary intelligence should be able to understand this. We have rejected a similar challenge. There we said "The words 'good repair' have a well known [a]nd definite meaning … They sufficiently inform the ordinary owner that his property must be fit for the habitation of those who would ordinarily use his dwelling."[187]

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.[188] 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.[189] 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.

The claimants challenge this conclusion, asserting that it is "based on conjecture that the changes to the statute are without purpose."[190] It is true that a change in statutory language is generally presumed to be intended to change the law.[191] However, it is equally axiomatic that courts "do

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[184] Exhibit I, California Jurisprudence 3d, Volume 58, Statutes, section 92 [citing *Phelps v. Stostad*, (1997) 16 Cal.4th 23; *City of Pasadena v. AT&T Communications of California, Inc.* (Cal. Ct. App. 2d Dist. 2002) 103 Cal.App.4th 981].

[185] Exhibit I, California Jurisprudence 3d, Volume 58, Statutes, section 138 [citing *People v. Whitlock*, (Cal. Ct. App. 4th Dist. 2003) 113 Cal.App.4th 456, *review denied*, March 17, 2004].

[186] Exhibit I, Webster's Third New International Dictionary, Merriam-Webster, Inc. Massachusetts 1993, page 1923. (Exhibit D.)

[187] Exhibit I, *People v. Tufts* (1979) 97 Cal.App.3d Supp. 37, 44 [citations omitted].

[188] Education Code section17002(d)(1) (Stats. of 2004, ch. 900 § 3 (SB 550)).

[189] Education Code section 17002(d)(1) (Stats. of 2006, ch. 704 § 4 (AB 607)).

[190] Exhibit H, Claimant Comments on Draft Staff Analysis/Proposed Statement of Decision, November 8, 2012.

[191] Exhibit I, *People v. Mendoza*, (2000) 23 Cal.4th 896, at p. 916 ["the Legislature's repeal of Act section 21, together with its enactment of a new statute on the same subject—section 1157—with significant differences in language, strongly suggests the Legislature intended to change the law."]

not presume that the Legislature intends, when it enacts a statute, to overthrow long-established principles of law unless such intention is clearly expressed or necessarily implied."[192] Given the authorities cited above, and the foregoing discussion of the longstanding responsibility to keep facilities in good repair, the change in statutory language may be presumed to simply clarify the law.[193] The Commission finds that the test claim statutes do not impose a new program or higher level of service.

3. Conclusion

Based on the foregoing, the Commission finds that the definition of good repair, including the reference to development of a Facilities Inspection System, does not impose a state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

E. Additions to Education Code Section 33126(b) of the School Accountability Report Cards Program Impose a Reimbursable State-Mandated Program. However, Sections 33126(c) and 33126.1 Do Not Require Reimbursement Because They Do Not Impose a State-Mandated New Program or Higher Level of Service.[194]

1. New reporting requirements added in section 33126(b), paragraphs (5), (6), and (9), impose state-mandated new program or higher level of service.

The School Accountability Report Card (SARC) was first introduced as a part of the Proposition 98 reforms to school funding. Subdivision (e) of section 8.5 of Article XVI was added to the California Constitution by the voters, providing 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.[195]

At the same time, section 33126 was added to the Education Code, which provided that "[i]n order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the Superintendent of Public Instruction" was required to develop a statewide model SARC. The report card at that time was required to include student achievement and progress toward meeting reading, writing, and arithmetic goals; progress toward the reduction of dropout rates; estimated expenditures per pupil; progress toward reduction of class sizes; and several other objectives.

Section 13 of Proposition 98 provided the following: "No provision of this act may be changed except to further its purposes by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed by the Governor." Accordingly, each time some portion of

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[192] Exhibit I, *Van Horn v. Watson* (2008) 45 Cal.4th 322, at p. 333.

[193] See Exhibit I, *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243 [citations omitted].

[194] Education Code section 33126 (as amended by Stats. 2004, ch. 900 § 10 (SB 550)); Education Code section 33126.1 (as amended by Stats. 2004, ch. 900 § 11 (SB 550)).

[195] California Constitution Art XVI, Section 8.5, subdivision (e) (Initiative Measure November 8, 1988).

the SARC has been added or amended, the Legislature has been required to obtain a two-thirds vote and has noted its finding "that this act furthers the purposes of the Classroom Instructional Improvement and Accountability Act."[196]

Usually amendments to section 33126 merely add or alter one of the objectives of the reports: in the 1993 amendments, for example, the Legislature added a requirement that the report card must include "the degree to which students are prepared to enter the work force."[197] In 1994, the Legislature added a requirement that the report cards include the total number of days and minutes of instructional time each school year.[198] The 1997 amendments added that "[i]t is the intent of the Legislature that schools make a concerted effort to notify parents of the purpose of the school accountability report cards, as described in this section, and ensure that all parents receive a copy of the report card." The 1997 amendments to section 33126 also reframed the purpose of the SARC in terms of informing parents as follows: "The school accountability report card shall provide data by which parents can make meaningful comparisons between public schools enabling them to make informed decisions on which school to enroll their children."[199] Further amendments to section 33126 in 2000 and 2002 added still more reporting requirements.[200]

Finally, SB 550, at issue in this test claim, added to section 33126 a definition of teacher vacancies and misassignments, and a requirement of reporting the same; as well as a requirement of reporting on the availability of sufficient textbooks and instructional materials; and any needed maintenance of facilities to ensure good repair. SB 550 also required that if the Commission found reimbursable state-mandated activities, LEAs would only receive reimbursement for costs incurred if the information provided in the SARC was accurate, as determined by the annual audit.[201]

Claimants allege generally that amendments to the SARC mandate new programs or higher levels of service resulting in increased costs mandated by the state.

Amendments to section 33126 add new requirements to the SARC. These new requirements are mandated, based on the plain language of section 33126, which provides that the SARC "shall provide data by which a parent can make meaningful comparisons between public schools" and "*shall include*, but is not limited to, the assessment of the following conditions:"

> (5) [M]isassignments, including misassignments of teachers of English learners, and the number of vacant teacher positions for the most recent three-year period.

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[196] See Statutes 1993, chapter 1031 § 4 (AB 198). See, e.g., Statutes 1994, chapter 824 § 2 (SB 1665); Statutes 1997, chapter 912 § 2 (AB 572); Statutes 2000, chapter 996 § 6 (SB 1632); Statutes 2002, chapter 1168 § 76 (AB 1818); Statutes 2004, chapter 900 § 26 (SB 550).

[197] Education Code section 33126(b) (Stats. 1993, ch. 1031 § 1 (AB 198)).

[198] Education Code section 33126(b) (Stats. 1994, ch. 824 § 1 (SB 1665)).

[199] Education Code section 33126(a-c) (Stats. 1997, ch. 912 § 1 (AB 572)).

[200] Education Code section 33126(b) (Stats. 2000, ch. 996 § 1 (AB 572)); (Stats. 2002, ch. 1166 § 2 (SB 1868)); (Stats. 2002, ch. 1168 § 5 (AB 1818)).

[201] Education Code section 33126(b-c) (Stats. 2004, ch. 900 §10 (SB 550)).

(A) For purposes of this paragraph, "vacant teacher position" means a position to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year, or, if the position is for a one-semester course, a position to which a single designated certificated employee has not been assigned at the beginning of the semester for an entire semester.

(B) For purposes of this paragraph, "misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(6) (A) Quality and currency of textbooks and other instructional materials…

(B) The availability of sufficient textbooks and other instructional materials, as defined in Section 60119, for each pupil, including English learners, in each of the following areas:

(i) The core curriculum areas of reading/language arts, mathematics, science, and history/social science.

(ii) Foreign language and health.

(iii) Science laboratory equipment for grades 9 to 12, inclusive, as appropriate.

(9) Safety, cleanliness, and adequacy of school facilities, including any needed maintenance to ensure good repair as specified in Section 17014, Section 17032.5, subdivision (a) of Section 17070.75, and subdivision (b) of Section 17089.[202]

The SARC is an activity that is both unique to government (falling exclusively on public schools) and provides a service to the public (promoting accountability in schools and school districts, and making parents or legal guardians aware of the quality of local schools, so they may make informed choices). The SARC is not a new program, but includes new reporting requirements, which increase the level of service provided to the public. Therefore the Commission finds that amended section 33126(b), paragraphs (5), (6)(B), and (9), mandate a new program or higher level of service within the meaning of article XIII B, section 6.[203]

2. Sections 33126(c) and 33126.1 do not impose a mandated new program or higher level of service.

Section 33126 was amended by Statutes of 2004, chapter 900 (SB 550), to read as follows:

(c) If the Commission on State Mandates finds a school district is eligible for a reimbursement of costs incurred complying with this section, the school district shall be reimbursed only if the information provided in the school accountability report card is accurate, as determined by the annual audit performed [by the county office of education]. If the information is determined to be inaccurate, the

[202] Statutes 2004, chapter 900 section 10 (SB 550).

[203] Education Code section 33126(b) (Stats. 2004, ch. 900 § 10 (SB 550)).

school district is not ineligible for reimbursement if the information is corrected by May 15.[204]

This subdivision recognizes that the Commission may determine that the amended section imposes reimbursable state-mandated costs, but provides for the withholding of funds in the event that the school district fails to report accurately in its SARCs.

This is not a reimbursable state-mandated new activity or higher level of service, for two reasons: first, accuracy of the SARC is an underlying expectation of the program arising from its inception. With one of the principal purposes of the SARC being to ensure that parents have sufficient information upon which to base a decision as to where to enroll their children, accuracy of information is a necessary prerequisite to the usefulness of that information. Moreover, the same underlying information is audited pursuant to Education Code section 41020, and other relevant sections, by the county office of education, and there are sanctions for inaccuracy provided in those sections as well. In short, accuracy and the fact of being subject to audit are not new requirements.

Second, the Commission finds that this amendment does not impose reimbursable state-mandated costs because to the extent that funds may be withheld due to inaccuracies that are not promptly corrected, those failings are voluntary, and the sanctions attached to them knowingly assumed and undertaken. Under a *Kern* analysis, a failure to accurately report required information which results in a monetary sanction is a voluntarily assumed monetary sanction.

Section 33126.1 requires the CDE to develop a standardized template to simplify the process of completing the SARC. This section does not impose any activities upon the school districts or county offices of education.

3. Paragraphs (5), (6), and (9) of section 33126(b) impose costs mandated by the state, within the meaning of Government Code section 17514.

Government Code section 17514 defines "costs mandated by the state" to include "any increased costs which a local agency or school district is required to incur [as a result of a state statute, regulation, or executive order]."[205] Government Code section 17556 provides a number of statutory exclusions from the definition under 17514 of "costs mandated by the state." If any of these exclusions applies, the Commission is proscribed from finding reimbursable costs. The exclusions from the definition of "costs," provided in section 17556 are supported by the court's relatively narrow interpretation of article XIII B section 6, which requires reimbursement only for costs *mandated by the state.*[206]

Where a statute relies upon, or otherwise overlaps in legal requirements with, a voter-enacted ballot measure, subdivision (f) of section 17556 is indicated. Government Code section 17556 provides, in pertinent part:

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[204] Education Code section 33126(c) (Stats. 2004, ch. 900 § 10 (SB 550)).

[205] Government Code section 17514.

[206] *County of Fresno v. State of California*, (1991) 53 Cal.3d 482, 487.

> The commission shall not find costs mandated by the state, as defined in section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:
>
> […]
>
> (f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.[207]

Therefore, when subdivision (f) of section 17556 is applicable, a statute may impose state-mandated activities under article XIII B, section 6, but those activities may be nevertheless non-reimbursable, due to the absence of *state-mandated* increased costs. The courts have upheld the applicability of the 17556 exclusions as being consistent with article XIII B, section 6 in a number of factual situations.[208]

DOF argues, in comments submitted in response to the draft staff analysis, that section 33126 should be denied because the SARC was enacted as a ballot initiative and "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." DOF cites the text of section 33126(a), as added by Proposition 98:

> (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 type·s 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.

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[207] Government Code section 17556 (Stats. 2010, ch. 719, § 31 (SB 856)).

[208] See, e.g., *City of Sacramento, supra*, 50 Cal.3d 51; *California School Boards Ass'n v. State* (*CSBA*) (Cal. Ct. App. 2009) 171 Cal.App.4th 1183, 1214.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership. [emphasis supplied] [209]

It is clear that paragraphs (5), (6), and (9) touch on the same subject matter in the original text of section 33126, as does the amended section 33126, which is the subject of this test claim. However, while the original text is much less specific as to what is required to be reported, amended paragraphs (5), (6), and (9), as discussed above, provide substantially more detail and precision than before. For example, teacher "misassignment" is much more than assignment "outside their core areas of competence," and requires verification of certifications and assignments that otherwise violate the law. And teacher "vacancies" were not addressed in the earlier code section at all. Moreover, section 33126, as enacted in Proposition 98, addressed only the quality and currency of textbooks and instructional materials; it did not address "sufficiency," as defined in section 60119 to mean that every pupil has textbooks and instructional materials assigned to them at a point in time early in the school year. And finally, the original text of section 33126 addressed safety, cleanliness, and adequacy of school facilities, but did not require the reporting of needed maintenance, as does the section, as amended by the test claim statutes. As the following discussion will show, the test claim statute adds meaningfully to section 33126, and despite DOF's reliance on its origins as a voter-enacted ballot initiative, the new provisions of section 33126 are not "expressly included" or "necessary to implement" that initiative.

Government Code section 17556(f) and the SARC program of Education Code 33126 share a complicated history. In 1998 the Commission heard the first of several test claims dealing with the SARCs. The amendments to Education Code section 33126 in Statutes 1993, chapter 1031 § 4 (AB 198), Statutes 1994, chapter 824 § 2 (SB 1665), and Statutes 1997, chapter 912 § 2 (AB 572) increased the scope and number of requirements of the SARCs, each time adding new and different measures of school quality and performance. [210] Although the underlying program outlined in section 33126 arose from a voter-enacted ballot measure, the Commission held that by increasing the requirements beyond those the voters had approved in Proposition 98, the Legislature had imposed reimbursable state-mandated costs.[211] At that time section 17556(f) proscribed the Commission from finding "costs mandated by the state" only where an activity or requirement was "expressly included" in a voter-enacted ballot measure.[212] Thus the Commission's interpretation of subdivision (f) as applied to the 1998 test claim was inevitably narrow, and the Commission had little choice under that narrow statutory exclusion but to find reimbursable costs resulting from the expansion of the SARCs by the Legislature.

In Statutes 2005, chapter 72, section 7 (AB 138), the Legislature amended Government Code section 17556(f) to provide that the Commission "shall not find" reimbursable state-mandated

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[209] Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November16, 2012. See also Government Code section 17556(f).

[210] See Statutes 1993, chapter 1031 § 4 (AB 198), Statutes 1994, chapter 824 § 2 (SB 1665), and Statutes 1997, chapter 912 § 2 (AB 572)

[211] Statement of Decision, *School Accountability Report Cards* (97-TC-21), available at http://www.csm.ca.gov/sodscan/97tc21sod.pdf.

[212] See Government Code section 17556 (Stats. 1989, ch. 589 § 1 (SB 1014)).

costs if the requirements of a statute or executive order are "*necessary to implement, reasonably within the scope of, or expressly included in*, a ballot measure approved by the voters in a statewide or local election."[213] In the same bill the Legislature also directed the Commission to set aside or reconsider a number of mandates decisions that relied on the former provisions of Government Code 17556, including *School Accountability Report Cards* (97-TC-21).[214] Upon reconsideration, the Commission found that under the amended subdivision (f), the additions and amendments to Education Code section 33126 were "reasonably within the scope of" the SARCs as enacted in Proposition 98, and therefore the test claim statutes could not give rise to reimbursable state-mandated costs under Government Code sections 17556 and 17514.[215]

In *CSBA*, *supra*, the reconsideration of the SARCs test claim on the basis of the amended language of 17556(f) was challenged, and rejected. The court of appeal held first that it was a violation of separation of powers doctrine under the California constitution for the Legislature to order the Commission to set aside or reconsider a final decision, and therefore the court of appeal directed the Commission to reinstate its former decision on the SARCs. More prescient to this test claim, however, the court's decision upheld in part and rejected in part the constitutionality of subdivision (f). The court held that the amended language of subdivision (f) "declaring that no reimbursement is necessary for 'duties that are…*reasonably within the scope of*…a ballot measure' [was] impermissibly broad" because it allowed exclusion of reimbursable activities in a manner inconsistent with article XIII B, section 6.

However, the court of appeal also held that "to the extent that Government Code section 17556(f)…declares that no reimbursement is necessary for costs resulting from 'duties that are *necessary to implement*…a ballot measure,' the amendment does not violate article XIII B, section 6." The court therefore found the "necessary to implement" language consistent with article XIII B, section 6, and held that where additional requirements imposed by the state are necessary to implement a ballot measure, and the additional costs are de minimus in the context of the program adopted by the voters, no reimbursement is necessary. [216]

The court borrowed heavily for its analysis from the California Supreme Court's decision in *San Diego Unified*, *supra*, which addressed whether state-imposed procedural requirements that exceeded federal due process requirements constituted a federal mandate. The *San Diego Unified* court held that all procedures set forth in the test claim statute, including those that exceeded federal law, were arguably "adopted to implement" a federal due process mandate and, thus, the costs were not reimbursable under article XIII B, section 6 of the California Constitution and Government Code section 17556. The *CSBA* opinion analogized to the *San Diego Unified* analysis, finding that the statutory exclusions in section 17556, subdivisions (c)

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[213] Government Code section 17556(f) (Stats. 2005, ch. 72 § 7 (AB 138)).

[214] Statutes 2005, chapter 72 § 17 (AB 138).

[215] *CSBA*, *supra*,171 Cal.App.4th 1183, 1197. See also Reconsideration of Prior Statement of Decision, *School Accountability Report Cards* (04-RL-9721-11), available at http://www.csm.ca.gov/sodscan/130.pdf; Reconsideration of Prior Statement of Decision, *School Accountability Report Cards* (04-RL-9721-11, 05-RL-9721-03), available at http://www.csm.ca.gov/sodscan/131.pdf.

[216] *CSBA*, *supra*, 171 Cal.App.4th 1183, 1211.

(federal law mandates), and (f) (voter-enacted ballot initiatives), operated substantially similarly with respect to the definition of "costs mandated by the state" under section 17514. In fact, the court held that the "necessary to implement" language of subdivision (f) was actually a narrower exclusion than "adopted to implement," as used by the California Supreme Court with respect to subdivision (c) in *San Diego Unified*. Therefore, the court of appeal upheld the amended section 17556, but only to the extent of that which is "necessary to implement" a ballot measure, and not "reasonably within the scope of."[217]

Following the partial rebuke by the court of appeal in *CSBA*, the Legislature amended section 17556 again; this time omitting the offending language, and preserving the exclusion as approved by the court of appeal. Government Code section 17556 now provides that the Commission "shall not find costs mandated by the state…if…[t]he statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election."[218] Thus the scope of the exclusion under the current Government Code, consistent with the holding of *CSBA*, is confined to statutes or executive orders which can be said to be expressly included in a ballot measure, or necessary to implement that ballot measure. A statute which goes beyond what is necessary to implement may still give rise to a reimbursable state mandate.

Amendments to section 33126 enacted in Statutes 2004, chapter 900 (SB 550), as described above, add the requirements of: reporting teacher vacancies and misassignments, with an attendant definition of those terms; the availability of sufficient textbooks and instructional materials; and any maintenance needed to ensure good repair. These requirements reach beyond the program as provided in the original voter-enacted statute, and therefore are not "expressly included." The issue, then, is whether the new requirements can be said to be "necessary to implement" the voter-enacted ballot initiative.

DOF argues, in its comments on the draft staff analysis, that the amendments made to SARCs by the test claim statutes are in furtherance of the provisions of the voter-enacted ballot initiative, and therefore "necessary to implement" the ballot 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.

[217] *CSBA*, *supra*, at p. 1217 [citing *San Diego Unified*, *supra*, at p. 890].

[218] Government Code section 17556 (Stats. 2010, ch. 719, § 31 (SB 856)).

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.[219]

The fundamental rule of statutory construction is to give effect to the intent of the Legislature. As in all cases of statutory construction, the inquiry must begin with the language of the statute, giving words their plain or literal meaning.[220] In this case, the phrase "necessary to implement" is at issue. Webster's Third New International Dictionary defines the word "necessary" to include those things which are "of, relating to, or having the character of something that is logically required or logically inevitable or that cannot be denied without involving contradiction." Accordingly, the court of appeal in *CSBA, supra*, embraced a strict view of "necessary to implement," concluding, with reference to *San Diego Unified*, that "[s]ubdivision (f) is even more restrictive, stating that there is no reimbursement obligation if the statute is 'necessary to implement' a ballot measure."[221] Given the court's strict interpretation of

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[219] Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November16, 2012

[220] California Jurisprudence, Vol 58, Statutes, §§ 91-92 [citations omitted].

[221] *California School Boards Ass'n v. State* (Cal. Ct. App. 2009) 171 Cal.App.4th 1183, 1214.

"necessary to implement," only those requirements which are considered "logically required or logically inevitable" should be held non-reimbursable, post *CSBA*.[222]

It might be argued, as DOF does, that the text of Proposition 98 contemplates amendment or augmentation of the programs involved therein, stating: "No provision of this act may be changed except to further its purposes by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed by the Governor."[223] Accordingly, the original text of section 33126, as enacted within Proposition 98, provided that "[t]he model School Accountability Report Card shall include, but is not limited to, assessment of the following school conditions."[224] The argument goes, therefore, that "the electorate recognized that the precise details of the model report card are subject to change, and that the districts are required to make modifications as necessary."[225] But such amendments cannot reasonably be characterized as "necessary to implement." Additions to the requirements of a reporting statute, though perhaps furthering the purpose of the statute, and however such changes might have been contemplated, cannot be said to be "necessary" to implement the requirements of the initiative, absent some showing that the statute was not being administered or enforced effectively, or that the statute *required* further amendment or adjustment by its nature. As raised by DOF, this argument is unpersuasive.[226]

Under the current text of Government Code 17556(f), as interpreted and endorsed by the court of appeal in *CSBA*, the Commission finds that the addition of new reporting requirements regarding teacher vacancies and misassignments, sufficiency of instructional materials, and facilities conditions, does constitute a higher level of service within the meaning of article XIII B section 6, and does impose costs mandated by the state because the amendments are not "necessary to implement" the original statute enacted in Proposition 98. The Commission finds that claimants have alleged costs in excess of $1000, and the statutory exclusion of section 17556(f) does not bar this finding.[227]

4. Conclusion

The Commission finds that amendments to section 33126(b) enacted in Statutes of 2004, chapter 900, impose a reimbursable state-mandated program upon school districts, beginning on September 29, 2004, for the following activities:

- Reporting teacher misassignments and vacancies within the School Accountability Report Card.

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[222] See Exhibit I, Webster's Third New International Dictionary, *supra*.

[223] Proposition 98, Section 13.

[224] Education Code section 33126 (Enacted by Proposition 98, Nov. 8, 1988).

[225] Exhibit D, Department of Finance Comments, filed 8/23/2006, p. 5.

[226] Finally, note that DOF relies on an earlier decision of the Commission, which relied on the broader reading of section 17556(f), before the statute was narrowed by the court in *CSBA*, *supra*. DOF has not sought to update its comments since that 2009 decision.

[227] Exhibit A, Test Claim I, p. 53.

- Reporting the availability of textbooks and other instructional materials within the School Accountability Report Card.
- Reporting any needed maintenance to ensure good repair within the School Accountability Report Card.

However, the Commission finds that section 33126(c) and section 33126.1, added by Statutes of 2004, chapter 900, do not mandate a new program or a higher level of service.

F. <u>The *Williams* Complaint Process Imposes a Reimbursable State-Mandated Program.</u>[228]

1. Sections 35186, as enacted in Statutes 2004, chapters 900 and 903, and amended by Statutes 2007, chapter 526, imposes a state-mandated new program or higher level of service.

The Uniform Complaint Process which existed prior to *Williams* is addressed primarily to discrimination complaints, and complaints regarding violations of federal or state law in certain specific educational programs, including Special Education, Adult Education, Child Nutrition, and others.[229] New section 35186, enacted in 2004 as part of the *Williams* implementing legislation, created a new and different *Williams* Uniform Complaint Process, which this analysis will refer to as the "*Williams* complaint process," to avoid confusion with the former Uniform Complaint Process.

The *Williams* complaint process provides for new permissible subjects of complaint, including: sufficiency of textbooks and instructional materials; teacher vacancies or misassignments; and facilities conditions; and helps school districts, on an ongoing basis, police and address the major types of deficiency identified in the *Williams* class action and settlement.

Education Code section 35186 imposes the following requirements on school districts:

- Receive *Williams* complaints "to help identify and resolve any deficiencies related to" sufficiency of textbooks or instructional materials, emergency or urgent facilities conditions "that pose a threat to the health and safety of pupils or staff," and teacher vacancies or misassignments.
- Respond to the complaint if a response is requested.
- Forward a complaint beyond the authority of the school principal to the appropriate school district official.
- For the principal or district superintendent's designee to:

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[228] Education Code section 35186 (as added by Stats. 2004, ch. 900 § 12 (SB 550); amended by Stats. 2004, ch. 903 § 1 (AB 2727); Stats. 2005, ch. 118 § 5 (AB 831); Stats. 2006, ch. 704 § 7 (AB 607); Stats. 2007, ch. 526 § 2 (AB 347)). Note also that the claimants have pled Code of Regulations, Title 5, sections 4600-4671, relating to the Uniform Complaint Process. These sections do not address the *Williams* complaint process, as enacted by section 35186 and later amendments, and therefore these regulations are treated in section (I), below, along with code sections not properly addressed in this test claim.

[229] California Code of Regulations, Title 5, section 4610 (Register 92, No. 3)).

- "make all reasonable efforts to investigate any problem within his or her authority…[and] remedy a valid complaint within a reasonable time period but not to exceed 30 working days."
- Report to a complainant, if the complaint was not filed anonymously, regarding the resolution of the complaint, within 45 working days.

- Provide for an unsatisfied complainant to be heard by the governing board of the district at the next regularly scheduled meeting, or, for facilities complaints regarding an emergency or urgent threat, to appeal directly to the Superintendent of Public Instruction.
- Report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the district, and to keep complaints and written responses available as public records.
- Post a notice in all classrooms in each district explaining the applicable scope of the *Williams* complaint process, and stating how a complaint form can be obtained in the event of a shortage.[230]

As enacted in Statutes 2004, chapter 900 (SB 550), the local educational agency is required to post a notice in each classroom in each school in the district, beginning September 24, 2004, which provides:

(1) There should be sufficient textbooks and instructional materials. For there to be sufficient textbooks and instructional materials each pupil, including English learners, must have a textbook or instructional materials, or both, to use in class and to take home to complete required homework assignments.

(2) School facilities must be clean, safe, and maintained in good repair.

(3) The location at which to obtain a form to file a complaint in case of a shortage. Posting a notice downloadable from the Web site of the department shall satisfy this requirement.[231]

The issues of keeping public records and responding in a language other than English are discussed separately below, but the Commission finds that all other requirements of section 35186(a-d) and (f) described above constitute a mandated new program or higher level of service, beginning, for purposes of reimbursement eligibility, on September 29, 2004.

Amendments made to section 35186(f) by Statutes 2005, chapter 118, section 5 (AB 831) provided that the notice posted in classrooms must include teacher vacancies and misassignments as a permissible subject of complaint. This amendment further increases the scope of the *Williams* complaint process, and therefore imposes a new program or higher level of service, beginning, for purposes of reimbursement eligibility, July 25, 2005.

[230] Education Code section 35186(a-d;f) (as added by Stats. 2004, ch. 900, § 12 (SB 550); amended by Stats. 2004, ch. 903 § 1 (AB 2727); Stats. 2005, ch. 118 § 5 (AB 831); Stats. 2007, ch. 526, § 2 (AB 347)).

[231] Education Code section 35186(f) (Stats. 2004, ch. 900 § 12 (SB 550)).

Amendments made to section 35186(a) by Statutes 2007, chapter 526 (AB 347) provided for complaints regarding intensive instruction services for students who have not passed both parts of the high school exit examination by the end of grade 12.

And, as amended by Statutes 2007, chapter 526 (AB 347), the classroom notice must include the following information beginning October 12, 2007:

> Pupils who have not passed the high school exit examination by the end of grade 12 are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of section 37254. The information in this paragraph, which is to be included in the notice required pursuant to this subdivision, shall only be included in notices posted in classrooms in school with grades 10 to 12, inclusive. [232]

These amendments further increase the scope of the *Williams* complaint process, and therefore impose a new program or higher level of service, beginning, for purposes of reimbursement eligibility, October 12, 2007.[233]

DOF argues, in its comments submitted on the draft staff analysis, that "[t]he Uniform Complaint Process alleged in the test claim is not 'new and different.'" DOF's comments state:

> 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.[234]

The Commission disagrees with DOF's interpretation. The *Williams* complaint process *is* new. Although section 35186 directs school districts to use the Uniform Complaint Process, as provided for in Title 5, section 4600 et seq., it qualifies that direction with the phrase "with modifications, as necessary." As noted above, the existing Uniform Complaint Process, as provided for in Title 5, section 4600 et seq., is addressed primarily to discrimination complaints

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[232] Education Code section 35186(f) (Stats. 2007, ch. 526, § 2 (AB 347)).

[233] Education Code section 35186(a)(4) (Stats. 2007, ch. 526, § 2 (AB 347)).

[234] Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November16, 2012.

in specified educational programs, and was limited to specific educational programs or discrimination against protected groups, as defined in the Education Code, sections 200 and 220, and Government Code section 11135.[235]

Because section 35186 provides for complaints on a number of new grounds, which are not necessarily discrimination-related, and provides for its own specific process requirements, CDE chose to adopt separate regulations (Title 5, section 4680-4687) to implement the *Williams* complaint process. It is apparent, by the adoption of separate regulations, that CDE interprets the *Williams* complaint process as being new, and separate from the existing Uniform Complaint Process. The regulations implementing section 35186, and the three categories of *Williams* issues provided for under those regulations, are specifically exempted from a number of sections of the former Uniform Complaint Process.[236] These regulations, which have not been pled and are therefore not before the Commission, provide specifically for complaints regarding emergency or urgent facilities conditions, instructional materials, and teacher vacancies or misassignments.[237]

DOF suggests that absent the *Williams* complaint process the districts "would still be required to respond to violations of applicable laws." But the existing Uniform Complaint Process addresses only discrimination complaints in specified programs, and is limited to specific educational programs or discrimination against protected groups.[238] The *Williams* complaint process is distinct from the former Uniform Complaint Process, in that it addresses emergency or urgent facilities conditions, teacher vacancies or misassignments, and insufficient provision of textbooks and instructional materials; subjects which may or may not rise to the level of discrimination, and which may occur at any school in any district, and are not confined to specific programs.[239] Moreover, a more specific provision of law will control over a more general one; even if, as DOF asserts, the Uniform Complaint Process could have addressed these issues, the *Williams* complaint process, being a new enactment, should be presumed to supersede the earlier, more general program.[240] And finally, the persons responsible for taking complaints, and the response required of the local educational agencies under the *Williams* complaint process are both different from and more specific than the Uniform Complaint Process under section 4600 et seq.[241]

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[235] See Code of Regulations, Title 5, section 4610.

[236] See, e.g., Code of Regulations, Title 5, section 4630 ["Except for complaints under sections 4680-4687 regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff, and teacher vacancies or misassignments,"].

[237] Code of Regulations, Title 5, sections 4680-4687.

[238] See Code of Regulations, Title 5, section 4610.

[239] *Contra*, Code of Regulations, Title 5, section 4610.

[240] California Jurisprudence 3d, Statutes, section 117.

[241] Compare, Code of Regulations, Title 5, section 4631 [Except for complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff, and teacher vacancies or misassignments, which must be processed in accordance with sections 4680-4687, within 60 days from the date of the receipt of the complaint, the local educational agency person responsible for the investigation of the

DOF also suggests that the costs of the *Williams* complaint process "must be compared with the costs of implementing an alternative process for the district to respond to complaints."[242] DOF submits no evidence, nor cites any legal authority, to support this contention.

Therefore, the Commission finds that section 35186 mandates a new program or higher level of service with respect to the requirements of subdivisions (a) through (d), and (f), as provided above.

DOF further argues, in its comments on the draft staff analysis, that there should be no increased costs for posting the notice regarding the *Williams* complaint procedures as follows:

> 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.

Though not dispositive on the issue,[243] the Legislative Counsel's Digest preceding SB 550 expressly states that posting the notice in classrooms regarding the *Williams* complaint process "impose[s] a state-mandated local program."[244] DOF submits no evidence or authority to support its contention; based on nothing more than common sense it would be unreasonable to assume that a physical act, no matter how slight, conducted in every classroom in every school in every district, would not result in costs. DOF's assertion must rely on Government Code section 17564, which provides that a test claim or reimbursement claim must allege at least $1000 in increased costs. But if so, DOF misapprehends the purpose and meaning of section 17564; the section does not require that every activity alleged, or even every program or code section alleged, result in costs of at least $1000. Here, even though the costs may be small, there is no evidence in the record to support DOF's assertion that there are no increased costs at all.

On the basis of the foregoing analysis, the Commission finds that these notice requirements impose a state-mandated new program or higher level of service on school districts.

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complaints or his or her designee shall conduct and complete an investigation of the complaint in accordance with the local procedures adopted pursuant to section 4621 and prepare a written Local Educational Agency Decision. "], with Code of Regulations, Title 5, section 4680 ["Complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff, and teacher vacancy or misassignment shall be filed with the principal of the school"]; and Code of Regulations, Title 5, section 4685 ["The principal, or, where applicable, district superintendent or his or her designee shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days from the date the complaint was received."]

[242] Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November16, 2012

[243] *County of Los Angeles v. Commission on State Mandates* (Cal. Ct. App. 2d Dist. 1995) 32 Cal.App.4th 805, at p. 819.

[244] Legislative Counsel's Digest, Statutes 2004, chapter 900.

2. Responding to complaints in a language other than English under section 35186(a)(1), as amended by Statutes 2006, chapter 526, and the keeping of complaints and responses as public records under section 35186(d), do not impose state-mandated new programs or higher levels of service because Education Code section 48985, and Government Code sections 6252 and 6253, respectively, were requirements of prior law.

Section 35186(a)(1), as amended by Statutes of 2006, chapter 704 (AB 607), requires that when reporting back to a complainant regarding the resolution of the complained-of subject matter, "[i]f section 48985 is otherwise applicable, the response, if requested, and report shall be written in English and the primary language in which the complaint was filed."[245] Section 48985 provides, in pertinent part:

> (a) If 15 percent or more of the pupils enrolled in a public school that provides instruction in kindergarten or any of grades 1 to 12, inclusive, speak a single primary language other than English…all notices, reports, statements, or records sent to the parent or guardian of any such pupil by the school or school district shall, in addition to being written in English, be written in the primary language, and may be responded to in either English or the primary language.[246]

Section 48985 was a requirement of prior existing law, and applied broadly to "all notices, reports, statements, or records sent to the parent or guardian of any such pupil." This requirement was broad enough to apply to the response and report required under section 35186(a), irrespective of the 2006 amendments specifically incorporating section 48985. The Commission finds that the incorporation by reference of section 48985 within the *Williams* complaint process under section 35186(a) is a clarification of existing law, and not a new program or higher level of service.

Similarly, section 35186(d) provides that "[t]he complaints and written responses shall be available as public records." The claimant alleges this subdivision to require a new program or higher level of service, but the keeping of school districts' "public records" was a requirement of existing law, pursuant to sections 6252 and 6253 of the Government Code. Section 6252 provides that "public records" shall include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Section 6252 also provides, that a "writing" includes "handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents."[247] And section 6253 provides that "[p]ublic records are open to inspection at all times during the office hours of the state or local agency and every citizen has a right to inspect any public record, except as hereafter provided."[248] The clear import of these two sections, as

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[245] Education Code section 35186(a)(1) (Stats. 2006, ch. 704 (AB 607)).

[246] Education Code section 48985 (Stats. 1981, ch. 219 § 2).

[247] Government Code section 6252 (Stats. 1970, ch. 575).

[248] Government Code section 6253 (Stats. 1975, ch. 544).

well as the broader purpose of the Public Records Act, as enacted in Statutes of 1968, chapter 1473, is addressed to the keeping and making available of all records of state and local agencies. The Legislature stated in Statutes 1968, chapter 1473, that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every citizen of this state."[249] Given the long history and broad applicability of the Public Records Act, the Commission finds that subdivision (d) does not impose a new program or higher level of service.

3. California Code of Regulations, Title 5, sections 4600-4670 do not impose a new program or higher level of service upon local educational agencies.

The Uniform Complaint Process in existence before the *Williams* settlement, and before the addition of section 35186 to the Education Code, is outlined at California Code of Regulations, Title 5, sections 4600-4670. Those regulations, the underlying statutes, and the requirements thereof, address allegations of discrimination and violations of specific educational programs, and are analyzed in a separate test claim: *Uniform Complaint Procedures* (03-TC-02). The regulations governing the new *Williams* complaint process are found at sections 4680-4687, and are not pled in this test claim.[250] The *Williams* complaint process is specifically excepted from the provisions of sections 4600-4670, which govern the former process, and which are not properly pled in this test claim.[251]

4. Sections 35186(a-d) and (f) impose costs mandated by the state upon local educational agencies.

The new programs and higher levels of service described above are alleged by claimants to result in increased costs mandated by the state. Those costs are alleged to amount to greater than $1000, and no funding specifically intended for these mandated activities is identified. Neither does any other provision of section 17556 operate to statutorily exclude these activities from a finding of "costs mandated by the state." The Commission finds that there is evidence of costs mandated by the state, within the meaning of Government Code section 17514.

5. Conclusion

The Commission finds that section 35186, as enacted in Statutes 2004, chapter 900 (SB 550), and amended by Statutes 2004, chapter 903 (AB 2727); Statutes 2005, chapter 118 (AB 831);

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[249] Statutes 1968, ch. 1473 § 39.

[250] California Code of Regulations, Title 5, sections 4680-4687 (Register 2005, No. 52).

[251] See, e.g., California Code of Regulations, Title 5, section 4631 (operative 9-25-91 (Register 92, No. 3)) ["Except for complaints regarding (the *Williams* subject matter), which must be processed in accordance with sections 4680-4687, within 60 days from the date of the receipt of the complaint, the local educational agency person responsible for the investigation of the complaints or his or her designee shall conduct and complete an investigation of the complaint in accordance with the local procedures adopted pursuant to section 4621 and prepare a written Local Educational Agency Decision."]; California Code of Regulations, Title 5, section 4650 (operative 9-25-91 (Register 92, No. 3)) ["Except for complaints under sections 4680, 4681, 4682, and 4683 (i.e., the *Williams* subject matter complaints), the Department shall directly intervene without waiting for local educational agency investigation if one or more of the following situations exist:"].

Statutes 2006, chapter 704 (AB 607); and Statutes 2007, chapter 526 (AB 347); imposes a reimbursable state mandated program upon school districts for the following activities:

- Receiving complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher misassignments or vacancies. The eligible reimbursement period for this activity begins September 29, 2004.[252]
- Responding to complaints, if requested. The eligible reimbursement period for this activity begins September 29, 2004.[253]
- Forwarding a complaint beyond the authority of the local school official in a timely manner but not to exceed 10 working days. The eligible reimbursement period for this activity begins September 29, 2004.[254]
- Making all reasonable efforts to investigate any problem within the principal's authority. The eligible reimbursement period for this activity begins September 29, 2004.[255]
- Remedying a valid complaint within a reasonable time period but not to exceed 30 working days; reporting the resolution to the complainant within 45 working days. The eligible reimbursement period for this activity begins September 29, 2004.[256]
- Hearing the complaint at a regularly scheduled hearing of the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.[257]
- Reporting summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent and the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.[258]
- Posting a notice in each classroom identifying the appropriate subjects of complaint, including sufficient textbooks and instructional materials, and facilities conditions; and informing potential complainants of the location where a complaint form may be obtained in the case of a shortage. The eligible reimbursement period for this activity begins September 29, 2004.[259]

[252] Education Code section 35186(a)(1) (as enacted by Stats. 2004, ch. 900 § 12 (SB 550).

[253] Education Code section 35186(a)(1) (as enacted by Stats. 2004, ch. 900 § 12 (SB 550).

[254] Education Code section 35186(a)(3) (as enacted by Stats. 2004, ch. 900 § 12 (SB 550).

[255] Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550).

[256] Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550).

[257] Education Code section 35186(c) (Stats. 2004, ch. 900 § 12 (SB 550).

[258] Education Code section 35186(d) (Stats. 2004, ch. 900 § 12 (SB 550).

[259] Education Code section 35186(f) (Stats. 2004, ch. 900 § 12 (SB 550).

- Adding to the posted notice in each classroom that "[t]here should be no teacher vacancies or misassignments." The eligible reimbursement period for this activity begins July 25, 2005.[260]
- Receiving complaints regarding "any deficiencies related to intensive instruction and services provided…to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12." The eligible reimbursement period for this activity begins October 12, 2007.[261]
- Adding to the posted notice in each classroom in schools that serve grades 10 to 12, that "[p]upils who have not passed the high school exit examination by the end of grade 12 are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first." The eligible reimbursement period for this activity begins October 12, 2007.[262]

All other statutes and regulations pled with respect to the *Williams* Uniform Complaint Process do not impose a reimbursable state-mandated program.

G. Expansion of the Scope of Compliance Audits and the Scope of Review of Audit Exceptions Imposes a Partially Reimbursable State-Mandated Program Upon School Districts and County Offices of Education.[263]

Claimants allege generally that the reviewing of additional audit exceptions and the addition to the requirements of the fiscal and compliance audit, pursuant to amended sections 14501, 41020, and 41344.4, impose reimbursable state-mandated activities upon county offices of education and school districts.

DOF asserts, in its comments in response to the draft staff analysis, that "the *Williams* elements," apparently referring to sufficiency of textbooks and instructional materials, teacher vacancies and misassignments, and facilities conditions, are "basic requirements that all school districts must meet in expending state funding," and "basic constitutional requirements." As such, DOF argues that the annual audits provided for in Proposition 98, and the "existing financial and compliance audits program" should reasonably have included these elements, and therefore the activities are not a new program or higher level of service. DOF also argues that the review of audit exceptions conducted by county offices of education would have addressed audit exceptions related to "the *Williams* elements."[264]

DOF does not submit any evidence or authority to support these contentions. The analysis below will demonstrate that the fiscal and compliance audits under section 14501 are expanded to

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[260] Education Code section 35186(f) (Stats. 2005, ch. 118 § 5 (AB 831).

[261] Education Code section 35186(a) (Stats. 2007, ch. 526 § 2 (AB 347).

[262] Education Code section 35186(f) (Stats. 2007, ch. 526 § 2 (AB 347).

[263] Education Code sections 14501 (Stats. 2004, ch. 900, § 2 (SB 550)); 41020 (Stats. 2004, ch. 900 § 13 (SB 550)); 41344.4 (Stats. 2004, ch. 900 § 14 (SB 550)).

[264] Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November16, 2012.

include the *Williams* elements, and that the review of audit exceptions was consequently expanded as well, to include the same elements. The conduct of an audit including elements that were not previously required by state law to be subject to audit constitutes a new program or higher level of service.

The Commission finds that the expansion of compliance audits under section 14501, and the expansion of audit exceptions and review under section 41020, impose a partial reimbursable state mandated program or higher level of service. But the possible withholding of funds pursuant to a significant audit exception unless the county superintendent certifies that the exception has been corrected or an acceptable plan of correction has been put in place, under section 41344.4, does not impose a reimbursable state mandated program, as discussed below.

1. Amendments to the Compliance Audit under section 14501 impose a state-mandated new program or higher level of service upon school districts.

Under prior existing law, section 14501 defined a "compliance audit" to mean "an audit that ascertains and verifies whether or not funds provided through apportionment, contract, or grant, either federal or state, have been properly disbursed and expended as required by law or regulation or both."[265] As amended by Statutes 2004, chapter 900, section 2, Section 14501 now defines a compliance audit to "includ[e] the verification of each of the following:"

> (1) The reporting requirements for the sufficiency of textbooks or instructional materials, or both, as defined in Section 60119.
>
> (2) Teacher misassignments pursuant to Section 44258.9.
>
> (3) The accuracy of information reported on the School Accountability Report Card required by Section 33126.

The expanded scope of the "compliance audit," like the expanded scope of the SARC, and the new *Williams* complaint process, mandates a higher level of service upon school districts. Paragraph (7) of the Legislative Counsel's Digest of chapter 900 of Statutes 2004 suggests an awareness by the Legislature that these amendments constitute a new state-mandated local program, and while the Legislative Counsel's expression is not dispositive on the issue, the amendments require school districts to perform new activities that provide a service to the public.[266]

DOF argues that the so-called "*Williams* elements" above are basic and essential to the provision of education and that therefore the audits required under Proposition 98 should encompass these items.[267] This argument relies on Government Code section 17556(f), which proscribes a

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[265] Education Code section 14501(b) (Stats. 2002, ch. 1128 (AB 2834)).

[266] Paragraph (7) of Legislative Counsel's Digest preceding Statutes 2004, chapter 900 describes in brief the requirements of the local audit and review of audit exceptions commencing with the 2004-2005 audit, concluding that the requirements "impos[e] a state-mandated local program."

[267] Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November16, 2012.

finding of costs mandated by the state where a mandated activity is "expressly included in," or "necessary to implement" a voter-enacted ballot initiative.[268]

There is no evidence or authority that would link the "annual audit accounting for such funds" that DOF cites from Proposition 98[269] to the "*Williams* elements" cited above. The language from Proposition 98 upon which DOF relies refers to fiscal accounting, while the test claim statute has been amended with respect to a "compliance audit" only.[270] It cannot reasonably be argued that the requirements of the test claim statute are "expressly included in" the fiscal audit provided for in Proposition 98.

Moreover, what is "necessary to implement" a voter-enacted ballot initiative is explored above, with respect to SARCs, and it is found that the word "necessary" is operative. As discussed with respect to SARCs, a program that contemplates amendment or augmentation does not result in any and all amendment being found "necessary to implement" that program. Whatever audit requirements might be permissible under Proposition 98, the test claim statute is not "necessary to implement" the voter-enacted ballot initiative.[271]

DOF also argues, in its comments, that "the existing financial and compliance audits program has always been able to address the categories of expenditures identified in the test claim statute." DOF argues, therefore, that "the statute should not be interpreted to create a higher level of service, but to identify the Legislature's use of audit resources."[272] Prior section 14501 provided that a compliance audit "means an audit which ascertains and verifies whether or not funds provided through apportionment, contract, or grant, either federal or state, have been properly disbursed and expended as required by law or regulation or both."[273] The test claim statute adds specific reference to the reporting requirements for sufficient textbooks and instructional materials, teacher misassignments, and the accuracy of the SARCs, as requirements for inclusion in a compliance audit. As discussed above, the prior audit requirements address fiscal accountability, and the disbursement of funds in compliance with law and regulation; the test claim statute adds elements that are beyond the scope, and by increasing the scope of the audit, the test claim statute imposes a new program or higher level of service.

The Commission finds that section 14501 imposes a state-mandated new program or higher level of service upon school districts.

2. Amendments and additions to the review of audit exceptions under section 41020 impose new programs or higher levels of service upon county offices of education and school districts.

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[268] Government Code section 17556(f).

[269] Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November16, 2012.

[270] Education Code section 14501(b) (Stats. 2004, ch. 900 (SB 550)).

[271] See *CSBA, supra* [discussion of "necessary to implement"].

[272] Exhibit I, DOF Comments on Draft Staff Analysis/Proposed Statement of Decision, *Williams I, II, III*, November16, 2012.

[273] Education Code section 14501 (Stats 2002, ch. 1128 (AB 2834)).

Under prior section 41020 both the county offices of education and the school districts were required to conduct an audit of all funds and expenditures within their respective control, by May 1 of each fiscal year.[274] The audit was to be conducted at the expense of the school district by a certified public accountant licensed by the California Board of Accountancy, and using a format established by the Controller.[275] The prior section required that, commencing with the 2002-2003 audits, county superintendents must review audit exceptions "related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determin[e] whether the exceptions have been either corrected or an acceptable plan of correction has been developed."[276] Amendments to section 41020, enacted in Statutes 2004, chapter 900 provide that beginning with the 2004-2005 fiscal year, county superintendents must also include in the review of audit exceptions "those audit exceptions related to use of instructional materials program funds, teacher misassignment, [and] information reported on the school accountability report card," and the superintendent "shall determine whether the exceptions are either corrected or an acceptable plan of correction has been developed."[277]

DOF argues, in its comments, that review of audit exceptions was a preexisting requirement on county offices of education, and in fact argues that "county superintendents would have had to address audit exceptions that related to the *Williams* elements, even though they were not expressly contained in statute." DOF also argues that "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." DOF argues that in carrying out the broad oversight duties, "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."

But in the same way that the test claim statute expands the scope of the audits to be performed, the scope of audit exceptions must expand. There is no evidence that prior to the express inclusion in the compliance audits of the so-called *Williams* elements, the county superintendents would have reviewed audit exceptions regarding those elements. To the extent that the review of audit exceptions is expanded in scope, and the claimants have alleged increased costs, DOF submits no evidence or authority to rebut the claimants' allegations. DOF's bare assertions that the broad oversight authority of county offices of education should extend to the review of audit exceptions are without supporting evidence or authority, and where an audit was not previously required to contain those elements under section 14501, no review of audit exceptions would have occurred under section 41020.

Pursuant to section 41020 the audit is required to be performed at the expense of the district, including any and all audit elements included under section 14501.[278] Thus, while section 41020 causes school districts to conduct new activities and incur increased costs by expanding the scope of the audit as defined by section 14501, the same section causes county offices of

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[274] Education Code section 41020(b)(1) (Stats. 2002, ch. 1128 (AB 2834)).

[275] Education Code section 41020(d, e, and f) (Stats. 2002, ch. 1128 (AB 2834)).

[276] Education Code section 41020(i) (Stats. 2002, ch. 1128 (AB 2834)).

[277] Education Code section 41020(i)(2) (Stats. 2004, ch. 900 (SB 550)).

[278] Education Code section 41020(g)(1)(A) (Stats. 2004, ch. 900 (SB 550)) [referring to section 14500 et seq. for the procedural and technical requirements of the audits].

education to conduct new activities and to incur increased costs by expanding the scope of review of audit exceptions.

The Commission finds that section 41020 imposes state-mandated new programs or higher levels of service upon both county offices of education and upon school districts.[279]

3. Section 41344.4 does not impose a state-mandated program upon local educational agencies.

Existing section 41344 required school districts to be penalized for "significant audit exceptions," either in the form of repayment or in the form of withholding from the next principal apportionment by the Controller.[280] New section 41344.4 provides that "notwithstanding any other provision of law," a local educational agency will not be required to repay an apportionment based on significant audit exceptions relating to instructional materials, teacher vacancies or misassignments, or inaccuracies in the school accountability report cards, if the county superintendent certifies to the Superintendent of Public Instruction and the Controller that the audit exception was corrected or that an acceptable plan of correction has been submitted to the county superintendent.

This section is alleged to result in a duty on the school district, in order to avoid being held accountable for repayment, to put a plan of correction in place, and a duty on the county superintendent to certify the same to the Superintendent of Public Instruction.[281] These new activities are alleged to result in increased costs, and therefore to create a reimbursable state-mandated local program.

However, there is nothing in the plain language of section 41344.4 that imposes any mandatory activities or costs. To the extent that the school districts are required to correct audit exceptions or to submit to the county superintendent an acceptable plan of correction or face repayment or reduction of the next principal apportionment, those costs are, pursuant to *County of Los Angeles*, *supra*, and *Long Beach Unified School District v. State of California*, not reimbursable absent some mandated new program or higher level of service.[282] Moreover, under *City of San Jose*, as discussed above, where mandated activities or costs are imposed by another entity of local government, such as a county office of education, those costs are not "mandated by the state," within the meaning of article XIII B, section 6 and Government Code section 17514. Here, as in *City of San Jose*, any costs imposed would be a result of either the school district's failure to correct a significant audit exception identified by the review of audit exceptions conducted by the county office of education, or the county office of education's failure to certify to the Superintendent of Public Instruction that an audit exception had been corrected or a plan of correction put in place.

The Commission finds that section 41344.4 does not impose a state-mandated program.

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[279] Statutes 2004, chapter 900 (SB 550).

[280] Education Code section 41344 (Stats. 2003, ch. 552 § 14 (AB 300)).

[281] Education Code section 41344.4 (Stats. 2004, ch. 900 § 14 (SB 550)

[282] *Long Beach Unified School District v. State of California* (Cal. Ct. App. 2d Dist. 1990) 225 Cal.App.3d 155, 173 ["A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service."].

4. The mandated new programs or higher levels of service under sections 14501 and 41020 result in increased costs mandated by the state, within the meaning of Government Code section 17514.

Claimants allege statewide cost estimates for Financial and Compliance Auditing for K-12 School Districts in amounts of $96,486 for fiscal year 2004-2005 and $97,000 for fiscal year 2005-2006. Claimants allege statewide cost estimates for Financial and Compliance Auditing for county offices of education in amounts of $20,174 for fiscal year 2004-2005 and $20,000 for fiscal year 2005-2006. No funding is identified for the activities required by sections 14501 and 41020. The Commission finds that Education Code sections 14501 and 41020 result in increased costs mandated by the state pursuant to Government Code section 17514.

5. Conclusion

The Commission finds that sections 14501 and 41020 impose a reimbursable state-mandated program for the following activities:

- School districts are required to include within their compliance audit, verification of reporting requirements for sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of the information reported on the School Accountability Report Card. The reimbursement period for these activities begins September 29, 2004.[283]
- County offices of education are required to include in the review of audit exceptions those audit exceptions related to sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of information reported on the SARC. The reimbursement period for these activities begins September 29, 2004.[284]

The Commission finds that section 41344.4 does not impose a state-mandated program upon any LEAs.

H. Sufficiency of Textbooks and Instructional Materials Do Not Impose a State-Mandated Program.[285]

Education Code sections 60117 through 60119 contain the Pupil Textbooks and Instructional Materials Incentive Program, added to the code in 1994. Prior section 60119 required school districts to do the following:

- Hold an annual public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials, or both, in each subject that are consistent

[283] Education Code section 14501; 41020 (Stats. 2004, ch. 900 (SB 550)).

[284] Education Code section 41020 (Stats. 2004, ch. 900 § 13 (SB 550)).

[285] Education Code sections 60119 (amended by Stats. 2004, ch. 900 § 18 (SB 550)); 60252 (Stats. 2004, ch. 900, § 20 (SB 550)).

with the content and cycles of the curriculum framework adopted by the state board.

- If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall (1) provide information to classroom teachers and to the public setting forth the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and (2) take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil *has, or will have, sufficient textbooks or instructional materials, or both, within a two-year period from the date of the determination*.[286]

- School districts may use any funds available for textbooks and instructional materials from categorical programs appropriated in the budget, funds in excess of the amount needed during the prior fiscal year to purchase textbooks or instructional materials, and any other funds available to the school district for textbooks and instructional materials to ensure that each pupil has sufficient textbooks or instructional materials within a two-year period from the date the governing board determines there are insufficient materials.[287]

Under amendments to the Pupil Textbook and Instructional Materials Incentive Program enacted pursuant to the *Williams* settlement, school districts are required, in order to be eligible to receive funds, to:

- Hold a public hearing *on or before the end of the eighth week of the school year*, in which the governing board must make a determination, through a resolution, as to whether each pupil in each school in the district *has* sufficient textbooks or instructional materials or both in each core subject as identified by the amended section;[288]

- Ensure that students enrolled in foreign language or health courses must have sufficient textbooks or instructional materials; that high school students must have sufficient laboratory equipment; and that the governing board shall address those issues in its hearing; and,[289]

- If the school district determines that an insufficiency exists, the district is required to provide information regarding the insufficiency to parents and teachers, and to take any action to remedy the deficiency, "except an action that would require reimbursement by

[286] Education Code section 60119(a) (Stats. 1999, ch. 646 § 32.2 (AB 1600)).

[287] Education Code section 60119(a)(2)(B) (Stats. 1999, ch. 646 § 32.2 (AB 1600)). Beginning in fiscal year 2009-2010, and until fiscal year 2014-2015, school districts may use funds from several enumerated categorical block grants, previously limited to specified purposes, to fund any educational purpose. (Education Code section 42605, Stats. 2009, 3rd Ex. Sess., ch. 12 § 15 (ABX3 4)).

[288] Education Code section 60119(a)(1) (Stats. 2004, ch. 900 § 18 (SB 550)).

[289] Education Code section 60119(a)(1)(C) (Stats. 2004, ch. 900 § 18 (SB 550)) [former section only required a finding that each pupil has or will have appropriate textbooks or instructional materials "in each subject." (Stats. 1999, ch. 646 § 32.2 (AB 1600))].

the Commission on State Mandates," to ensure that each pupil has sufficient textbooks or instructional materials, or both, within *two months* of the beginning of the school year.[290]

- "Sufficient textbooks or instructional materials" is defined in the amended section to mean that each pupil has a textbook or instructional materials, or both, to use in class and to take home. This does not require two sets of textbooks, and does not include photocopied portions of a textbook.[291]
- Amended section 60252 requires LEAs to ensure that textbooks and instructional materials are ordered, to the extent practicable, before the school year begins.[292]

Claimants allege generally that amended sections 60119 and 60252 impose reimbursable state-mandated activities on LEAs.

1. Sections 60119 and 60252 do not impose a state-mandated program because local educational agencies are not legally compelled to participate in the Pupil Textbook and Instructional Materials Incentive Program.

Based on the plain language of the statutes creating the underlying education programs in *Kern*, the court determined that school districts were not legally compelled by the state to establish school site councils and advisory bodies, and hence, not legally compelled to incur the notice and agenda costs required under the applicable open meeting laws. Rather, the districts elected to participate in the school site council programs to receive funding associated with the programs, and made themselves subject to the open meeting requirements.[293]

Here, school districts are not legally compelled by the state to comply with the requirements of the Pupil Textbook and Instructional Materials Incentive Program. Rather, school districts make a local decision to perform the activities in order to be eligible to receive funding. The plain language of Education Code section 60119 provides that "*in order to be eligible to receive funds*," the governing board of a school district must provide for a public hearing, and adopt a resolution determining whether each student has sufficient textbooks or instructional materials.[294] There is no legal compulsion to comply with the requirements of section 60119.

Section 60252, similarly, does not impose any mandated activities upon local educational agencies. In 1994, the Legislature created the Pupil Textbook and Instructional Materials Incentive Account to provide supplemental funding to school districts for textbooks and instructional materials, by adding Education Code section 60252.[295] That statute was in effect

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[290] Education Code section 60119(a)(2)(A) (Stats. 2004, ch. 900 § 18 (SB 550) [The former section permitted *two years* to remedy the insufficiency (Stats. 1999, ch. 646 § 32.2 (AB 1600))]; Stats. 2005, ch. 118 (AB 831); Stats. 2006, ch. 704 (AB 607)).

[291] Education Code section 60119(c) (Stats. 2004, ch. 900 § 18 (SB 550)[the former section contained no express definition of sufficiency]).

[292] Education Code section 60252 (Stats. 2004, ch. 900 § 20 (SB 550)).

[293] *Kern, supra*, 30 Cal.4th 727, at pp. 744-745.

[294] Education Code section 60119 (Stats. 2004, ch. 900 § 18 (SB 550)).

[295] Statutes 1994, chapter 927.

until a 2002 amendment, which made section 60252 inoperative on January 1, 2003.[296] The section was amended, and the account reinstated, in this test claim statute.[297] The money in the account is intended to fund the Pupil Textbook and Instructional Materials Incentive Program, and is allocated to K-12 school districts that "satisfy each of the following criteria:"

(1) A school district shall provide assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.

(2) A school district shall ensure that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.

(3) A school district shall ensure that textbooks and instructional materials are ordered, to the extent practicable, before the school year begins.

Therefore, the requirements of both section 60119 and section 60252 are imposed only upon LEAs who choose to participate in the Pupil Textbook and Instructional Materials Incentive Program. There is no legal compulsion to participate in the program, and therefore the requirements of sections 60119 and 60252 are not mandated by the state.

2. Sections 60119 and 60252 do not impose a state-mandated program because local educational agencies are not practically compelled to participate in the Pupil Textbook and Instructional Materials Incentive Program.

As discussed above, in *Kern*, the school districts urged the court to define "state mandate" broadly to include situations in which participation in the program is practically compelled; where the absence of a reasonable alternative to participation creates a "de facto" mandate. Although the court in *Kern* declined to do so, the court did recognize the possibility of practical compulsion existing in the context of a voluntary funded program.

The court acknowledged that a participant in a funded program may be burdened by additional requirements imposed as a condition of continued participation in a program. Such conditions alone, however, do not make the program mandatory or reimbursable under article XIII B, section 6:

> Although it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of continued participation in the program, just as such a participant would be disappointed if the total amount of the annual funds provided for the program were reduced by legislative or gubernatorial action, the circumstance that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render a local entity's

[296] Statutes 2002, chapter 803 added subdivision (d) to section 60252, which stated: "This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2007 deletes or extends the dates on which it becomes inoperative and is repealed." In 2004, the Legislature deleted subdivision (d), making the statute operative again (Stats. 2004, ch. 900, S.B. 550).

[297] Education Code section 60252 (Stats. 2004, Ch. 900, § 20 (SB 550)).

> decision whether to continue its participation in the modified program any less voluntary. [298]

The court's reasoning applies here. If a school district decides not to participate in the Pupil Textbook and Instructional Materials Incentive Program, or elects to discontinue participation in the program, there is no evidence in the record that the district will face "certain and severe penalties" such as "double taxation" or other "draconian measures." It simply loses its right to continue to receive funding.

One might argue, after *Williams*, that compliance with the Pupil Textbook and Instructional Materials Incentive Program is required; that a pupil's constitutional right to an equal educational opportunity may be impaired if every pupil does not have access to textbooks or instructional materials in each subject area; and that the compliance with the section 60119 is required in order to carry out the preexisting constitutional and statutory requirement to provide students with textbooks or instructional materials at no cost to the student.[299] Indeed a failure to provide sufficient textbooks was one of the grounds upon which the *Williams* class action against the public schools was instituted, and noncompliance with the standards set by the amended provisions of the Pupil Textbook and Instructional Materials Incentive Program might well be expected to lead to further legal action. However persuasive that line of reasoning, it is entirely hypothetical; potential liability cannot reasonably be said to constitute "practical compulsion" within the meaning of *City of Sacramento*, and *Kern*, *supra*.

There is no evidence in the record to support a finding that a pupil's constitutional right to education is impaired if a school district does not comply with the Pupil Textbook and Instructional Materials Incentive Program and receive that additional funding. Neither is there evidence in the record that school districts' existing funding fails to provide sufficient funds to purchase textbooks and instructional materials for students, or that participation in the Pupil Textbook and Instructional Materials Incentive Program is the *only* reasonable means of carrying out the core mandatory function of providing sufficient textbooks and instructional materials to each pupil.[300] Compliance with section 60119 is required to receive the supplemental funding under this program, but school districts are not legally compelled to comply. As described in the analysis above, school districts are not legally or practically compelled to comply with sections 60252 and 60119, and to seek supplemental funding for textbooks and instructional materials.

Accordingly, the Commission finds that Education Code sections 60119 and 60252 do not impose a state-mandated new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution.

I. Remaining Code Sections, Regulations, and Executive Orders Pled

[298] *Kern, supra*, 30 Cal.4th 727, 748; 752-754.

[299] Article IX, section 7.5 of the California Constitution provides that "The State Board of Education shall adopt textbooks for use in grades one through eight throughout the State, to be furnished without cost as provided by statute." Education Code section 60411 governs instructional materials for high school students and similarly provides that the books be provided to pupils at no charge.

[300] *POBRA, supra* (2009) 170 Cal.App.4th 1355, 1368.

The following code sections were pled in the test claim but nowhere alleged specifically to result in new programs or higher levels of service, or to result in increased costs mandated by the state to LEAs.

- Section 88 provides that "state board" shall mean the State Board of Education. There is no activity mandated by this section.
- Section 32228.6 was repealed by the test claim statutes in section 4, chapter 118, Statutes 2005.[301] There are no activities required by this repealed section.
- Section 41207.5 created the Proposition 98 Reversion Account. There are no activities mandated by this section.[302]
- Sections 41500, 41501, and 41572 were amended in chapter 118 of Statutes 2005, in a manner not relevant to this test claim.[303]
- Section 44225.6, addressing the annual report to the Legislature and to the Governor by the Commission on Teacher Credentialing, was amended by Statutes 2004, chapter 902, but mandates activities only of the state Commission on Teacher Credentialing.[304] Moreover, no costs have been alleged under this section.
- Sections 44274 and 44275.3 were amended to provide that where the commission [on Teacher Credentialing] determines that another state's licensing requirements are at least comparable to California's applicants from that state will not be required to meet California requirements for the basic skills proficiency test.[305] These code sections do not impose mandated activities on school districts.
- AB 3001 amended sections 44325 and 44453 to bring districts' and universities' internship programs in line with the requirements of the federal No Child Left Behind Act of 2001.[306] There are no state-mandated activities alleged under these sections.
- AB 3001 made technical, non-substantive changes to section 44511 that do not mandate a new program or higher level of service on school districts.[307]
- Section 52059 was amended to require that the Statewide System of School Support, consisting of regional consortia, including county offices of education and school districts, to provide assistance to schools and school districts in need of improvement by reviewing and analyzing all facets of the school's operation, including recruitment, hiring, and retention of principals, teachers, and other staff; and the roles and

[301] Statutes 2005, chapter 118, section 4 (AB 831).

[302] Education Code section 41207.5 (Stats. 2004, ch. 899 § 4 (SB 6)).

[303] Statutes 2005, chapter 118, sections 6-8 (AB 831).

[304] Statutes 2004, chapter 902, section 2 (AB 3001).

[305] Statutes 2004, chapter 902, sections 4-5 (AB 3001).

[306] Statutes 2004, chapter 902, sections 6-7 (AB 3001).

[307] Statutes 2004, chapter 902, section 8 (AB 3001).

responsibilities of district and school management personnel.[308] There are no activities required of LEAs alleged under this section.

- Section 48642 provides for the sunsetting and repeal of a number of other sections not relevant to this test claim.[309] There are no activities required by this section.
- Sections 49436, 52295.35, and 56836.165, were amended in a manner not relevant to this test claim.[310]
- Sections 52055.625 and 52055.640 add requirements, conditional upon the receipt of funds, to the High Priority Schools Grant Program. SB 550 also added section 52055.662, providing for new grants during the phase-out of schools from the High Priority Schools Grant Program.[311] There are no new activities or costs alleged under this program in the test claim. Moreover, the program is a grant program, and any requirements that might be alleged under the test claim are downstream requirements of a voluntary funding program, and are therefore not mandated by the state.
- Section 62000.4 was repealed by the test claim statutes in section 21 of chapter 900, Statutes 2004.[312] There are no activities required by this repealed section.

The foregoing code sections and regulations are not alleged to impose any new activities or costs mandated by the state upon LEAs. The claimants' narrative and declarations do not address the requirements of these statutes, and the Commission therefore finds no mandated activities or costs mandated by the state.

V. Conclusion

For the reasons above, the Commission finds that Education Code sections 33126(b), 35186, 14501, 41020, and 42127.6 impose a reimbursable state-mandated program for school districts and county offices of education, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for the following activities:

1. Education Code section 33126(b), enacted in Statutes of 2004, chapter 900, imposes a reimbursable state-mandated program upon school districts, beginning September 29, 2004, for the following activities:
    - Reporting teacher misassignments and vacancies within the School Accountability Report Card.
    - Reporting the availability of textbooks and other instructional materials within the School Accountability Report Card.
    - Reporting any needed maintenance to ensure good repair within the School Accountability Report Card.

[308] Statutes 2004, chapter 902, section 10 (AB 3001).

[309] Statutes 2005, chapter 118, section 10 (AB 831).

[310] Statutes 2005, chapter 118, sections 11-14 (AB 831).

[311] Statutes 2004, chapter 900, section 15-17 (SB 550); Statutes 2005, chapter 118, § 12.

[312] Statutes 2004, chapter 900, section 21 (SB 550).

2. Education Code section 35186, as enacted in Statutes 2004, chapter 900 (SB 550), and amended by Statutes 2004, chapter 903 (AB 2727); Statutes 2005, chapter 118 (AB 831); Statutes 2006, chapter 704 (AB 607); and Statutes 2007, chapter 526 (AB 347); imposes a reimbursable state mandated program upon school districts for the following activities:

   - Receiving complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher misassignments or vacancies. The eligible reimbursement period for this activity begins September 29, 2004.[313]
   - Responding to complaints, if requested. The eligible reimbursement period for this activity begins September 29, 2004.[314]
   - Forwarding a complaint beyond the authority of the local school official in a timely manner but not to exceed 10 working days. The eligible reimbursement period for this activity begins September 29, 2004.[315]
   - Making all reasonable efforts to investigate any problem within the principal's authority. The eligible reimbursement period for this activity begins September 29, 2004.[316]
   - Remedying a valid complaint within a reasonable time period by not to exceed 30 working days; reporting the resolution to the complainant within 45 working days. The eligible reimbursement period for this activity begins September 29, 2004.[317]
   - Hearing the complaint at a regularly scheduled hearing of the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.[318]
   - Reporting summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent and the district governing board. The eligible reimbursement period for this activity begins September 29, 2004.[319]
   - Posting a notice in each classroom identifying the appropriate subjects of complaint, including sufficient textbooks and instructional materials, and facilities conditions; and informing potential complainants of the location where a complaint form may be obtained in the case of a shortage. The eligible reimbursement period for this activity begins September 29, 2004.[320]

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[313] Education Code section 35186(a)(1) (Stats. 2004, ch. 900 § 12 (SB 550).

[314] Education Code section 35186(a)(1) (Stats. 2004, ch. 900 § 12 (SB 550).

[315] Education Code section 35186(a)(3) (2004, ch. 900 § 12 (SB 550).

[316] Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550).

[317] Education Code section 35186(b) (Stats. 2004, ch. 900 § 12 (SB 550).

[318] Education Code section 35186(c) (Stats. 2004, ch. 900 § 12 (SB 550).

[319] Education Code section 35186(d) (Stats. 2004, ch. 900 § 12 (SB 550).

[320] Education Code section 35186(f) (Stats. 2004, ch. 900 § 12 (SB 550).

- Adding to the posted notice in each classroom that "[t]here should be no teacher vacancies or misassignments." The eligible reimbursement period for this activity begins July 25, 2005.[321]
- Receiving complaints regarding "any deficiencies related to intensive instruction and services provided…to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12." The eligible reimbursement period for this activity begins October 12, 2007.[322]
- Adding to the posted notice in each classroom in schools that serve grades 10 to 12, that "[p]upils who have not passed the high school exit examination by the end of grade 12 are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first." The eligible reimbursement period for this activity begins October 12, 2007.[323]

3. Education Code sections 14501 and 41020, as amended by Statutes 2004, chapter 900 (SB 550), impose a reimbursable state-mandated program for the following activities:
   - School districts are required to include within their compliance audit verification of reporting requirements for sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of the information reported on the School Accountability Report Card. The reimbursement period for these activities begins September 29, 2004.[324]
   - County offices of education are required to include in the review of audit exceptions those audit exceptions related to sufficiency of textbooks and instructional materials; teacher misassignments; and the accuracy of information reported on the School Accountability Report Card. The reimbursement period for these activities begins September 29, 2004.[325]
4. Education Code section 42127.6, as amended by Statutes 2004, chapter 902 (AB 3001), imposes a reimbursable state-mandated program upon school districts, beginning, for purposes of reimbursement eligibility, on September 29, 2004, and requiring them to:
   - For school districts to provide the county superintendent with a copy of a study, report, evaluation, or audit that contains evidence that the school district is showing fiscal distress, 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

[321] Education Code section 35186(f) (Stats. 2005, ch. 118 § 5 (AB 831).

[322] Education Code section 35186(a) (Stats. 2007, ch. 526 § 2 (AB 347).

[323] Education Code section 35186(f) (Stats. 2007, ch. 526 § 2 (AB 347).

[324] Education Code section 14501; 41020 (Stats. 2004, ch. 900 (SB 550)).

[325] Education Code section 41020 (Stats. 2004, ch. 900 § 13 (SB 550)).

(i) of section 42127.8, unless commissioned at the discretion of the district or of the county office of education.[326]

The Commission denies the remaining allegations and finds that all other statutes, regulations, and alleged executive orders pled in this test claim that are not specifically identified in this section do not impose a reimbursable state-mandated program.

[326] Education Code section 42127.6 (Stats. 2004, ch. 902 § 1 (AB 3001)).

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

RE: **Adopted Statement of Decision**

Williams Case Implementation I, II, III, 05-TC-04, 07-TC-06, and 08-TC-01
San Diego County Office of Education and Sweetwater Union High School District, Claimants

On December 7, 2012, the foregoing statement of decision of the Commission on State Mandates was adopted in the above-entitled matter.

Heather Halsey, Executive Director

Dated: December 18, 2012