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Commission on
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LATE FILING

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

Re: Draft Staff Analysis
High School Exit Exam II, 08TC-TC-02
Education Code section 37254, et al.
San Jose Unified School District, Claimant

Dear Ms. Halsey:

Please be advised claimant, San Jose Unified School District, submits the following comments in response to the staff analysis in the above matter.

1. CAHSEE ESTABLISHED STATEWIDE ACADEMIC STANDARDS

CAHSEE, test claim urgency statute enacted by the state setting higher academic standards,¹ requires school districts to offer "supplemental instructional programs for pupils ... who do not demonstrate sufficient progress toward passing the [CAHSEE]." (§ 37252, subd. (a); see also § 60851, subd. (f).)

¹ CAHSEE was initially enacted in 1999 for the following reasons:
In March 1999, the California Legislature found that "[l]ocal proficiency standards" set by individual school districts were "generally set below a high school level and [were] not consistent with state adopted academic content standards." (Stats. 1999, 1st Ex.Sess.1999-2000, ch. 1, §1(a).) The Legislature concluded that "[i]n order to significantly improve pupil achievement in high school and to ensure that pupils who graduate from high school can demonstrate grade level competency in reading, writing, and mathematics, the state must set higher standards for high school graduation." (Stats.1999, 1st Ex.Sess.1999-2000, ch.1, §1(b).) FSA page one. (emphasis added)

In order to further this goal, the Legislature directed that defendant "Superintendent of Public Instruction, with the approval of [defendant] State Board of Education, shall develop a high school exit examination in English-language arts and mathematics in accordance with ...statewide academically rigorous content standards adopted by [defendant] State Board of Education..." (Ed.Code, §60850, subd. (a).) The examination developed under that mandate has come to be known as the CAHSEE. The CAHSEE is administered to all public high school students starting in grade 10, and each student is permitted to continue to take the CAHSEE at each subsequent administration, several times a year, until he or she has passed both sections. (§60851, subd. (b).) FSA page two. (emphasis added)

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The 2007 test claim statute amendment also implemented a settlement from the *Valenzuela v. O'Connell* litigation by ensuring that pupils who fail to pass the CAHSEE by the end of 12th grade have remedial assistance.

As in the case *San Diego Unified School Dist. v. Commission On State Mandates* (2004) 33 Cal.4th 859, 16 Cal.Rptr.3d 466, decided after the Kern decision² relied upon in the staff analysis, the test HSEE claim legislation provides an enhanced service to the public—a higher level of academic proficiency. In *San Diego Unified School Dist. v. Commission On State Mandates*, the Supreme Court of California decided the hearing costs incurred as a result of the mandatory actions related to expulsions compelled by Education Code section 48915 were fully reimbursable as the legislation provided enhanced service to the public, safer schools for the vast majority of students. Providing public schooling clearly constitutes a governmental function, and enhancing the safety of those who attend such schools constitutes a service to the public.

2. CLAIMANT TIMELY FILED TEST CLAIM

Claimant complied with Government Code section 17551(c) in filing the test claim within 12 months.³ Staff analysis conclusion, "The Commission does not have jurisdiction over section 1204.5 of the title 5 regulations, as added and amended in 2004, 2005, and 2006, because those versions were not filed within the one-year statute of limitations required by Government Code section 17551(c)", incorrectly creates a requirement the regulations must be filed with the test claim.

In the alternative the Commission need only take judicial notice of the regulations in accordance with California Evidence Code⁴ sections that state, "Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United

² Department of Finance v. Commission on State Mandates (Kern High School Dist.) (2003) 30 Cal.4th 727.

³ Government Code section 17551 (c) Local agency and school district test claims shall be filed no later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

⁴ Cal. Evidence Code Section 452. Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

(a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.

(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.

(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(e) Rules of court of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(f) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

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States," E.C. 452(b), "Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute," E.C. 452(g) or "Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." E.C. 452(h)

3. SCHOOL DISTRICTS MUST COMPLY WITH THE STATUTE WHETHER OR NOT THEY APPLY FOR FUNDING

The test claim legislation requires local school districts to provide "intensive instruction and services." The state legislation requires school districts to offer remedial instruction, an enhanced service to the public. Whether school districts seek or receive funds, a local discretionary decision, for the CAHSEE Intensive Instruction Program does not relieve this requirement.

"Staff finds that section 37254, as amended by Statutes 2007, chapter 526, does not impose a state-mandated program on school districts, because it *simply* (emphasis) revised definitions of "eligible pupil," and "intensive instruction and services." The term "simply" incorrectly describes the changes imposed by the test claim legislation.

(1) This bill, among other things, would revise the definition of "eligible pupil" to include pupils who have not satisfied the requirement that they pass the high school exit examination in order to graduate from high school and have failed one or both parts of the examination by the end of grade 12; revise the calculation for determining the per pupil rate for purposes of funding; authorize the receipt of intensive instruction and services on Saturdays, evenings, or at a time and location deemed appropriate by the school district for eligible pupils; expand the authorized scope of intensive instruction and services to include instruction in English language arts or mathematics, or both, that eligible pupils need to pass those parts of the high school exit examination not yet passed and the provision of instruction and services by a public or nonpublic entity as determined by the local educational agency; require a school district to accomplish additional matters relating to pupils who have not passed one or both parts of the exit examination by the end of grade 12; and require the annual report to also include information relating to the notification of eligible pupils of the intensive instruction and services provided and be submitted to the appropriate county superintendent of schools.

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(2) This bill also would require a school district to use its uniform complaint process to help identify and resolve 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 bill would also require the notice, for certain classrooms, to include certain information about the entitlement to receive the intensive instruction and services, and would require a complaint regarding any deficiency related to intensive instruction and services to be submitted to the district official designated by the district superintendent. By imposing additional duties on school districts, this bill would impose a state-mandated local program.

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(3) This bill also would require the counselor to explain the availability, for up to 2 consecutive academic years after the completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, of intensive instruction and services for those pupils who have not passed one or both parts of the exit examination by the end of grade 12. The bill also would require a school district, for the identified pupils, to inform a pupil who has not passed one or both parts of the high school exit examination of the option of intensive instruction and services. The bill would require the report also to be submitted to the appropriate county superintendent of schools and contain an assurance that the school district has complied with the provision that requires a school counselor to apprise a pupil of certain information during an individual conference.

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(4) This bill would require a county superintendent of schools to perform additional duties related to conducting school visits and verifying that 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 2 consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the exit examination, whichever comes first, and verifying that those pupils who elected to receive the instruction and services are being served. By imposing additional duties on local educational agencies or officials, the bill would impose a state-mandated local program.

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4. **CLAIMANT REQUEST TEST CLAIM BE AMENDED**


The application of Government Code 17554, permits the parties to agree to waive the application of any procedural requirement. Claimant requests the test claim be amended to include Education Code Sections 37254, 52378, 52379, 52380 and Title 5 California Code of Regulations section 1024.5. The equitable application of Government Code section 17554, provides all parties to the claim, the opportunity to agree that the Commission may waive the application of any procedural requirement imposed by this chapter or pursuant to Section 17553. Such amendment is procedural not substantive.

CONCLUSION

CAHSEE, test claim legislation, requires school districts to offer "supplemental instructional programs for pupils ... who do not demonstrate sufficient progress toward passing the [CAHSEE]," creating a reimbursable state mandated program. The filing by the claimant on October 14, 2008 was in compliance with Govt. Code Section 17551(c) and the rules of evidence provide the Commission with jurisdiction of the applicable statues and regulations.

CERTIFICATION

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


Arthur M. Palkowitz
Attorney for the Claimant